

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: TRANSIT MALL EASEMENT AND OPERATING
MEMORANDUM FOR RESIDENTIAL VEHICULAR ACCESS –
AND PARKING AGREEMENT – FORMER AT&T BUILDING,
520 THIRD STREET
STAFF PRESENTER: JENNIFER PHILLIPS, ASSISTANT CITY MANAGER
AGENDA ACTION: RESOLUTIONS (2)

ISSUES

Will the Council 1) approve the conveyance of an easement to the Redevelopment Agency of the City of Santa Rosa that allows limited passenger vehicle access through the Transit Mall for future residents at the former AT&T site, 520 Third Street (Easement), and an operating memorandum that addresses operational details of the Easement; and 2) approve an agreement to make available 100 parking permits for purchase by Museum on the Square, LLC, for the benefit of the Museum on the Square project (Parking Agreement)?

COUNCIL GOALS

1. Per the adopted Council Goals and Strategic Plan, the City desires to create and sustain a vital downtown, a strong economic base, a positive business model for a sustainable carbon neutral community that points out the advantages of living, working and doing business in Santa Rosa, as well as aggressive additions to the Economic Sustainability Work Plan that includes using redevelopment tools for the AT&T building.
2. Development of the AT&T Site as a mixed-use, infill project fulfills the Council goals and Strategic Plan objectives because it promotes additional cultural, employment, residential and economic activity downtown; helps reduce carbon generation as evidenced by the expectation that the building will achieve LEED Gold status; and provides new jobs and residential units with access to various modes of alternative transportation (Transit Mall, SMART rail station, various off-street bicycle/pedestrian routes).
3. Per the Santa Rosa Center Redevelopment Plan, the Council and Redevelopment Agency are responsible to assist in removing physical and economic blighting influences. The Easement will assist in the elimination of blight by increasing the amount of usable ground floor area, including the street frontage of the building, and the Easement and Parking Agreement will facilitate the redevelopment of the currently vacant and underutilized building.

BACKGROUND

1. On June 29, 2010, the Council and the Agency approved a Disposition and Development Agreement executed between the Agency and Museum on the Square, LLC, for the redevelopment of the former AT&T site, located at 520 Third Street (DDA).
2. On May 29, 1986, AT&T and Pacific Bell (Grantors) conveyed to the City of Santa Rosa an Easement Limiting Access, consisting of the Grantors' rights of ingress and egress to and from the site through Second Street for vehicles intended solely for carrying of passengers to and from the subject property (Original Easement). The Original Easement did not restrict the ingress or egress of vehicles and equipment required for the continued operation and maintenance of the Grantors' business and facilities.

ANALYSIS

Easement to Allow Residential Access and Operating Memorandum

1. Council Direction. On December 14, 2010, the Council reviewed a Technical Memorandum prepared by Fehr & Peers Transportation Consultants¹ which raised several concerns regarding access through the Transit Mall to the AT&T site for future residents and presented alternatives that would accommodate such access while minimizing potential conflicts with transit operations.

The Council directed that an Easement be prepared that would allow for safe access to the AT&T site through the Transit Mall solely for those individuals residing in the residential units to be constructed within the AT&T site without significant financial cost to the City. (The proposed Easement has been prepared by the City Attorney's office to address the interests and concerns of the Transit Department and the Developer.)

2. Safety features of Easement and Operating Memorandum. The proposed Easement includes several restrictions to minimize conflicts with transit operations. These include one access point at B Street and a pedestrian warning light and sounds triggered by vehicles exiting the site.

The proposed Easement also requires an Operating Memorandum between the City and Agency (or successor owners) that addresses operational details such as, location of the security gate; hours the security gate is open; access limitations for large trucks and construction vehicles, and a process for educating residential tenants about safety considerations associated with driving through the Transit Mall.

3. Safety Measures Incorporated into Transit Mall Project and Museum on the Square Project. The City's Traffic Engineer reviewed the studies, plans and designs relative to the Museum on the Square Project and the Transit Mall Revitalization Project and

¹ Fehr & Peers Transportation Consultants Technical Memorandum to Coleen Ferguson, Deputy Director – Capital Projects Engineering and David Montague – Santa Rosa Public Works, *AT&T Building Project Access*, dated December 7, 2010

made final recommendations that should be included in the Museum on the Square (MOTS Project) and the Transit Mall Project or implemented by the City's Public Works Department. These include:

- The posted speed limit of the Transit Mall should be 15 miles per hour (to be posted by the Public Works Department).
 - Provide access to the MOTS Project site only through B Street/Second Street intersection.
 - Install "Stop," "Right-Turn Only," and "No-Left-Turn" signs on the MOTS site for outbound vehicles.
 - Install a visual and audible system that is activated by detecting a vehicle exiting the MOTS site.
 - Locate the MOTS Project gate a minimum of eighteen (18) feet from the edge of the sidewalk that borders the MOTS site.
 - Leave the MOTS Project gate in an open position between 7:00 a.m. to 6:00 p.m. Monday – Friday (unless commercial vehicles need access after 6:00 p.m., then 7:00 p.m.) and 8:00 a.m. to 5:00 Saturday.
 - The Transit Mall Project Design maintains seven bus bays on the north side of the Mall, and the Traffic Engineer confirmed that this design configuration allows for adequate site distance for vehicles exiting the MOTS Project site. The posted speed limit will increase the safety of all users and effectively reduce the required sight distance needed. enhanced with the posted speed limit.
 - The Traffic Engineer confirmed that unauthorized vehicles are discouraged from entering the Transit Mall by signage at intersections and by the Transit Mall design.
4. Cost to City. The only cost to the City that has been identified would be the limited cost of posting of speed limit signs on the Transit Mall by the Department of Public Works. Other identified City costs are limited to staff time (document preparation, Transit Mall orientation, and resolving issues, if any). The Transit Mall Design will not need to be modified to incorporate the recommendations of the Traffic Engineer. The Developer will be responsible for installing signs and a visual and audible warning system on its property and for proper management of the gate.
5. Term. The Easement commences upon issuance of a Certificate of Occupancy for the residential units within the Museum on the Square project. The Easement is transferrable, running appurtenant to the property. The Operating Memorandum is also transferrable along with the property and Easement to future property owners.
6. Consistency with DDA. The Easement and Operating Memorandum are consistent with the Project as described in the DDA. Specifically, the DDA describes the ground floor of the MOTS Project to include the building lobby, museum space, restaurant space, and flexible space. The flexible space provides access for residential tenants to the parking at the rear of the Project site from Third Street, or in the event that the developer is able to secure access to the parking in the rear of the Project site through other means, provides for additional restaurant or other commercial purposes. The Easement provides the alternative access to the parking area, allowing for the flexible space to be utilized for commercial uses. In addition, the purchase price as set forth in

the DDA is based on an appraised fair market value of highest and best use of the property, which assumed that the ground floor would be commercial uses, as facilitated by the Easement, and not a driveway.

7. Legal Authority. Pursuant to Community Redevelopment Law, Health and Safety Code Section 33220 permits the City to convey property to the Agency for the purpose of aiding and co-operating in a redevelopment project.
8. Value to City. The conveyance of the Easement to the Agency will provide benefit and value to the City in that it would 1) enhance the extent of the pedestrian-friendly experience on Third Street, consistent with the General Plan Downtown Station Area Specific Plan and Zoning Code; and 2) facilitate the success of the Project, which will result in economic benefits to the City.
9. Economic Benefits of Museum on the Square. The Museum on the Square Project is anticipated to generate 260 jobs during construction and 520 long term jobs, for a total of 780 jobs. This includes direct, supplier and consumer jobs. The project is anticipated to result in net City revenues of \$1.2 million over a ten year period, and generate \$68 million of local economic activity annually.
10. Metropolitan Transportation Commission. On May 31, 2011, the City Manager sent a letter to Steve Heminger, MTC Executive Director, indicating that the City has proposed to convey the Easement to the Redevelopment Agency and approve an operating memorandum with restrictions and requirements to ensure the greatest safety and compatibility of users as possible. The letter further states that the overall intended use of the Transit Mall remains unchanged by the easement, and does not impact any aspect of the Transit Mall Project for which MTC granted funds under the Transportation for Livable Communities Program.
11. CEQA. The Project, including the conveyance of the proposed Easement would continue to qualify for Categorical Exemption under CEQA because it is an infill development and continues to meet the conditions of Class 32 (In-Fill Development Projects), CEQA Guidelines Section 15332.

Parking Agreement

12. Request. In order to assure a lender that parking is available for future tenants and to secure project financing, the MOTS developer desires to enter into an agreement to secure one hundred (100) non-reserved parking permits from the City to meet the parking demand of tenants of the Project, at such time as the redeveloped building is ready for occupancy, but not sooner than necessary.
13. Agreement. The Agreement allows the developer the right to purchase 100 non-reserved parking permits in a City parking facility. The City may offer the permits at Garage 12 (1st Street, across the Transit Mall), which is located in closest proximity to the Project or, at the City's sole discretion, at Garage 9 (by 2nd/D Streets), or Lot 7 (the White House site across from the Post Office), based on permit and space availability. .

14. Parking Capacity. The City currently has approximately 250 non-reserved parking permits available for purchase on a first-come first-serve basis at Garage 12 and additional spaces at Garage 9 and/or Lot 7, and anticipates that there will be sufficient parking spaces in these facilities to make available one hundred (100) non-reserved permits during the term of the Parking Agreement.
15. Benefits to City. The Parking Agreement will facilitate redevelopment of the Project, which is expected to generate increased economic activity downtown and increased revenue to the parking district.
16. Term. The term of this Agreement commences upon execution and continues until the earlier of a) March 31, 2013, b) purchase of the total number of permits authorized under this Agreement, or c) termination of the DDA. Upon request by the Purchaser, the City may agree to one or more extensions to this Agreement, depending on availability of parking spaces and the progress the Purchaser has made with the redevelopment of the Project Site.

RECOMMENDATION

It is recommended by the City Manager's Office and the Department of Economic Development and Housing, that the Council, by two resolutions, 1) approve conveyance of an easement to the Redevelopment Agency of the City of Santa Rosa that allows vehicular access through the Transit Mall for future residents at the former AT&T site, 520 Third Street, and approve an operating memorandum that addresses operational details of the easement; and 2) approve an agreement to make available 100 parking permits for purchase by Museum on the Square, LLC, for the benefit of the Museum on the Square project.

Author: Frank Kasimov, Program Specialist

Attachments:

- Easement Limiting Access, recorded in the Official Records of Sonoma County on July 18, 1986 as Document No. 86053182
- Easement Agreement
- Operating Memorandum
- Memorandum from Traffic Engineer, June 2, 2011, *Museum on the Square – Final Traffic and Safety Recommendations*
- Parking Agreement

RECORDING REQUESTED BY:
SONOMA TITLE GUARANTY CO.
Escrow No. 1-156406 JWA/amg

RECORDED AT REQUEST OF
ST@CO.

86053182

2

WHEN RECORDED RETURN TO
CITY ENGINEER'S OFFICE
P. O. Box 1678
Santa Rosa, CA 95402

1986 JUL 18 AM 8 00

OFFICIAL RECORDS
SONOMA COUNTY CALIFORNIA

BERNICE A. PETERSON

EASEMENT LIMITING ACCESS
RECITALS

Free

- a. AT&T Communications of California, Inc., and Pacific Bell ("GRANTORS") are the Owners of or have an interest in certain real property situated in the City of Santa Rosa, State of California, more particularly described hereinafter and referred to herein as "subject property".
- b. GRANTORS use the subject property for, but not limited to, accepting and dispatching deliveries of cargo and equipment and for the parking of passenger vehicles.
- c. City of Santa Rosa ("GRANTEE"), a Charter City, is constructing a transit mall on Second Street between "B" Street and Santa Rosa Avenue in the City of Santa Rosa. At the present time GRANTORS are using said portion of Second Street for access to said property.
- d. In order to provide for the safe and expeditious movement of public transit vehicles in the vicinity of said mall, the public necessity and convenience require that GRANTEE limit the use of said portion of Second Street by passenger vehicles.
- e. GRANTEE desires to obtain, and GRANTORS agree to convey an Easement Limiting Access prohibiting access by any vehicle other than vehicles and equipment required for the continued operation and maintenance of GRANTORS business and facilities.

QUITCLAIM DEED

NOW, THEREFORE, for consideration received, AT&T Communications of California, Inc., a California Corporation, and Pacific Bell, a California Corporation ("GRANTORS"), hereby quitclaim to the City of Santa Rosa ("GRANTEE") an easement consisting of any and all of GRANTORS' rights of ingress to the subject property from Second Street and egress from the subject property to Second Street for any and all vehicles intended solely for the carrying of passengers to and from the subject property.

The subject property is situated in the City of Santa Rosa, County of Sonoma, State of California, and more particularly described as follows:

PARCEL A, AS SHOWN ON THE CERTAIN RECORD OF SURVEY, FILED ON DECEMBER 9, 1983, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SONOMA IN BOOK 352 OF MAPS, AT PAGES 22 AND 23.

APPROVED
AS TO FORM

SLC 5/14/86

AT&T COMMUNICATIONS OF CALIFORNIA, INC.
a California Corporation

REFERENCE: R- _____

By: *[Signature]*
R. L. Geise, Authorized Agent
PACIFIC BELL, a California corporation

A.P.N. 10 063 19827

Dated May 29 19 86

By: *[Signature]*
Division Manager

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed above is hereby accepted by order of the Council of the City of Santa Rosa pursuant to Council Resolution/Ordinance No. 17983 dated 8 JULY 19 86, and grantee consents to recordation thereof by its duly authorized officer.

CITY OF SANTA ROSA,
A Municipal Corporation
By: *[Signature]*
Dated: 9 July 1986

The property described in this instrument is located within/outside the Corporate limits of the City of Santa Rosa.

Recording of this document is requested for and on behalf of the City of Santa Rosa pursuant to Section 6103 of the Government Code.

NO TAX DUE

Office of the City Attorney,
By *[Signature]*

ATTACH NOTARY PUBLIC ACKNOWLEDGEMENT

86053182

CORPORATE ACKNOWLEDGMENT

NO. 202

State of California }
County of Alameda } SS.

On this the 29th day of May 19 86, before me,
Robert S. Katz
the undersigned Notary Public, personally appeared



R. L. Geise
 personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
an Authorized Agent or on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

Robert S. Katz
Notary's Signature

7130 122

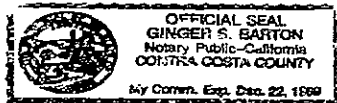
NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4825 • Woodland Hills, CA 91364

CORPORATE ACKNOWLEDGMENT

NO. 202

State of CALIFORNIA }
County of CONTRA COSTA } SS.

On this the 17 day of JUNE 19 86, before me,
GINGER S. BARTON
the undersigned Notary Public, personally appeared



V. T. ESPOSITO
 personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
DIVISION MANAGER or on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

Ginger S. Barton
Notary's Signature

7130 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4825 • Woodland Hills, CA 91365-4825

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

R&T 11922 DEED TO PUBLIC AGENCY, -0- TRANSFER TAX DUE

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made by and between The City of Santa Rosa, a California charter City (hereinafter, the "City"), and The Redevelopment Agency of the City of Santa Rosa (hereinafter, "Grantee").

R E C I T A L S

WHEREAS, the City is the owner of that certain real property located in the City of Santa Rosa, commonly known as Second Street between B Street and Santa Rosa Avenue, used as a regional bus transit terminal and commonly referred to as the Santa Rosa Transit Mall (hereinafter the "Transit Mall"); and

WHEREAS, Grantee is the owner of that certain real property located in the City of Santa Rosa, located at 520 Third Street, Santa Rosa, Assessor's Parcel Numbers 010-063-019 and 010-063-027 as more specifically described on Exhibit A attached hereto and made part hereof, commonly known as the AT&T Building, which is adjacent to Transit Mall (hereinafter "AT&T Building"); and

WHEREAS, on May 29, 1986, the then current owner of the AT&T Building conveyed certain property rights to the City pursuant to that certain Easement Limiting Access, recorded in the Official Records of Sonoma County on July 18, 1986 as Document No. 86053182 ("Original Easement"), which conveyance effected a limitation on the use of the Transit Mall for purpose of access to the AT&T Building.

WHEREAS, based on the limitations set forth and contained in the Original Easement, the Grantee may only use the Transit Mall for commercial vehicle access and without the additional rights to be conveyed herein, would have no right to use the Transit Mall for passenger vehicles.

WHEREAS, Grantee is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (“MOTS”) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, Santa Rosa Center Redevelopment Project dated June 29, 2010, pursuant to which MOTS will be making further improvements to the AT&T Building for utilization of said property and improvements to include the addition of 43 residential units.

WHEREAS, Grantee desires to have certain limited rights of access for passenger vehicles of residents within the AT&T Building reinstated in order to facilitate the future development of residential units in downtown Santa Rosa and City desires to assist in the facilitation of development of residential units within the downtown.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantee and the City covenant and agree as follows:

A G R E E M E N T

1. Grant of Easement. For valuable consideration, the City reconveys certain of the rights given in that Original Easement and hereby grants to Grantee easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building, the nature, character, and extent to be as described and set forth herein, which easement rights shall be subject to the conditions set forth in this Agreement (such conveyance hereinafter referred to as the “Easement”).

2. Character of Easement. The Easement granted by the City to Grantee hereunder shall run appurtenant to the AT&T Building in accordance with the Term herein described.

3. Description of Easement. The Easement shall be for the specific purpose of allowing passenger vehicle access into and out of the Transit Mall via B Street to the AT&T Building solely for those individuals residing in the residential units within the AT&T Building, and shall not be extended to any invitees, guests or other users. The scope of the Easement shall not be expanded unless done in a written agreement between the City and the Grantee, or its successor in interest.

4. Term. This Easement shall have no force or effect unless and until the residential units anticipated to become part of the AT&T Building are constructed and ready for occupancy and shall only continue to serve the purpose of providing passenger vehicle access to the AT&T Building as specifically set forth herein.

5. Access Gate; Restrictions on Use. Grantee shall have the right to install an access gate at the entrance from the Transit Mall to the AT&T Building equipped with a keyed or coded access gate to discourage general public access (the “Access Gate”). Grantee shall be solely responsible to construct and maintain the Access Gate and associated signage in good operating

condition and repair. The Access Gate shall be set back not less than eighteen (18) feet from the Transit Mall back-of-sidewalk and shall open towards the AT&T Building. An audible and visual warning system shall be provided at the access driveway's outbound lane to be activated when a car is present at the stop bar in such form as may be approved by the City's Traffic Engineer (the "Warning System"). Grantee shall be solely responsible to construct and maintain the Warning System in operating condition and repair. Access through the Transit Mall shall be solely from and to B Street and not from or to Santa Rosa Avenue. Passenger vehicles allowed under this Easement shall only enter the Transit Mall from B Street and then turn left onto the AT&T Building property, and when exiting, shall exit to the right back onto the Transit Mall to B Street. Grantee shall be responsible for the cost of installing and maintaining signs, markings and pavement treatments in the Transit Mall intended to allow limited access to the AT&T Building property as described herein, all of which shall be installed in a manner acceptable to the City prior to any use pursuant to this Easement. Grantee hereby understands and acknowledges that nothing herein shall be construed so as to prohibit the continued use and operation of the Transit Mall as a regional transit hub for the greater Santa Rosa area and Grantee shall at all times endeavor to maintain and operate the AT&T Building in a manner compatible with such primary use of the Transit Mall, including but not limited to allowance for the temporary blockage of the driveway into and out of the AT&T Building by buses or transit passengers and the expansion of mass transit use over time within the Transit Mall.

6. Operating Memorandum. In conjunction with the granting and recording of this Easement, Grantee shall also enter into an operating memorandum with the City for purposes of addressing operational details of the use of the Easement ("Operating Memorandum"), to include without limitation, the hours during which the Access Gate shall be left open to prevent passenger vehicle queuing that could interfere with transit use and the process for permitting and educating residents who reside within the residential units (whether owners or tenants) of the limitations set forth in the Easement and the need to conduct ingress and egress through the Transit Mall with care to the primary use (including bus and transit passenger use). The City and Grantee, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The City shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Easement, provided that such changes shall not materially impact Grantee's rights of access under this Easement. The City shall provide not less than thirty (30) days prior written notice to Grantee of any changes. In the event that Grantee objects to changes to the Operating Memorandum as proposed by the City, Grantee shall notify the City in writing of such objections within fifteen (15) days from receipt of notice of the proposed changes and the City and Grantee shall meet to discuss possible alternatives prior to the expiration of said thirty-day period. The City Manager shall be the final decision-maker in the event of any dispute regarding proposed changes to the Operating Memorandum.

7. Indemnity. The City shall not be liable to the Grantee or any third party for any injury, loss, or damage arising out of or in connection with the use, by or through the City, of the Easement granted herein, except to the extent that such injury, loss, or damage is caused by the

sole, active negligence or due to the willful misconduct of the City, its agents or employees. The City shall have no responsibility or liability for the operation or maintenance of the Access Gate. As an ongoing requirement and condition of granting this Easement, Grantee agrees, on behalf of its officers, employees, successors, tenants and agents, to defend, indemnify, hold harmless, and release the City, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses (including attorneys' fees and court costs) that may be asserted by any person or entity arising out of or relating to the use of the Easement granted herein, excepting only that resulting from the sole, active negligence or willful misconduct of the City, its officers, agents or employees. Grantee further agrees to compensate the City for any damage to the Transit Mall as a result of the installation, operation or maintenance of the Access Gate and the use of the Easement, excepting normal wear and tear resulting from use consistent with the terms of this Easement.

8. Insurance. Grantee shall at all times during the term of this Easement maintain in full force and effect commercial general liability insurance (occurrence policy form) from an insurer reasonably acceptable to the City, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$3,000,000 per occurrence and \$5,000,000 annual aggregate. All insurance coverage available or applicable to this Easement is intended to apply to the full extent of the policies. Nothing contained in this Easement shall be construed to limit the application of such coverage.

All coverage types and minimum coverage amounts are subject to approval, modification and additional requirements by the City, as the need arises. Grantee shall not make any reductions in scope of coverage that may affect City's protection without City's prior written consent.

Endorsements:

Said insurance coverage shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the minimum coverage amounts provided hereinabove, policy endorsements shall be attached to the certificate, which also provides the following:

- (A) "The City of Santa Rosa, its officers, employees and agents are covered as additional insured with respect to any liability arising out of or connection with any use and operation of the property, including use of the easement granted by the City for limited passenger vehicle use of the Santa Rosa City Transit Mall at Second Street."
- (B) "The insurance coverage afforded by this policy shall be primary insurance with respect to the City of Santa Rosa, its officers, officials and employees. Any insurance or self-insurance maintained by the City of Santa Rosa, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by this policy and shall not contribute to any loss."
- (C) An unqualified statement that "The insurer or its authorized agent will provide to the City at least thirty (30) days prior notice of cancellation or material change in coverage," or alternatively a broker letter agreeing to provide such notice to the City.

9. No Waiver of Breach. Enforcement of the provisions of this Agreement shall be at the discretion of each party, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other party shall not be deemed or construed to be a waiver by that party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of that party's rights under this Agreement.

10. Amendment. This Agreement may be amended or terminated only by a writing signed by both parties.

11. Termination. Except as otherwise provided herein or as may be provided by law or in equity, this Agreement may only be terminated by a writing signed by both parties.

12. Severability. If any provision of this Agreement is found to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision of this Agreement.

13. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

GRANTEE: Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

CITY: City of Santa Rosa
Attn: City Manager
100 Santa Rosa Avenue, Room 10
Santa Rosa, CA 95404

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

14. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement or the breach thereof shall be brought and tried in the County of Sonoma.

15. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

16. Integration. This Agreement is the final and complete expression of an easement agreement delineating property rights between the parties.

17. Binding Effect; Successors and Assigns. This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the heirs, administrators, successors, and assigns of Grantee and the City.

18. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, Grantee and the City have executed this Agreement as set forth below.

THE CITY OF SANTA ROSA,
a California charter city

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA ROSA

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Agency Counsel

ATTACHMENTS:

Notary Acknowledgments
Certificate of Acceptance for RDA
Legal description for AT&T Building

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interests in real property conveyed by the Easement Agreement dated _____, 2011 from the City of Santa Rosa, a California Charter City, to the Redevelopment Agency of the City of Santa Rosa, a public body organized and existing under laws of the State of California (Agency), is hereby accepted by order of the Agency on _____ pursuant to authority conferred by Resolution No. _____, adopted on - _____, and the Agency consents to recordation of the Easement Agreement with this Certificate of Acceptance by its duly authorized officer.

Dated

REDEVELOPMENT AGENCY
OF THE CITY OF SANTA ROSA,
a public body organized and existing
under the laws of the State of
California

By: _____
DAVID E. GOUIN
Executive Director

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

LEGAL DESCRIPTION OF THE SITE

Real Property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

PARCEL A, AS SHOWN UPON RECORD OF SURVEY FILED FOR RECORD ON DECEMBER 9, 1983 IN BOOK 352 OF MAPS AT PAGES 22 AND 23, SONOMA COUNTY RECORDS.

APN: 010-063-027 AND 010-063-019

OPERATING MEMORANDUM

520 Third Street – AT&T Building

CITY OF SANTA ROSA AND REDEVELOPMENT AGENCY OF THE CITY OF SANTA ROSA

OWNER is the Redevelopment Agency of the City of Santa Rosa, or any future owner, of that certain property located at 520 Third Street, Santa Rosa. OWNER is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (DEVELOPER) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, dated June 29, 2010, pursuant to which DEVELOPER will be making further improvements to the AT&T Building for utilization of said property, and improvements to include the addition of museum, restaurant, office and residential uses, a project called Museum on the Square (MOTS).

The purpose of this Operating Memorandum is to (1) meet the obligations pursuant to the Easement Agreement by and between The City of Santa Rosa (CITY) and OWNER, by which CITY grants to OWNER easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building for purposes of the use of the Easement recorded in the Official Records of Sonoma County as Document No. _____; and (2) to fulfill the condition of design review approval for the Museum on the Square project for operational details to minimize any practical conflicts between building requirements/use of Second Street driveway and transit operations.

This Operational Agreement will follow the conveyance of the property and easement rights to future property owners, the first of which is anticipated to be the DEVELOPER.

The OWNER shall take the following steps to minimize conflicts between Transit Mall and MOTS operations.

I. Definitions

1. “Delivery/Service” vehicles are those vehicles that enter the site for a commercial, service, operational, or similar purpose for the commercial or residential tenants of the building.
2. “Large Truck” is defined as a truck which exceeds the maximum length able to turn around within the MOTS parking lot, as identified by a turning movement study performed by DEVELOPER for OWNER and approved by the CITY.
3. “Commercial tenants” includes all non-residential owners or tenant occupants.
4. “Operating hours” is defined as the regular operating times of Santa Rosa CityBus from the first bus pull-in to the last bus pull-out at the Transit Mall.

II. Contact Information

Prior to commencement of construction of the MOTS project or the Transit Mall Revitalization (TM) project, the OWNER and the City of Santa Rosa Transit Department (CITY) shall provide each other with the following contact information in writing:

Contact Name
Contact email
Contact address
Contact office phone number and fax
Contact cell number if available

This information shall be provided for both primary and alternative contacts and shall be kept up to date by the CITY and OWNER. OWNER and CITY shall also provide this information for the construction-period project superintendents and project managers.

III. Ordinary Use by Commercial Tenants Prohibited

OWNER shall incorporate into its leases or rental agreements with commercial tenants a provision prohibiting owners of commercial spaces, commercial tenants, their employees, customers or invitees using Transit Mall to access the building site for parking or passenger drop-off purposes, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein. Only Delivery/Service vehicles with a commercial, service, operational or similar purpose are excluded from the provision set forth in this section.

IV. Residential Parking

Residential tenants or owners shall be provided access for one vehicle per on-site parking space through the Transit Mall. The OWNER will furnish each vehicle to access the MOTS site through the Transit Mall with a visible identifier of the right to do such. Vehicles must display the visible identifier at any time they attempt to traverse the Transit Mall in order to enter or exit the MOTS site. OWNER will be responsible for ensuring that no more than one identifier is provided per each on-site residential space.

OWNER shall incorporate into its leases, rental or purchase agreements with residential tenants or buyers a provision prohibiting their visitors using Transit Mall to access the building site for visitor parking, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein.

All residential tenants or buyers must attend a Transit Mall Orientation, of no greater than one hour in duration, provided by the CITY prior to, or within one week, of accessing on-site parking located on the MOTS site. CITY shall make regular Transit Mall Orientations available no less than twice in any given calendar month. At OWNER'S request, CITY must provide more frequent Transit Mall Orientations if more than three residential tenants require such.

Residential vehicles shall access the MOTS Project site through the Transit Mall only by the B Street/Second Street intersection, thus restricting project access driveway operations to left-in-right-out movements.

V. Incidental Deliveries and Service Vehicles

Vehicles performing incidental deliveries and/or service calls shall not be restricted from using the Transit Mall except as follows:

1. Large Trucks shall be prohibited from using the Transit Mall during Operating Hours. During non-Operating Hours, Large Trucks must comply with Section VI “Large Truck Deliveries” section of this Operating Memorandum, or during the MOTS construction, with Section VII, “Construction Period Conditions.
2. The Delivery/Service vehicle shall pull fully into the driveway so that at no time does it block the public sidewalk or project into the Second Street travel way.
3. The Delivery/Service vehicle shall exit the building site head-out and shall not back into Transit Mall.
4. The Delivery/Service vehicle shall access and exit the Transit Mall only from B Street and in no case shall use the intersection of 2nd Street and Santa Rosa Avenue.

“Incidental Deliveries and Service Calls” are (1) those delivery of items customarily provided to commercial or residential tenants in the course of the business day or afterward; (2) tasks performed by persons laboring on, or providing services or materials for, exterior or interior building components or building or office equipment, whether those people are on-site maintenance staff or outside service personnel; (3) the use of commercial vehicles to move household or commercial goods into the building from another location; and (4) garbage and waste pickup.

VI. Large Truck Deliveries

Large Trucks shall be prohibited from using the Transit Mall to access the MOTS site during Operating Hours. During non-Operating Hours large truck(s) are permitted to idle or park in the Transit Mall solely for the purposes of unloading material deliveries to the MOTS site. Large trucks are prohibited from idling and/or parking in the Transit Mall when not actively unloading materials. Large trucks are only permitted to idle or park curbside in the area to the west of the MOTS driveway, and cannot impede the traffic flow by buses through the Transit Mall.

VII. Construction-Period Conditions

During the initial and any subsequent period of MOTS building construction, use of Transit Mall shall be restricted as follows:

1. Delivery of construction materials, mobilization or demobilization of cranes, booms and other equipment, and removal of construction debris shall be limited to non-Operating Hours except as set forth at 2, below.
2. During Operating Hours, the activities set forth at 1, above, shall be permitted provided that (a) OWNER gives CITY contact listed in Section II above 72 hours prior written notice for movement through the Transit Mall of cranes and booms and at least 24 hours for the other activities, (b) OWNER provides safety and management personnel to conduct the vehicle to the site, first meeting the vehicle at

- any off-site location, (c) OWNER ensures that the operator of the vehicle conforms with any instructions provided by identified CITY contact listed in section II above, and (d) does not impede the normal bus traffic in the Transit Mall.
3. Notwithstanding 2, above, OWNER shall endeavor to use the adjoining property (1 Santa Rosa Avenue) to the west whenever possible for such deliveries during operating hours.

During the initial and any subsequent period of construction related to the Transit Mall Revitalization Project, OWNER must provide a schedule to CITY of regular delivery/service vehicle access. CITY will make all reasonable efforts to allow continuous access to the MOTS parking lot by OWNER. CITY will take all reasonable efforts to minimize temporary periods of MOTS site access closure and will provide no less than one week notice to OWNER of the expected duration for said closures.

VIII. Security Gates

The vehicular security gate on the MOTS site shall (1) be set back 18' from the back-of-sidewalk, and (2) shall remain open 7:00 a.m. to 6:00 p.m. Monday through Friday. During non-operating hours, OWNER shall provide to operators of all vehicles having the right to access the site from the Transit Mall with all necessary information to operate the gate safely and expeditiously.

IX. Signage

OWNER shall install permanent traffic-control signage on the MOTS site in accordance with the approved project plans. CITY has the right to review and approve any additional traffic control signage prior to its installation by OWNER on the external face of the southernmost fence and/or Access Gate on the MOTS site.

X. Operating Memorandum Review and Revisions

The CITY and OWNER, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The CITY shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Operating Memorandum, or the Easement provided that such changes shall not materially impact Grantee's rights of access under the Easement. The Operating Memorandum is binding on OWNER, its employees, officers and agents, and heirs or assigns.

CITY must provide no less than 60 days notice to OWNER of changes to the CityBus schedule that may impact the conditions of this Operating Memorandum.



MEMORANDUM

DATE: June 6, 2011

TO: FRANK KASIMOV, PROGRAM SPECIALIST II - ECONOMIC DEVELOPMENT
& HOUSING
WILLIAM ROSE, SENIOR PLANNER - COMMUNITY DEVELOPMENT

FROM: ROBERT M. SPRINKLE, CITY TRAFFIC ENGINEER *RS*

SUBJECT: MUSEUM ON THE SQUARE – FINAL TRAFFIC AND SAFETY
RECOMMENDATIONS

You have asked that I review the studies, plans and designs¹ relative to the Museum on the Square Project (the "MOTS Project"), located at 520 Third Street, and the Transit Mall Revitalization Project (the "Transit Mall Project"), located at Second Street between B Street and Santa Rosa Avenue. You requested that I make final recommendations for modifications to the Transit Mall Project and/or the MOTS Project to allow safe, vehicular access to the MOTS Project site from the Transit Mall, while maintaining the bus operations.

Currently, commercial vehicular access to the MOTS site through the Transit Mall is unrestricted, and an easement restricts passenger vehicles from accessing the MOTS site through the Transit Mall. The City Council has directed that a new, limited easement be brought to the Council that would allow for safe access to the site through the Transit Mall for approximately 50 vehicles of the MOTS Project residential tenant (the "Easement").

Traffic and Safety Recommendations:

Based on my review of the documents identified below, I have determined that the following traffic and safety recommendations should be included in the MOTS Project and Transit Mall Project or implemented by the City's Public Works Department. These serve as the final, consolidated list of the traffic and safety recommendations. They include a refinement of recommendations set forth in earlier traffic studies by Transpedia and by Fehr & Peers, as well as one recommendation by the City that has not been previously discussed:

Recommendation 1: Post Speed Limit

I have noted that none of the traffic studies have recommended a posted speed limit for all traffic on the Transit Mall. The Fehr & Peers technical memorandum (the "Fehr & Peers Memo") uses a 20 mph speed for their calculation of stopping sight distance. A lower posted speed limit will provide a safer environment for all Transit Mall users.

The posted speed limit of the Transit Mall should be 15 miles per hour. This speed limit would have the following benefits: a) it would effectively reduce the distance needed for vehicles to perceive and stop for pedestrians; and b) reduce the required sight distance needed from the driveway exiting the MOTS site. The Fehr & Peers Memo stated that the sight distance would be adequate for vehicles as they pulled toward the travel lane, however, with the slower speed limit, the sight distance would be adequate from the sidewalk. The City's Public Works Department will post the speed limit signage prior to the construction of the MOTS Project.

I concur with the following recommendations of Transpedia reports as noted below. These recommendations are necessary and should be included into the MOTS Project, as they provide safer movement for all Transit Mall users.

Recommendation 2: Access to Transit Mall at B Street

Provide access to the MOTS Project site only through B Street/Second Street intersection, thus restricting project access driveway operations to left-in-right-out movements (this applies to commercial and residential vehicles accessing the MOTS site, but does not apply to transit operators).

Recommendation 3: Traffic Control Signage on MOTS site

Install "Stop," "Right-Turn Only," and "No-Left-Turn" signs on the MOTS site for outbound vehicles. The signs and sign locations shall be approved by the City's Traffic Engineer prior to installation.

Recommendation 4: Pedestrian Warning System

Install a visual and audible system that is activated by detecting a vehicle exiting the MOTS site. The system shall be designed to indicate to pedestrians on the

sidewalk of the Transit Mall that a vehicle is exiting. The warning system shall be approved by the City's Traffic Engineer.

The Fehr & Peers Memo identified concerns and made recommendations in their December 7, 2010, memo submitted to the City. Their recommendations are modified here, as appropriate, and shown below. Together, the eight recommendations set forth in my memo address the concerns raised in the Fehr & Peers Memo.

Recommendation 5: Gate Location

The MOTS Project is anticipated to have a gate to control access to the Project site. The gate shall be located a minimum of eighteen (18) feet from the edge of the sidewalk that borders the MOTS site to allow a passenger vehicle to pull forward so as not to block the sidewalk when operating the gate when it is in its closed position.

Recommendation 6: Gate Open Hours

A single residential vehicle would pose minimal effect to transit operations due to the gate setback, however, commercial vehicles would extend over the 18 foot space. Depending on the truck size, it would block pedestrian movements along the sidewalk and overhang past the driveway cut while awaiting the gate to open. Under this scenario, the gate would be recommended to stay open during City Bus operations.

There are several factors that control the potential for queuing of vehicles in the Transit Mall, waiting for the closed gate to open. One is the arrival of vehicles (how many and how often), another is the means of opening the gate (manual, automatic via remote, punch key or, swipe card, etc.), the speed at which the gate operates and how long the gate remains open. Each of these dictates whether there will be a queue at the entrance to the MOTS site.

Following the PM peak hour Monday – Friday (5:00 p.m.-6:00 p.m.), if commercial vehicles that need access to the MOTS site via the rear gate are prohibited, the gate is wirelessly remotely operated (garage door opener style) by the residents, and the speed at which the gate opens is less than 20 seconds, then there should not be queuing at the gate. Under this scenario, the gate would be recommended to stay open until 6:00 p.m. If commercial vehicles will still need access to the MOTS site following 6:00 p.m., I recommend that the gates remain open until 7:00 p.m. To accommodate commercial delivery and service vehicles on Saturday, I recommend that the gate remain open from 8:00

a.m. to 5:00 p.m. on Saturday. Operations of the gate and commercial vehicles should be monitored to determine if the gate operation hours need adjustment.

Recommendation 7: Sight Distance

The Kimley-Horn Alternate Bus Layout, dated December 17, 2010, provides adequate sight distances for a 20 mph speed limit if the vehicle proceeds directly adjacent to the travel lane. We understand that this layout does not change the design plan, but shows how seven bus bays can be accommodated and provide adequate sight distance for vehicles exiting the MOTS site. As stated above in Recommendation 1, we are posting a 15 mph speed limit to increase the safety of all of the users and effectively reduce the required sight distance needed.

Recommendation 8: Discouraging Unauthorized Vehicles

To discourage unauthorized vehicles from entering the Transit Mall, residential vehicles will have a visible identifier. In addition, the signage at the B Street and Santa Rosa Avenue intersections will allow entry only for buses and other authorized vehicles. Finally, the Transit Mall will be designed with entry features that distinguish it as a transit mall and not a through street. These measures will discourage unauthorized vehicles from entering the Transit Mall.

The following Transpedia recommendations are not necessary and should not be included in the Transit Mall Project or the MOTS Project.

- 1) Modify B Street/Second Street intersection signage to allow residential and commercial traffic access to the project site anytime and to prohibit commercial and delivery traffic between 7:00 a.m. and 8:00 a.m. on weekdays.

It is my understanding that these conditions were proposed prior to the understanding that the gate into the MOTS site would be open during bus service times. With the gate being open there is little opportunity for queuing to occur onto Second Street.

- 2) Install mirrors on both sides of the access driveway to permit Project outbound drivers to determine if there are any pedestrians on the sidewalk.

The mirrors were intended for use under the former configuration of the MOTS Project which contemplated residential vehicular access to and from the MOTS Project Site from Third Street through a driveway on the ground

floor of the building. Sight lines of pedestrians are provided exiting the MOTS Project to the Transit Mall so mirrors are not necessary.

- 3) Install “Yield Here to Pedestrian Signs” at mid-block crossings on Second Street. The usefulness of this signage is questionable as it would be blocked when buses dwell near the crosswalks.

California drivers must yield to pedestrians whether or not there is a sign so directing. The posted speed limit will be reduced to 15 mph to increase the ability for vehicles to stop in an appropriate distance. Historically, pedestrians do not use the crosswalks in the Transit Mall, and autos must yield to those pedestrians, too. The Operations Memorandum currently being reviewed calls for all resident drivers of the MOTS project to attend a Transit Mall Orientation provided by the Transit Department. During this orientation, the sporadic nature of the pedestrian crossings will be conveyed.

In summary, this memorandum describes the traffic and safety recommendations to allow safe, vehicular access to the MOTS Project site via the Transit Mall, while maintaining the bus operations. Certain traffic safety recommendations that were presented in traffic studies are carried forward here, perhaps with a slight modification or clarification, and some were determined to be redundant or unnecessary, and have been removed. Finally, one recommendation, the posting of a 15 mph speed limit, has been added, which was not included in prior studies.

RMS/as [G:\RMS\mSummaryAnalysisRevFinal060611.doc]

Materials Referenced:

Transpedia Consulting Engineers, *Focused Traffic Study for AT&T Building Project*, April 19, 2010.

Transpedia Consulting Engineers, *Addendum to the Focused Traffic Study for AT&T Building Project*, June 7, 2010.

Transpedia Consulting Engineers, *Focused Traffic Study for AT&T Building Project*, June 15, 2010.

(Together the above reports are referred to in the memo as the “Transpedia Reports”).

Walt Laabs, Associate Civil Engineer – Traffic Engineering Memorandum to Frank Kasimov, Program Specialist II, *Comments on [June 7, 2010] Addendum to the Focused Traffic Study for AT&T Building Project*, dated June 10, 2010.

Fehr & Peers Transportation Consultants Technical Memorandum to Coleen Ferguson, Deputy Director – Capital Projects Engineering and David Montague – Santa Rosa Public Works, *AT&T Building Project Access*, dated December 7, 2010.

Kimley Horn and Associates, Inc. *City of Santa Rosa Improvement Plans for Second Street – Transit Mall*, bid set, July, 2010.

Kimley Horn and Associates, Inc. *Alternate Bus Layout Second Street*, dated December 17, 2010.

Draft Easement Agreement by and between the City of Santa Rosa and the Redevelopment Agency of the City of Santa Rosa regarding limited residential vehicle access through the Transit Mall, version date May 11, 2011.

Draft Operating Memorandum, City of Santa Rosa and Museum on the Square, LLC, Version Date June 1, 2011.

AGREEMENT TO MAKE AVAILABLE 100 PARKING PERMITS TO MUSEUM ON THE SQUARE, LLC FOR THE BENEFIT OF THE MUSEUM ON THE SQUARE PROJECT

This agreement (“Agreement”), dated _____, 2011 (“Effective Date”) is made between the City of Santa Rosa, a California charter city (“City”), and Museum on the Square, LLC, a Limited Liability Company (“Purchaser”), the developer of the Museum on the Square Project (“Project”).

RECITALS

A. The City owns that certain public parking garage located at 555 First Street (“Garage 12”) for which the City currently has approximately 250 non-reserved parking permits available for purchase on a first-come first-serve basis.

B. The Purchaser has entered into a Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, Santa Rosa Center Redevelopment Project, dated June 29, 2010 (“DDA”), which provides for the disposition and redevelopment of the former AT&T site (“Project Site”) in the City of Santa Rosa, and which Purchaser is proposing to redevelop into a mix of museum, retail, office and residential uses.

C. The Purchaser, in conjunction with the redevelopment of the Project Site, desires to assure the ability to obtain one hundred (100) non-reserved parking permits from the City in Garage 12 or another nearby City parking facility, as needed to meet the parking demand of tenants of the Project, at such time as the redeveloped building is ready for occupancy, but not sooner than necessary.

D. This Agreement will facilitate redevelopment of the Project, which is expected to generate increased economic activity downtown and increased revenue to parking district. The City, therefore, desires to cooperate with the Purchaser to support the redevelopment of the existing Project Site through this Agreement, to the extent that such is consistent with the City’s rules, regulations and policies regarding parking permits, including, but not limited to, permit rates, parking facility space priority, sale of parking permits on a first-come, first served basis, parking permit renewal, and waiting lists, as may be changed from time to time.

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. The City shall make available one hundred (100) non-reserved permits in Garage 12 or another nearby parking facility for sale to the Purchaser. The City reserves the right to fulfill the terms of this Agreement, by offering non-reserved parking permits in Garage 12 or, at the City’s sole discretion, in Garage 9, located at 97 D Street, or at Lot 7, located at 730 Third Street, based on permit and space availability.

2. The Purchaser shall make progress with the redevelopment of the Project as set forth in the DDA.

3. Term. The term of this Agreement shall commence upon full execution, subject to approval of the Santa Rosa City Council, and shall continue until the earlier of a) March 31, 2013, b) purchase of the total number of permits authorized under this Agreement, or c) termination of the DDA. Upon request by the Purchaser, the City may agree to one or more extensions to this Agreement, depending on availability of parking spaces and the progress the Purchaser has made with the redevelopment of the Project Site.

4. Purchase Price and Renewal of Permits. In the event Purchaser elects to acquire permits for Garage 12 or another nearby parking facility, Purchaser shall be obligated to pay the monthly permit fee in accordance with the Schedule of Parking User Fees adopted by the Santa Rosa City Council, as may be amended and updated from time to time. Any permits acquired by Purchaser will be held in accordance with Council Policy No. 400-02, Parking Permit Sale Policy, as amended or revised from time-to-time, which policy currently provides that “a permit holder’s option to renew shall continue as long as the valid permit is renewed prior to expiration” by timely payment of the current fees.

5. Limitation on Liability. Other than as expressly provided in this Agreement, the City shall have no obligation to guarantee or provide assurances of parking space availability within any City owned facility. Nothing herein shall be deemed or construed as implied or express approval from the City for the proposed redevelopment of Purchaser’s project located at 520 Third Street. It is hereby understood and agreed by the parties that Purchaser will proceed with said redevelopment proposal through the appropriate City process independent of this Agreement.

6. Miscellaneous.

(A) Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

(B) Modification. No modification or change to the terms of this Agreement will be binding on a Party unless in writing and signed by an authorized representative of that party.

(C) Governing Law; Venue. This Agreement shall be construed, and its performance enforced, under California law. Any judicial proceeding in connection with any dispute under, or enforcement of, the Agreement shall be brought in Sonoma County, California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF SANTA ROSA,
a charter city

By: _____
Name: _____
Title: _____

By: _____
Title: _____

Taxpayer ID # _____

ATTEST: _____
City Clerk

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney's Office