

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.4**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs and Construction

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute the First Amendment to Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART) to set forth SFMTA responsibilities relating to construction of the Central Subway Project and its impact on BART's Powell Street Station.

**SUMMARY:**

- The City and BART entered into a Cooperative Agreement, dated as of April 19, 2012, for reimbursement of costs incurred by BART related to SFMTA's activities at the existing BART Market Street tunnels and Powell Street Station (the BART Facilities) associated with construction of the Central Subway Project (Project);
- The Cooperative Agreement has been amended to include provisions regarding SFMTA's activities during construction of the Project at the BART Facilities.
- Among other things, SFMTA has agreed to assume liability for any damages to BART or the BART Facilities caused by the Project, including liquidated damages incurred by BART as a result of the Project's tunneling activities or failure to mitigate any adverse conditions related to hydrology (water intrusion) and settlement.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Central Subway Project Budget and Financial Plan
3. First Amendment to Cooperative Agreement
4. Disposition Agreement

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

6/12/12

SECRETARY \_\_\_\_\_

6/12/12

**ASSIGNED SFMTAB CALENDAR DATE:** June 19, 2012

## **PAGE 2.**

### **PURPOSE**

The proposed resolution authorizes the Direction of Transportation to execute the First Amendment to the Cooperative Agreement with BART to set forth SFMTA responsibilities relating to construction of the Central Subway Project and its impact on BART's Powell Street Station.

### **GOAL**

The BART Cooperative Agreement is needed for the design and construction of the Project's Union Square/Market Street station and its tunnels. The Project is a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with the retail and employment centers in downtown and Chinatown, and is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

Goal 2 – System Performance: To get customers where they want to go, when they want to be there

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

### **DESCRIPTION**

#### **Background:**

The Central Subway Project is the second phase of SFMTA's Third Street Light Rail Project, and

## **PAGE 3.**

will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to Union Square and Chinatown. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

### **Current Status of the Project:**

The Project has completed the Final Design of all segments except for the last contract, Surface, Track and Systems. SFMTA has issued bid packages for the Chinatown Station and the Union Square Market Street (UMS) Station; the bids are currently due on June 5 for the Chinatown Station, and July 11 for UMS. Project construction commenced in 2010, and the start of revenue operation is scheduled for 2019.

### **Explanation:**

The Project benefits BART by providing a direct service link at the Powell Street Station to the subway service operated by BART. The Project will have impacts to BART's Powell Street Station and its tunnel beneath Market Street. BART has and continues to spend a significant amount of staff time and resources analyzing these impacts for which they are eligible to be reimbursed.

On April 19, 2011, the City and BART entered into a Cooperative Agreement for reimbursement of costs incurred by BART related to SFMTA's activities at the existing BART Market Street Tunnels and Powell Street Station (the BART Facilities) associated with construction of the Project. The Cooperative Agreement, which was approved by the SFMTA Board of Directors on April 5, 2011 (Resolution No. 11-043), specifies that SFMTA shall not initiate construction activities (other than tunneling activities) for the Union Square Market Street (UMS) Station that potentially impact BART's safety, operations, or maintenance until construction-related provisions are incorporated by amendment into the Cooperative Agreement.

Impacts to BART that will be incorporated into the UMS Station construction contract include changes to the station entrances and changes resulting from passenger flows through an opening that the Project will construct into the Powell Street Station to connect from the Central Subway's UMS Station. In a separate Disposition Agreement BART has agreed to convey to the City for \$1.00 the Ellis Street entrance to the Powell Street Station (by the Apple Store). The Disposition

## **PAGE 4.**

Agreement is subject to approval by the Director of Transportation. A copy of the agreement is included for your information (Enclosure 4). After the conveyance, SFMTA will be responsible for maintenance of the area, and will construct a grille gate to separate the area from the Powell Street Station. The conveyance of the Ellis Street entrance is subject to execution of this Amendment to the Cooperative Agreement.

### **Provisions of Amendment**

The main provisions of this Amendment to the Cooperative Agreement are as follows:

- Construction in the Powell Street Station
  - SFMTA will design and construct an additional platform elevator at the west end of the Muni paid area from the concourse to the Muni platform. BART will provide the additional costs if it wishes SFMTA to extend the elevator to the BART platform. SFMTA will own and be responsible for maintenance of the elevator after its construction.
  - SFMTA will procure, design, and construct the site preparation infrastructure required to install, four standard and one accessible fare gates for BART customers; one ticket vending machine in a recessed vault at a location to be determined by BART; and one add-fare machine to be located on the eastern end of the BART secondary paid area. BART will install the equipment.
  - SFMTA will install a smoke sensor on the BART side of the firewall to be constructed approximately at the property line between the BART Facilities and UMS Station, which sensor shall be owned and maintained by SFMTA following installation.
  - SFMTA will prepare a signage plan and install appropriate signage.
  - SFMTA will ensure that the construction meets all applicable construction and safety standards.
  
- Protection of BART Facilities and Operations
  - SFMTA will not undertake any activity that may damage BART's trains or Facilities or may obstruct, endanger, interfere with, hinder or delay the operation or maintenance of BART's trains or Facilities.
  - SFMTA has agreed to mitigate any damage resulting from its tunneling activities in the following respects:
    - SFMTA and BART will share the costs of an independent hydrologist to analyze data relating to water seepage in the Powell Street Station and recommend acceptable statistical ranges for hydrology levels and thresholds for consideration whether mitigation is appropriate. SFMTA will mitigate any adverse conditions resulting from deviations in the hydrology levels.
    - Additionally, SFMTA will mitigate any movement and deflection of the BART Facilities that exceeds a baseline determined by a prior survey.
  
- Actual Damages; Liquidated Damages

## **PAGE 5.**

- SFMTA will be responsible for all damages to BART or the BART Facilities caused by SFMTA or its contractor that result from tunneling activities or failure to mitigate as required under the agreement or from an SFMTA default under the agreement that cannot be cured. (This provision would be operable to the extent such damages are not be paid under the tunneling or UMS construction contract.)
  - In addition, SFMTA will be ultimately responsible for liquidated damages to BART required under SFMTA's tunneling contract. These liquidated damages vary according to the time of day that BART service would be unavailable, but could be as much as \$60,000 an hour during peak weekday periods; however, SFMTA would only be responsible to the extent such damages are not paid under the tunneling contract.
  - To address SFMTA's liability to BART the following provisions are in place:
    - SFMTA benefits from \$500 million dollars in liability coverage from the work being performed under the Tunnel Contract 1252.
    - In addition, the Tunnel Contractor shall pay to BART Liquidated Damages if the BART facilities are damaged or otherwise rendered unusable or unavailable for public transit arising from or otherwise due to Contractor's negligent performance of work.
- Permit language; Insurance
    - The Amendment contains BART's required permit language and insurance requirements for the UMS construction contract.

## **FUNDING IMPACT**

The Cooperative Agreement will be funded by a combination of federal, state and local money. The Project Budget & Financial Plan is set forth in Enclosure 2.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None.

The City Attorney's Office has also reviewed this calendar item.

## **RECOMMENDATION**

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Direction of Transportation to execute the First Amendment to Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART), to set forth SFMTA responsibilities relating to construction of the Central Subway Project and its impact on BART's Powell Street Station.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, On April 19, 2011, the City and BART entered into a Cooperative Agreement for reimbursement of costs incurred by BART related to the San Francisco Municipal Transportation Agency (SFMTA's) activities at the BART Market Street tunnels and Powell Street Station (BART Facilities) associated with construction of the Central Subway Project (Project); and

WHEREAS, The Cooperative Agreement specifies that SFMTA shall not initiate construction activities (other than tunneling activities) for the Union Square Market Street (UMS) Station that potentially impact BART's safety, operations, or maintenance until construction-related provisions are incorporated by amendment into the Cooperative Agreement; and

WHEREAS, The SFMTA and BART have negotiated an Amendment to the Cooperative Agreement (Amendment) that provides for SFMTA to construct various improvements and perform activities in and around the BART Facilities to mitigate impacts resulting from the Project; and

WHEREAS, The Amendment also provides for SFMTA to be responsible for damages to BART or its Facilities caused by SFMTA activities relating to the Project; and to be ultimately responsible for liquidated damages to BART should SFMTA's tunneling contractor damage BART Facilities so as to prevent BART service; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the First Amendment to the Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART) to set forth the SFMTA's responsibilities relating to construction of the Central Subway Project and its impact on BART's Powell Street Station.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 19, 2012.

---

Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY

San Francisco Municipal Railway

Project Budget and Financial Plan

<b>Cost</b>	<b>(\$Million)</b>
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts (Tunnel, Stations and System is \$560 million)	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts	942.20
State RTIP Grant	68.28
CMAQ	41.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	82.50
Proposition 1B-MTA Share	225.28
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	61.31
State Local Partnership Program	19.72
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>

FIRST AMENDMENT TO  
COOPERATIVE AGREEMENT  
BETWEEN THE  
CITY AND COUNTY OF SAN FRANCISCO  
AND THE  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

This FIRST AMENDMENT TO COOPERATIVE AGREEMENT (“**First Amendment**”), dated for reference purposes as of \_\_\_\_\_, 2012, is by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (“**BART**”), and the CITY AND COUNTY OF SAN FRANCISCO (“**City**”), acting by and through its MUNICIPAL TRANSPORTATION AGENCY (“**SFMTA**”) (collectively, the “**Parties;**” each, a “**Party**”).

**RECITALS**

**A.** The Parties have entered into a Cooperative Agreement, dated for reference purposes as of April 19, 2011 (the “Cooperative Agreement”), relating to SFMTA’s intent to perform certain activities at the existing BART Market Street Tunnels and Powell Street Station (collectively, the “BART Facilities”) associated with construction of the Central Subway Project, Phase 2 of the Third Street Light Rail Project (“CSP” or “Project”).

**B.** Section 19.1 of the Cooperative Agreement provides in part that the Parties will proceed expeditiously to amend the Cooperative Agreement to add provisions regarding SFMTA's activities during construction of the Project and that SFMTA may not initiate construction activities (other than tunneling activities) for Contract No. 1253 (the “UMS Station”) that potentially impact BART’s safety, operations, or maintenance until construction-related provisions are incorporated by amendment into the Cooperative Agreement.

**C.** The Parties desire to amend the Cooperative Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, The Parties agree as follows:

**1. Section 2.2 of the Agreement is amended to read as follows:**

**2.2 Project Costs.** “**Project Costs**” shall mean all of the reasonable costs and expenses (“Costs”) incurred by BART on Project Activities (as defined below), including (a) all Costs attributable to BART staff’s time (including staff of BART's Office of General Counsel) spent on Project Activities, which costs shall be equal to the hours billed by each BART staff person to Project Activities through appropriate time entry codes multiplied by the base hourly labor rate paid by BART for each such staff person, plus administrative overhead costs equal to the base hourly labor rate multiplied by an overhead rate of 99.5% (e.g., hourly labor costs = base hourly labor rate + (base hourly labor rate x .995); and (b) actual Costs (with no mark-up) of such outside counsel, third-party consultants, advisors and professionals engaged by and billed to BART for work on Project Activities; (c) Costs associated with BART staff travel related to Project Activities, including out of pocket costs and vehicular mileage based on the federal mileage rates when they are unable to take BART to such Project Activities; and (d) the reasonable procurement and installation



costs required to perform the activities under Section 8.2.2. Notwithstanding the foregoing, Project Costs shall not include any fees and costs which are disallowed by federal, state or local granting agencies or that are duplicate costs paid under other agreements between the Parties.

**2. Section 3 of the Agreement is amended to read as follows:**

**3. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's monetary obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

Any Work Authorizations issued under this Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, any Work Authorizations issued under this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. BART's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

**3. Section 6.1 and 6.1.1 of the Agreement are amended to read as follows:**

**6.1 Event of Default.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

**6.1.1** BART or City fails or refuses to perform or observe any material term, covenant or condition contained in this Agreement, and such default continues for a period of 30 days after written notice thereof from City to BART or BART to City; provided, however, that if such Event of Default constitutes an emergency such that equitable relief is warranted, BART shall provide reasonable written notice and an opportunity to cure to the City prior to seeking such relief.

**4. Section 6.2 of the Agreement is amended to read as follows:**

**6.2 Remedies Available to City or BART.** On and after any Event of Default of one party, the non-defaulting party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. A Party's right to seek legal remedies is subject to the conclusion of any dispute resolution process initiated by a Party under Sections 10 or 13. In addition, either party shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the other party any Event of Default under Section 6.1.1; the defaulting party shall pay to the other party on demand all costs and expenses incurred by that party in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The non-

defaulting party shall be entitled to all reasonable damages, losses, costs or expenses actually incurred as a result of an Event of Default, and shall have the right to offset said amounts from any amounts due to the defaulting party under this Agreement or any other agreement between the Parties. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**5. Section 8 of the Agreement is amended to read as follows:**

**8. Project Design and Construction.**

**8.1 Project Design Review.** During the design and prior to construction of the Project, SFMTA shall provide BART with all designs, specifications, documents, and information ("Plans") regarding CSP construction activities in and around the BART Facilities, to include any Plans for proposed construction activities which may adversely affect BART in any manner. The Parties agree to provide to each other timely comments and responses concerning the Plans and proposed construction activity consistent with the Central Subway Quality Assurance Program. The Parties shall use their best efforts to provide comments and responses within 10 working days of receipt of the documents for comment or response. If BART in good faith believes that any Plans or proposed work in the vicinity of the BART Facilities may adversely affect the BART Facilities, BART shall so notify the SFMTA as part of its response. An approval hereunder, or a permit issued under Section 18.2, shall constitute confirmation by BART that the design, construction, or intended operation of the permitted improvement will satisfy BART Facilities Standards (the "BFS"), a copy of which has been furnished to SFMTA. BART's review of the Plans and issuance of any permit shall not reduce, modify, eliminate or otherwise affect SFMTA's or its contractor's responsibilities, obligations or liabilities under law. Except as provided above, BART's review of and comments on the Plans will be provided to the SFMTA with the understanding that BART makes no representations or warranties of any kind whatsoever regarding the Plans, including, without limitation, their validity, adequacy, accuracy, legal compliance or completeness.

**8.2 SSI and Confidential Information.**

**8.2.1 SFMTA Documents.** BART acknowledges that the Plans contain Sensitive Security Information (SSI) and are to be held as confidential by BART and not released to the public as required by federal law.

**8.2.2 BART Documents.** SFMTA acknowledges that BART has designated and marked as "confidential" all BART as-built drawings and other drawings and information provided to SFMTA in connection with this Project ("Confidential Information"). SFMTA agrees that it will not release, and it will direct its agents, consultants, and contractors not to release, any Confidential Information to the public that BART provides to SFMTA except as required pursuant to a Sunshine Ordinance or other public records request or otherwise required by law and pursuant to the terms of this section. If a request is made to SFMTA by a third party for Confidential Information by means other than court order, SFMTA will notify BART. If BART confirms that it wishes for SFMTA not to make the information available to the requestor, BART shall hold the City, including SFMTA, harmless, and at City's option, provide legal defense for City from all claims and demands, including attorneys' fees, assessed against City that result from SFMTA refusing to make available the Confidential Information. BART also agrees that, if any action is filed in court seeking disclosure of information declared confidential by BART, SFMTA

shall provide prompt notice to BART of such filing so that BART may contest the order or obtain a protective order. If there is a court order requiring SFMTA to disclose Confidential Information, such disclosure shall not be deemed to be a breach of this Agreement; however, SFMTA shall notify BART immediately of such court order.

### **8.3. Project Construction.**

**8.3.1 Construction in BART Facilities.** SFMTA shall incorporate into its Project the following elements or facilities in the BART Facilities (i) that are necessary to maintain pedestrian safety and a pedestrian level of service of D or better (as defined in the Project EIR/EIS), or (ii) that satisfy applicable laws, regulations and standards, including the BFS, which elements shall be constructed or installed at no cost to BART with sufficient time to be made operational by BART prior to commencement of revenue service at the UMS Station

(a) Design and construction of an additional platform elevator at the west end of the Muni paid area from the Station concourse to the Muni platform (required by BART standards). SFMTA shall include in its UMS Station construction contract a design/build alternative option to extend the elevator to the BART platform ("BART alternative"). Under the construction contract, the Contractor shall have approximately three months to submit to SFMTA a conceptual design of each alternative. SFMTA shall submit the conceptual design and bid amount for the BART alternative promptly upon receipt. SFMTA shall select the BART alternative if BART, after reviewing the design, agrees in writing, prior to the deadline set forth in the construction contract for exercise of the alternative, to pay (i) for half of the cost of the BART conceptual design, and (ii) for the difference between the cost of the final design and construction work required for the BART alternative, and the cost to design and build the elevator without the BART alternative element, as bid by the Contractor;

(b) Procurement of, and design and construction of the site preparation infrastructure required to install, (i) six new fare gate consoles (to accommodate four standard and one accessible fare gates) as identified in the 2011 CSDG study and (ii) one ticket vending machine in a recessed vault at a location to be determined by BART; and (iii) one add-fare machine to be located on the eastern end of the BART secondary paid area. Such work shall include removal of the existing bicycle racks to a location designated by BART in San Francisco or Oakland; alternatively, within one month prior to their planned removal, at BART's request, SFMTA will relocate the bicycle racks to another location in the Powell Street Station;

(c) With respect to the Undercrossing referred to in Section 9, SFMTA shall cause its Contractor to confirm pretension load on the BART tunnel liner bolts before commencement of boring activities;

(d) Reconfiguration of the eastern end of BART's secondary paid area barrier to accommodate six consoles and five additional fare gates;

(e) Installation of a smoke sensor on the BART side of the firewall to be constructed approximately at the property line between the BART Facilities and UMS Station, which sensor shall be owned and maintained by SFMTA following installation;

(f) Preparation of a signage plan and installation of station signage as mutually agreed by the parties relating to the work to be performed by SFMTA in the Powell Street Station.

(a) **8.3.2 Reimbursement for Elements Furnished and Installed by BART.** In addition to the elements or facilities to be constructed by SFMTA in the BART Facilities, SFMTA agrees to reimburse BART for the reasonable costs for the work listed below:

- (a) Review of a station signage plan for installation of station signage;
- (b) Procurement, installation and commissioning of the six consoles and five fare gates referred to in Section 8.2.1(b); and
- (c) Procurement, installation and commissioning of one ticket vending machine and one add-fare machine referred to in Section 8.3.1(b).

### **8.3.3 UMS Station Construction Contract Requirements**

(a) SFMTA agrees to require its UMS Station construction contractor, or any other contractor performing activities in BART Facilities under this Agreement (collectively, "Contractor"), to comply with the terms of the Cooperative Agreement, including this First Amendment.

(b) SFMTA will require its Contractor to warrant any new BART Facilities constructed as part of the Project work against defects for a period of three years after SFMTA's final acceptance of the work. SFMTA shall not issue a final acceptance of such work until BART has issued its acceptance to SFMTA. If SFMTA's Contractor fails to correct any defects in a timely manner, SFMTA will cause such defects to be corrected in a timely manner. SFMTA will provide, or will require its Contractor to provide a hard copy and electronic copy of the final shop drawings of the grille door and the fare gate installation, and a CAD file of the elevator design, a hard copy of the shop drawings, and a hard copy of the as-built drawings for the elevator.

**8.3.4 Construction Meetings.** SFMTA will hold a preconstruction meeting subsequent to the award of the construction contract for the UMS Station and related BART Facilities, and before the Contractor commences any work. Authorized representatives of SFMTA, BART, and the Contractor and affected subcontractors will attend the preconstruction meeting at the time and place designated by SFMTA. After commencement of work on the Project, SFMTA and its Contractor will hold weekly construction status meetings, to which BART's authorized representative may, in BART's discretion, attend if work potentially affecting BART's safety, operations, or maintenance is on the agenda. Only those BART representatives whose presence is necessary to monitor or address the agenda topics shall attend. SFMTA shall use its best efforts to provide BART a copy of the agenda a minimum of three days prior to each meeting.

**8.3.5 Project Work in Accordance with Plans and the Construction Schedule.** SFMTA will perform its Project work in compliance with the Plans and will use its best efforts to stay within the construction schedule submitted by SFMTA to the Federal Transit Administration (the "Construction Schedule"). Changes to the Plans that may affect the safety, operations, or maintenance of BART Facilities or property will be subject to BART's confirmation that the Plans will satisfy the BFS (which approval will not unreasonably be withheld, conditioned, or delayed), except to the extent the Parties have previously agreed in writing to modify such standards in connection with the Project, in which case such modified standards will control. Except for BART standards, which BART shall be responsible for determining compliance, SFMTA shall be responsible for determining and ensuring that all Project construction complies

with all relevant laws, regulations and standards, including the rules and regulations of the Federal Transit Administration and California Public Utilities Commission. BART shall cooperate with SFMTA in ensuring compliance with such laws. BART's review of the Plans and issuance of any permit shall not reduce, modify, eliminate or otherwise affect the responsibilities, obligations or liabilities under law of SFMTA or its Contractor.

**8.3.6. Safety.** Except as otherwise approved by BART in writing, SFMTA will not do, suffer or permit anything to be done which may obstruct, endanger, interfere with, or hinder the safety of BART's trains or Facilities, or the safety of others lawfully occupying or using BART's property. SFMTA shall require that its Contractor maintain unobstructed at all times all emergency egress routes from the Powell Street Station.

(a) Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Project work. SFMTA shall be responsible for initiating, maintaining and supervising all safety, operations and activities in connection with the work. SFMTA shall at a minimum comply with those BART safety standards described in the most current BFS that are applicable to the work being performed by SFMTA in the BART Facilities to ensure uniformity with the safety standards followed by BART's own forces. As a part of SFMTA's safety responsibilities, SFMTA shall notify BART if SFMTA believes that any of BART's safety standards are contrary to good safety practices. SFMTA shall furnish copies of the BFS to the Contractor before commencement of the work under the UMS Station construction contract.

(b) Without limiting any of the provisions above, SFMTA shall require its Contractor to keep the job site free from safety and health hazards and shall ensure that SFMTA's employees and its UMS Station contractor are competent and adequately trained in all safety and health aspects of the job. Any job site accessible to the public shall be adequately fenced to prevent the public from entering the job site.

(c) SFMTA shall require its Contractor to have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. SFMTA shall promptly notify BART of any U.S. Occupational Safety and Health Administration reportable injuries in the BART Facilities. SFMTA shall require its Contractor to comply with the Federal Drug-Free Workplace Act of 1989 and make certain that the Contractor and its employees do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

(d) If and when requested by BART, SFMTA shall deliver to BART a copy of its Contractor's safety plan for conducting the work (the "Safety Plan"). BART shall have the right, but not the obligation, to require SFMTA to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Amendment and the Safety Plan.

### **8.3.7 Protection of BART Operations and Maintenance.**

(a) **Prohibited Activities.** Except as otherwise approved by BART, SFMTA will not do, suffer or permit anything to be done which may damage BART's trains or Facilities or may obstruct, endanger, interfere with, hinder or delay the operation or maintenance of BART's trains or Facilities. SFMTA activities that are deemed to interfere with BART operations or maintenance include, but are not limited to, the following: (1) activity that restricts passenger access to and from the BART platform at current or projected levels; (2) activity that prevents the ongoing use of BART Facilities at their current and projected levels; or (3) activity that requires an

adjustment in the BART train schedule of more than three minutes for more than five consecutive days. Prior to commencing any work which may damage BART's trains or Facilities or may obstruct, endanger, interfere with, hinder or delay the operation or maintenance of BART's trains or Facilities, SFMTA shall prepare and submit a program, plan, and schedule for approval by BART (a "Site Specific Work Plan" or "SSWP") that accurately describes and illustrates the manner in which such work shall be accomplished. The requirements of the SSWP are more particularly described in the BFS.

(b) **Mitigation Measures; General.** Any adverse impact on BART's safety, operations, and maintenance arising out of construction of the Project, whether temporary or permanent, shall be mitigated by SFMTA at no cost to BART or, at BART's sole discretion, by BART at SFMTA's cost. Mitigation measures shall include, but are not limited to, those set forth below.

(c) **Mitigation of Tunneling and Hydrology Impacts.**

(i) **Baselines.** The historical amount of water seeping into BART Facilities is documented by BART and shall be compiled in the "Summary of Water Seepage at the Powell Street Station" ("Historical Data"). In addition, SFMTA's consultant has prepared two hydrogeology reports establishing the water table levels in monitoring wells adjacent to the Powell Street Station entitled "Technical Memorandum, Supplemental Investigation, Union Square Market Street Station Groundwater Flow Model Development and Results, Revision 0, August 22, 2011" and "Summary of Water Level Measurements for the Central Subway Project" (together, "CSDG Reports"). Together, the Historical Data and the CSDG Reports constitute the "Baseline Data." The Parties agree to engage an independent hydrologist to analyze the Baseline Data in order to recommend to the Parties acceptable statistical ranges for hydrology levels ("Acceptance Criteria") and thresholds for consideration whether mitigation is appropriate. As described below in Section 8.3.7(c)(iii), SFMTA shall mitigate any adverse conditions resulting from deviations from the Acceptance Criteria. The Parties agree to share the costs of the hydrologist. In addition, SFMTA's consultant has prepared a report entitled "Technical Memorandum – BART Tunnels Survey and Condition Assessment, Rev 0, August 31, 2011," which the Parties accept as a document to establish the baseline condition of the approximately 331-foot portion of the BART tunnel as depicted on drawing BP 313 of the Plans ("Tunnel Baseline Document"). As an additional source of information, SFMTA's Contractor will establish the baseline for possible movement or deflection of the BART Facilities through a survey of the existing tunnel condition and geometry ("Facilities Movement Baseline").

(ii) **Monitoring.** In accordance with the recommendations of the independent hydrologist referenced in Section 8.3.7(c)(i) during the Mitigation Period, as defined below, SFMTA or its Contractor shall measure the water table monthly in the existing monitoring wells adjacent to the Powell Street Station and the BART tunnel for potential variances compared to the Baseline Data and Tunnel Baseline Document ("Water Monitoring") and submit a report describing the results of such Water Monitoring to BART ("Hydrology Report") every three months beginning with the commencement of Project tunnel boring activities, during the construction of the UMS Station, and ending two years after completion of construction of the box for the UMS station ("Mitigation Period"). During this same period, SFMTA or its Contractor shall monitor potential movement of the Powell Street Station and BART tunnel for possible movement or deflection of the BART Facilities through instrumentation placed in the BART tunnel and adjacent to the Powell Street Station. SFMTA or its Contractor shall submit reports describing the results of such movement monitoring to BART concurrently with the submission of each Hydrology Report. In addition to the reporting requirements, SFMTA or its Contractor shall promptly notify BART in writing of (a) any variation in the water levels in the monitoring wells that deviates from the Acceptance Criteria, or (b) any deviation in the movement or deflection of BART Facilities that

exceeds the Facilities Movement Baseline. In accordance with the recommendations of the independent hydrologist, during the Mitigation Period, BART will continue to monitor water levels in its pumps at the Powell Street Station. BART shall promptly notify SFMTA in writing of any variation in the water levels in its pumps that deviates from the Acceptance Criteria.

**(iii) Mitigation.** SFMTA shall mitigate any adverse conditions resulting from deviations from (a) the Acceptance Criteria or (b) the Baseline Hydrology in the BART tunnel during the Mitigation Period in accordance with the Mitigation Plan described in subsection (iv). SFMTA also shall mitigate any deviation from the Facilities Movement Baseline during the Mitigation Period in accordance with the Mitigation Plan.

**(iv) Mitigation Plan.** Prior to commencing any construction activities for the UMS Station or the Undercrossing, SFMTA shall prepare a Mitigation Plan for possible mitigation of any adverse conditions resulting from a deviation from the Acceptance Criteria or any deviation from the Facilities Movement Baseline during the Mitigation Period, which will be subject to comment by BART. The Mitigation Plan shall conform to industry standards and describe the technology, equipment and resources to be used for such mitigation.

**(d) Damages for Tunneling and Hydrology Impacts**

**(i) Actual Damages.** Without limiting the remedies available under Section 6.2, to the extent permitted by law, and to the extent not covered by the liquidated damages in (ii) below, SFMTA shall be responsible for all damages to BART or the BART Facilities caused by the SFMTA's or Contractor's actions that result in a Prohibited Activity under Section 8.3.7(a), including any damages that result from tunneling activities under this Agreement or SFMTA's failure to mitigate as required under subsection (b) above.

**(ii) Liquidated Damages.** SFMTA shall be responsible for, and shall pay to BART, liquidated damages to the extent that SFMTA Contractor's tunneling activities under this Agreement or SFMTA's failure to mitigate as required under subsection (b) above caused BART to incur such damages. SFMTA has included such liquidated damages in the Project tunneling contract and the amount of liquidated damages that SFMTA may be responsible for under this Agreement shall be equivalent to the amounts specified in the tunneling contract. BART shall not be entitled to recover the same liquidated damages from both SFMTA and SFMTA's Contractor.

**8.3.8 Supervision of Work.** SFMTA, at its own expense, will require its Contractor to adequately police and supervise all work to be performed by the Contractor. The responsibility of SFMTA for safe conduct and adequate policing and supervision of the Project will not be lessened or otherwise affected by BART's review of the Plans, or by BART's collaboration in performance of any work, or by the presence at the work site of BART's representatives, or by compliance by SFMTA with any reasonable requests or recommendations made by such representatives. If a representative of BART is assigned to the Project, SFMTA will give due consideration to suggestions and recommendations made by such representative for the safety and protection of BART's Facilities and operations. If at any time BART's Chief Engineer or his representative notifies SFMTA or its Contractor that any work of SFMTA or its Contractor on or adjacent to BART's operating right-of-way is being, or is about to be, done or prosecuted without due regard and precaution for safety and security, SFMTA and its Contractor shall immediately suspend the work until suitable, adequate and proper protective measures are adopted; provided, however, that BART reserves the right for BART's Chief Engineer or his representative to immediately order SFMTA or Contractor to cease any unsafe work practices on BART's operating

right of way if the BART Chief Engineer or his representative deems such practices to be causing a dangerous condition. Concurrently with making any such determination, BART will provide SFMTA with documentary evidence, if any, supporting such determination.

### **8.3.9 Inspection and Approval of Permitted Work**

(a) Upon substantial completion of any work or portion of any work performed pursuant to a BART Permit to Enter (“Permitted Work”), SFMTA shall give written notice to BART inviting BART to inspect such Permitted Work. BART will have the right to reasonably approve or disapprove the Permitted Work based on (i) faulty materials or workmanship of any improvements; (ii) the failure of any materials, improvements or Permitted Work to conform to the BART-approved plans; or (iii) failure of any materials, improvements or Permitted Work to comply with applicable laws, regulations and standards.

(b) Following each inspection authorized by this Section, BART will provide to SFMTA written verification of the inspection indicating whether BART has approved or disapproved of all or any portion of the Permitted Work. If BART reasonably disapproves any aspect of the Permitted Work in accordance with this Section, BART agrees to notify SFMTA of such disapproval in writing within 30 calendar days after BART receives the written notice to inspect. SFMTA shall reasonably remedy any disapproved aspect of Permitted Work to BART’s reasonable satisfaction. Notwithstanding the foregoing, BART’s failure to disapprove of any Permitted Work within said 30-day period will not constitute a waiver of BART’s right to compel SFMTA to bring the Permitted Work into compliance with the approved Plans and applicable building and regulatory codes. BART’s approval, or failure to approve the Permitted Work shall not reduce, modify, eliminate or otherwise affect the responsibilities, obligations or liabilities under law of SFMTA or its Contractor.

**8.3.10. Title to Improvements; Maintenance.** Title to all improvements constructed by SFMTA for BART, including all rights and duties attached thereto, shall transfer to BART only upon (i) BART’s approval of the Permitted Work constructing or installing such improvements pursuant to Section 11 herein, and (ii) BART’s receipt of completed as-built drawings for such improvements. Maintenance of the improvements shall be covered under the provisions of the Joint Station Maintenance Agreement. Notwithstanding the above, title to the elevator to be constructed by SFMTA under Section 8.3.1(a), including any portion serving the BART station platform, shall vest in the City upon its completion, and City shall be solely responsible for its operation and maintenance.

## **6. Sections 13.1 and 13.2 of the Agreement are amended to read as follows:**

**13.1 Notice of Contest.** SFMTA shall have the right to contest the amount, validity or applicability of any Monthly Billing, or request further information, in the case of an incomplete Monthly Billing, by notifying BART in writing within fifteen (15) days of receipt of said Monthly Billing (“Notice of Contest”). Any such Notice of Contest shall describe in detail the amount(s) being contested and the reasons for such contest. Upon receipt of the Notice of Contest from SFMTA, BART and SFMTA shall in good faith meet with each other to resolve the contested amount(s) in accordance with the procedures described below. If the Parties are unable to resolve the dispute, the matter shall be resolved in accordance with Section 13.2 below.

**13.2 Process.** If any dispute under this Agreement (other than disputes under Section 9) cannot be resolved by the Parties, prior to submission to mediation as set forth below, upon the written request of either of the Parties, the matter shall be dealt with as follows:



**7. Section 14.4 of the Agreement is amended to read as follows:**

**14.4 Damages.** Except as provided in Section 8.3.7(d)(ii), neither City nor BART, and their respective officers, agents, members, employees, and authorized representatives shall have liability to each other for any type of special, consequential or incidental damages arising out of or connected with the Project.

**8. Section 15 of the Agreement is amended to read as follows:**

**15. Liability Insurance.** SFMTA shall require its Contractor for the tunneling contract to comply with the minimum insurance requirements indicated in Appendix C with respect to BART losses arising out of the Project. SFMTA shall require its Contractor for the UMS Station to comply with the minimum insurance requirements indicated in Appendix E with respect to BART losses arising out of the Project. In the alternative, SFMTA may provide Owner Controlled Insurance Coverage for all or a portion of the coverages listed in Appendix C and Appendix E.

**9. Section 18.2 of the Agreement is amended to read as follows:**

**18.2. BART Permits.** SFMTA or its Contractor shall obtain permits from BART for Project work in the BART Facilities prior to the commencement of such work. BART's issuance of said permits shall not be unreasonably withheld, conditioned or delayed. Specifically, BART shall not put conditions on such permits that are in conflict with the provisions of this Agreement. The form of Permit shall be substantially similar to the Permit to Enter attached as Attachment A.

**(c) 18.2.1 Temporary Construction Permits and Permanent Property**

**Rights.** SFMTA shall cause its Contractor to obtain from BART permits for Project work in or on the BART Facilities prior to the commencement of such work. BART's issuance of said permits are subject to confirmation by BART that the work, design, construction, or intended operation of any permitted improvement will satisfy the BFS. The Parties shall use their best efforts to provide comments and responses to matters affecting the issuance of a Permit to Enter within 10 working days of receipt of the documents or information for comment or response. Where permanent facilities to be owned by SFMTA are to be installed in or on the BART Facilities, upon approval, BART shall issue authority to SFMTA for their permanent placement in the BART Facilities.

**(d)**

**18.2.2** Except as provided in Section 8.3.1(a) or as otherwise agreed to in writing by the Parties, all work performed under a Permit to Enter shall be performed at SFMTA's sole cost and expense. No easement, lease or other permanent property right will be acquired by Permittee through any Permit, which shall be temporary only.

**18.2.3** At the request of BART, SFMTA shall cause SFMTA's Contractor to remove from BART's Facilities any employee of Contractor who refuses to comply with the conditions of a BART Permit to Enter in connection with the work or activities on BART's Facilities.

**10. The first paragraph of Appendix C of the Agreement is amended to read as follows:**

SFMTA shall require its prime construction contractors for the Project to comply with the following minimum insurance requirements with respect to losses arising out of the Project. In the alternative, SFMTA may provide Owner Controlled Insurance Coverage for all or a portion of the coverages listed below. With respect to insurance for architects and engineering consultants for the

Project, BART acknowledges that it has been advised of the insurance provisions in the existing contracts of said consultants.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to Cooperative Agreement to be executed as of the date first above written.

BART: SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT

By: GRACE CRUNICAN  
Title: General Manager

Date:

APPROVED AS TO FORM:

OFFICE OF THE GENERAL COUNSEL

By: \_\_\_\_\_  
Nancy Lowenthal  
Attorney

CITY: CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

By: EDWARD D. REISKIN  
Director of Transportation

Date:

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:

\_\_\_\_\_

APPROVED AS TO FORM:

DENNIS HERRERA, City Attorney

By: Robin M. Reitzes  
Deputy City Attorney

**Attachment A**  
**FORM OF**  
**BART PERMIT TO ENTER (WORK)**

Subject to the following covenants, terms, conditions and restrictions, the San Francisco Bay Area Rapid Transit District (hereinafter "District" or "BART") hereby grants permission to [Name] (hereinafter "Permittee") (collectively, the "Parties") to [do something], (hereinafter the "Work") upon BART property located between \_\_\_\_\_ and \_\_\_\_\_ and in the City of San Francisco, County of San Francisco, (hereinafter "Premises"), as shown on Exhibit "A," attached hereto and incorporated herein by this reference.

1. Subject to Section 17 below, the term of this Permit shall commence on \_\_\_\_\_, 20\_\_, and end on \_\_\_\_\_, 20\_\_, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. Said notice shall be sent certified mail, return receipt requested, to:

[Name]  
[Address]  
[Attn:]

or

Real Estate and Property Development Department  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 22<sup>nd</sup> Floor  
Oakland, California 94612  
Attention: Jeffrey P. Ordway, Manager

The notice period shall begin to run upon receipt of said notice.

2. The fee for this Permit shall be calculated pursuant to the Fee Schedule in effect when the permit is issued, pursuant to the policy adopted by the BART Board of Directors. The current fee schedule may be found at [http://www.bart.gov/docs/constructionpermits/Fee\\_Schedule.pdf](http://www.bart.gov/docs/constructionpermits/Fee_Schedule.pdf). An application fee pursuant to such Fee Schedule shall be paid prior to issuance of this Permit. Fees to reimburse BART for plan review and inspection will be billed to Permittee upon completion of the Work and said amounts shall be paid to BART within thirty (30) days of the invoice date. A 10% late fee will be assessed on the balance if payment is not received within said 30 days of the invoice date. The late fee will be increased to 20% on the original balance if payment is not received within 60 days of the invoice date. BART reserves all rights to pursue all appropriate remedies to collect outstanding payments and penalties that have not been paid by Permittee within 90 days of the invoice date.

3. Permittee's right to use this area shall be non-exclusive and non-transferable, and shall be for the sole purpose of performing the Work. In no event shall BART's property be deemed to be

a public right-of-way. Overnight parking is prohibited on BART's property.

4. Conditions of Use:

4.a, 4.b, 4.c, etc. (conditions specific for permitted use).

d. Permittee shall have Underground Service Alert and an independent utility locator service mark out the trench locations prior to digging.

e. Any change in the scope of this permit shall be subject to a separate amendment.

5. The cost of repair and any and all losses caused by Permittee's damage to any BART property or facility, or resultant loss of service, shall be at the sole expense of Permittee. Any damage to BART property or facilities shall be repaired or remedied by Permittee or BART, at BART's discretion, and at Permittee's sole cost and expense. Permittee agrees to reimburse BART promptly for any such damage.

6. Permittee shall have the duty and hereby agrees to exercise reasonable care to properly maintain BART's property pursuant to this Permit, including but not limited to, removing debris dumped or placed on the Premises during the term of this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of BART's property.

7. Permittee acknowledges that said Work constitutes an encroachment upon BART's property and agrees to perform said Work in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits," attached hereto as **Exhibit "B"** and incorporated herein by reference, and all applicable state and local laws. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.

8. Permittee agrees to notify BART's Construction Liaison, John Fu at (510) 464-6439, at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee must obtain any and all necessary permits and pay all fees in connection therewith. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.

9. Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Permit and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section

9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.

10. BART shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.

11. Permittee shall be responsible for and bear the entire cost of removal and disposal, in compliance with Environmental Laws, for all Hazardous Materials and non-hazardous wastes introduced to the Premises during Permittee's use and possession of the Premises. Permittee shall also be responsible for any remediation on or off the Premises necessitated by such Hazardous Materials or non-hazardous wastes. As used herein, "remediation" includes any investigation or post-cleanup monitoring that may be necessary in compliance with Environmental Laws. For purposes of disposal, Permittee shall be the generator of any such Hazardous Materials and shall provide a generator identification number on manifests for such disposal as required by Environmental Laws.

12. To the extent that any New Environmental Condition is caused by, or any Pre-existing Environmental Condition is contributed to or exacerbated by, Permittee's acts or omissions (including those of its employees, contractors and agents) during its use and possession of the Premises, Permittee shall, at BART's discretion, either (a) perform remediation of such New Environmental Condition or Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such New Environmental Condition or Pre-Existing Environmental Condition. A "New Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises as of the commencement date of this Permit. A "Pre-Existing Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises prior to the commencement date of this Permit.

13. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, consultants, subconsultants and agents) or, and to the extent that, any New Environmental Condition is caused by, or any Pre-existing Environmental Condition is contributed to or exacerbated by, the

acts or omissions of Permittee (including those of its employees, consultants, subconsultants and agents) during its use of the Premises.

14. Permittee agrees to assume responsibility and liability for, and to defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, except to the extent such losses are caused by the gross negligence or willful misconduct of BART. Permittee agrees at its own cost, expense and risk to defend any and all actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

15. To the extent that a governmental agency with jurisdiction requires remediation of any Pre-Existing Environmental Condition that is discovered as a result of Permittee's activities pursuant to this Permit, and is not contributed to or exacerbated by the acts or omissions of Permittee, its employees, contractors or agents, Permittee shall, at BART's discretion, either (a) perform remediation of such Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such Pre-Existing Environmental Condition; provided, however, that in no event shall Permittee be responsible for remediation or indemnification with respect to the discovery of a Pre-Existing Environmental Condition that occurs outside the permitted work area or any other area where Permittee, its employees, contractors or agents are actually conducting work.

16. Permittee agrees that no easement, lease or other property right is acquired by Permittee through this Permit.

17. Upon any use of BART property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, BART may terminate this Permit immediately.

18. Permittee shall provide insurance in accordance with the provisions of Appendix E of the Cooperative Agreement between the City and BART.

SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT

By \_\_\_\_\_  
Jeffrey P. Ordway, Manager

Date \_\_\_\_\_

Real Estate and Property Development Department

ACCEPTED  
Permittee

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_



## EXHIBIT B

### SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

---

#### ***GENERAL TERMS AND CONDITIONS RELATING TO UTILITY PERMITS***

All Utility Permits issued by the San Francisco Bay Area Rapid Transit District to privately and publicly owned utilities relating to poles, wires, cables and other overhead structures, pipes, conduits, manholes and other miscellaneous underground facilities, railroad crossings, storm drains, flood control and minor work are subject to the following General Terms and Conditions contained herein as well as the specific conditions set forth on the face of the Permit.

#### **1. DEFINITION:**

Each Utility Permit (hereinafter referred to as "Permit") is issued by the San Francisco Bay Area Rapid Transit District (hereinafter referred to as BART) by the Manager of Real Estate Services.

Applicant (hereinafter referred to as "Permittee") understands and agrees that except as otherwise provided, all Permits issued by BART are subject to the terms and conditions contained herein.

#### **2. REVOCABILITY AND MODIFICATION:**

Any Permits issued hereunder are revocable upon thirty (30) days written notice by BART, and the terms and conditions thereof shall be subject to modification by BART at any time. Any Permit is revocable immediately in the event of any use other than that authorized by the Permit, or upon failure of the Permittee to conform to any of the terms and conditions of the Permit.

#### **3. NEW WORK PERFORMED ON EXISTING PERMIT:**

No new work can be initiated by a Permittee based upon a prior Permit unless that Permit specifically sets forth the nature and method of such future work at the time of the original approval and if the prior Permit has not expired.

If occupation of BART right-of-way is under easement or previous agreement with BART, new installations and work must be applied for to provide BART with notice and record of new work, and for inspection and approval by BART relating to construction and safety procedures. All prior rights shall be fully protected in such cases.

**4. ACCEPTANCE OF PROVISIONS:**

It is understood and agreed by Permittee that doing any work under a Permit shall constitute an acceptance of the terms and conditions contained herein except as otherwise specifically provided in the Permit.

**5. NO PRECEDENT ESTABLISHED:**

It is understood and agreed by Permittee that approval of a particular action under a Right of Entry or Permit shall not establish a precedent for similar future requests by Permittee.

**6. NOTICE PRIOR TO STARTING WORK:**

Before starting work on which full inspection is required in the Permit, the Permittee shall notify BART's Field Management Section in writing fourteen days in advance of the day work is to begin. Five days notice shall be given on Permits where partial inspection is specified.

**7. PERMIT AT SITE OF WORK:**

The Permit or a copy thereof shall be available at the site of the work and must be shown to any representative of BART on demand.

**8. PERMITS FROM OTHER AGENCIES:**

The party or parties to whom a Permit is issued shall, whenever the same is required by law, secure the written order or consent to any work under a Permit from the Public Utilities Commission of the State of California or any other public agency having jurisdiction and any Permit shall not be valid until such order or consent is obtained.

**9. PROTECTION OF TRAFFIC WHEN APPLICABLE:**

Adequate provisions shall be made for the protection of the traveling public when construction affects cross streets along BART right-of-way. Warning signs, lights, safety devices and other measures required for the public safety shall conform to requirements of the Vehicle Code.

**10. RAIL CLEARANCE AT OR NEAR GRADE:**

No construction material shall be stored, nor equipment parked within 10 feet, measured at right angles, from the outer edge of the BART aerial structure or BART right-of-way fence, whichever is greater. Construction equipment operating adjacent to BART tracks or facilities shall be so situated and restrained so as not to fail in a manner that would potentially damage BART facilities or to interfere with BART's operating envelope. Any activity within 10 feet, measured at right angles, of BART's aerial structure or rail shall be conducted during non-revenue service hours and shall be subject to Track Allocation clearance.

**11. LIMIT OF EXCAVATION AT OR NEAR GRADE:**

No excavation is to be made closer than 10 feet, measured at right angles, from the edge of rail except as specified in the Permit. Depth of excavation shall be subject to inspection and approval by BART's Special Services Section.

**12. STANDARDS OF CONSTRUCTION:**

All work performed within BART right-of-way shall conform to Civil and Structural Design Criteria, latest revision, by this reference made a part hereof.

**13. APPROVAL BY BART:**

All work shall be subject to inspection and approval by BART. The type of inspection will be specified in each Permit.

**14. CLEAN UP OF RIGHT-OF-WAY:**

Upon completion of the work, the right-of-way shall be left in the same condition as existed before work started.

**15. MAINTENANCE:**

Permittee agrees, by acceptance of a Permit, to exercise reasonable care to properly maintain any installation placed in BART right-of-way and to exercise reasonable care in preventing damage to any portion of right-of-way or to BART's facilities as a result of work done under a Permit.

**16. RESTORATION:**

Within 30 days of the expiration or earlier termination of a Permit, Permittee shall, at its sole expense, restore to its former condition any portion of the right-of-way or of any BART facility which has been disturbed by Permittee, except as provided otherwise in the Permit. Restoration shall include, but not be limited to, removal of improvements, equipment, materials, debris, and the like, and repair of any damage. If Permittee fails to restore BART property as required herein, BART may perform such restoration at Permittee's sole expense.

**17. CARE OF DRAINAGE:**

If the work contemplated in any Permit interferes with established drainage, provision shall be made by Permittee to re-establish equal drainage conditions as may be directed by BART, at Permittee's sole expense.

**18. SUBMISSION OF PLANS:**

For installation of all underground facilities and surface work, Permittee shall submit for approval a plan showing location and details with its application. Three sets of as-built plans shall be filed with BART upon completion and approval of work. Any substantial change from plans submitted with the application must be approved by BART prior to commencement of work.

**19. EXPENSE OF INSPECTION, PREPARATION, AND ADMINISTRATION:**

On installations made under request of Permittee which require the presence of any employee of BART as inspector, the cost of such inspection during the work shall be paid by Permittee upon presentation of bills therefor. In addition, Permittee agrees to promptly pay BART for costs involved in the preparation, administration and processing of the Permit and its provisions.

**20. LIABILITY FOR DAMAGES:**

Permittee agrees to assume responsibility and liability for all damage, loss or injury of any kind or nature whatever to persons or property, caused by or resulting from or in connection with work done by Permittee under a Permit or which may arise out of failure on Permittee's part to perform their obligations under any Permit. In the event any claim of such liability is made against BART, or any department, officer, or employee thereof, Permittee shall defend, indemnify and hold them, and each of them harmless from such claim, and pay and satisfy any resulting judgments in accordance with section 14 of the Cooperative Agreement. At its sole discretion, BART may require that Permittee obtain a bond and/or insurance in connection with the Permit.

**21. FUTURE MOVING OF INSTALLATIONS:**

It is understood by Permittee that whenever BART construction, re-construction or maintenance work on BART right-of-way may be required, and upon request by BART, the Permittee's installation shall be immediately moved by and at the sole expense of Permittee except as otherwise provided for by a specific Permit provision.

**22. ROUTINE MAINTENANCE OF PERMITTEE'S FACILITIES:**

Permittee may perform routine work maintenance on Permittee's facilities in accordance with the Terms and Conditions set forth in the Permit. It will be necessary to provide fourteen days' prior written notice, unless otherwise stated, to BART's Construction Liaison prior to commencing any work within the property boundaries of BART. In emergencies, the Permittee shall notify BART's Construction Liaison by telephone and then follow up by confirming letter relating to the emergency and the disposition of the emergency.

**23. PIPES, CONDUITS AND MISCELLANEOUS FACILITIES:**

BART's Civil and Structural Design Criteria, latest revision, sets forth specification for installation and maintenance of all underground facilities within BART right-of-way. In addition to BART criteria, all installation and maintenance procedures by Permittee shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. When abandonment of facilities is contemplated, Permittee shall notify BART.

**24. POLES, WIRES, CABLES AND OVERHEAD STRUCTURES:**

Poles shall be located as specifically directed in the Permit. In addition to BART's Civil Structural Design Criteria, latest revision, all clearances and types of construction shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. Whenever it is necessary to secure permission from abutting property owners, such authority must be secured by Permittee prior to commencing work. Where removal of old poles, guys and stubs is necessary, the entire length of the abandoned pole, guy or stub shall be removed from the ground and the hole backfilled and thoroughly tamped.

**25. CLEARANCE OF TREES:**

All new pole line construction must allow sufficient vertical clearance for trees 40 feet in height. At locations where growing trees are in place, or Permittee's facilities are already in place, normal construction standards may be followed at the option of Permittee with the ultimate provision to clear a 40-foot tree. Protected cable, tree wire, or plastic tree wire guards may be used on telephone lines through trees provided neither the tree nor its appearance will be damaged. No guy wires are to be attached to trees or BART structures.

**26. TRIMMING OF TREES:**

Trimming of trees will be permitted only where specifically stated in a Permit. Except when specifically authorized in the Permit, removal of trees will generally be prohibited since all trees within BART right-of-way have been placed as landscaping. Permittee shall be required to conduct tree trimming at no cost to BART. In general, only light trimming of branches two inches or less in diameter will be permitted. The shapeliness of the trees must be preserved. If the permit requires inspection by BART during progress of the work, the cost of inspection shall be borne by the Permittee.

**27. SERVICE CONNECTIONS:**

These terms and conditions do not authorize installation of utility service connections within BART right-of-way regardless of location of Permittee's facilities. All such service connections or excavations to abandon services must be covered by individual Permits.

## Appendix E

SFMTA shall require its prime construction contractors for the Project to comply with the following minimum insurance requirements with respect to losses arising out of the Project. In the alternative, SFMTA may provide Owner Controlled Insurance Coverage for all or a portion of the coverages listed below. With respect to insurance for architects and engineering consultants for the Project, BART acknowledges that it has been advised of the insurance provisions in the existing contracts of said consultants.

### A. LIABILITY INSURANCE

1. Contractors shall maintain in full force and effect, for the period covered by the contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
  - a. Worker's Compensation in the statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000 each accident, injury, or illness. The policy shall include Broad Form All States/Other States coverage. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and of BART for all work performed by the Contractor, its employees, agents and subcontractors.
  - b. Commercial General Liability insurance with limits not less than One Hundred Million Dollars (\$100,000,000) each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broad Form Property Damage, Products, and Completed Operations.
  - c. Commercial Automobile Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
2. Approval of contractors' insurance by the City will not relieve or decrease the liability of contractors. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

### B. ADDITIONAL COVERAGES

1. Builder's Risk Insurance: City contractors or the SFMTA shall purchase and maintain in force, throughout the term of this Contract, Builder's Risk insurance on an all-risk form, excluding earthquake and flood, for 100 percent of the completed value of the Work. Any deductible shall be the responsibility of City contractors, including coverage for debris removal of at least 100 percent of the

completed value of removal. Such policy shall include as named insureds and be made payable to contractor, to their subcontractors and suppliers of all tiers, to the City and County of San Francisco, as their interests may appear, and shall be issued by carrier(s) satisfactory to the City to conduct insurance business in California. In the event of damage, it shall be City contractors' responsibility to perform at their expense all required repair and replacement at no cost to the City. In accordance with Public Contract Code section 7105, in the event of damage caused by earthquake or tidal waves, contractors shall not be responsible for losses in excess of five percent of the contract amount, including deductibles.

2. Environmental Pollution Liability: The Contractor, or its subcontractor, who perform abatement of hazardous or contaminated materials removal, shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-Site or off-Site third party claims for bodily injury and property damage, with any deductible not to exceed \$50,000, unless a different deductible amount is approved in writing by the SFMTA. Coverage shall included contractor and subcontractor's legal liability for contaminated soils, in ground or airborne asbestos, lead, PCBs and other hazardous material that may be encountered on the Site.

3. Railroad Protective Liability for bodily injury (including death), property damage, and physical damage, including loss of use thereof, to railroad property with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate annually applicable to all operations of Contractor and its subcontractor(s) within 50 feet vertically or horizontally of the center line of BART's tracks. BART shall have the right to approve of the policy wording. The named insured shall be San Francisco Bay Area Rapid Transit District.

4. Professional Liability Insurance. City shall provide or require its prime consultant architects and engineers working on the Project to meet the professional liability insurance requirements provided below:

a. Professional liability insurance coverage with limits not less than Two Million Dollars (\$2,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). The consultants shall be responsible for the payment of all claim expenses and loss payments within the deductible.

b. The City will in good faith endeavor to obtain an excess liability policy to protect against its consultants' errors and omissions in excess of the coverage in subsection a above for commercially reasonable terms and cost.

### C. FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

1. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City,

evidencing all required insurance and with proper endorsements from contractors' insurance carriers identifying as additional insureds the parties indicated above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Contractor will be allowed a maximum of five working days after the date on which the Contract is awarded in which to deliver appropriate bond and insurance certificates and endorsements. Contractor shall also furnish a copy of the above to BART.

2. Approval of the insurance by the City shall not relieve or decrease the extent to which contractors or subcontractors of any tier may be held responsible for payment of any and all damages resulting from their operations. Contractors shall be responsible for all losses not covered by the policy, excluding damage caused by earthquake and tidal waves consistent with section 7105 of the California Public Contract Code in excess of five percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

3. The contractors and their subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.

4. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

5. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.

6. Should any of the required insurance be provided under a claims-made form, contractors shall maintain such coverage continuously throughout the term of their contracts, and without lapse, for a period five years beyond the final completion dates, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.

7. Each such policy shall provide that no cancellation or non-renewal shall occur without the carrier giving to the City at least 30 days' written notice prior thereto.



8. Contractors, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.

9. If, at any time during the life of this Contract, contractors fail to maintain any item of the required insurance in full force and effect, all work of the contracts may, at City's sole option, be discontinued immediately, and all contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Paragraph that such insurance has been restored to full force and effect and that the premiums for such policies have been paid for a period satisfactory to the City.

10. For general liability, environmental pollution liability and automobile liability insurance, Contractor shall include as additional insureds, the City and County of San Francisco, BART, their board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

11. Contractors agree to waive subrogation which any insurer of contractors may acquire from contractors by virtue of the payment of any loss. Contractors agree to obtain any endorsement that may be necessary to effect this waiver of subrogation.

12. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default.

13. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

**DISPOSITION AGREEMENT**  
**(Fee, Easement and Improvements )**

THIS DISPOSITION AGREEMENT (this “**Agreement**”) is entered into as of the \_\_\_ day of \_\_\_\_\_ 2012 (“**Agreement Date**”), by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district (“**BART**” or “**Transferor**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“**SFMTA**” or “**Transferee**”). Transferor and Transferee each are referred to herein as a “**Party**” and both together as the “**Parties**.”

THE PARTIES ENTER INTO THIS AGREEMENT on the basis of the following facts, understandings, and intentions:

- A. Transferor is the owner of certain improved real property located in the City and County of San Francisco, State of California, known as San Francisco County Assessor’s Parcel Number 0327-024 and more particularly described as Parcel 1 on the grant deed attached hereto as Exhibit 1 (the “**Fee Parcel**”).
- B. Transferor is the owner of an improved subsurface easement located in the City and County of San Francisco, State of California, situated on the parcel known as San Francisco County Assessor’s Parcel Number 0327-025 and more particularly described as Parcel 2 on the attached Exhibit 1 (the “**Easement Parcel**”). Together, the Fee Parcel and Easement Parcel are referred to herein as the “**Real Property Interests**.”
- C. Transferor is the owner of certain facilities and improvements (the “**BART Entrance R Facilities**”) that are part of the Powell Street BART/Muni Station located at 899 Market Street, San Francisco, California (the “**Powell Street Station**”), and located within the area designated as "Entrance R" on the attached Exhibit 2 (“**Entrance R**”) and the area immediately abutting Entrance R (such as the vault closure walls and grade slab at the locations depicted on the attached Exhibit 2 and labeled “**Abutting Facilities**”), but excluding are immediately abutting the southern boundary of Entrance R.
- D. Transferee is extending its Third Street light rail line to Market Street, Union Square and Chinatown as part of its Central Subway Project. As part of such extension, Transferee intends to construct a new subway station within Stockton Street between Union Square and Market Street (the “**UMS Station**”) and wishes to incorporate Entrance R, the Real Property Interests and the BART Entrance R Facilities (collectively, the “**UMS Entry Area**”) into the new UMS Station, as indicated by the “**UMS South Entrance**” and “**South Concourse**” designations shown on the attached Exhibit 3. The “**Project**” shall mean the construction of the UMS Station, including the incorporation of the UMS Entry Area as part of the UMS

Station.

- E. Transferor desires to sell the Real Property Interests and the BART Entrance R Facilities (collectively referred to herein as the “**Property**”), and Transferee desires to purchase the Property from Transferor, on the terms and conditions set forth herein.

NOW THEREFORE in consideration of the mutual covenants and promises of the Parties, the Parties hereto agree as follows:

#### ARTICLE 1 – FEE PARCEL AND EASEMENT PARCEL DISPOSITION

- 1.1 Transferor shall quitclaim to Transferee and Transferee shall acquire from Transferor, all of Transferor’s right, title, and interest in and to the Real Property Interests, described as Parcel 1 and Parcel 2 in that certain Grant Deed from Great Western Savings and Loan Association to BART recorded October 3, 1974 in the Official Records of the City and County of San Francisco in Liber B936, Page 697, together with all structures, improvements, machinery, fixtures and equipment affixed or attached thereto owned by Transferor (but excluding any items removed from the Real Property Interests by Transferor pursuant to Section 3.1 or to be delivered to Transferor pursuant to Section 8.3) and all easements and rights appurtenant thereto, in accordance with the terms and conditions and subject to the conditions, exceptions and reservations set forth in this Agreement and the Quitclaim Deed attached hereto as Exhibit 4 (“Quitclaim Deed”), and subject to any existing rights and interests therein of third parties existing prior to the date this Agreement is fully executed. Transferee shall take these Real Property Interests as-is and shall have no claim against Transferor for any defect of title, workmanship, hazardous materials, or other defect.

#### ARTICLE 2 – BART ENTRANCE R FACILITIES DISPOSITION

- 2.1 Transferor hereby conveys to Transferee and Transferee hereby acquires from Transferor, on all of the terms and conditions and subject to the conditions, exceptions and reservations set forth in this Agreement, all right, title, and interest in and to any and all BART Entrance R Facilities, including structures, improvements, machinery, fixtures and equipment, including but not limited to escalators, lighting and electrical facilities, water lines, and drains, owned by Transferor as of the date of this Agreement, but excluding any items removed from the Real Property Interests by Transferor pursuant to Section 3.1 or to be delivered to Transferor pursuant to Section 8.3. Transferee accepts each of the BART Entrance R Facilities as-is and shall have no claim against Transferor for any defect of title, workmanship, hazardous materials, or other defect.

#### ARTICLE 3 – EXCEPTIONS AND RESERVATIONS

- 3.1 Transferor excepts from the Property conveyed and to be conveyed pursuant to Articles 1 and 2 above and reserves to itself the following rights and interests.

- 3.1.1 Wall Tiles. After the Closing Date (as defined in Section 6.2.2.1), Transferee shall detach the white tiles that are in place on the walls of the Property on the Closing Date at Transferee's sole cost and expense and make such detached white tiles available for pickup by BART at its sole cost, as further provided in Section 8.3.2. BART reserves title to and ownership of any white tiles removed by BART from the Property pursuant to Section 8.3.2. If BART does not timely remove all of such detached tiles from the Property pursuant to Section 8.3.2, any remaining detached tiles shall automatically become the property of Transferee. Transferee's obligations under this Section shall survive Closing.
- 3.1.2 Escalator Components. BART reserves title to and ownership of the escalator treads, motors, framing, and all other escalator components (but excluding the trusses) that are in place at the Property on the Closing Date (collectively, the “**Escalator Components**”), which shall be removed from the Property by Transferee and delivered to BART as provided in Section 8.3.3, all at Transferee's sole cost and expense. Transferee's obligations under this Section shall survive Closing.
- 3.1.3 CCTV Camera. BART reserves title to and ownership of the existing CCTV camera on the Property (“**CCTV Camera**”). Prior to the Closing Date, BART will remove the CCTV camera from Property at its sole cost. If BART's removal activities causes any damage to the UMS Entry Area that interferes with Transferee's ability to use the UMS Entry for construction staging or increases Transferee's costs to construct the UMS Station, BART shall repair such damage or reimburse SFMTA for its reasonable costs to repair such damage.
- 3.1.4 Additional Equipment. BART conditionally reserves title to and ownership of the standard lighting system components, the public announcement system components, station signage, and door and gate locking mechanisms (but excluding the mechanisms needed to manually lock the doors and gates located at the Property) existing on the Property on the Closing Date (collectively the “**Additional Components**”). BART shall have the right to remove the Additional Components from the Property on the day immediately following the Closing Date by way of the existing stairways leading to Ellis Street at BART's sole cost and expense. If BART elects to leave any Additional Components at the Property at such time, BART shall have been deemed to have transferred title to and ownership of such remaining Additional Components to Transferee at midnight on the first day immediately following the Closing Date. BART shall use due care in removing the Additional Components from the Property and shall not allow any third parties other than BART employees or contractors to enter the UMS Entry Area while performing such removal activities. If BART's removal activities causes any damage to the UMS Entry Area that either interferes with Transferee's ability to use the UMS Entry for construction staging or increases Transferee's costs to construct the UMS Station, BART shall repair such damage or reimburse SFMTA for its reasonable costs to repair such damage.

3.1.5 Radio Facilities. BART reserves title to and ownership of the radio antenna facilities located at the Property as of the Agreement Date, which facilities consist of an RXL5 Radiax unit and ancillary facilities mounted to the existing ceiling with three (3") standoffs and serve the BART system ("**Existing Antenna Facilities**"). BART further reserves the right to have the Existing Antenna Facilities, or any replacement radio antenna facilities and related extensions that are functionally equivalent and comparable in size to the Existing Antenna Facilities and do not interfere with SFMTA's facilities or operations in the UMS Entry Area ("**Replacement Radio Facilities**"), located at the approximate location shown on the attached Exhibit 2 after the Closing Date, together with the right(s) of way therefor and right of access thereto for the purposes of operating maintaining, repairing, or replacing the Existing Antenna Facilities or the Replacement Radio Facilities, as applicable. BART and SFMTA shall negotiate in good faith on the terms and conditions of such access, which shall be set forth in a separate written agreement that is mutually acceptable to BART and SFMTA (the "**Access Agreement**"). BART acknowledges that its continued use and operation of the Replacement Radio Facilities or the Existing Antenna Facilities, as applicable, and its activities to operate, repair, or replace the Replacement Radio Facilities or the Existing Antenna Facilities, as applicable, shall not unreasonably interfere with the operation, or maintenance, or interfere with the safety, of Transferee's facilities or operations at the UMS Entry Area, and Transferee agrees to use due care to reasonably minimize any interference with the operation, maintenance, or safety of the Replacement Radio Facilities or the Existing Antenna Facilities, as applicable, that may be caused by Transferee's facilities or operations at the UMS Entry Area. If BART's activities with respect to the Replacement Radio Facilities or the Existing Antenna Facilities, as applicable, and related access rights causes any damage to the UMS Entry Area, BART shall repair such damage or reimburse SFMTA for its reasonable costs to repair such damage. If SFMTA's activities in the UMS Entry Area causes any damage the Replacement Radio Facilities or the Existing Antenna Facilities, as applicable, SFMTA shall repair such damage or reimburse BART for its reasonable costs to repair such damage.

Prior to the Closing Date, BART shall remove the Existing Antenna Facilities from the UMS Entry Area, provided that SFMTA shall functionally restore the Existing Antenna Facilities or, at BART's election, the Replacement Radio Facilities at the same approximate location indicated on the attached Exhibit 2 no later than the date City opens the UMS Station for public use (the "**Project Completion Date**"), provided such restored or the Existing Antenna Facilities or Replacement Radio Facilities, as applicable, shall be located above the plaster ceiling installed by SFMTA in its construction of the Project. SFMTA shall provide sufficient space above such plaster ceiling to accommodate the restored Existing Antenna Facilities or Replacement Radio Facilities, as applicable. SFMTA shall provide BART with no less than ten (10) days prior notice of the date that SFMTA plans to functionally restore the Existing Antenna Facilities or Replacement Radio Facilities, as

applicable, in the UMS Entry Area to coordinate with BART's work to reconnect the functionally restored Replacement Radio Facilities with the radio antennae facilities located within the Powell Street Station, and BART shall deliver the Existing Antenna Facilities or Replacement Radio Facilities, as applicable, to SFMTA for functional restoration before such planned restoration date. SFMTA shall reimburse BART for its reasonable costs to initially remove the Existing Antenna Facilities in the UMS Entry Area pursuant to this paragraph.

If Transferee deems it necessary to relocate the Existing Antenna Facilities or any Replacement Radio Facilities, as applicable, at any time after the Project Completion Date to accommodate its use of or operations at the UMS Entry Area, then such relocation(s) will be subject to BART's prior written approval and will be at Transferee's sole cost and expense. If BART deems it necessary to relocate the Existing Antenna Facilities or any Replacement Radio Facilities, as applicable, at any time after Project Completion Date to improve its radio antenna coverage, then such relocation(s) will be subject to SFMTA's prior written approval and will be at BART's sole cost and expense. After the Project Completion Date, BART shall keep the Existing Antenna Facilities or any Replacement Radio Facilities, as applicable, in a good, safe condition at all times.

- 3.1.6 Right of Emergency Access. Transferor reserves a right of access to the UMS Entry Area by BART Police to the extent reasonably necessary for public safety purposes or for the safety and security of the Powell Street Station. BART and SFMTA shall negotiate in good faith on the terms and conditions of such access, which shall be set forth in the Access Agreement. Transferee shall provide BART Police with copies of any access keys, electronic access codes, or other such means of opening any doors or barriers to the UMS Entry Area. BART Police shall not access the UMS Entry Area during any times it is closed to the public except in the event of an emergency. BART Police shall notify SFMTA of such access as soon as practicable and shall ensure that all locked doors or barriers are returned to their locked condition immediately following any use by BART Police. This section shall not be interpreted to imply that Transferor assumes any duty or obligation for the security or policing of the UMS Entry Area. If BART Police activities cause any damage to the UMS Entry Area, BART shall repair such damage or reimburse SFMTA for its reasonable costs to repair such damage.
- 3.1.7 Right to Own, Operate, Maintain and Replace a Gate. Transferor reserves the right to own, operate, maintain and replace the Grille Gate (as defined in Section 8.3.3) or a replacement gate that is functionally equivalent and comparable in size to the Grille Gate (a "**Replacement Gate**") at the approximate location within the UMS Entry Area shown on the attached Exhibit 3, together with rights of access thereto from the Powell Street Station. BART and SFMTA shall negotiate in good faith on the terms and conditions of such access, which shall be set forth in the Access Agreement. Subject to the reservation contained in Section 3.1.8 and the terms of Section 8.1,

BART acknowledges that its continued use and operation of the Grille Gate or any Replacement Gate, and its activities to operate, repair, or replace the Grille Gate or any Replacement Gate, shall not unreasonably interfere with the operation, or maintenance, or interfere with the safety, of Transferee's facilities or operations at the UMS Entry Area. If BART's activities with respect to the Grille Gate or any Replacement Gate and related access rights causes any damage to the UMS Entry Area, BART shall repair such damage or reimburse SFMTA for its reasonable costs to repair such damage.

- 3.1.9 Right to Close Access to Powell Street Station. Transferor reserves the right to close, block, or otherwise restrict or prevent access from the UMS Entry Area into the Powell Street Station after the removal of the Temporary Wall (as defined in Section 5.1.4) by closing the Grille Gate as Transferor, in its sole judgment, deems necessary to protect the safety, operation, and maintenance of the Powell Street Station and the public. This provision may be modified by the Access Agreement.

#### ARTICLE 4 - PURCHASE PRICE

- 4.1 Purchase price. The purchase price ("Purchase Price") shall be One Dollar (\$1.00) for the Property.
- 4.2 Payment. The Purchase Price shall be payable all in cash, in immediately available funds, at the Close of Escrow (defined below).

#### ARTICLE 5 - CONDITIONS TO PURCHASE AND SALE

- 5.1 Conditions Precedent to Transferor's Obligations to Sell. The obligation of Transferor to sell the Property to Transferee is expressly conditioned upon the satisfaction prior to Close of Escrow of each of the conditions set forth in this Section 5.1, each of which is for the benefit of the Transferor and any or all of which only may be waived by Transferor, in writing, at Transferor's option. If any condition set forth in this Section 5.1 is not fully satisfied or waived in writing by Transferor, this Agreement shall terminate, but without releasing Transferee from liability if Transferee defaults in the performance of any such covenant or agreement to be performed by Transferee before such termination.
- 5.1.1 On the Closing Date (defined below), Transferee shall not be in default in the performance of any covenant or agreement to be performed by Transferee under this Agreement, including its obligation to deliver into escrow the documents referenced in Section 6.1.1 below.
- 5.1.2 On the Closing Date, all representations and warranties made by Transferee in Article 7 hereof shall be true and correct as if made on and as of the Closing Date,

without exceptions.

- 5.1.3 On or before the Closing Date, SFMTA and BART shall execute an amendment to the April 19, 2011 Cooperative Agreement between the Parties to incorporate construction-related terms acceptable to the Parties (“**First Amendment to Cooperative Agreement**”).
- 5.1.4 On the Closing Date, SFMTA shall, at its sole cost, install a temporary wall (the "**Temporary Wall**") at the boundary between the UMS Entry Area and the Powell Street Station. The Temporary Wall shall be in a condition sufficient to prevent any access between the UMS Entry Area and the Powell Street Station by the general public, and may include a locked pedestrian door accessible by SFMTA and BART, which shall be used for safety and security purposes only, and shall not be used for any construction activities by SFMTA without a prior permit from BART or for any construction activities by BART without a prior permit from SFMTA. SFMTA shall, at its sole cost, maintain the Temporary Wall in good condition and repair at all times and may remove the Temporary Wall only after SFMTA completes the installation of, and BART accepts, the Grille Gate.
- 5.1.5 As of the Agreement Date, the UMS Entry Area is subject to a Professional Services Agreement between BART and Titan Outdoor LLC ("Titan") for Poster Advertising Franchise, dated as of June 12, 2008 (the "Titan Contract"). Before the Closing Date, BART shall obtain Titan's written confirmation that the UMS Entry Area will no longer be subject to the Titan Contract after the Closing Date, and shall cause Titan to remove all of its advertising panels and any other advertising media from the UMS Entry Area. SFMTA shall indemnify and hold BART harmless in the event that Titan makes a claim against BART or refuses to pay any amounts under the Titan Contract due to the required removal of advertising from the UMS Entry Area. BART is not responsible if Titan should ever claim the required removal of advertising from the UMS Entry Area is a breach of the Titan Contract and refuses to pay all revenue owed under the Titan Contract as a result of such alleged breach. SFMTA's obligations under this Section shall survive Closing.
- 5.2 Conditions Precedent to Transferee’s Obligations to Purchase. The obligations of Transferee to purchase the Property from Transferor is expressly conditioned upon the satisfaction prior to the Close of Escrow of each of the conditions set forth in this Section 5.2, each of which is for the benefit of Transferee and any or all of which only may be waived by Transferee, in writing, at Transferee’s option. If any condition set forth in this Section 5.2 is not fully satisfied or waived in writing by Transferee, this Agreement shall terminate, but without releasing Transferor from liability if Transferor defaults in the performance of any such covenant or agreement to be performed by Transferor before



such termination.

- 5.2.1 On the Closing Date, Transferor shall not be in default in the performance of any covenant or agreement to be performed by Transferor under this Agreement.
- 5.2.2 On the Closing Date, all representations and warranties made by Transferor in Article 7 hereof shall be true and correct as if made on and as of the Closing.
- 5.2.3 On or before the Closing Date, SFMTA and BART shall execute the First Amendment to Cooperative Agreement.
- 5.2.4 The condition of title to the Real Property Interests shall be acceptable to SFMTA, in its sole discretion, on the Closing Date, and if SFMTA has elected to acquire an Owner's Policy for the Real Property Interests, Title Company shall be irrevocably committed to issue to City an owner's policy of title insurance (the "**Title Policy**") insuring title to the Real Property Interests vested solely in City free of all exceptions, liens and encumbrances other than the conditions of title accepted by SFMTA. Transferor shall have no obligation to clear any title matters encumbering the Real Property Interests as of the Closing Date, except to the extent such matters arise from Transferor's failure to comply with its obligations under Section 8.1.
- 5.2.5 The physical condition of the UMS Entry Area shall be substantially the same on the Closing Date as on the date of SFMTA's execution of this Agreement, subject to reasonable wear and tear and the removal of the Existing Antenna Facilities, the CCTV Camera, and the advertising panels and materials.
- 5.3 Cooperation of Parties. The Parties shall cooperate on a reasonable and good faith basis in consummating the satisfaction of the conditions precedent to Transferee's obligations to purchase for benefit of the Transferee and the satisfaction of the conditions precedent to Transferor's obligations to sell for benefit of the Transferor.

## ARTICLE 6 - CLOSING AND ESCROW

- 6.1 Deposits Into Escrow. Within ten (10) days after execution of this Agreement by Transferee and Transferor, Transferee shall establish an escrow with Chicago Title Company (the "**Title Company**"), at its office located 455 Market Street, Suite 2100, San Francisco, CA 94105. A copy of this Agreement, duly executed by Transferee and Transferor, shall be deposited therein. Prior to or on the Closing Date, the following shall be deposited into escrow with the Title Company:
  - 6.1.1 Transferee. Transferee shall deposit (a) cash in the amount of the Purchase Price, together with additional funds in an amount necessary for closing costs and Transferee's share of prorations, as set forth below, (b) a certificate of acceptance

in the form attached to the Quitclaim Deed (the "**Certificate of Acceptance**"), duly executed by Transferee, (c) two original copies of the assignment of general intangibles in the form attached hereto as Exhibit 5, duly executed by Transferee, and (d) any other documents as may be reasonably required by Escrow Holder to effect Closing.

6.1.2 Transferor. Transferor shall deposit (a) the Quitclaim Deed, duly executed and acknowledged by Transferor, (b) a Certificate of Non-Foreign Status in accordance with section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder, executed by Transferor, (c) satisfactory evidence that no California withholding of tax is required with respect to the sale of the Property, (d) a bill of sale in the form attached hereto as Exhibit 7, duly executed by Transferor, (e) two original copies of the assignment of general intangibles in the form attached hereto as Exhibit 5, duly executed by Transferor, (f) an estoppel certificate in the form attached hereto as Exhibit 6 (the "**Apple Improvements Estoppel**"), duly executed by Transferor, and (g) any other documents as may be reasonably required by Escrow Holder to effect Closing.

## 6.2 Close of Escrow.

6.2.1 Closing Date. Escrow shall close no later than June 8, 2012 (the "**Outside Closing Date**") unless extended by mutual agreement of the Parties.

6.2.2 Closing of Escrow. When all conditions precedent specified in Article 5 hereof have been either satisfied or waived by Transferor or Transferee, and the Title Company has received all necessary cash and documents, but in any event prior to the Outside Closing Date, the Title Company shall immediately cause the following to occur (the "**Close of Escrow**"):

6.2.2.1 Record Deed. Attach the Certificate of Acceptance to the Quitclaim Deed and record the Quitclaim Deed in the Official Records of San Francisco County. The date the Quitclaim Deed is recorded is the "**Closing Date**."

6.2.2.2 Pay to Transferor. Pay to Transferor the Purchase Price, reduced only by the Transferor's share of prorations, as hereinafter set forth.

6.2.2.3 Deliveries to Transferor. Deliver to Transferor and Transferee a conformed copy of the recorded Quitclaim Deed.

6.2.2.4 Tax Filing. If applicable, the Title Company shall file the information return for the sale of the Property required by section 6045 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations

thereunder, which requires that a tax return be filed with the Internal Revenue Service in connection with the sale of Real Property Interests in which a broker is involved.

### 6.3 Closing Costs and Prorations.

6.3.1 Closing Costs. Transferee shall pay all closing costs, including the recording costs (if any), all escrow fees and the title insurance premium for any policy of title insurance Transferee elects to acquire in connection with the Property ("**Title Policy**").

6.3.2 Prorations. All current income, except advertising income, from the UMS Entry Area, if any, and all current taxes, assessments, utilities, maintenance charges and similar expenses of the UMS Entry Area, determined using the accrual method of accounting, shall be prorated on the basis of a thirty (30) day month between Transferor and Transferee as of the Closing Date, and, to the extent of information then available, such prorations shall be made as of the Close of Escrow. Such prorations shall be adjusted, if necessary, and completed after the Closing Date as soon as final information becomes available. Such income and expenses of the Property for the period before the Closing Date shall be for the account of Transferor, and such income and expenses for the period on and after the Closing Date shall be for the account of Transferee. Transferor shall pay all taxes, assessments, and other expenses relating to the UMS Entry Area that are allocable to the period before the Closing Date. Transferor shall immediately pay to Transferee all income from the UMS Entry Area received by Transferor either before or after the Closing Date that are allocable to the period on or after the Closing Date, except advertising income, which shall be paid pursuant to the First Supplemental MUNI/BART Joint Station Maintenance Agreement between BART and City, dated July 1, 1986 (the "**Joint Maintenance Agreement**"). The provisions of this Section shall survive the Closing.

6.3.3 Possession. Transferor shall transfer possession of the UMS Entry Area to Transferee on the Closing Date.

## ARTICLE 7 - REPRESENTATIONS AND WARRANTIES

### 7.1 Authority.

7.1.1 Transferor's Authority. Transferor represents and warrants as follows: Transferor is a rapid transit district created under the laws of the State of California. Transferor has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Transferor have been duly and validly authorized by all necessary

action on the part of Transferor and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Transferor, enforceable against Transferor in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

- 7.1.2 Transferee's Authority. Transferee represents and warrants as follows: Transferee is a municipal corporation created under the laws of the State of California. Transferee has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Transferee have been duly and validly authorized by all necessary action on the part of Transferee and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
- 7.2 Brokers. Transferor represents and warrants that it has not dealt with any investment adviser, real estate broker or finder, or incurred any liability for any commission or fee to any investment adviser, real estate broker or finder, in connection with the sale of the Property to Transferee under this Agreement. Transferee represents and warrants that it has not dealt with any investment adviser, real estate broker or finder, or incurred any liability for any commission or fee to any investment adviser, real estate broker or finder, in connection with the purchase of the Property by Transferee or this Agreement.
- 7.3 Tax Matters. Transferor represents and warrants that it is not a "foreign person" as defined in section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder which require the withholding of tax on the sale of real estate by a foreign person, subject to certain exemptions. No California withholding of tax or reporting pursuant to California Revenue and Taxation Code sections 18661, 18662 and 18668 will be required with respect to the sale of the Property by Transferor which requires the withholding of taxes in connection with the sale of California real property, subject to certain exceptions.
- 7.4 Hazardous Materials. Transferor represents that to its knowledge, there has been no release and there is no threatened release of any Hazardous Material (defined as follows) in, on, under or about the Property and there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property; provided, however, that Transferor is aware and has notified Transferee of the potential for existing asbestos contained within the ceiling materials and wall tiles located in the Property. Transferor has furnished Transferee with copies of the following reports: (a) Powell Station Waste Characterization, SCA Environmental, Inc. dated May 11, 2011, (b)

Containment Clearance, Forensic Analytical, Environmental Health Consultants, dated September 7, 2011 - October 26, 2011, (c) Baffle Material, Micro Analytical Laboratories, Inc., dated May 17, 2011, (d) Bulk Asbestos Analysis–PLM(EPA/600/R-93/116,1993), Micro Analytical Laboratories, Inc., dated May 12, 2011, and (e) Report on Building Inspection for ACBM, ITEK Enviro Services, Inc., dated January 14, 1990.

**"Hazardous Material"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 *et seq.*

**"Release"** or **"threatened release"** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

- 7.5 Apple Store Permit. Transferor represents that it permitted Apple Computer, Inc. ("**Apple**") to install the Apple Improvements (defined as follows) at the Real Property Interests pursuant to a Permit to Enter identified as Permit No. M-08.1-002-SF, executed by Apple and Transferor as of August 1, 2003, as amended by Apple and BART, and a Permit to Enter (Work) between Apple and BART identified as Permit No. M-08.1-012-SF, fully executed as of May \_\_\_\_, 2012, all attached hereto as Exhibit 8 (the "**Apple Store Permit**"). The "**Apple Improvements**" are comprised of stone wall treatments, a clear glass wall, stainless steel ceiling panels, lighting fixtures and a rolling grille gate above the street level on the Fee Parcel. Transferor represents that it has extended Permit No. M-08.1-002-SF by implication. Except for Transferor's obligation to execute and deliver the Apple Improvements Estoppel, Transferor shall have no obligation to negotiate the identification or continuing ownership, use and maintenance of the Apple Improvements. Transferee acknowledges that upon the Close of Escrow, Transferor shall have no obligation to negotiate with Apple with respect to the continuing ownership, use and maintenance of the Apple Improvements. Transferor agrees to cooperate with Transferee as may be required for Transferee's negotiations with Apple with respect to the continuing ownership, use and maintenance of the Apple Improvements.

## ARTICLE 8 - COVENANTS

- 8.1 Operation and Maintenance of UMS Entry Area. Between the date of Transferee’s execution of this Agreement and the Closing Date, Transferor shall not execute any agreement affecting the UMS Entry Area and shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the UMS Entry Area, or any part thereof or interest therein, without the prior approval of Transferee, which approval may be withheld in the sole and absolute discretion of Transferee. Between the date of Transferee’s execution of this Agreement and the Closing Date, Transferor shall manage, operate, maintain and repair the UMS Entry Area in the ordinary course of business in accordance with sound property management practice and comply with laws applicable to the UMS Entry Area.

The Parties agree that on the Closing Date, the UMS Entry Area will be severed from the Powell Street Station and will no longer be subject to the terms and conditions contained in the Joint Maintenance Agreement and Transferee shall assume sole ownership and responsibility for the UMS Entry Area. After the Project Completion Date, Transferee shall permit Powell Street Station patrons to use the UMS Entry Area for access to and from the Powell Street Station during all times that the UMS Entry Area is open to the public, except to the extent that Transferee closes its door between the UMS Entry Area and the Powell Street Station. After the Project Completion Date, Transferor shall permit UMS Station patrons to use that portion of the Powell Street Station adjacent to the UMS Entry Area for access to and from the UMS Station during all times that the Powell Street Station is open to the public, subject to BART’s right to restrict access as reserved in Section 3.1.6 herein. BART and SFMTA shall negotiate in good faith on additional terms and conditions of such access between the UMS Station and the Powell Street Station, which shall be further set forth in the Access Agreement.

- 8.2 Adjacent Support. If Transferee removes or modifies any of the BART Entrance R Facilities conveyed herein, including but not limited structural walls, which such removal or modification will affect the operation, functionality, or integrity of any improvement or facility owned by Transferor, Transferee shall conduct such work in a manner to ensure the continuing safe and functional integrity of such improvement or facility owned by Transferor.
- 8.3 Construction Contract Requirements. Transferee shall include in its construction contract for the Project the following work at no cost to BART:

8.3.1 Utility Cut and Cap. Except for the Existing Antenna Facilities, sever, cut and cap the water, electricity and utility lines conveyed herein as part of the Property, including but not limited to lighting, fire sprinklers and drains, from the BART water, electricity and utility lines located outside of the UMS Entry Area, as specified in the Project construction contract drawings approved by BART upon issuance of a Permit to Enter for the performance of such work in the Powell

Street Station (the "**Contract Drawings**").

- 8.3.2 Tile removal. Remove the white wall tiles reserved to Transferor in Section 3.1.1 above and deliver them to an Oakland storage location specified by Transferor no later than the Project Completion Date, as specified in the Contract Drawings.
- 8.3.3 Grille Gate Installation. Install a BART standard coiling grille gate and all appurtenant components, such as electrical conduits (collectively, the "**Grille Gate**"), at the location shown on the attached Exhibit 2 prior to the Project Completion Date. Upon BART's acceptance of the work, BART shall take title to the coiling Grille Gate and will be responsible for the operation, maintenance and condition thereof.
- 8.4 Termination of Contracts. Prior to Closing, except for the Apple Store Permit, Transferor shall terminate or modify as needed any service contracts, utility contracts, maintenance contracts, management contracts, and any other contracts for the maintenance or operation of the UMS Entry Area between Transferor and any party other than Transferee.
- 8.5 Access to Smoke Sensor. SFMTA shall have the right to install, use, maintain, repair, replace, and access a smoke sensor ("**Smoke Sensor**") at SFMTA's sole cost in the portion of the Powell Street Station depicted on the attached Exhibit 3, provided that the Smoke Sensor shall only be installed in compliance with a use permit issued by BART. BART and SFMTA shall negotiate in good faith on the terms and conditions of SFMTA's continued use, maintenance, repair, replacement and access to the Smoke Sensor after such installation, which shall be set forth in the Access Agreement. SFMTA acknowledges that its continued use and operation of the Smoke Sensor, and its activities to operate, repair, or replace the Smoke Sensor, shall not unreasonably interfere with the operation, or maintenance, or interfere with the safety, of BART's facilities or operations at the Powell Street Station. If SFMTA's activities with respect to the Smoke Sensor and related access rights causes any damage to the Powell Street Station, SFMTA shall repair such damage or reimburse BART for its reasonable costs to repair such damage.

## ARTICLE 9 – REMEDIES

- 9.1 If the Close of Escrow does not occur because of Transferor's default under or breach of this Agreement, then Transferee shall have the right to pursue any and all remedies available to Transferee at law or in equity, including the right to seek damages or to require specific performance of this Agreement.
- 9.2 If the Close of Escrow does not occur because of Transferee's default under or breach of this Agreement, then Transferor shall have the right to pursue any and all remedies available to Transferor at law or in equity. Transferee agrees that should the Close of Escrow not occur because of Transferee's default under or breach of this Agreement, if Transferee nonetheless wishes to proceed with construction of the UMS Station in the

UMS Entry Area, Transferee shall only be permitted to perform such construction under a permit to enter or other form of agreement with Transferor that incorporates the Transferee and Transferor rights and obligations with respect to the use of the UMS Entry Area contemplated in this Agreement and is in a form mutually agreeable to the Parties.

#### ARTICLE 10 - GENERAL PROVISIONS

- 10.1 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and insure to the benefit of the successors and assigns of the Parties.
- 10.2 Entire Agreement. This Agreement contains all of the covenants, conditions, and agreements between the Parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Transferor and Transferee.
- 10.3 Notices. All notices or other communications required or permitted hereunder shall be in writing and either delivered by hand (including by courier or reputable overnight delivery service) or deposited in the United States mail first-class, postage prepaid and addressed as follows:

To Transferee: City and County of San Francisco  
San Francisco Municipal Transportation Agency  
Real Estate Section  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Senior Manager  
Fax No.: (415) 701-4341

and: Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

To Transferor: San Francisco Bay Area Rapid Transit District  
Real Estate and Property Development Department  
300 Lakeside Drive (LKS-22)  
Oakland, CA 94612  
Attention: Department Manager

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing. The foregoing addresses may be



changed by notice to the other Party as herein provided.

- 10.4 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California. SFMTA's obligations under this Agreement shall be further governed by City's Charter, and there shall be no obligation for the payment of money by SFMTA under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.
- 10.5 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.
- 10.6 Time. Time is of the essence in every provision herein contained in this Agreement.
- 10.7 Counterparts. This agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.
- 10.8 Exhibits. All Exhibits and attachments hereto are hereby incorporated herein by reference thereto.
- 10.9 Construction. Transferor and Transferee acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.
- 10.10 Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."
- 10.11 Further Assurances. From and after the date of this Agreement, Transferor and Transferee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.
- 10.12 Partial Invalidity. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not

affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

- 10.13 Waivers. No waiver of any provision of this Agreement or of any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
- 10.12 Sunshine Ordinance. BART understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. BART hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.
- 10.13 Conflicts of Interest. Through its execution of this Agreement, BART acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if BART becomes aware of any such fact during the term of this Agreement, BART shall immediately notify the City.
- 10.14 Notification of Limitations on Contributions. Through its execution of this Agreement, BART acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.
- 10.15 Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, agent or consultant of City shall be personally liable to BART, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to BART, its successors and assigns, or for any obligation of City under this Agreement.
- 10.16 No Merger. The obligations contained herein shall not merge with the transfer of title to

the Property but shall remain in effect until fulfilled.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

TRANSFEROR: SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT

By: \_\_\_\_\_  
Grace Crunican

Title: General Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

OFFICE OF THE GENERAL COUNSEL

By: \_\_\_\_\_  
Nancy Lowenthal  
Attorney

TRANSFeree: CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

**EXHIBIT 1**

Grant Deed, BART Parcel O-S335

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

**EXHIBIT 2**

Plat of Location of Fee and Easement Parcels, Entrance R,  
Existing Antenna Facilities, and Abutting Facilities

[SFMTA to update and provide; subject to BART review and approval.]

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

**EXHIBIT 3**

[SFMTA Drawings of UMS Station South Entrance, South Concourse and Grille Gate Location]

**EXHIBIT 4**

**RECORDING REQUESTED BY:**

**WHEN RECORDED RETURN TO:**

---

SPACE ABOVE IS FOR RECORDERS USE

The undersigned transferee hereby declares:  
This instrument is exempt from recording fees  
(Government Code § 27383).

BART PARCEL NO. O-S335  
APN: 0327-024 (fee) and  
0327-025 (easement)

**QUITCLAIM DEED WITH RIGHT OF REVERSION**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district (“**Transferor**”), does hereby remise, release and forever quitclaim to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Transferee**”), all right title and interest Transferor has in and to all of that certain fee parcel and subsurface easement situated in the City of San Francisco County of San Francisco, State of California described in the document recorded October 3, 1974 in the Official Records of the City and County of San Francisco in Liber B936, Page 697, as further described in the attached Exhibit 1 (the “**Property**”), together with all structures, improvements, machinery, fixtures and equipment affixed or attached thereto owned by Transferor and all easements and rights appurtenant thereto, for the purposes of constructing, operating, and maintaining an entrance to a subsurface transit station.

Transferor reserves to itself the following rights and interests with respect to the Property:

1. Radio Facilities. Transferor reserves the right to install, use, operate, maintain, and replace radio antenna facilities that serve the BART system (“Radio Facilities”) at the approximate location shown on Exhibit 2, together with the right(s) of way therefor and right of access thereto, in accordance with the terms and conditions set forth in the Disposition Agreement between the Transferor and Transferee dated \_\_\_\_\_, 2012 (the "Purchase Agreement").
2. Right of Emergency Access. Transferor reserves a right of access to the Property by BART Police to the extent reasonably necessary for public safety purposes or for the safety and security of the Powell Street Station, in accordance with the terms and conditions set



forth in the Purchase Agreement.

3. Right of Reversion. This conveyance is made on the express condition, and Transferor and Transferee especially stipulate, as follows:

(a) Transferee is extending its Third Street light rail line to Market Street, Union Square and Chinatown as part of its Central Subway Project. As part of such extension, Transferee intends to construct a new subway station within Stockton Street between Union Square and Market Street (the “**UMS Station**”) and wishes to incorporate the Property into the new UMS Station;

(b) Transferee shall use the Property exclusively for an entrance to a subsurface transit station and ancillary transportation uses serving the public benefit, provided that Transferee shall have the right to use the Property for uses that do not interfere with such entrance and auxiliary transportation uses, including for advertising, communication facilities, and retail operations that fund transportation activities;

(c) If Transferee (i) does not complete construction of a UMS Station entrance on the Property by May 31, 2020 or (ii) fails to provide the public with access to the UMS Station through such entrance for at least three years (subject to gaps caused by any closures caused by force majeure or by the need to improve the transit operations served by the UMS Station) immediately following May 31, 2020, then all right, title and interest of Transferee in the Property, together with any structures, improvements, machinery, fixtures and equipment affixed or attached thereto, shall immediately and irrevocably revert to Transferor, and this Quitclaim Deed shall thereupon terminate and be of no further force and effect, without the requirement of any additional documentation or actions on the part of Transferor or Transferee as fully and completely as if this instrument had not been executed. If the foregoing requirements are satisfied, Transferor shall deliver any documentation reasonably requested by Transferee to evidence the termination of the foregoing right of reversion.

SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT

(SEAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2012

By: \_\_\_\_\_

Title: \_\_\_\_\_



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the foregoing Quitclaim Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Resolution No. \_\_\_\_\_ of the Municipal Transportation Agency Board of the City and County of San Francisco, approved \_\_\_\_\_, and Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officers.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation, SFMTA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Updike  
Acting Director of Property

Exhibit 1 to Quitclaim Deed

All that certain real property located in the County of San Francisco, State of California, described as follows:

PARCEL ONE:

Beginning at the intersection of the northerly line of Ellis Street with the westerly line of Stockton Street; thence northerly, along the westerly line of Stockton Street 15.0 feet; thence at a right angle westerly 38.0 feet; thence at a right angle southerly 15.0 feet to the northerly line of Ellis Street; thence at a right angle easterly, along said line of Ellis Street 38.0 feet to the Point of Beginning.

Containing 570 square feet, more or less.

Together with the underlying fee interest, if any, appurtenant to the above described parcel in and to any adjoining streets, alleys, public ways or railroad rights of way.

EXCEPTING THEREFROM all air rights lying above an elevation of 51 feet above mean sea level, United States Coast and Geodetic Survey, 1929 mean sea level datum, approximately 11 feet above present ground level.

The owners, and any heirs, successors or assigns of the real property lying above or contiguous to the hereinbefore-described Parcel One shall not make any use of said real property which would interfere with, damage or endanger the San Francisco Bay Area Rapid Transit District's structures and facilities, or the maintenance, possession, replacement or use thereof.

PARCEL TWO:

A perpetual subsurface easement for right of way purposes, including construction, reconstruction, maintenance, operation, repair and use for rapid transit structures and facilities.

Said perpetual subsurface easement being that certain real property located in the City and County of San Francisco, State of California, described as follows and lying beneath an elevation of 40 feet above mean sea level.

BEGINNING at a point on the northerly line of Ellis Street, distant thereon 38.0 feet westerly from the westerly line of Stockton Street; thence westerly, along said line of Ellis Street, 22.0 feet; thence at a right angle northerly 15.0; thence at a right angle easterly 22.0 feet; thence at a right angle southerly 15.0 feet to the Point of Beginning.

Elevation is based on United States Coast and Geodetic Survey Seal Level Datum of 1929.

The owners, and any heirs, successors or assigns of the real property lying above the hereinbefore-described Parcel Two shall not make any use of said real property which would interfere with, damage or endanger the San Francisco Bay Area Rapid Transit District's

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

structures and facilities or the maintenance, possession, replacement or use thereof. Provided, however, that grantee, its successors or assigns, shall not make any use of said perpetual subsurface easement which would interfere with, damage or endanger grantor's real property or the maintenance, possession, replacement or use thereof.

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

Exhibit 2 to Quitclaim Deed

Location of Radio Facilities

**EXHIBIT 5**

**ASSIGNMENT OF WARRANTIES AND  
GUARANTIES AND OTHER INTANGIBLE PROPERTY**

THIS ASSIGNMENT is made and entered into as \_\_\_\_\_, 2012, by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("Assignee").

Pursuant to a Disposition Agreement between Assignor, as seller, and Assignee, as buyer, dated as of \_\_\_\_\_ (the "Purchase Agreement"), Assignee is purchasing that certain improved real property located in San Francisco, California, and further described in Attachment 1 (the "Property") and that certain personal property and those certain improvements (collectively, the "Improvements") located in certain real property abutting the Property (the "Adjacent Land"), as depicted in Attachment 2, on the Effective Date (as defined below).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby assigns and transfers to Assignee all or that portion of Assignor's right, title, claim and interest, as they relate to the Property and Improvements, in and under:

- A. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of the Property (collectively, "Warranties"), but excluding any warranties and guaranties with respect to the radio cable facilities located in the Property and the Adjacent Land in the approximate location depicted in Attachment 3 (the "Existing Antenna Facilities") or with respect to the white tiles that are in place on the walls of the Property and the Adjacent Land on the Effective Date (the "White Tiles"); and
- B. any other intangible property related to the Property or the Improvements, but excluding the Existing Antenna Facilities and the White Tiles.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

2. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

3. For purposes of this Assignment, the "Effective Date" shall be the date the quitclaim deed transferring the Property from Assignor to Assignee is recorded in the Official Records of San Francisco County.

4. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

ASSIGNOR: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ASSIGNEE: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney



Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

Attachment 1 to Assignment of Warranties

Legal Description of Property

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

Attachment 2 to Assignment of Warranties

Depiction of Entrance R

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

Attachment 3 to Assignment of Warranties

Depiction of Location of Existing Antenna Facilities

**DRAFT**

**EXHIBIT 6**

**APPLE IMPROVEMENTS ESTOPPEL**

DRAFT

**DRAFT**

**EXHIBIT 7**

**BILL OF SALE**

For good and valuable consideration the receipt of which is hereby acknowledged, the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district ("Seller"), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("Buyer"), all personal property owned by Seller and located on or in the real property depicted in the attached Attachment 1, but excluding any white wall tiles, escalator components, standard lighting system components, public announcement system components, station signage, and door and gate locking mechanisms removed by Seller or delivered by Buyer to Seller pursuant to Section 3.1 and Section 8.3 of the Disposition Agreement between Seller and Buyer dated \_\_\_\_\_, 2012, and any improvements owned by Apple, Inc.

Seller does hereby represent to Buyer that Seller is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that Seller has good right to sell the same as aforesaid.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

SELLER: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Project: Central Subway – UMS Station  
Owner: BART  
BART Parcel No.: O-S335

Attachment 1 to Bill of Sale

Plat of Fee Parcel, Easement Parcel and Entrance R

**DRAFT**

**EXHIBIT 8**

**APPLE STORE PERMIT**

DRAFT