

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

CITY OPERATIONS AND NEIGHBORHOOD SERVICES

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor John Avalos, Chair
City Operations and Neighborhood Services

FROM: Gail Johnson, Committee Clerk

DATE: June 13, 2011

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, June 14, 2011

The following file should be presented as a **COMMITTEE REPORT** at the June 14, 2011, Board Meeting. This item was acted upon at the Committee Meeting on Monday, June 13, 2011, at 10:00 a.m., by the votes indicated.

Item No. 35 File No. 110059

Resolution approving a Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART), through its Port Commission, authorizing BART to install, use, and maintain security barriers on and under the Ferry Plaza Platform, on the east side of the Ferry Building along the Embarcadero, for a term of 66 years, subject to BART's right to request an extension before the end of the 64th year of the term.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Avalos: Aye
 Mar: Absent
 Elsbernd: Aye

cc: Angela Calvillo, Clerk of the Board
Cheryl Adams, Deputy City Attorney
Rick Caldeira, Legislative Deputy Director
Binder Copy

File No. 110059

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee CITY OPERATIONS AND
NEIGHBORHOOD SERVICES

Date 6/13/11

Board of Supervisors Meeting

Date 6/13/11

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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Completed by: Gail Johnson
Completed by: Gj

Date 6/9/11
Date 6/13/11

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

1 [Cooperative Agreement - San Francisco Bay Area Rapid Transit District]

2
3 **Resolution approving a Cooperative Agreement between the City and County of San**
4 **Francisco and the San Francisco Bay Area Rapid Transit District (BART), through its**
5 **Port Commission, authorizing BART to install, use, and maintain security barriers on**
6 **and under the Ferry Plaza Platform, on the east side of the Ferry Building along the**
7 **Embarcadero, for a term of 66 years, subject to BART's right to request an extension**
8 **before the end of the 64th year of the term.**

9
10 WHEREAS, The San Francisco Bay Area Rapid Transit District ("BART") proposes to
11 construct within the boundaries of the San Francisco Bay and on and under the Ferry Plaza
12 Platform enhanced security barriers around the BART transit facilities to protect its continuing
13 use and restrict access in the proximity of the facilities;

14 WHEREAS, The Port of San Francisco and BART have negotiated a cooperative
15 agreement authorizing BART to install, use and maintain the security barriers on and under
16 the Ferry Plaza Platform, on the east side of the Ferry Building along The Embarcadero, for a
17 term of 66 years (the "Cooperative Agreement"); and

18 WHEREAS, The Cooperative Agreement grants BART the right to request an
19 extension of the term of the agreement before the end of the 64th year of the term and
20 obligates the Port to negotiate the extension in good faith with BART; and

21 WHEREAS, The Cooperative Agreement does not require BART to pay the Port a fee
22 for the use of Port property; however, the barriers will benefit the trust and the City by
23 protecting the public and BART's public transit system, assuring public transit to the waterfront
24 and the City; and

1 WHEREAS, The BART barriers will not require the expenditure of Port harbor trust or
2 other City revenues; and

3 WHEREAS, In addition to granting BART the right to install the barriers, the
4 Cooperative Agreement requires BART to obtain building permits from the Port for
5 construction of the barriers, be responsible for any and all damages caused by the
6 construction, installation, use, maintenance, repair or relocation of the barriers, and indemnify
7 the City for BART's activities under the Cooperative Agreement; and
8

9 WHEREAS, On October 26, 2010, the Port Commission, by Port Resolution No. 10-71
10 approved the Cooperative Agreement, subject to approval by the Board of Supervisors; and

11 WHEREAS, BART has authority to make its own California Environmental Quality Act
12 (CEQA) determinations, and has determined that the proposed surface barriers are
13 categorically exempt from CEQA under Class 15301(f), and the Port and the City Planning
14 Department's Major Environmental Analysis Division ("MEA"), have determined that this
15 determination is adequate for the proposed surface barriers on the Ferry Plaza Platform; and
16

17 WHEREAS, Before the Port issues building permits for BART's marine barriers, the
18 Port and MEA, in their sole discretion, must first determine that BART's CEQA determination
19 for the barriers is adequate; and the Bay Conservation and Development Commission must
20 also provide permit approval for the marine barriers; now, therefore, be it
21

22 RESOLVED, That the Board of Supervisors approves the Cooperative Agreement;
23 and, be it
24
25

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
2 Director of the Port (the "Executive Director") to execute the Cooperative Agreement in a form
3 approved by the City Attorney; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
5 Director to enter into any additions, amendments or other modifications to the Cooperative
6 Agreement (including, without limitation, preparation and attachment of, or changes to, any or
7 all of the exhibits and ancillary agreements) that the Executive Director, in consultation with
8 the City Attorney, determines are in the best interests of the Port and City, do not materially
9 increase the obligations or liabilities of the Port or City or materially decrease the public
10 benefits accruing to the Port, and are necessary or advisable to complete the transactions
11 which the Cooperative Agreement contemplates and there under and effectuates the purpose
12 and intent of this Resolution, such determination to be conclusively evidenced by the
13 execution and delivery by the Executive Director of any the Cooperative Agreement, and any
14 such amendments or modifications thereto.



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

2011

June 1, 2011

Bob Franklin
PRESIDENT

John McPartland
VICE PRESIDENT

Dorothy W. Dugger
GENERAL MANAGER

The Honorable David Chiu
President
City and County of San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Cooperative Agreement between the San Francisco Bay Area Rapid Transit District and the City and County of San Francisco

DIRECTORS

Gail Murray
1ST DISTRICT

Joel Keller
2ND DISTRICT

Bob Franklin
3RD DISTRICT

Robert Raburn
4TH DISTRICT

John McPartland
5TH DISTRICT

Thomas M. Blalock, P.E.
6TH DISTRICT

Lynette Sweet
7TH DISTRICT

James Fang
8TH DISTRICT

Tom Radulovich
9TH DISTRICT

Dear President Chiu,

This is to transmit a copy of the above referenced Cooperative Agreement as requested by the Clerk of the San Francisco Board of Supervisors. This Cooperative Agreement is being considered for approval of the Board. The copy attached includes redactions necessary to protect the security nature of the work being performed under this Agreement. In accordance with Article 3.5.1 of the Cooperative Agreement, the City may post a copy of the enclosed Cooperative Agreement in conjunction with the proceedings of the San Francisco Board of Supervisors.

BART staff is available to respond to any questions that may arise regarding this Agreement.

Sincerely,

Thomas D. Horton
Group Manager
San Francisco Bay Area Rapid Transit District

Enclosure

Cc: Mayor Edwin M. Lee
Supervisor Eric Mar, District 1
Supervisor Mark Farrell, District 2
Supervisor Carmen Chu, District 4
Supervisor Ross Mirkarimi, District 5
Supervisor Jane Kim, District 6
Supervisor Sean Elsbernd, District 7
Supervisor Scott Wiener, District 8
Supervisor David Campos, District 9
Supervisor Malia Cohen, District 10
Supervisor John Avalos, District 11

**COOPERATIVE AGREEMENT
BETWEEN THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
AND THE CITY AND COUNTY OF SAN FRANCISCO**

This Cooperative Agreement is entered into this ____ day of _____, 2010, in the City and County of San Francisco, by and between the San Francisco Bay Area Rapid Transit District ("BART"), and the City and County of San Francisco, through the Port of San Francisco ("Port") (collectively, "City").

RECITALS

A. Pursuant to various provisions in the San Francisco Bay Area Rapid Transit District Act as set forth in California Public Utilities Code Section 28500, *et seq.*, enacted in 1957 (the "BART Act"), including but not limited to Sections 29031 and 29033, BART has the authority to construct and operate rapid transit facilities in, under, upon, over, across and along any street or public highway or any stream, bay or watercourse, or over any of the lands which are the property of the State.

B. BART and the San Francisco Port Authority, a State agency formed pursuant to Section 1700 of the California Harbors and Navigation Code, entered into an Agreement for Joint Exercise of Powers dated July 12, 1965, as subsequently amended (the "Joint Powers Agreement") setting forth certain conditions for the joint use of a portion of the San Francisco Bay and the Port of San Francisco, and BART constructed certain rapid transit facilities within the San Francisco Bay, which facilities include a [REDACTED] building known as the San Francisco Transition Structure ("SFTS").

C. Pursuant to an Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco, dated January 24, 1969, entered into pursuant to Chapter 1333 of the California Statutes of 1968, and the San Francisco Charter, Section B3.581, the City and County of San Francisco assumed jurisdiction and control of the harbor of San Francisco and the facilities thereof, which jurisdiction and control it exercises through the San Francisco Port Commission.

D. BART constructed a platform within the San Francisco Bay designed primarily to protect its San Francisco - Oakland rapid transit [REDACTED] and its functional appurtenances, including the SFTS (the "Platform"), portions of which are used by BART and by Port for access to each of their structures constructed thereon.

E. BART now finds it necessary to construct within the boundaries of the San Francisco Bay and on and under the Platform certain appurtenances to the SFTS associated with its continuing use [REDACTED].

F. Port and BART now desire to set forth the conditions under which the joint power over and use of the San Francisco Bay and of the Platform by the parties will accommodate BART's construction, use and maintenance of the necessary appurtenances to the SFTS.

[REDACTED]

AGREEMENT

1. BART USES

1.1 Barriers.

1.1.1 Surface Barriers. BART shall install and maintain in good working order, condition and repair, vehicular barriers and other appurtenances to the SFTS associated with its continuing use and protection (the "Surface Barriers") of the size, type, and location as approved by the Port of San Francisco, necessary to prevent vehicular access within the area described on Exhibit A attached hereto (the "Joint Use Area"). The Surface Barriers shall be installed with gates and in a manner which maintains emergency and fire access through the Surface Barrier array. The term "Surface Barrier" also shall include any barriers relocated under Section 3.2 (Relocation of Barriers) or added under Section 3.3 (Additional Barriers) of this Cooperative Agreement.

1.1.1.1 Architectural Requirements. Subject to confidentiality and security sensitive information restrictions per the confidentiality agreement between BART and the Port dated August 13, 2008 (the "Confidentiality Agreement"), plans for construction of the Surface Barriers, and any reconstruction thereof, shall be submitted to and approved by Port prior to commencing construction. The external design of the Surface Barriers shall comply with the conditions of any permits which may be issued by the Bay Conservation and Development Commission and shall meet all federal, state, and local accessibility standards and emergency access standards, and shall be substantially as depicted on Exhibit B attached hereto. The requirements and approvals required by this paragraph shall be provided by the Port through issuance of the building permit issued pursuant to Section 1.2.1 below.

1.1.2 Marine Barrier. BART shall install below the surface of the Platform and maintain in good working order, condition and repair, a barrier and other appurtenances to the SFTS associated with its continuing use and protection (the "Marine Barrier") of the size, type, and location as approved by the Port of San Francisco, necessary to prevent access within the area described on Exhibit A. Subject to the Confidentiality Agreement, plans for the construction of the Marine Barriers and reconstruction thereof shall be submitted to and approved by Port prior to commencing construction. The Marine Barriers shall comply with the conditions of any permits which may be required under federal and state law and shall meet all federal, state, and local emergency access standards. The Marine Barrier shall be installed in a manner which maintains emergency and maintenance access to Port facilities in the vicinity of the Marine Barrier. The term "Marine Barrier" also shall include any portion of the Marine Barrier relocated under Section 3.2 (Relocation of Barriers) or added under Section 3.3 (Additional Barriers) of this Cooperative Agreement.

1.2 **Joint Use Area.** BART shall install the Surface Barriers and Marine Barrier (collectively, the "Barriers") within the Joint Use Area. BART shall have reasonable use of the Joint Use Area for so long as BART requires said area for the construction, protection, maintenance, use and replacement of the Barriers.

1.2.1 **Building Permit.** In this instance, notwithstanding the provisions of California Government Code Sections 53090 and 53091, BART agrees to obtain building permits from the Port for the installation of any Barriers or portions thereof which will be attached to the Platform and its substructure elements.

1.2.2 **Access.** BART shall have the right of reasonable ingress and egress to the Joint Use Area across and under the Platform at convenient points for the enjoyment of the uses, rights, and privileges described herein.

1.2.3 BART shall provide to Port a current engineering assessment report (the "Report") describing the current structural condition of the surface and substructure elements of the Platform where construction activities or installation of the Barriers will occur, or the Platform and its substructure elements which, in a reasonable determination of the Parties, may be impacted, including without limitation any structural defects. The Port will review and confirm the assessment findings and recommend necessary changes. BART shall be required to provide one Report only and shall not commence any construction activity related to initial construction under this Cooperative Agreement before receipt of the Port's written acceptance of the Report.

1.2.4 BART agrees to cooperate with the Port by granting it access to the site to perform inspections during installation of Barriers.

1.2.5 BART acknowledges that City has made no representations or warranties concerning the Platform or Joint Use Area, including without limitation, the seismological condition thereof. BART is hereby advised that hazardous materials may be present on or near the Joint Use Area including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and the building materials containing chemicals, such as lead and formaldehyde. BART further acknowledges its receipt of *Schedule 1* attached hereto as Exhibit C regarding the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos), in the Joint Use Area, if any, and the Report regarding the condition of the substructure, if any, of the Platform and Joint Use Area and shall be deemed to have inspected the Platform and Joint Use Area, and has agreed to use each area in its "As Is" condition and as being suitable for the conduct of BART's activity thereon. By execution of this Cooperative Agreement, BART acknowledges that the notice set forth in this section satisfies the requirements for disclosure under laws.

[REDACTED]

BART on behalf of itself and its agents, hereby fully and irrevocably releases, discharges, and covenants not to sue the Port for any and all Claims (defined in Section 3.4) directly or indirectly arising from the condition of the Platform or Joint Use Area on or before the Effective Date and agrees to indemnify, defend and hold harmless the Port against any demand, claim or suit based on any such Claims by BART's agents.

1.2.6. Access Restrictions. Following installation of the Surface Barriers, BART shall have the right to place reasonable conditions on third parties' vehicular access to or stockpiling of materials [REDACTED] in the Joint Use Area. Persons desiring vehicular access shall be required to obtain a permit to enter from BART's Real Estate Department. Where the Port desires to enter the area between the Barriers and the SFTS, for any reason, Port shall only be required to give 48 hours notice to BART's Manager of Security Programs or his designee by written communication by e-mail or otherwise, except in case of an emergency, in which case the Port shall give notice as soon as possible and identify the nature of the emergency.

1.3 Costs. Subject to the provisions of Section 1.5 and the relocation provisions contained in Section 3.2 of this Agreement, all costs and expenses for the Barriers and related construction, installation, use, maintenance, and removal, including restoration of affected area, shall be the sole responsibility of BART.

1.4 Repair of Damages. If any portion of the Platform or other property of the Port is found to have been damaged by any of the activities conducted by BART or its contractors during the construction, installation, use, maintenance, repair or removal of the Barriers, BART shall, at its own cost and expense, repair any and all such damage and restore said portion of the Platform or other property of the Port to the condition as stated in the Report. Such repair shall be done immediately if the damage creates an unsafe condition or, if the damage does not create an unsafe condition, within a reasonable period but not longer than thirty (30) days.

1.4.1 Value of Improvements. Port has leased a portion of the Platform to Barbary Coast Investment pursuant to that certain Lease dated January 10, 1973, which was subsequently assigned to The Bay Corporation and Ferry Plaza Limited Partnership and was subsequently amended, and is or may be the subject of a further assignment or sublease to third parties. Under the said Lease improvements made to the leasehold will revert to the Port upon expiration of the Lease. The Port acknowledges that, as part of the installation of the Barriers, BART will remove or modify certain improvements, including planters and landscaping, within the leasehold. It is agreed that BART shall compensate The Bay Corporation and Ferry Plaza Limited Partnership or their designee for the value of such improvements and the Port shall not make a claim therefor.

1.5. Maintenance. All costs and expenses for the maintenance of the Barriers as installed will be the sole responsibility of BART. BART shall be solely responsible for

monitoring the condition of the Barriers. BART agrees to maintain the Barriers in good working repair and in a clean and orderly condition. Port has no obligation to maintain any portion of Platform or Joint Use Area for purposes of BART's activities under this Cooperative Agreement, and BART on behalf of itself and its agents hereby fully and irrevocably releases, discharges, and covenants not to sue the Port for any Claims directly or indirectly arising from the Port's failure to maintain the Platform or Joint Use Area and agrees to indemnify, defend and hold harmless the Port against any demand, claim, or suit based on such Claims by BART's agents. Any graffiti appearing on the Surface Barriers shall be removed within 96 hours of BART having knowledge of the graffiti.

Prior to installation of Marine Barriers, BART shall undertake the following actions:

- (a) Protect the first row of piles supporting the Platform and surrounding the Marine Barrier from impact and abrasion forces caused by movement of the Marine Barrier due to wave and tide action; and
- (b) Provide a minimum 2' clearance from the Marine Barrier to the piles. As an alternative, BART may wrap each pile with fiber reinforced polymer or equivalent, in which case clearance can be reduced to six inches (6") In the event that Port requires access for maintenance and repair, BART shall provide adequate access for such work; and
- (c) To the extent practicable, relocate all existing utilities located within the footprint of the Marine Barrier to a location outside the footprint of the Marine Barrier or provide reasonable access to existing utilities not relocated. If, as a result of the Marine Barrier, Port incurs additional costs beyond those which it would normally incur in association with maintenance of such utilities, such additional costs shall be borne by BART.

1.6. **Term.** This Cooperative Agreement shall become effective as of the date first written above (the "Effective Date") and shall remain effective until the sooner of: (a) 66 years from the Effective Date; or (b) when BART provides written notice to the Port that the Barriers are no longer needed by BART for security purposes.

2. PORT USES

2.1 **Port's Uses.** Port's existing rights to use the Platform shall not be restricted except as set forth herein.

2.1.1 **Public Access.** Pedestrian public access to all areas of the Platform, including those areas in the vicinity of the SFTS, shall be maintained in conformance with the requirements of the San Francisco Bay Conservation and Development Commission.

2.2 **Port Tenants' Uses.** Port has identified to BART all of the existing leases, licenses, and permits issued by the Port as of the Effective Date that grant an

[REDACTED]

interest to a third party on and in the Platform which to the Port's knowledge may be impacted by the installation and use of the Barriers.

3. MUTUAL AGREEMENTS

3.1. **Joint Powers.** Any improvements on and to the Platform which affect BART's rights exercised under this Agreement, shall be subject to BART's prior approval.

3.2. **Relocation of Barriers.** If subsequent improvements under, on and to the Platform by Port or authorized by Port require that BART remove or relocate any of the existing Barriers, such removal or relocation, including restoration work to the Platform, shall be at the Port's sole cost and expense. Subject to the availability of a reasonably acceptable alternative to its existing facilities and right-of-way, BART agrees to cooperate with the Port in the redesign and reinstallation of the Barriers in the alternative locations. Port shall work with BART to identify such alternative locations and make them available under the same terms and conditions as contained in this Cooperative Agreement.

3.3. **Additional Barriers.** If subsequent Port and Port-authorized improvements on or to the Platform, including removal of any existing structures, require that BART install additional Surface Barriers in order to maintain its protection of the SFTS and the Joint Use Area, Port agrees that BART is authorized to install such additional Barriers under the same terms and conditions contained in this Cooperative Agreement. The cost to install such additional Barriers shall be borne solely by BART. Port shall work with BART to identify locations for the additional Barriers and to make them available under the same terms and conditions as contained in this Cooperative Agreement.

3.4. **Indemnity.** BART agrees to indemnify, hold harmless and defend, City, including, but not limited to, all of its boards, commissions, department, agencies, officers, employees and agents and or contractors, including, without limitation, the Port, all of its members, officers, directors, commissioners, employees, agents or contractors, and their respective heirs, legal representatives, successors and assigns, and each of them (collectively, "Indemnitees"), without cost to Indemnitees, from and against any and all demands, claims, judgments, losses, damages (including foreseeable and unforeseeable consequential damages), penalties, fines, liabilities, liens, obligations, interest, injuries, lawsuits, and other proceedings, costs, and expenses, including, without limitation, interest, engineering fees, consultant fees and reasonable attorneys' fees of whatever kind or nature, known or unknown, contingent or otherwise (collectively "Claims") imposed upon or incurred by or asserted against any such Indemnitees directly or indirectly arising from BART's performance or activities under this Cooperative Agreement, including without limitation, any of the following: (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the SFTS, Surface Barriers or Platform, or any part thereof, whether to the person or property of BART or City or each of its officers, directors, employees and agents, or third persons, to the extent arising directly or indirectly from BART's performance or activities under this Cooperative Agreement; (ii) any failure by BART or its directors, employees,

[REDACTED]

contractors, or agents to faithfully observe or perform any of the terms, covenants or conditions of this Cooperative Agreement; (iii) the performance by BART of any of the activities described in this Cooperative Agreement; (iv) any civil rights actions, inverse condemnation or takings claims, lease defaults or other legal actions or suits initiated or threatened by any tenant of the Port or other party against the Indemnitees to the extent arising directly or indirectly from BART's performance or activities under this Cooperative Agreement; or (v) any rent abatement, rent setoff, or rent waiver incurred by Port to the extent arising directly or indirectly from BART's performance or activities under this Cooperative Agreement; provided, however, that City shall not agree to any rent abatement, rent setoff, or rent waiver which may give rise to BART's indemnification of City under this paragraph without first obtaining BART's consent thereto. Nothing herein shall be construed to require BART to indemnify the Port, its officers, directors, employees, contractors or agents against any liability resulting from the Port's own negligence, willful misconduct, or intentional malfeasance. In addition to its obligation to indemnify, BART specifically acknowledges and agrees that it has an immediate and independent obligation to defend Indemnitees from any Claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. BART's obligations under this Section shall survive the expiration or other termination of this Agreement.

3.5. Other Terms and Conditions.

3.5.1 Notice of Public Records Act Request. City agrees to provide BART prompt notice, no later than ten (10) business days, of receipt of a request for a copy of this Agreement and related correspondence, memoranda, and other documents related to the subject matter herein pursuant to the California Public Records Act and/or the San Francisco Sunshine Ordinance.

3.5.2 Notices. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States Postal Service or by private delivery systems, or by facsimile if followed by United States Postal Service or by private delivery systems, as follows:

TO BART: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 22nd Floor
Oakland, CA 94612
Attention: Manager, Real Estate Department
Telephone: (510) 464-7582
Fax: (510) 464-7583

████████████████████

TO PORT: Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Property Manager
Telephone: (415) 274-0504
Fax: (415) 274-0578

3.5.3 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

3.5.4 Incorporation of Exhibits. All exhibits, attachments and schedules hereto are hereby incorporated herein by this reference.

3.5.5 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California, without reference to conflicts of law principles. The parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of San Francisco County.

3.5.6 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

3.5.7 Consent. Wherever the consent, approval, or permission of the City or BART is required under any term of this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

3.5.8 Modification to Agreement. This Cooperative Agreement may be modified or amended at any time by the mutual written consent of the parties herein.

3.5.9 Agreement of Affected Parties. BART acknowledges and agrees that its rights exercised under this Agreement may affect the property interests and/or contractual rights of persons or entities using or occupying the Ferry Building, Ferry Plaza as of the Effective Date (the "Affected Parties"). To the extent required by applicable law BART shall be responsible to obtain the agreement of any such Affected Parties to BART's exercise of rights hereunder. The acquisition of such agreement is solely BART's responsibility.

3.5.10 Communications with the Public. BART shall be responsible for responding to inquiries by third parties about the Barriers. During the course of construction BART shall post signs at the construction site providing a telephone number for the public to call to obtain information. City staff shall respond to

third parties by referring inquiries about the construction and the Barriers to BART's designated project information staff.

3.5.11 Surrender. Unless BART has entered into an extension of this Agreement, upon the expiration or earlier termination of this Agreement, BART shall surrender to Port the Joint Use Area and any pre-existing alterations and improvements in as good condition as existed at the time of installation of the Barriers (except for ordinary wear and tear). On or before the expiration or earlier termination hereof, BART shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that BART has installed pursuant to this Agreement, and perform all restoration made necessary by the removal of BART's personal property. BART may request one extension of this Agreement no later than the end of the 64th year of the Term by written notice to the Port. If BART requests said extension, by the date specified above, BART and Port shall negotiate in good faith to extend the Agreement, subject to all applicable laws, before the expiration date.


If BART fails to surrender the Joint Use Area as required by this Section, or to remove alterations or improvements as required in this Section, BART shall indemnify Port from all damages resulting from BART's failure to surrender the Joint Use Area, or failure to remove alterations or improvements. BART, by agreeing to this Section 3.5.11, does not waive or relinquish any other rights it may have to use the Joint Use Area beyond the term of this Agreement.

4.0 INSURANCE

During the term of this Agreement, for any installation, maintenance, repair, relocation or removal of the Barriers or other facilities, structures or improvements on, beneath, or adjacent to the Platform ("Work"), BART or its contractors shall maintain, in full force and effect, the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:

- A. Workers' Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000 each accident, injury, or illness, and, where BART, its contractors, or any subcontractors operates a watercraft, or berths, loads, or unloads a watercraft including, coverage for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits.
- B. Commercial General Liability insurance with limits not less than \$1,000,000 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, and completed operations.
- C. Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, hired, or non-owned vehicles, as applicable.

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D. **Watercraft Liability Insurance.** Should BART, its contractors or subcontractors operate any watercraft, BART or its contractors shall maintain and cause subcontractors to maintain Protection and Indemnity insurance with limits not less than \$5,000,000 each occurrence.

E. **Water Pollution Insurance.** The operator of any watercraft used in performing work under this Agreement which carries chemicals, petroleum products (for fuel or otherwise) or other polluting substances, shall maintain water pollution liability insurance, with limits not less than \$5,000,000 each occurrence.

F. **Environmental Pollution Liability.** BART or its contractors or subcontractors who perform abatement of hazardous or contaminated materials shall maintain in force, throughout the abatement, contractor's pollution liability insurance with limits not less than \$1,000,000 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.

4.1 **Additional Insureds**

For general liability and environmental pollution liability insurance, BART or its contractors or subcontractors shall include as additional insured, the City and County of San Francisco, Port of San Francisco, their board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

4.2 **Forms of Policies and Other Insurance Requirements**

A. Before commencement of any Work, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Contractor's insurance carrier identifying as additional insureds the parties identified in Section 4.1 (Additional Insureds) above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request.

B. 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.

C. 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.

[REDACTED]

City reserves the right to increase any insurance requirement as needed and as appropriate.

D. Should any of the required insurance be provided under a claims-made form, BART, its contractors or subcontractors shall maintain such coverage continuously, without lapse, for a period of at least 4 years beyond the completion of the Work, to the effect that, should occurrences during the Work give rise to claims made after the Work, such claims shall be covered by such claims-made policies.

E. 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. All notices shall be made to:

Deputy Director of Real Estate
Port of San Francisco
City and County of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111.

F. BART, its contractors or subcontractors shall, upon notification of receipt by the City of any such notice, 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.

G. If, at any time during the life of this Cooperative Agreement, BART, its contractors or subcontractors fail to maintain any item of the required insurance in full force and effect, the Work, at City's sole option, may be discontinued immediately, until notice is received by the City as provided in the immediately preceding Section 4.2E that such insurance has been restored to full force and effect.

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

4.3 **Qualifications**

A. 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.

Subject to the approval of the City of San Francisco's Risk Manager ("CRM"), the Port of San Francisco will accept evidence of BART's self-insurance to satisfy the requirements in Section 4.0 as to BART. BART's contractors must also provide satisfactory evidence of insurance as required by Section 4.0. The Port's tenants with leasehold interests in the License Area shall also be named as Additional Insureds per Section 4.0.

To the extent that CRM determines that BART's self-insurance is not adequate to meet the requirements of Section 4.0 of this lease, BART agrees to provide any additional insurance as required by the CRM.

5.0 SPECIAL CITY PROVISIONS

The following City contracting requirements will apply except to the extent pre-empted by countervailing federal or state law or regulation, or other legal limitations. Each of the ordinances cited below is incorporated by reference and made a part of this Agreement and is a material term of this Agreement.

5.1 MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Sections 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. BART acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

5.2 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 City for the selling or leasing of any land or building to or from City whenever the 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 the contract until the termination of negotiations for the contract or three 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.

5.3 Pesticide Prohibition. BART shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require BART to submit to Port an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that BART may need to apply to the Joint Use Area during the term of this Agreement, (B) describes the steps BART will take to meet the City's IPM Policy described in section 300 of the Pesticide Ordinance and (C) identifies, by name, title, address and telephone number, an individual to act as the BART's primary IPM contact person with City. In addition, BART shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

BART may seek a determination from City's Commission on the Environment that BART is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Agreement, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with BART if BART seeks in good faith an exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

[REDACTED]

5.4 Prohibition of Tobacco Sales and Advertising. BART acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Joint Use Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

5.5 Prohibition of Alcoholic Beverages Advertising. BART acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Joint Use Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

5.6 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 Sections 87100 et seq. and Sections 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 that provision, and agrees that if BART becomes aware of any such fact during the term of this Agreement, BART will immediately notify City.

5.7 Tropical Hardwood and Virgin Redwood Ban. Port and City urge BART not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

5.8 Food Service Waste Reduction Ordinance. BART agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. This provision is a material term of this Agreement. By entering into this Agreement, BART agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, BART agrees that the sums of One Hundred Dollars (\$100) in liquidated damages for the first breach, Two Hundred Dollars (\$200) in liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500) in liquidated damages for each subsequent breach in the same year is a reasonable estimate of the damage that City will incur based

on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of BART's failure to comply with this provision.

5.9 Non Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Cooperative Agreement, BART covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under Chapter 12 of the San Francisco Administrative Code against any employee of BART, any City and County employee working with BART, any applicant for employment with BART, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by BART in the City and County of San Francisco.

(b) **Licenses and Other Contracts.** BART shall include in all licenses and other contracts relating to the Joint Use Area a non-discrimination clause applicable to such licensee or other contractor in substantially the form of Section 5.9(a) above. In addition, BART shall incorporate by reference in all licenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all licensees and other contractors to comply such provisions. BART's failure to comply with the obligations in this Section 5.9(b) shall constitute a material breach of this Cooperative Agreement.

(c) **Non-Discrimination in Benefits.** BART does not as of the date of this Agreement and will not during the term of this Cooperative Agreement, in any of its operations in San Francisco or where the work is being performed for City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the San Francisco Administrative Code.

(d) **HRC Form.** On or prior to the Effective Date of this Agreement, BART shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties are incorporated in this Section by reference and made a part of this Cooperative Agreement as though fully set forth herein. BART shall comply fully

with and be bound by all of the provisions that apply to this Cooperative Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, BART understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Cooperative Agreement may be assessed against BART and/or deducted from any payments due BART.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement as of the date written above.

BART: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district

By: [Signature]

Title: General Manager

Date: 8/17/10

APPROVED AS TO FORM:

By: [Signature]

Title: Attorney

Date: 9/17/10

PORT: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION

By: _____

Title: _____

Date: _____

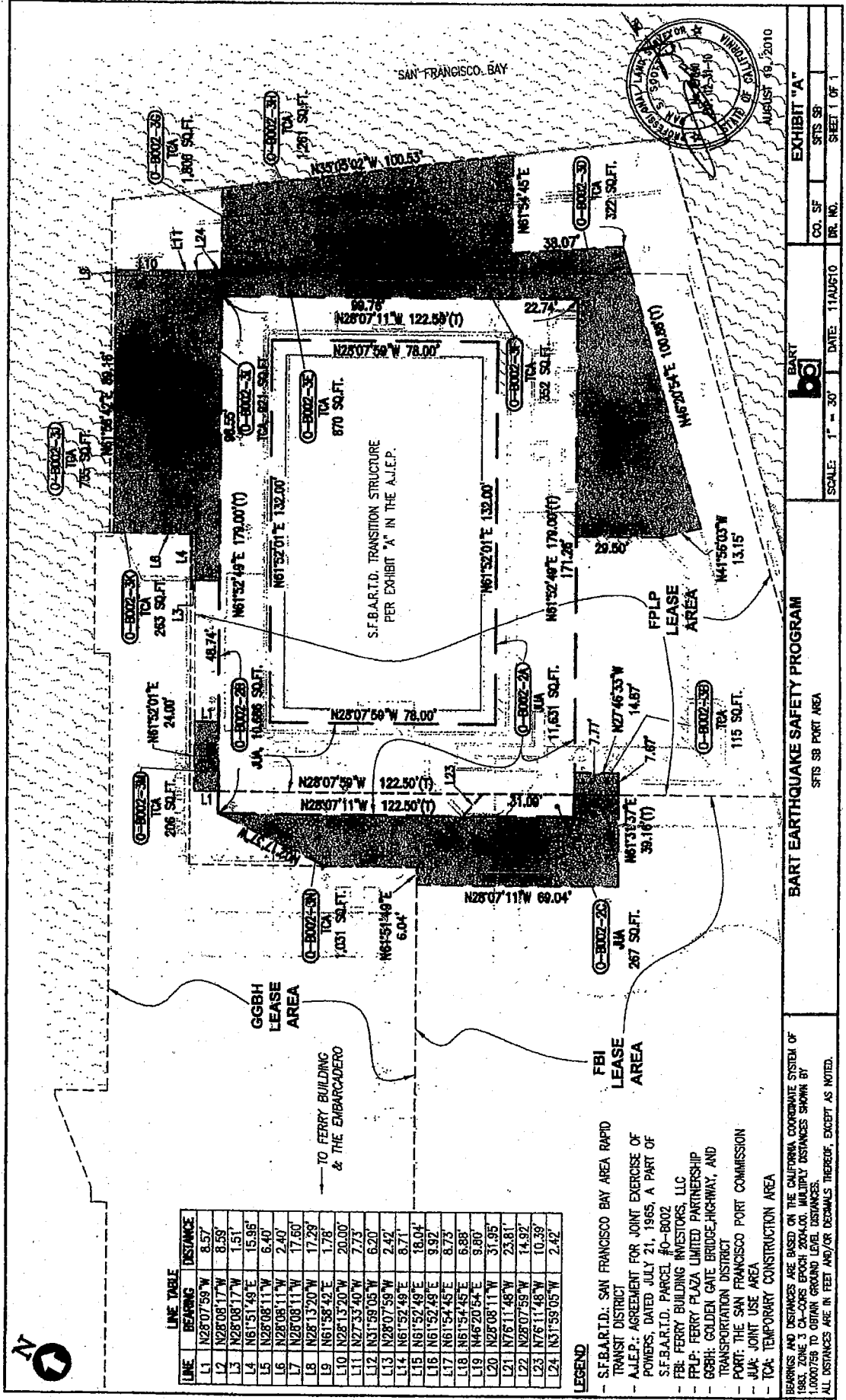
APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____

Robert A. Bryan
Deputy City Attorney

F00196

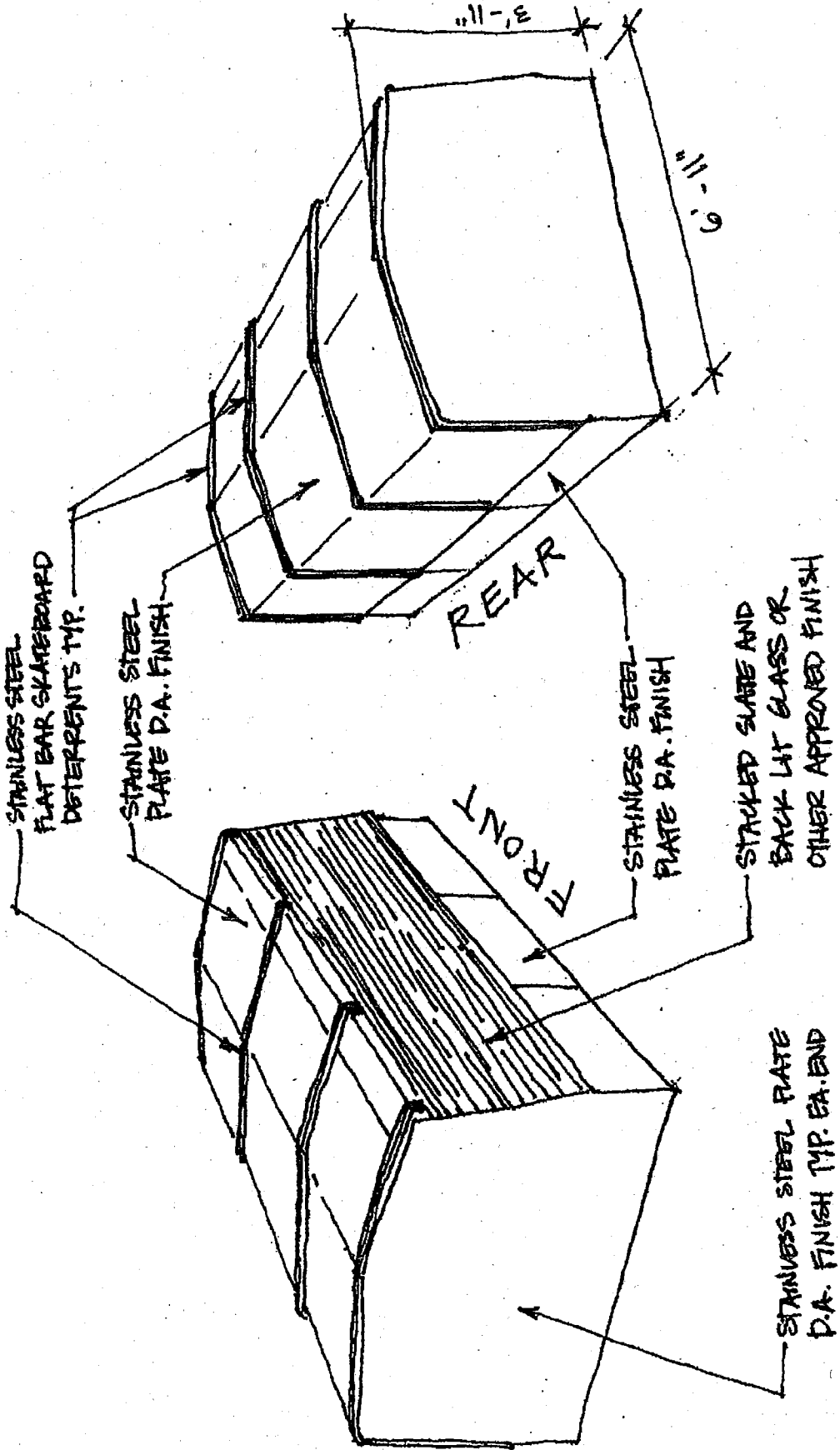


LINE TABLE

LINE	BEARING	DISTANCE
L1	N28°07'59"W	8.57
L2	N28°08'17"W	8.59
L3	N28°08'17"W	1.81
L4	N61°51'49"E	15.96
L5	N28°08'11"W	6.40
L6	N28°08'11"W	2.40
L7	N28°08'11"W	17.50
L8	N28°13'20"W	17.28
L9	N61°58'42"E	1.78
L10	N28°13'40"W	20.00
L11	N27°33'40"W	7.73
L12	N31°58'05"W	6.20
L13	N28°07'59"W	2.42
L14	N61°50'49"E	8.71
L15	N61°52'49"E	18.04
L16	N61°52'49"E	3.92
L17	N61°54'45"E	8.73
L18	N61°54'45"E	6.88
L19	N46°20'54"E	8.80
L20	N28°08'11"W	31.95
L21	N76°11'48"W	23.81
L22	N28°07'59"W	14.92
L23	N76°11'48"W	10.39
L24	N31°58'05"W	2.42

- LEGEND
- S.F.BART.D.: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
 - A.J.E.P.: AGREEMENT FOR JOINT EXERCISE OF POWERS, DATED JULY 21, 1965, A PART OF S.F.BART.D. PARCEL #0-8002
 - FBI: FERRY BUILDING INVESTORS, LLC
 - FPLP: FERRY PLAZA LIMITED PARTNERSHIP
 - GGBH: GOLDEN GATE BRIDGE, HIGHWAY, AND TRANSPORTATION DISTRICT
 - PORT: THE SAN FRANCISCO PORT COMMISSION
 - JUA: JOINT USE AREA
 - TCA: TEMPORARY CONSTRUCTION AREA
- BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3 CA-COCS EPOCH 2004.00. MULTIPLE DISTANCES SHOWN BY 1,000/750 TO OBTAIN GROUND LEVEL DISTANCES.
ALL DISTANCES ARE IN FEET AND/OR DECIMALS THEREOF, EXCEPT AS NOTED.

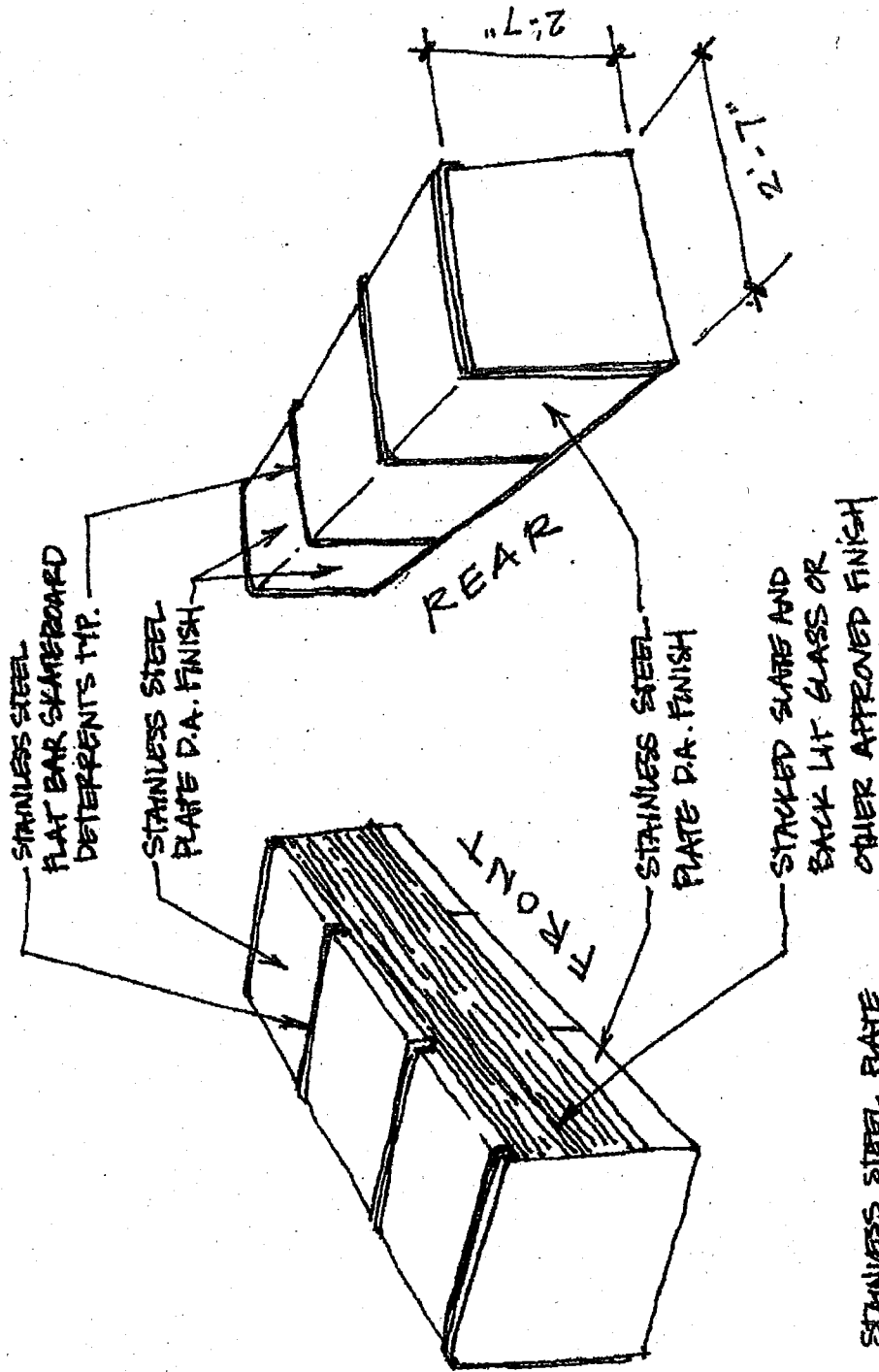
EXHIBIT "B"



PERSPECTIVE VIEWS SURFACE BARRIER TYPE 1



EXHIBIT "B"



PERSPECTIVE VIEWS SURFACE BARRIERS TYPE 2

EXHIBIT "C"

NOTICE TO EMPLOYEES, OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS

ASBESTOS IN BUILDINGS

FOR PERIOD THROUGH: April 2010

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing. Asbestos may be found in soils as well, especially if soil is non-native or commingled with municipal waste (land fill).

WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to **HIGH AIRBORNE LEVELS** of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

ASBESTOS SAMPLING RESULTS

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (f/cc) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 f/cc as a 30 minute TWA. When employees are exposed at these levels, OSHA and Cal/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm²). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which as voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specifications which include work practice procedures, removal techniques, clean up and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with, or release or disturb asbestos containing building materials, it is required that the area be posted with a clear and conspicuous warning sign. The warning sign must read:

**"CAUTION. ASBESTOS
CANCER AND LUNG DISEASE HAZARD
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"**

Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Bureau of Environmental Health Management at 252-3800.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

SITE SPECIFIC INFORMATION

At this time, the Port has not sampled for asbestos in your building. The following materials, if present in your building, are assumed to contain asbestos and should be treated as such:

Insulation on pipes and ducts; Fireproofing; Drywall and associated taping compound; Plaster; Texturing or acoustic materials on walls or ceilings; Stucco; ceiling tiles; floor tiles or sheet flooring; roofing; fire door core insulation; carpet, baseboard, flooring, and ceiling tile mastics; window glazing compound; ceramic tile grout and mastic. Asbestos may also be found in soil due to natural or man-made conditions.

These materials must not be drilled into, sanded, demolished or otherwise disturbed by unauthorized personnel. Prior to any renovation activities or other activities which may disturb asbestos, please contact your property manager.

The asbestos coordinator for this building is Tim Felton, who can be reached at 274-0582.

Initial: _____
Port: _____
Tenant / Licensee: _____



May 17, 2011

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Cooperative Agreement between the San Francisco Bay Area Rapid Transit District and the City and County of San Francisco, through the Port Commission

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for the Board of Supervisors approval of the Cooperative Agreement between the San Francisco Bay Area Rapid Transit District ("BART") and the City and County of San Francisco, through the Port Commission ("Port"), authorizing BART to install, use and maintain security barriers on and under the Ferry Plaza Platform, located on the east side of the Ferry Building along The Embarcadero, for a term of 66 years.

Attached you will also find the following supporting documents:

1. Five copies of the Port Commission Staff Report and Resolution 10-71, (approving the proposed cooperative agreement and recommending the cooperative agreement to the Board of Supervisors); and
2. Five copies of the proposed Port Commission Cooperative Agreement.

The following Port staff may be contacted regarding the matter: Elsa Lamb, Commercial Property Manager (274-0500) and Kanya Dorland, Planner (274-0264). Thank you for your consideration.

Sincerely,

Susan Reynolds
Deputy Director of Real Estate

cc: Elsa Lamb, Commercial Property Manager
Kanya Dorland, Planner
Elliott Riley, Senior Property Manager



MEMORANDUM

October 21, 2010

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Kimberly Brandon, Vice President
Hon. Ann Lazarus

FROM: Monique Moyer *Monique Moyer*
Executive Director *Monique Moyer*

SUBJECT: Request approval of the Cooperative Agreement between the San Francisco Bay Area Rapid Transit District (BART) and the City and County of San Francisco, through the Port of San Francisco for a term of 66 years for the installation, use and maintenance of security barriers on and under the Ferry Plaza, subject to Board of Supervisors approval and to BART entering into agreements with Ferry Plaza Limited Partnership, Equity Office Partnership, and Golden Gate Bridge Highway and Transportation District for use of the property currently under agreement to each.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

BACKGROUND

The San Francisco Bay Area Rapid Transit District ("BART") operates and maintains certain transit facilities on and under the Ferry Plaza Platform ("Platform"), immediately east of the Ferry Building. In 2005 the San Francisco Port Commission allowed BART to install barriers on the Platform as part of its on-going operation and maintenance of the existing BART facilities. In 2006, in the interest of providing enhanced security to the Ferry Plaza BART facilities, BART presented proposed new barriers for the Platform with enhanced security features to the Port, and to Ferry Plaza tenants with leasehold interests, and stakeholders. BART received approval for the design and layout of these new enhanced security barriers in May 2009 from all of the mentioned parties. Following approval, Port and BART staff conferred on a Cooperative Agreement ("Agreement") to establish the conditions under which these proposed barriers will be accommodated in respect to review procedure, construction, design, access, relocation, maintenance and indemnification. BART has or is negotiating separate agreements directly with Port tenants or licensees that would be affected by the proposed enhanced barrier structures on and under the Platform. Port staff recommends that the Port Commission approve the Agreement between Port and BART for the enhanced barriers with the conditions provided.

This Print Covers Calendar Item No. 10A

SUMMARY OF AGREEMENT

BART has existing barriers on the Ferry Plaza to protect its facility, and this barrier installation was allowed through an agreement with the Port in 2005. This agreement expired in September 2009 and is now on holdover status. Subsequent to this agreement, BART proposed a barrier enhancement project that it will fully fund and that will involve removing their existing barriers and replacing them with new barriers. The proposed Agreement between the Port and BART is for the installation, use, and maintenance of this proposed enhanced surface barrier project and new marine barriers ("barriers") under the Platform to protect the BART facilities. Since this project involves placing improvements on Port property and requires construction in San Francisco, applicable permits and compliance with applicable City ordinances are required. The term of the Agreement is 66 years, with BART's right to request an option to extend such term consistent with the Burton Act and any other applicable laws at such time of the extension. The Agreement does not require a fee for locating the barriers on Port property. However, the barriers will benefit the harbor trust and the City by protecting the public and BART's public transit system, assuring transit of the public to the waterfront and the City. Furthermore, the barriers will not require the expenditure of any Port harbor trust or other City revenues.

To ensure that roles and responsibilities are defined and cover possible consequences resulting from this project, the Port and BART have agreed to the following additional conditions covering damages and maintenance, review procedure, design and access, tenant agreements, indemnification and future improvements. The following are descriptions of these conditions:

To ensure the Platform area is maintained in its current condition, BART will maintain the barriers, and has agreed to undertake any necessary repairs for the project at its own expense such as relocating utilities within the footprint of the proposed barriers and wrapping piles, and to take responsibility for all damages to the Platform or other property of the Port caused by the construction, installation, use, maintenance, repair or removal of the barriers. Prior to construction, BART must provide the Port with a current engineering assessment report on the Platform structure with information provided on the condition of the areas where the proposed barrier construction and installation activities will occur. The Port must review this report and confirm its accuracy before any construction activity on this project can occur. If any portions of the Platform are found to be damaged by any activities conducted by BART, or its contractors, as a consequence of this project, BART has agreed to restore, at its own expense, any damaged portion of the Platform within 30 days. BART has also agreed to maintain the barriers in a clean and orderly condition, and to respond to any graffiti abatement request within 96 hours.

To ensure that applicable regulatory requirements are followed for this project, BART must submit Port Building permits for the barriers, and cannot commence construction until a Port building permit has been secured. The Port building permit procedure requires that necessary federal, state and local regulatory permits for projects, such as California Environmental Quality Act (CEQA) and San Francisco Bay Conservation Development Commission (BCDC) permit authorization are secured and that required emergency and fire access in the project area are maintained before a permit is issued. BART has submitted a building permit for the proposed surface barriers and has not submitted an

application for a marine barrier building permit. BART has the authority to make its own CEQA determinations, and has determined that the proposed surface barriers are categorical exempt from CEQA under class 15301(f). BART will be required to provide a CEQA determination for its proposed marine barriers as part of the building permit application for these barriers. BCDC and the area stakeholders (Ferry Plaza Limited Partnership ["FPLP"], Equity Office Partnership ["EOP"], and Golden Gate Bridge Highway and Transportation District ["GGBHTD"]) approved the proposed design and locations of the surface barriers as presented in a May 2009 BCDC Commission Hearing. The proposed locations of the surface barriers will provide the required fire and emergency access and will maintain the existing BCDC dedicated public access in the area.

Since portions of the proposed marine and surface barriers on the Platform fall within the license or leased areas of FPLP, EOP, or GGBHTD, BART has or is securing separate agreements with these affected parties for this proposed project.

In addition, the Agreement imposes no obligation on the Port to maintain the Platform and the areas where the barriers will be installed, and BART has agreed to indemnify the Port and its agents against any demand, claim, or suit arising from BART's actions under the Agreement.

In the event that there are future improvements on the Platform that the Port may authorize which require BART to remove or relocate their barriers in order to maintain security around its facilities, the Port will be responsible for those relocation costs. If there are future improvements on the Platform that require BART to add additional barriers to secure its structure such as the removal of structures on the Platform, then BART will be responsible for the cost of these new barriers. Any barrier relocations or additional barriers installations will be subject to the same terms and conditions of the proposed Agreement.

A copy of the Cooperative Agreement is on file with the Secretary of the Port Commission.

NEXT STEPS

With Port Commission approval of this Resolution and with agreements between the parties (EOP, FPLP, and GGBHTD) with property interest that will be affected by this barrier project and BART, this Agreement will be submitted to the San Francisco Board of Supervisors for the City of San Francisco (BOS) for its review and approval.

RECOMMENDATION

Port staff requests that the San Francisco Port Commission authorize the Executive Director to enter into an Agreement with BART for the proposed enhanced security barriers on the Ferry Plaza Platform for a term of 66-years, subject to approval by the Board of Supervisors and agreements between BART and FPLP, EOP, and GGBHTD.

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**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTON NO. 10-71

WHEREAS, Charter Sections B3.581 of the Charter of the City and County of San Francisco empowers the Port Commission with the power and authority and duty to use, conduct, operate, maintain, manage, regulate and control the Port area(s) of the City and County of San Francisco; and

WHEREAS, The Port owns a certain pile-supported platform extending into the San Francisco Bay on the east side of the Ferry Building, generally referred to as the Ferry Plaza Platform; and

WHEREAS, BART proposes to construct within the boundaries of the San Francisco Bay and on and under the Ferry Plaza Platform enhanced security barriers around the BART facilities to protect its continuing use and restrict access in the proximity of the BART facilities; and

WHEREAS, Port and BART have negotiated a Cooperative Agreement providing the conditions for the construction use and maintenance of the enhanced security structures on and under Port property; and

WHEREAS, In addition to granting BART the rights to install the barriers, this Cooperative Agreement requires (1) BART to produce to Port a current engineering assessment report of the Ferry Plaza Platform to be confirmed by the Port before beginning any construction activity, (2) BART to obtain building permits from the Port for construction of the barriers, and (3) BART to agree to be responsible for any and all damages caused by the construction, installation, use, maintenance, repair or relocation of the barriers, and to indemnify the City for its activities under the Cooperative Agreement; and

WHEREAS, The term of the Cooperative Agreement is 66 years with BART's right to request an extension, consistent at such time with the Burton-Act and other applicable laws; and

WHEREAS, The Cooperative Agreement does not require BART to pay the Port a fee for the use of Port property; however, the barriers will benefit the trust and the City by protecting the public and BART's public transit system, assuring public transit to the waterfront and the City; and

WHEREAS, The BART barriers will not require the expenditure of Port harbor trust or other City revenues; and

WHEREAS, Before the Port issues building permits for BART's marine barriers, the Port and MEA, in their sole discretion, must first determine that BART's CEQA

determination for the barriers is adequate; and BCDC must also provide permit approval for the marine barriers; and

WHEREAS, The proposed barrier project affects the property interests of Ferry Plaza Limited Partnership ("FPLP"), Equity Office Partners ("EOP") and Golden Gate Bridge, Highway and Transportation District (GGBHTD); FPLP, EOP, and GGBHTD have or will have agreements with BART regarding the proposed BART structures within each of their respective leased and licensed areas prior to the Port seeking Board of Supervisor approval for the Cooperative Agreement; and

WHEREAS, BART has authority to make its own California Environment Quality Act (CEQA) determinations, and has determined that the proposed surface barriers are categorically exempt from CEQA under Class 15301(f), and the Port and the City Planning Department's Major Environmental Analysis Division, (MEA), have determined that this determination is adequate for the proposed surface barriers on the Ferry Plaza Platform; and

WHEREAS, Port staff recommends that the San Francisco Port Commission approve the proposed Cooperative Agreement in substantially the form on file with the Commission Secretary; and now, therefore, be it

RESOLVED, That the BART barriers will benefit the harbor trust and the City by protecting the public and BART's public transit system, assuring public transit to the waterfront and the City; and, be it further

RESOLVED, That the BART barriers will not require the expenditure of Port harbor trust or other City revenues; and, be it further

RESOLVED, That subject to approval by the Board of Supervisors of the Cooperative Agreement and to BART entering into agreements with Ferry Plaza Limited Partners, Equity Office Partners, and Golden Gate Bridge Highway and Transportation District consenting to BART's use of property leased or licensed to each, the Port Commission approves the Cooperative Agreement with BART in substantially the form on file with the Secretary of the Port Commission for the installation, use and maintenance of security barriers on the Platform for a term of 66 years; and, be it further

RESOLVED, That the Executive Director shall not submit the Cooperative Agreement for review and approval by the Board of Supervisors before BART has entered into the agreements with Ferry Plaza Limited Partners, Equity Office Partners, and Golden Gate Bridge Highway and Transportation District; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Cooperative Agreement that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the Port and City, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Cooperative Agreement contemplates there under and effectuates the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Cooperative Agreement, and any such amendments or modifications thereto.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 26, 2010.



Secretary