

**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
In re Airspace Ground Lease between  
Parking Authority of the City and County of San Francisco  
and the State of California, Department of Transportation,  
concerning the Performing Arts Garage Access Premises

This Assignment and Assumption Agreement ("**Assignment**"), dated for convenience purposes only as of November [REDACTED], 2016, is entered into by and between the Parking Authority of the City and County of San Francisco, a public entity ("**Parking Authority**" or "**Assignor**"), and the City and County of San Francisco ("**City**"), a municipal corporation, acting by and through its Municipal Transportation Agency ("**SFMTA**" or "**Assignee**").

RECITALS

- A. WHEREAS, the Parking Authority is a State agency created under and governed by the California Parking Law of 1949, California Streets and Highways Code ("**CS&HC**") section 32500 et seq.; and
- B. WHEREAS, the Parking Authority and the State of California, Department of Transportation ("**Caltrans**") entered into an Airspace Ground Lease dated February 27, 1981 (the "**Lease**"), whereby the Parking Authority leases that certain real property located between the Performing Arts Garage and Gough Street in San Francisco, California, which premises is a portion of Assessor's Parcel Number 0792-028 and depicted in Exhibit A to the Lease (the "**Premises**"); and
- C. WHEREAS, Caltrans transferred fee ownership of the Premises, and assigned its interest in the Lease, to City on January 16, 2001, and such ownership and lessor interests are under the jurisdiction of San Francisco Public Works and managed by the Real Estate Division of the Office of the City Administrator ("**RED**"); and
- D. WHEREAS, the Lease permits the Premises to be used for the purposes described in Section 5.1 of the Lease (the "**Permitted Purposes**") on the terms and conditions specified in the Lease for a term that terminates on March 31, 2080, and the Parking Authority paid the one-time advance rent payment required under the Lease to Caltrans prior to the commencement of the Lease, and RED will not require any additional monthly rent payment to be made if the Lease is assigned from the Parking Authority to the SFMTA; and
- E. WHEREAS, three amendments to the Charter of the City effectively merged the functions of the Parking Authority with the off-street parking functions of the City; and
- F. WHEREAS, in 1988, the first of these amendments, Proposition D, created the Department of Parking and Traffic ("**DPT**"), and placed all City parking functions and facilities under the DPT; and mandated that the members of the Parking and Traffic Commission also

serve *ex officio* as the Parking Authority Commission, effectively placing management of all publicly-owned off-street parking facilities within the City (except those owned by the Port and the Airport) under a single department and policy body; and

G. WHEREAS, in 1999, the second of these amendments, Proposition E, created the SFMTA and placed both the Municipal Railway and DPT under it, thereby consolidating public transit and public parking under a single agency; provided for the SFMTA Board of Directors to assume the powers of the Parking and Traffic Commission; and, as authorized by the State law, mandated that the members of the SFMTA Board of Directors also serve *ex officio* as the Parking Authority Commission; and

H. WHEREAS, in 2007, the third of these amendments, Proposition A, eliminated the DPT and formally transferred the DPT's authority over parking facilities to the SFMTA; and

I. WHEREAS, in 2007, the Parking Authority Commission contracted with the SFMTA to manage all Parking Authority facilities, and, under the terms of that contract, the SFMTA Board of Directors sets policies for Parking Authority facilities to mirror SFMTA parking policies, and SFMTA staff manage the Parking Authority's facilities in the same manner as they do the SFMTA's parking facilities; and

J. WHEREAS, the Parking Authority does not have a director nor staff of its own; and

K. WHEREAS, the Parking Authority desires to transfer its properties to the SFMTA, as provided in CS&HC section 32667, so that the SFMTA may explore non-parking uses of some of those properties; and

L. WHEREAS, the SFMTA will continue to utilize the Premises for the Permitted Purposes and will not seek to develop it for other purposes without the express written agreement of RED, which may require prior approval from the City's Board of Supervisors; and

M. WHEREAS, the Parking Authority, as Assignor, desires to assign its interest in the Lease, and the SFMTA, as Assignee, desires to assume such interest the Lease, each on the terms and conditions set forth herein, and the SFMTA and RED desire that the Lease survive such assignment and not merge with City's fee ownership interest of the Premises to allow the SFMTA to the continued use of the Premises for the Permitted Purposes on the terms and conditions of the Lease until March 31, 2080, or any earlier termination of the Lease; and

N. WHEREAS, the SFMTA Board of Directors and Parking Authority Commission voted in support of this Assignment on the date of [REDACTED]; and

O. WHEREAS, the Board of Supervisors of the City and County of San Francisco approved this Assignment by at least a two-thirds vote, as required under CS&HC section 32667, on the date of [REDACTED];

NOW, THEREFORE, for in consideration of the promises and mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

**1. Definitions.** The following definitions shall apply to this Assignment:

- a. **Effective Date.** "Effective Date" shall mean the latest date on which a party to this Assignment, and City, acting by and through RED, as the intended third party beneficiary to this Assignment, executes and approves this Assignment as provided for herein.
- b. **Lease.** "Lease" shall mean the Lease defined in Recital B of this Assignment.
- c. **Other Terms.** Terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Lease.

**2. Assignment.** The Parking Authority, as Assignor, hereby assigns, conveys and transfers to the SFMTA, as Assignee, all of Assignor's right, title and interest in and to the Lease and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date. This Assignment effects only an assignment and assumption of the Lease from the Parking Authority to the SFMTA, and effects no other changes to the Lease. By its execution of this Assignment, the Parking Authority further transfers to the SFMTA ownership of all improvements on the Premises owned by the Parking Authority, and the Parking Authority represents such improvements are in good operating condition.

**3. Assumption.** The SFMTA, as Assignee, hereby accepts the assignment, transfer and conveyance set forth in Section 2 of this Assignment and agrees to perform all of the Parking Authority's duties and obligations under the Lease, to the extent arising on or after the Effective Date. By its execution of this Assignment, and in reliance of the representation made by the Parking Authority in Section 2 of this Assignment, the SFMTA accepts ownership of all Parking Authority improvements on the Premises.

**4. Consent of Lessor.** By its execution of this Lease, City, acting by and through RED, consents to this Assignment. RED shall be a third party beneficiary of this Assignment (other than Section 5) and shall have the right to enforce this Assignment.

**5. Mutual Indemnities.**

- a. **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, and all liabilities, losses, damages, claims, costs or expenses (including attorney's fees) arising out of (1) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (2) any breach by Assignor of the Lease or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

- b. **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorney's fees) arising out of any breach by Assignee of the Lease or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.
- 6. Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.
- 7. Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.
- 8. Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Lease and supersedes all other oral or written provisions.
- 9. Further Assurances.** From and after the date of this Assignment, Assignor and Assignee 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 assignment, transfer and conveyance contemplated by this Assignment or as may be required by the Lessor.
- 10. Severability.** Should the application of any provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Assignment shall not be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Assignor, Assignee and Lessor.
- 11. Successors; Third-Party Beneficiaries.** Subject to the terms of the Lease, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than the Lessor and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.
- 12. Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Lease shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time, Assignor, Assignee or Lessor may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor: Secretary to the Parking Authority Commission  
1 South Van Ness Avenue, 7th floor  
San Francisco, CA 94103

If to Assignee: Director of Off-Street Parking  
SFMTA  
1 South Van Ness Avenue, 7th floor  
San Francisco, CA 94103

If to Lessor: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attention: Director of Property

**13. Construction.** The parties to this Assignment acknowledge that they have fully read the contents of this document and that they have had opportunity to be advised by counsel of their choice and that they have full, complete and total comprehension of the provisions contained in this document and are in full agreement with each and every one of those terms, conditions and provisions. As such, the parties agree to waive any and all rights to apply, in the interpretations of any and all terms, provisions or condition of this Assignment, the rule of construction that ambiguities are to be resolved against the drafter of the agreement. For the purposes of this instrument, the parties to this Assignment agree that ambiguities, if any, are to be resolved in the same manner as would have been the case if this instrument had been jointly conceived and drafted.

**14. Incorporation of Recitals.** The parties to this Assignment understand and agree that the recitals set forth above are terms of this Agreement, and are fully incorporated herein by this reference.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment.

ASSIGNOR

ASSIGNEE

**PARKING AUTHORITY OF THE CITY  
AND COUNTY OF SAN FRANCISCO**

**CITY AND COUNTY OF SAN  
FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY**

By \_\_\_\_\_  
Edward D. Reiskin                      **Date**  
Acting as Administrator of  
the Parking Authority

By \_\_\_\_\_  
Edward D. Reiskin                      **Date**  
Director of Transportation

APPROVED BY:

APPROVED BY:

San Francisco Parking Authority  
Commission  
Resolution No: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest: \_\_\_\_\_

San Francisco Municipal Transportation  
Agency Board of Directors  
Resolution No: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest: \_\_\_\_\_

\_\_\_\_\_  
Secretary, San Francisco Parking  
Authority Commission

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
Robert Stone                              **Date**  
Deputy City Attorney

**SIGNATURES CONTINUED ON FOLLOWING PAGE**

RED hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment. RED further agrees 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 assignment, transfer and conveyance contemplated by this Assignment.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

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