

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Central Subway Project

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a Memorandum of Understanding (“MOU”) between the San Francisco Municipal Transportation Agency (“SFMTA”) and the San Francisco Recreation and Parks Department (“RPD”) for the use of certain portions of City real property located at the Union Square Garage and Park to facilitate construction of the SFMTA’s Central Subway Project.

SUMMARY:

- RPD maintains and operates real property in the City and County of San Francisco (“City”) bounded by Geary, Powell, Post and Stockton streets known as Union Square. Union Square consists of a below-grade public parking garage and a public park and open space plaza above the garage.
- The SFMTA is undertaking construction of the Central Subway Project (the “Project”), which will include construction of three subway stations, including the Union Square Market Street (“UMS”) Station.
- Construction of the UMS Station will result in a total permanent reduction of 109 parking spaces, and approximately 2,390 square feet of exterior park space will be redesigned for the UMS Station.
- The purpose of this MOU is to (1) compensate RPD for the temporary and permanent use of parking spaces within the Garage and for the reconfiguration and use of open space in the Park; (2) authorize the SFMTA’s construction and settlement monitoring activities within the Garage; and (3) define maintenance responsibilities between RPD and SFMTA with respect to the UMS Station Work and the Union Square Park and Garage.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan
3. Memorandum of Understanding

APPROVALS:

DATE:

DIRECTOR _____

April 23, 2013

SECRETARY _____

April 23, 2013

ASSIGNED SFMTAB CALENDAR DATE: May 7, 2013

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PURPOSE

The proposed resolution authorizes the Director of Transportation to enter into an MOU with RPD for the use of certain portions of City real property located at the Union Square Garage and Union Square Park to facilitate construction of the SFMTA's Central Subway Project.

GOAL

The MOU allows for the use of real property for the construction of the Central Subway Project's UMS Station. The Project, a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with retail and employment centers in downtown and Chinatown, is consistent with the SFMTA Strategic Plan and meets the following goals and objectives:

Strategic Plan Goal 3 – Improve the environment and quality of life in San Francisco
Objective 3.3 Allocate capital resources effectively

DESCRIPTION

The UMS Station is over 700 feet long and nearly 100 feet deep under Stockton Street. The Union Square entrance, located on Geary Boulevard near Stockton Street, is the visible portion of the UMS Station at the northern end. At the south end, the station connects to the Muni/BART Powell Station under Market Street.

The UMS Station entrance has been designed to be as compact as possible in both plan and elevation to preserve open space, and to blend in with its surroundings by mimicking the Park's existing features and by incorporating existing treatments, materials, and finishes. The roof of the station entrance will function as walk-on glass deck, optimizing the open space of the Park.

On the west side of the station entrance, stepped terraces will be integrated into and match the finish and composition of the existing terraced seating; on the east side, a new enclosure wall will rise behind the existing palm trees; on the south side along Geary Street, the station entrance will be framed by concrete walls and parapet. The concrete surfaces of the south and east facades of the station entrance will be treated to match the finish of the existing retaining walls within the plaza; these surfaces will eventually be covered with vines planted at the base of the walls.

At the Park level, the station entrance will permanently displace approximately 1,200 square feet of terraced seating; however, the roof of the station entrance incorporates approximately 950 square feet of translucent glass walk-on roof deck, resulting in a net loss of approximately 250 square feet of open space. The roof deck is accessible from a short ramp at the Park's intermediate plaza level and via the terraced seating along the west edge of the deck.

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Within the Garage, an existing vehicular ramp must be reconfigured and the Garage structure must be altered to accommodate the station entrance and a portion of the station's concourse below. The UMS Station work will permanently impact 109 parking spaces. To minimize the impacts to parking operations during station construction, the contract documents stipulate that reconfiguration of the vehicular ramp must be completed prior to the holiday moratorium within the same calendar year that the ramp reconfiguration work commences

In summary, the structures to be constructed in the Garage and at the Park for the UMS Station are as follows:

1. Escalator, Stairs, Two Elevators
2. Emergency ventilation equipment
3. Glass deck (public space)
4. Ancillary components such as overhead doors to close off station entrance.

MAIN TERMS OF THE MOU

Under the proposed MOU, the SFMTA will be granted a Right of Entry to perform the following Work:

- Pre-Construction survey of the condition of the Property and Baseline Report which shall be issued to RPD for comment
- Installation of Settlement Monitoring Equipment
- Installation of Temporary Shoring and Bracing
- Temporary and Permanent Use of Garage Parking Spaces for the UMS Station
- Construction of a new circulation ramp in the south east corner of the Union Square Garage
- Reconfiguration and Use of Open Space in Union Square Park

The MOU provides for SFMTA to make a payment to RPD of \$6,987,624 for the temporary and permanent acquisitions. This amount reflects the appraised value of \$7,055,000, less a credit of \$67,376 for improvements to the sidewalk, curb ramp, and traffic signals at the north-west corner of Geary and Stockton Streets that SFMTA will be constructing (the credit is equal to 50% of the total value of this work, estimated at \$134,752).

The MOU also sets forth maintenance responsibilities of the departments. SFMTA shall be responsible for all maintenance related to the UMS Station including the elevators, escalators, stairs, overhead doors and ventilation shafts. RPD shall be responsible for maintaining Union Square Park, including the Glass Deck roof of the UMS Station; however, SFMTA shall be responsible for the material cost and labor to replace or make significant repairs to the elements of UMS Station on or within the Park.

ALTERNATIVES CONSIDERED

No other alternatives have been considered, as the authorization to execute this MOU would facilitate construction of the UMS Station, thus fulfilling other SFMTA goals and objectives.

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FUNDING IMPACT

The proposed MOU will commit \$6,987,624 of California State Prop and 1B Infrastructure Bond funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA received concurrence from the Federal Transit Administration on its fair market value appraisal of the temporary and permanent use of the portion of the Union Square Park and Garage.

Approval of the MOU by the San Francisco Recreation and Parks Department Commission is required.

The City Attorney has reviewed this Calendar Item.

RECOMMENDATION

Authorize the Director of Transportation to enter into an MOU with RPD for the use of certain portions of City real property located at the Union Square Garage and Union Square Park to facilitate construction of the SFMTA's Central Subway Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency ("SFMTA") intends to construct the Central Subway Project ("Project") to provide rail service to the South of Market, Union Square and Chinatown neighborhoods; and,

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

WHEREAS, Construction of the Project's Union Square/Market Street ("UMS") Station requires the acquisition of real property in the City and County of San Francisco bounded by Geary, Powell, Post and Stockton Streets known as "Union Square"; and

WHEREAS, The San Francisco Recreation and Park Department (RPD) maintains and operates Union Square Park ("Park") and Union Square Garage ("Garage"); and

WHEREAS, At the August 16, 2007 meeting of the Recreation and Park Commission, SFMTA staff presented information on the Project's potential impacts on Union Square, including the station entrance and vent shafts at the Park level and impacts to existing parking within the Garage; and

WHEREAS, At the September 20, 2012 Recreation and Park Commission meeting, SFMTA staff presented the Commission with its final plans for the construction of the UMS Station in the southeastern corner of Union Square Park consisting of an escalator, stairs, two elevators, emergency ventilation equipment, glass deck (public space) and ancillary components such as overhead doors to close off the station entrance; and

WHEREAS, On September 20, 2012, the Recreation and Park Commission adopted Resolution No. 1209-005, in which it approved the construction of the surface and subsurface structures in Union Square for the UMS Station and recommended that the Board of Supervisors similarly approve such construction; and

WHEREAS, On October 23, 2012, the Board of Supervisors approved Resolution No. 388-12 for the construction of surface and subsurface structures in Union Square for the UMS Station; and

WHEREAS, On December 5, 2012, the SFMTA received concurrence from the Federal Transit Administration on its fair market value appraisal of the temporary and permanent use of a portion of the Park and Garage; and

WHEREAS, On December 14, 2012, the SFMTA formally offered RPD fair market value for the temporary and permanent use of a portion of the Park and Garage; and

WHEREAS, The SFMTA and RFD have agreed to an MOU regarding use of the Park and Garage for the UMS Station and setting forth their respective roles and responsibilities for maintenance of the facilities after construction of the UMS Station; now therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Memorandum of Understanding with the Recreation and Park Department for the use of certain portions of City real property located at the Union Square Garage and Union Square Park to facilitate construction of the SFMTA's Central Subway Project.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 7, 2013.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY

Project Budget & Financial Plan

Cost	(\$Million)
Conceptual and Preliminary Engineering	46.32
Program Management & Construction Management	206.52
Final Design	86.05
Construction Contracts (Tunnel, Stations and Systems is \$1.034B)	1,089.61
Vehicles	26.38
Contingency	63.34
Right-of-Way	37.40
Other Professional Services	22.68
Total Central Subway Cost	\$1,578.30

Funding	(\$Millions)
Federal 5309 New Starts	942.20
Federal CMAQ	41.03
State RTIP Grant	88.00
State TCRP Grant	14.00
State Proposition 1A - High Speed Rail	61.31
State Proposition 1B - PTMISEA	307.78
Proposition K Sales Tax Funds	123.98
Total Central Subway Funding	\$1,578.30

**MEMORANDUM OF UNDERSTANDING
UNION SQUARE PARK AND GARAGE – UMS STATION**

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated for reference purposes only as of _____, 2013, is by and between the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the Recreation and Park Commission, acting through the Recreation and Park Department ("**RPD**"), collectively referred to as the "Parties."

RECITALS

A. RPD maintains and operates real property in the City and County of San Francisco ("**City**") bounded by Geary, Powell, Post and Stockton Street known as "**Union Square Park**."

B. Union Square Park consists of a public park and open space plaza. Underneath Union Square Park is a public parking garage known as the Union Square Parking Garage ("Garage") (Garage and Union Square Park are referred to collectively as the "**Property**"). The City, through the City of San Francisco Uptown Parking Corporation, operates the Garage as a paid public parking garage. Net revenues derived from the Garage go to RPD.

C. The SFMTA is undertaking construction of the Central Subway Project (the "**Project**"), which is designed to address mobility and transit deficiencies in the northeastern part of San Francisco by improving connections from the northeastern part of the City to communities in the southeastern part for the City and improving reliability of transit services.

D. The Project will include construction of three subway stations, including the Union Square Market Street Station ("**UMS Station**"). The entrance to the UMS Station will be located in the southeastern corner of Union Square Park.

E. The improvements depicted in the final plans for construction of the UMS Station consist of an escalator, stairs, two elevators, emergency ventilation equipment, glass deck (public space) and ancillary components such as overhead doors to close off the station entrance (collectively, the "**UMS Station Work**").

F. The UMS Station Work will require the permanent or temporary use of 129 parking spaces in the Garage during construction. Following completion of the UMS Station Work, 20 parking spaces will be reinstated, resulting in a total permanent reduction of 109 parking spaces within the Garage.

G. On September 20, 2012, SFMTA presented the Recreation and Park Commission with its final plans for the UMS Station Work. At that meeting, the Commission adopted Resolution No. 1209-005 finding that the construction of the surface and subsurface structures in Union Square Park for the UMS Station is consistent with and supportive of a recreational purpose as required by Charter Section 4.113 because the proposed use (1) will occupy an insubstantial portion of the surface area of Union Square Park and impact less than 2 percent of the total square footage of Union Square Park; (2) will not substantially impair or interfere with the use and enjoyment of Union Square Park for recreational purposes because of the location and dimension of the proposed structures, and the nature and existing use of the affected park area; and (3) will substantially improve public access to and from Union Square Park, thereby enhancing public use and enjoyment of Union Square Park.

H. On October 23, 2012, the Board of Supervisors, by Resolution No. 388-12, approved the construction of surface and subsurface structures in Union Square Park for the UMS Station.

I. Pursuant to the final approved plans, approximately 2,390 square feet of exterior park space, which is approximately two percent of the 2.6-acre (113,256 square feet) Union Square Park, will be redesigned or used in some respect for UMS Station facilities, and 1,410 square feet of that 2,390 square feet will continue to be pedestrian open space or landscaped area.

J. Although the UMS Station entrance will displace approximately 1,200 feet of terraced seating on the surface of Union Square Park, the roof of the UMS Station entrance will include approximately 950 square feet of a translucent glass walk-on roof deck, resulting in a net loss of only 250 square feet of the open space that was previously occupied by terraced seating.

K. The purpose of this MOU is to (1) set forth the terms by which SFMTA will compensate RPD for the temporary and permanent use of parking spaces in the Garage and the reconfiguration and use of open space in Union Square Park; (2) authorize the SFMTA's construction and settlement monitoring activities within the Garage and the Park; and (3) define maintenance responsibilities between RPD and SFMTA with respect to the UMS Station Work and the Union Square Park and Garage.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
- 2. Permission to Enter.** RPD grants SFMTA and its employees, contractors, subcontractors, representatives agents and consultants (collectively, "**SFMTA's Agents**") the right to enter upon that portion of the Property described and generally depicted on the Final Plans (as defined below) (the "Work Area") to construct and install the **UMS Station Work** on the terms and conditions set forth herein. SFMTA shall give RPD 21 days' notice prior to Contractor's scheduled date to take possession of the Work Area.
- 3. Effective Date; Term.** The term of this MOU shall commence on the date of issuance of the notice to proceed for the construction contract for the Project stations.
- 4. Minimize Interference.** SFMTA and its construction contractor will coordinate with RPD to minimize disruption to the use of Union Square Park and access to and use of the Garage during construction. Drawing CS-101 in the Final Plans sets forth the agreed-upon construction area and public access restrictions. SFMTA shall seek RPD approval prior to implementing any proposed changes in access as designated on Drawing CS-101. The southeast stairway in the Park shall not be closed for more than a total of 90 days during the construction period without SFMTA obtaining RPD's written approval.
- 5. Compliance with Laws.** SFMTA, at SFMTA's expense, shall comply with all laws, regulations and requirements of Federal, state, county and municipal authorities, now in force or which may hereafter be in force, and all laws relating to Hazardous Materials, which impose any duty upon SFMTA with respect to the use, occupation or alteration of the Property.

6. SFMTA Use of Union Square Park and Garage for the UMS Station. RPD acknowledges that it has reviewed the final plans and specifications for the UMS Station Work identified as Third Street Light Rail Program Phase 2 – Central Subway Union Square/Market Street Station, prepared by the Central Subway Design Group, dated February 15, 2012: AR-851, 852, 853, 854, 855, 861, 862, 865, 866, 867, 868, 869, 870, 871, 872, 873, 876, 877, 881, 882, 883, ST-421, ST-422, ST-423, ST-424, ST-425, ST-426, ST-427, BP-001, 011, 012, 013, 021, 022, 023, 031, 033, 035, 036, 101, CS-001, 101, 111, 112, 113, 114, and LA-001, 301, 302, 401, 402, 501, 502, 503, 504, 505, 506 (the "**Final Plans**"). The UMS Station Work shall be conducted in substantial compliance with the Final Plans and consist of the following:

A. Installation of Settlement Monitoring Equipment

(i) Installation of automated building settlement monitoring prisms, manual building settlement monitoring prisms and crack gauges (collectively, the "Exterior Monitors") on the surface of the Property and depicted in and in substantial compliance with the Final Plans.

(ii) Installation of liquid levels, tape extensometers, tilt meters, tilt plates, and crack gauges (collectively, the "Interior Monitors") in the interior of the Garage in substantial compliance with the Final Plans.

B. Installation of Temporary Shoring and Bracing

(i) Installation of temporary shoring and bracing on levels 1-4 of the Garage to support the remaining Garage structure during demolition and construction work.

(ii) Temporary shoring will consist of structural steel or timber members and be designed and installed by the SFMTA's Central Subway contractor.

C. Temporary and Permanent Use of Garage Parking Spaces

(i) Temporary Use. The UMS Station Work will result in a reduced parking capacity of 129 parking spaces during the construction period of up to 12 months, beginning mid-2013. The temporary use of parking spaces in the Garage will impact Levels 2-4 of the Garage and consist of approximately 21,500 square feet of parking space. SFMTA shall install a temporary construction wall in the Garage as depicted in the Final Plans to safeguard SFMTA's work area, and shall remove the temporary wall following completion of construction of the new circulation ramp (as described in D below) and shall return the affected area in the condition existing prior to such temporary installation.

(ii) Permanent Use. Upon completion of construction, the UMS Station Work will result in a reduced capacity of 109 parking spaces in the Garage on a permanent basis, and an aggregate total of approximately 23,985 square feet of parking space, as depicted in the Final Plans.

D. New Circulation Ramp. The UMS Station Work will include the demolition of the existing upbound ramp located between grid lines A and B in the southeast corner of the Garage and the construction of a new upbound ramp between grid lines B and C within the Garage, as depicted in the Final Plans

E. Reconfiguration and Use of Open Space. Construction of the UMS Station will eliminate approximately 1,200 square feet of terraced seating in Union Square Park (collectively, "**Union Square Park Improvements**"). However, the finished roof of the UMS Station will include a ramp and walk-on glass roof deck of approximately 950 square feet ("**Glass Deck**").

7. Consent. RPD consents to all of the UMS Station Work to be performed on the Property as generally shown on or described in the Final Plans, subject to the provisions of this MOU. RPD agrees that it shall not grant the right to any other party to, cover or otherwise permanently block access to the Property, the exterior monitors or the interior monitors during the construction of the UMS Station Work.

8. Payments to RPD and Credits to SFMTA for SFMTA Use of the Property.

A. The total value of SFMTA's permanent and temporary use of open space and parking spaces in Union Square Park and the Garage for the Project, including severance damages, is \$7,055,000, which amount has been approved by the Federal Transit Administration ("FTA"). Of the total value, (1) \$4,370,000 represents SFMTA's permanent acquisition of property rights, (2) \$450,000 is for SFMTA's temporary acquisition of property rights during construction, and (3) \$2,235,000 is for severance damages to the remaining property as detailed in the May 2012 Appraisal Summary Report prepared by David Tattersall & Company. If the Work extends over the time periods assumed in the May 2012 Appraisal, the parties will negotiate additional compensation, based on a similar methodology as in the Appraisal, subject to review by the appraiser and concurrence by FTA, as required.

B. In addition to the UMS Station Work within the Garage and Union Square Park, the SFMTA will be constructing improvements to the northwest corner of Geary and Stockton. These improvements include a new sidewalk, curb ramp and traffic signal upgrades ("**UMS Sitework Improvements**") to bring this intersection up to code and to enhance pedestrian and vehicular safety in this area. The estimated cost for the UMS Sitework Improvements is \$134,752. RPD acknowledges that the UMS Sitework Improvements will benefit Union Square Park patrons and Garage patrons as well as SFMTA patrons, and accordingly agrees to provide a credit to the SFMTA in the amount of half of the estimated cost of the UMS Site Improvements (\$67,376).

C. The SFMTA shall pay or cause to be transferred to RPD \$7,055,000, less the credit of \$67,376 specified in Section 5(B), in consideration for temporary and permanent property rights in the Property as well as severance damages to the remaining Property as a result of the UMS Station Work. The total amount SFMTA will pay or cause to be transferred to RPD will be \$6,987,624.

D. The SFMTA will use FTA grant funds for the payment to RPD. Payment in full to RPD shall occur no later than 30 days prior to notice to proceed with the UMS Station Work,.

9. Construction Approvals. SFMTA shall obtain, at its sole cost and expense, all applicable approvals ("**Approvals**") of any regulatory agencies required for the performance of the UMS Station Work by or for SFMTA. RPD shall cooperate in good faith with SFMTA to submit any necessary consents or other documents reasonably required to enable SFMTA or SFMTA's agents to apply for and obtain such Approvals; provided, however, that SFMTA shall obtain RPD's written consent, which shall not be unreasonably withheld, delayed or conditioned, to any Approvals that would place any restriction or obligations that survive the completion of the UMS Work on Property or RPD.

10. Pre-Construction Survey and Monitoring Equipment

A. Baseline Report. SFMTA shall inspect the Property and prepare a written report detailing the condition of the Property as of such inspection date (the "**Baseline Report**"). SFMTA shall provide RPD with at least five days written notice of the date that SFMTA intends

to perform such inspection and RPD representatives shall have the right to accompany the persons performing such inspection for the SFMTA. SFMTA shall deliver a draft Baseline Report to RPD for review, and RPD shall notify SFMTA in writing (the "**RPD Report Comments**") of any item that needs to be modified, deleted or added in the draft Baseline Report to accurately describe the condition of the Property as of such inspection date. RPD shall deliver the RPD Report Comments to SFMTA within 10 days of receiving the draft Baseline Report from City.

If RPD does not deliver the RPD Report Comments to SFMTA within such 10-day period, SFMTA shall promptly notify RPD that it did not receive a response, and if RPD does not deliver the RPD Report Comments within five business days thereafter, the draft Baseline Report shall be deemed to be the Baseline Report. If RPD delivers the RPD Report Comments to SFMTA within such 10-day period, SFMTA shall respond to RPD in writing within 10 days of receiving the RPD Report Comments (the "**SFMTA Report Comments**"), and the draft Baseline Report, the RPD Report Comments and the City Report Comments shall be collectively deemed to be the Baseline Report. The Baseline Report shall be prepared before the SFMTA commences construction of the UMS Station Work.

11. Restoration; Damages

A. Restoration and Repair. Immediately following completion of any work permitted hereunder, SFMTA shall remove all debris, equipment, signage, and any excess dirt from the Property. SFMTA or its contractor shall restore excavated areas with new or existing vegetation (including irrigation and maintenance of palm trees for one year after replacement). Prior to conducting such restoration, SFMTA shall submit to RPD for approval a detailed landscaping planting plan, which identifies specific plant materials. Upon completion of restoration, RPD shall inspect the plantings for compliance with the approved plans, and SFMTA shall make corrections if requested by RPD. . Any damage to RPD property caused by construction, maintenance, repair or any other activity of SFMTA permitted hereunder shall be promptly repaired and restored to its prior condition upon completion of the construction, maintenance, repair or other activities, at no cost to RPD.

B. Damages. It is the understanding of the parties that RPD shall not expend any funds due to or in connection with SFMTA's activities on the Property or the use of the Property (other than the credit to be provided to SFMTA in accordance with Section 8.B. above). Therefore, SFMTA agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Property by SFMTA, its agents or invitees, and its contractor's assignees or sublessees, or (ii) out of any injury or death of any person or damage of any property occurring in, on or about the Property from any cause other than the sole negligence or willful misconduct of RPD. The foregoing obligation of SFMTA shall survive the termination or expiration of this MOU. As used herein, "Hazardous Materials" shall mean any substance, water or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety or property.

12. As-Built Plans. Upon completion of construction, SFMTA agrees to furnish RPD with a complete copy of the as-builts of the Final Plans and other plans pertaining to the portion of the Union Square Garage not being used for the UMS Station ("As-Built Plans"), as reasonably requested by RPD and agreed to by SFMTA, subject to the following condition. Since the As-Built Plans will contain Sensitive Security Information (SSI) that is protected from disclosure

under federal law, those employees at RPD with a need for the information shall sign a confidentiality agreement for protection of SSI prior to obtaining the As-Built Plans..

13. Maintenance

A. Maintenance of UMS Station. Except as provided in Section 13.B. below, SFMTA shall be responsible, at its sole cost and expense, for all maintenance related to the UMS Station ("**UMS Station Maintenance**"). UMS Station Maintenance shall include maintenance of all areas inside of the UMS Station, including the elevators, escalator, stairs, overhead doors and ventilation shafts, and entrances.

B. Maintenance of Union Square Park Improvements. RPD shall maintain or cause to be maintained Union Square Park. RPD shall also maintain or cause to be maintained the Glass Deck in accordance with the manufacturer's operation and maintenance requirements that will be provided to RPD by SFMTA upon substantial completion of the Project; provided, however, that SFMTA shall be responsible for the material costs and labor to replace or make repairs to the Glass Deck in excess of \$5,000 per repair and any repairs or replacement of the glass panels within the Glass Deck. RPD shall notify SFMTA within 10 business days of determining that repairs in excess of \$5,000 or replacement of glass panels may be required. RPD's total liability for repairs to the Glass Deck under this Agreement shall not exceed \$50,000 for each 10-year period following substantial completion of the Project.

14. Common Walls and Floors. The final structural arrangement will result in various walls and floors being shared between the Union Square Garage and the UMS Station. Each party agrees to notify the other party before making a decision to perform alteration work that could impact a shared wall or floor or any other UMS Station or RPD facility, and take all precautions to ensure that no damage will accrue to the neighboring facility.

15. Insurance. SFMTA shall require any contractor or subcontractor it hires in connection with its use of the Property, to secure such insurance as is recommended by the City Risk Manager. RPD shall require any person or entity issued a permit to use the Glass Deck for an event to carry adequate liability coverage for damage that may occur to the UMS Station Glass Deck arising from their use of the Glass Deck, with SFMTA as the beneficiary of insurance proceeds for damage to the Glass Deck. Should any damage occur, RPD shall pursue compensation for the costs associated with repair from such person or entity and/or its insurer and shall provide all proceeds obtained from such efforts to SFMTA.

16. Notices. All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person or two business days following deposit in the United States mail, postage prepaid, and addressed as follows:

If to SFMTA:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Real Estate Section
Re: UMS Station

Fax No.: (415) 701-4341

If to RPD: Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117
Attn: General Manager

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

17. Resolutions. Following approval of the Recreation and Park Commission and the Board of Directors of the SFMTA, the respective resolutions indicating such approval shall be attached hereto as, respectively, Exhibit B and Exhibit C.

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

19. Cooperation. Subject to the terms and conditions of this MOU, SFMTA and RPD shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts; or (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided.

20. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the SFMTA's Director of Transportation, or his or her designee, and the General Manager of RPD, or his or her designee. (b) No waiver of any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of SFMTA has the authority to bind the SFMTA to any action contemplated herein unless and until its Board of Directors and the Board of Supervisors or the Mayor, if necessary, approves such action, and no officer, director or employee of RPD has the authority to bind RPD, as applicable, to any action contemplated herein unless and until the Board of Supervisors or the Mayor, if necessary, approves such action. (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the date first written above.

San Francisco Recreation and Park Department

San Francisco Municipal Transportation Agency

By: _____
Philip Ginsburg
General Manager

By: _____
Edward D. Reiskin
Director of Transportation

Recreation and Park Commission

SFMTA Board of Directors

Resolution No. _____
Dated: _____

Resolution No. _____
Adopted: _____
Attest: _____

Secretary

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Dennis Herrera, City Attorney

Dennis Herrera, City Attorney

By:

By:

Robin M. Reitzes
Deputy City Attorney