

THIS PRINT COVERS CALENDAR ITEM NO. :10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Agreement No. 2019-63, Administration of Capital Funding for the BART/Muni Market Street Entrance Modernization Project, with the San Francisco Bay Area Rapid Transit District (BART), to fund half of the cost of installing canopies over the four BART/Muni station entrances on Market Street with proceeds from the sale of the second and future issuances of 2014 General Obligation bonds, in an amount not to exceed \$45,000,000, and for a term beginning as of February 1, 2018, and ending December 31, 2025.

SUMMARY:

- The City will provide up to \$45,000,000 for design and construction of canopies that are part of the BART/Muni Market Street Entrance Modernization Project (Canopy Project), using proceeds from the sale of General Obligation (GO) Bonds approved by the voters in November 2014 (the 2014 San Francisco Transportation and Road Improvement Bond or 2014 GO Bond)
- Under the Canopy Project, BART intends to install canopies above the entrances to the BART/Muni stations along Market Street as required by State code to protect newly installed escalators from weather-related damage and to enhance safety.
- The Canopy Project will be financed from the second and future issuances of GO Bonds from the 2014 GO Bond.
- The SFMTA will be the fiscal agent for disbursement of these GO Bond proceeds.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement
3. BART Market Street Canopies and Escalators Modernization Project Mitigated Negative Declaration <https://www.bart.gov/sites/default/files/docs/Market%20St%20Canopies-Escalators%20Final%20ISMND%20June%202018.pdf>
4. BART Market Street Canopies and Escalators Modernization Project MMRP <https://www.bart.gov/sites/default/files/docs/Market%20St%20Canopies-Escalators%20MMRP%20June%202018.pdf>

APPROVALS:

DIRECTOR 
SECRETARY 

DATE

June 11, 2019
June 11, 2019

ASSIGNED SFMTAB CALENDAR DATE: June 18, 2019

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PURPOSE

The purpose of this calendar item is to authorize the Director of Transportation to execute Agreement No. 2019-63, Administration of Capital Funding for the BART/Muni Market Street Entrance Modernization Project, with BART, to fund half of the costs of installing canopies over the four BART/Muni station entrances on Market Street with proceeds from the sale of the second and future issuances of 2014 General Obligation bonds, in an amount not to exceed \$45,000,000, and for a term beginning as of February 1, 2018, and ending December 31, 2025.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This proposed Agreement shall assist the SFMTA in achieving the following of its strategic goals:

Goal 1: Create a safer transportation experience for everyone.

Objective 1.1: Achieve Vision Zero by eliminating all traffic deaths.

Objective 1.2: Improve the safety of the transit system.

Objective 1.3: Improve security for transportation system users.

Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.1: Improve transit service.

Objective 2.2: Enhance and expand use of the city's sustainable modes of transportation.

Objective 2.3: Manage congestion and parking demand to support the Transit First Policy.

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

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DESCRIPTION

In November 2014, San Francisco voters approved the \$500 million Transportation and Road Improvement General Obligation Bond (2014 GO Bond).

The City will provide up to \$45 million, which represents half the cost for design and construction of canopies that are part of the Canopy Project, using proceeds from the sale of the second and future issuances from the 2014 GO Bond.

On May 16, 2017, the SFMTA Board of Directors adopted Resolution No. 170516-065, which recommended, among other things, that the Board of Supervisors appropriate \$3 million from the second issuance of GO Bond sale proceeds for the Canopy Project. On February 01, 2018, the City approved Resolution No. 17-18, which authorized the sale of Series 2018B GO Bonds from the 2014 Bond, in an amount not to exceed \$177,000,000. Subsequently on February 9, 2018, the City approved Ordinance No. 19-18, which appropriated \$3 million from the sale of the second issuance of the 2014 GO Bond for the Canopy Project.

Under the Canopy Project, BART intends to install canopies above the entrances to the BART/Muni stations along Market Street as required by State code to protect newly installed escalators from weather-related damage and to enhance safety. The canopies are going up in conjunction with the Market Street Escalators Renovation Project that will install and replace 41 escalators in downtown San Francisco. In March 2019, the BART Board of Directors awarded a \$96.5 million contract for the Escalators Renovation Project that will install and replace 41 escalators in downtown San Francisco. It is anticipated that BART can complete work on six escalators per year and the first escalators are expected to be delivered for installation in spring 2020. Under the maintenance agreement with BART, SFMTA will fund \$34 million of the escalator project, which represents half of the cost of the shared station elevators.

The canopies will not only protect the new escalators from the wear-and-tear of elements like rain and wind-swept debris, they will provide an added layer of station security and cleanliness through motorized gates that allow the entrances to be locked at the street level when stations are closed. Each canopy includes a real-time digital display that shows train arrival times, a retractable gate, LED lighting and security cameras. BART estimates that the Canopy Project will be completed by the end of 2025.

In November 2018, BART opened the first two canopies above the entrances to the Powell Street Station (north side of Market and Ellis Streets) and the Civic Center Station (south side of Market and 7th Streets). The two canopies were built as a pilot project. The remaining canopies will be installed at 19 BART/Muni entrances (Embarcadero, Montgomery, Powell, and Civic Center). BART intends to include three options in the contract (not included in the \$90 million estimated project cost) that may be exercised in coordination with the City's Civic Center Public Realm and Better Market Street projects which may affect the entrances and if funding is available as follows:

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- Option 1: Two street level canopies at Powell Street Station (which may be jointly agreed by BART and the City to be closed)
- Option 2: One new street level canopy at the UN Plaza entry of Civic Center Station (where the City is contemplating constructing a building that would take the place of the canopy)
- Option 3: Incorporation of patterned art into the ceilings of the canopies.

The SFMTA will serve as the fiscal agent for disbursement of these bond proceeds on behalf of the City. The Agreement establishes how the SFMTA will disburse and administer the GO Bond proceeds for the Canopy Project and BART's role in implementing the project, including maintaining records of expenditures, and providing reports in order to obtain reimbursement from the SFMTA. The Agreement also sets forth dispute resolution provisions and remedies in the event of any default by the parties.

STAKEHOLDER ENGAGEMENT

Open houses were held at Powell and Civic Center stations, along with in-station outreach and surveys in December 2014 and April 2015. A public meeting was held on May 16, 2018 in the San Francisco Main Library to provide the public an opportunity to learn more about the project, discuss project features with project staff, and collect public comments on the Draft Initial Study/Mitigated Negative Declaration. BART staff have met with city stakeholders including SFMTA, Public Works, City Planning, Mayor's Office, Police and Fire departments along with the Civic Center Community Benefits District, Arts Commission, and accessibility groups.

ALTERNATIVES CONSIDERED

The agreement is required to make the funds appropriated by the Board of Supervisors available to BART. No other alternative was considered.

FUNDING IMPACT

The City's Board of Supervisors has appropriated \$3 million from the sale of the second issuance of GO Bonds for the Canopy Project (Ordinance No. 19-18). Other disbursements of GO Bond proceeds for the Project are planned for the future as additional GO Bonds are issued and sold. This Agreement will cover all future disbursements of GO Bond proceeds for the Canopy Project, as the bonds are sold and the funds are appropriated by the Board of Supervisors. The GO Bond proceeds will be reduced by the actual costs incurred for issuance of the bonds, when known.

Previously, BART has estimated that the Canopy Project would cost \$60 million, to be split equally between BART and the City (\$30 million each). BART's current estimated cost is \$90 million (\$45 million each). According to BART, the project cost has increased due to recent cost estimates reflecting current market conditions, e.g. Bay Area labor shortages, material tariffs, escalation. BART also reevaluated the Project schedule and project risks based on the pilot canopy project.

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Subject to approval and appropriation by the City, the agreement allows for the GO Bond to cover up to \$45 million of the City's share.

ENVIRONMENTAL REVIEW

On December 21, 2015, BART filed a Notice of Exemption under the California Environmental Quality Act (CEQA) for Canopy/Escalator Replacement Project – Powell Street and Civic Center Station (pilot project for two canopies at Powell Station and one canopy at Civic Center Station, along with escalator improvements), as defined in Title 14 of the California Code of Regulations Section 15301.

On June 28, 2018, the BART Board of Directors adopted the CEQA findings for the entire BART Market Street Canopies and Escalators Modernization Project, including the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, and approved the entire BART Market Street Canopies and Escalators Modernization Project.

The proposed agreement is within the scope of the Canopy/Escalator Replacement Project – Powell Street and Civic Center Station exemption and the BART Market Street Canopies and Escalators Modernization Project Mitigated Negative Declaration.

Copies of the CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Bay Area Rapid Transit District at 300 Lakeside Drive, Oakland, and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Since this Agreement will involve the expenditure of more than \$10 million, the Board of Supervisors will have to approve the agreement under Charter Section 9.118.

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute the Agreement No. 2019-63, Administration of Capital Funding for the BART/Muni Market Street Entrance Modernization Project, with BART, to fund half of the cost of installing canopies over the four BART/Muni station entrances on Market Street with proceeds from the sale of the second issuance of 2014 General Obligation bonds, and any future issuances of General Obligation bonds, in an amount not to exceed \$45,000,000, and for a term beginning as of February 1, 2018, and ending December 31, 2025.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Under the Bay Area Rapid Transit/Muni Market Street Entrance Modernization Project (Canopy Project), Bay Area Rapid Transit intends to install canopies above the entrances to the Bay Area Rapid Transit/Muni stations along Market Street as required by State code to protect newly installed escalators from weather-related damage and to enhance safety; and

WHEREAS, The canopies are going up in conjunction with the Market Street Escalators Renovation Project, which will install and replace 41 escalators in downtown San Francisco, beginning in spring 2020; and

WHEREAS, The canopies will not only protect the new escalators from the wear-and-tear of elements like rain and wind-swept debris, they will provide an added layer of station security and cleanliness through motorized gates that allow the entrances to be locked at the street level when stations are closed; and

WHEREAS, In November 2018, as a pilot project, Bay Area Rapid Transit opened the first two canopies over the Bay Area Rapid Transit/ Muni entrances on Market Street above the Powell Street Station (north side of Market and Ellis Streets) and above the Civic Center Station (south side of Market and 7th Streets); and

WHEREAS, Canopies will be installed at 19 remaining Bay Area Rapid Transit and San Francisco Municipal Transportation Agency entrances above the four downtown San Francisco stations (Embarcadero, Montgomery, Powell, Civic Center); and

WHEREAS, In November 2014, San Francisco voters approved the \$500 million Transportation and Road Improvement General Obligation Bond; and

WHEREAS, On May 16, 2017, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 170516-065, which recommended, among other things, that the Board of Supervisors appropriate \$3 million from General Obligation Bond sale proceeds to the San Francisco Municipal Transportation Agency to be used to satisfy a portion the City's contribution to Bay Area Rapid Transit for upgrades for the Canopy Project; and

WHEREAS, On February 1, 2018, the City approved Resolution No. 17-18, which authorized the sale of Series 2018B General Obligation Bonds from the 2014 Bond, in an amount not to exceed \$177,000,000; and

WHEREAS, On February 9, 2018, the City approved Ordinance No. 19-18, which appropriated \$3 million from the second issuance and sale of the 2014 General Obligation Bond to satisfy a portion of the City's contribution to Bay Area Rapid Transit for the Canopy Project;

and

WHEREAS, Other disbursements of General Obligation Bond proceeds for the Canopy Project are planned for the future as additional General Obligation Bonds are issued and sold; and

WHEREAS, The San Francisco Municipal Transportation Agency will be the fiscal agent for disbursement of the General Obligation Bond proceeds; and

WHEREAS, On December 21, 2015, Bay Area Rapid Transit filed a Notice of Exemption under the California Environmental Quality Act for Canopy/Escalator Replacement Project – Powell Street and Civic Center Station (pilot project for two canopies at Powell Station and one canopy at Civic Center Station, along with escalator improvements), as defined in Title 14 of the California Code of Regulations Section 15301; and

WHEREAS, On June 28, 2018, the Bay Area Rapid Transit Board of Directors adopted the California Environmental Quality Act findings for the entire Bay Area Rapid Transit Market Street Canopies and Escalators Modernization Project, including the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, and approved the entire Bay Area Rapid Transit Market Street Canopies and Escalators Modernization Project; and

WHEREAS, This proposed Agreement is within the scope of the Canopy/Escalator Replacement Project – Powell Street and Civic Center Station exemption and the Bay Area Rapid Transit Market Street Canopies and Escalators Modernization Project Mitigated Negative Declaration; and

WHEREAS, Copies of the California Environmental Quality Act determinations are on file with the Secretary to the San Francisco Municipal Transportation Agency Board of Directors and may be found in the records of the Bay Area Rapid Transit District at 300 Lakeside Drive, Oakland, and is incorporated herein by reference; and

WHEREAS, The proposed Agreement sets forth the terms and conditions for disbursement of the already issued General Obligation Bond proceeds for the Canopy Project and future disbursements to the Canopy Project up to a total of \$45 million, pending City Board of Supervisors approval and appropriation of future issuances of General Obligation Bonds; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board has reviewed and considered the Canopy/Escalator Replacement Project – Powell Street and Civic Center Station exemption and the Bay Area Rapid Transit Market Street Canopies and Escalators Modernization Project Mitigated Negative Declaration and record as a whole, finds that the exemption and Mitigated Negative Declaration are adequate for the Board's use as the decision-making body for the actions taken herein relative to construction of the Projects, and incorporates the California Environmental Quality Act findings by this reference as though set forth in this Resolution; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board further finds that since the exemption and Mitigated Negative Declaration were finalized, no changes have occurred in the Projects or in the circumstances under which the Projects would be implemented that would cause new significant impacts or a substantial increase in the severity of impacts identified and analyzed in the Mitigated Negative Declaration, and that no new information has emerged that would materially change the analysis or conclusions set forth in the Mitigated Negative Declaration; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Agreement No. 2019-63, Administration of Capital Funding for the Bay Area Rapid Transit/Muni Market Street Entrance Modernization Project, with the San Francisco Bay Area Rapid Transit District, to fund half of the cost of installing canopies over the four Bay Area Rapid Transit/Muni station entrances on Market Street with proceeds from the sale of the second and future issuances of 2014 General Obligation Bonds, in an amount not to exceed \$45,000,000, and for a term beginning as of February 1, 2018, and ending December 31, 2025; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board recommends that the Board of Supervisors approve this Agreement; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board authorizes the Director of Transportation to enter into any amendments or modifications to the Agreement (including, without limitation, the Attachments to the Agreement) that the Director of Transportation determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Agreement or this Resolution, and are in compliance with all applicable laws, including the City's Charter.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2019.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT

Between the

CITY AND COUNTY OF SAN FRANCISCO,
through its
MUNICIPAL TRANSPORTATION AGENCY

and the

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

**Regarding Administration Of Capital Funding
For The BART/Muni Market Street Entrance Modernization Project**

Contract No. SFMTA-2019-63

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Attachment A – Sample Reimbursement Request

Attachment B – Scope, Schedule, Budget

AGREEMENT

Between the

CITY AND COUNTY OF SAN FRANCISCO,
through its
MUNICIPAL TRANSPORTATION AGENCY

and the

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

**FOR ADMINISTRATION OF CAPITAL FUNDING
FOR THE BART/MUNI MARKET STREET ENTRANCE
MODERNIZATION PROJECT**

Contract No. SFMTA-2019-63

This Agreement (Agreement) is made this ____ day of _____, 2018, in the City and County of San Francisco, State of California, between the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (City or SFMTA) and San Francisco Bay Area Rapid Transit District (BART), a rapid transit district organized and existing under the laws of the State of California.

RECITALS

A. The City will provide up to \$45,000,000 (to be reduced by the actual costs incurred for issuance of the bonds, when known, and costs of SF Police Department (SFPD) support) for design and construction of canopies that are part of the BART/Muni Market Street Entrance Modernization Project (Canopy Project or Project), using proceeds from the sale of General Obligation (GO) Bonds approved by the voters as Proposition A in November 2014 (the 2014 San Francisco Transportation and Road Improvement Bond or 2014 Bond). As of the Effective Date, there have been two issuances of GO Bonds from the 2014 Bond—in July 2015 and February 2018). The Canopy Project will be financed from the second and future issuances of GO Bonds from the 2014 Bond. The SFMTA will be the fiscal agent for disbursement of the GO Bond proceeds. Bond proceeds must be spent within three years of issuance.

B. Under the Canopy Project, BART intends to install canopies above the entrances to the BART/Muni stations along Market Street as required by State code to protect newly installed escalators from weather-related damage and to enhance safety. The canopies will extend over the City's right-of-way.

C. On May 16, 2017, the SFMTA Board of Directors adopted Resolution No. 170516-065, which requested, among other things, that the City's Board of Supervisors appropriate \$3,000,000 from the second issuance of GO bond proceeds for the Canopy Project. On February 1, 2018, the City approved Resolution No. 17-18, which authorized the sale of Series 2018B GO Bonds from the 2014 Bond, in an amount not to exceed \$177,000,000. Pursuant to Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue

Code of 1986, the City, in Resolution No. 17-18, declared its official intent to reimburse prior expenditures with the proceeds of a subsequent borrowing. Reimbursement for prior hard cost expenditures is limited to expenditures incurred within 60 days prior to Resolution No. 17-18; for soft costs, no later than three years from the date the expenditures by BART are paid.

D. On February 9, 2018, the City approved Ordinance No. 19-18, appropriating \$3,000,000 from the sale of the second issuance of GO Bonds for the Canopy Project (Ordinance No. 19-18).

E. Other disbursements of GO Bond proceeds for the Project are planned for the future as additional GO Bonds are issued and sold. The parties intend that this Agreement cover all future disbursements of GO Bond proceeds for the Project, as the bonds are sold and the funds are appropriated by the Board of Supervisors.

F. On December 21, 2015, BART filed a Notice of Exemption under the California Environmental Quality Act (CEQA) for Canopy/Escalator Replacement Project – Powell Street and Civic Center Station (pilot project for two canopies at Powell Station and one canopy at Civic Center Station, along with escalator improvements), as defined in Title 14 of the California Code of Regulations Section 15301. The BART Board of Directors adopted the CEQA findings for the entire Project, including the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, and approved the Project on June 28, 2018.

G. This Agreement sets forth the terms and conditions for disbursement of GO Bond proceeds to BART for the Project.

In accordance with the above understandings, the City and the BART agree as follows:

I. TERM; EFFECTIVE DATE

A. Term. This Agreement will commence as of February 1, 2018, and will terminate on December 31, 2025, unless earlier terminated under the terms of this Agreement.

B. Effective Date. This Agreement will be effective on the date it is fully executed and funds are certified by the San Francisco Controller's Office.

II. PROJECT; USE OF FUNDS.

The full funding plans, timelines, and budgets for the Project are included as Attachment B. GO Bond proceeds may be used for the design and construction contracts and to cover associated staff time and expenses for management and oversight of the Project.

III. CITY/SFMTA RESPONSIBILITIES

A. Disbursement of Project Funds. The SFMTA will disburse funds for the Project as set forth below. As provided in the column entitled "2014 San Francisco Transportation and Road Improvement Bond (SF GO Bond)" in Attachment B, and provided that three years have not elapsed since the issuance of bonds for which reimbursement of bond proceeds is requested, the SFMTA will disburse an amount not to exceed \$45,000,000 (less actual costs incurred for issuance of the bonds and costs for SFPD support) of the GO Bond proceeds, inclusive of the initial \$3,000,000 (less actual bond issuance costs and costs for SFPD support) disbursement, for expenditures incurred for the Canopy Project, subject to (1) prior issuance and sale of sufficient GO Bonds to reimburse such expenditures; (2) an acceptable invoice submitted by BART, with documentation of costs incurred; and (3) compliance with BART's responsibilities, as set forth below. The SFMTA will not reimburse any contractor

retention withheld by the BART until such retention is authorized by BART to be paid to the contractor or others to whom said funds may be legally owed. The SFMTA will only provide funds for implementation of the Project if BART has obtained CEQA clearance for such implementation.

B. Eligible Capital Costs. The SFMTA will reimburse BART for those services and expenses required to perform the work in accordance with the amounts approved by the City for disbursement. Capital expenses eligible for reimbursement shall be in accordance with the U.S. Department of Transportation's "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 1201 (adopting 2 CFR part 200). The SFMTA may only reimburse eligible construction costs incurred beginning 60 days prior to final approval of the Board of Supervisors resolution authorizing the sale of the GO Bonds, or as otherwise specified in the resolution. The GO Bond proceeds provided pursuant to this Agreement shall not be used to pay for soft costs in an amount that exceeds 25 percent of the total GO Bond funds used for the Canopy Project. Soft costs are any costs other than direct construction costs (labor and materials), such as architectural, engineering, financing, environmental, planning, staff costs, and other pre- and post-construction expenses.

C. Review and Payment of Invoices. BART shall forward each request for reimbursement to the SFMTA, attention: Jonathan Rewers, Senior Manager of Capital Finance. The SFMTA will make payment to BART for eligible and approved expenses within 30 days of receipt of BART's invoice, less BART's share of costs for issuance of the bonds. The SFMTA may also invoice BART for its share of costs for off-duty San Francisco Police Department support hired to provide security for the Canopy Project.

D. Issuance of Permits. The City, through San Francisco Public Works, will issue minor sidewalk encroachment, excavation, and night noise permits, as applicable. The SFMTA is responsible for issuing any required traffic permits, and determining whether the work will necessitate rail and overhead contact system (OCS) clearances. The City will use its best efforts to coordinate its departments to expedite and consolidate permitting approvals.

IV. BART RESPONSIBILITIES

A. Cost Estimates. Before incurring costs for which reimbursement is claimed under this Agreement, BART shall provide cost estimates to the City for review.

B. Implementation of the Projects. BART will be responsible for using funds received under this Agreement for the purposes, and in accordance with the terms, set forth in this Agreement and any amendments thereto. Unless BART submits a status report with an invoice (as required under Subsection E.5 below) during the applicable period, BART shall provide written status reports to the SFMTA regarding the Project on a quarterly basis, beginning October 1, 2019.

C. City Requirements. BART shall comply with all applicable City permitting and review processes for installation of the canopies.

D. Recordkeeping; Reporting. Unless otherwise directed by the SFMTA, BART shall maintain the original records of all procurements, payments and contract expenses related to the Projects during the term of this Agreement, and shall retain such records for a minimum of three years following completion of the Project, or longer if required by federal or other regulatory agencies. BART shall allow SFMTA, or its agents, to review and inspect said records during business hours to ensure compliance with such requirements, and to audit the books, records, and accounts of BART and its contractors, if necessary. Upon request, the BART shall provide SFMTA, or its agents, with copies of any records in its files relating to procurements and other expenditures for the Project. BART shall support the SFMTA, or its agents, in reporting out the project details to the City's General Obligation Bond Oversight Committee (GOBOC),

providing documents to or meeting with auditors, or assisting with any other bond-related reporting

E. Requests for Reimbursement. BART shall submit requests for reimbursement (see sample in Attachment A) no later than 30 days after the end of each quarter. BART shall not submit (and the City will not pay) any requests for reimbursement more than three years from the date of issuance of the GO Bonds series from which the reimbursement is requested. Requests shall include a brief description of the work performed during the billing period and the following supporting documentation in electronic format:

1. A detailed schedule of expenditures for the period that includes the date, amount and purpose the expenditures incurred.
2. Copies of paid invoices for non-payroll expenditures.
3. Copies of payroll registers to support salaries and fringe benefits (if requested).
4. For purposes of complying with bond requirements, completion of an attestation by an officer indicating the appropriateness and eligibility of the capital expenses (in accordance with Section III.B above regarding eligible capital expenses).
5. An updated narrative status report of the work (the most recent report presented to BART will suffice if it is no more than 30 days old).

V. CERTIFICATION; APPROPRIATION OF FUNDS

A. Risk of Non-Appropriation of Funds. This Agreement is subject to the budget and fiscal provisions of the City Charter. City will have no obligation to make appropriations for this Agreement should the City fail to appropriate the funds for the Project. BART also acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors.

B. Certification of Controller; Guaranteed Maximum Costs. No funds will be available under this Agreement until prior written authorization certified by the Controller. The SFMTA agrees to issue a written notice to proceed to BART when the Controller has certified to the availability of funds. Notices to proceed will be issued as funds are certified by the Controller and shall specify the funds that have been certified. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code:

1. City's obligations hereunder will not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
2. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request BART to perform services or to provide materials, equipment and supplies that would result in BART performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay BART for services, materials, equipment or supplies that are provided by BART which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City.
3. City and its employees and officers are not authorized to offer or promise to BART additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein will require lawful approval and certification by the Controller. City is not

required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

4. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

C. Termination for Non-appropriation of Funds. This Agreement will automatically terminate, without penalty, liability or expense of any kind to City, at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of any fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the fiscal year. Notwithstanding the foregoing, SFMTA agrees to reimburse BART for eligible costs incurred prior to or as a result of such termination.

VI. INDEMNIFICATION

A. SFMTA agrees to indemnify, save harmless and defend BART, its officers, agents, and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of SFMTA, its officers, agents, employees and contractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of BART, its officers, agents, or employees.

B. BART agrees to indemnify, save harmless and defend SFMTA, its officers, agents and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of BART, its officers, agents, employees and contractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of SFMTA, its officers, agents, or employees.

C. The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code, and are intended by the parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

VII. DEFAULT

A. BART Default. BART may be in default of this Agreement for the following acts: submitting a false or misleading statement or document to the City; failing to comply with applicable laws, after 30 days to cure such breach; or failing to perform other material covenants of this Agreement, including, but not limited to, adhering to the schedule for expenditure cash flow, as provided in Exhibit B.

B. Remedies Upon Event of BART Default. Upon and during the continuance of a default, City may do any of the following, individually or in combination with any other remedy below or as provided under law:

1. Termination. City may terminate this Agreement for cause, as provided in Section VIII.A.

2. Withholding of Project Funds. City may withhold all or any portion of Go Bond funds not yet disbursed, regardless of whether BART has previously submitted a request for such funds or whether City has approved the disbursement of the funds under a prior request for such funds. Any funds withheld pursuant to this Section and subsequently disbursed to BART after cure of applicable Events of Default will be disbursed with interest.

3. Return of Go Bond Funds. City may demand the immediate return of any previously disbursed Go Bond funds that have been claimed or expended by BART in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

C. City Default

1. Failure to Disburse GO Bond Funds. City's failure to disburse Go Bond funds in accordance with Section III of this Agreement shall constitute a City default for cause provided such default continues for a period of 30 days after written notice of the Default from BART to City.

2. No Default. For the purposes of this Section VII.C, each of the following shall not constitute a City default:

a. Where City's failure to perform under Section III results from or is caused by BART's failure to perform any other material term, covenants or condition contained in the Agreement.

b. Where City's failure to perform under Section III results from or is caused by a Force Majeure Event, as defined in Section IX.F below.

3. BART Remedies. Subject to the provisions of Section X.G, for any uncured City default, BART may file an action to collect any and all payments then due to BART under this Agreement, together with applicable interest thereon.

VIII. TERMINATION

A. Termination for Cause. This Agreement may be terminated by either party for cause. In the event of such termination, BART will be paid or credited for eligible and approved expenses relating to the Projects that were incurred by BART prior to the date of such termination specified in such notice.

B. Termination for Convenience. This Agreement may be terminated for convenience by either party at the end of a fiscal year by giving 90 days prior written notice to the other party (by March 31 of that fiscal year).

IX. NOTICES TO THE PARTIES

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and will be addressed to the following persons, who will be the contact persons for each party:

To City: San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th floor
San Francisco, CA 94103
Attn: Jonathan Rewers
Senior Manager, Budget, Financial Planning and Analysis
jonathan.rewers@sfmta.com

To BART: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, LKS-2100
Oakland, CA 94612-2688
Attn: Tracy Johnson
Chief Transit System Development Officer

BART or SFMTA shall notify the other party at least 30 days prior to changing the designated contact person. Any notice of default must be sent by registered mail or other guaranteed delivery service.

X. OTHER CONDITIONS

A. No Assignment. No party can assign, transfer or otherwise substitute its interest or obligations under this Agreement without the written consent of the other party.

B. Modifications. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required under law.

C. Submitting False Claims; Monetary Penalties. BART agrees to comply with the requirements of San Francisco Administrative Code Section 21.35. Under such Section 21.35, any contractor, subgrantee or consultant who submits a false claim will be liable to City for three times the amount of damages which City sustains because of the false claim. A contractor, subgrantee or consultant who submits a false claim will also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A contractor, subgrantee or consultant will be deemed to have submitted a false claim to City if the contractor, subgrantee or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim. The parties acknowledge and agree that BART will not be responsible for penalties or damages resulting from a false claim submitted by a contractor of BART provided that BART has made this provision applicable to such contractor.

D. Relationship of the Parties. It is understood that this is an Agreement by and between independent contractors and is not intended to and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.

E. No Waiver. No waiver of any default or breach of any covenant of this Agreement by either party to this Agreement can be implied from any omission by the other party to take action on account of such default if such default persists or is repeated. No express waiver will affect any default not specified in the waiver, and the waiver will be operative only for the time or extent stated. The Consent or approval of any act by either party will not be deemed to waive or render unnecessary consent or approval to any subsequent, similar acts.

F. Force Majeure Event. An inability for any party to perform under this Agreement that the party demonstrates could not have been avoided by the party's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of the party, its suppliers, or contractors to procure labor; freight embargo; accident; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; the prevention by the one party of the other party from commencing or prosecuting any of its duties

under the Agreement; inability of a party to obtain applicable permits and licenses from relevant governmental authorities; change of law that prevents implementation of the Program; a judgment, order, or decree issued by a court preventing implementation of the Program; or failure of public utility service outside the control of the party.

G. Dispute Resolution. If a question arises regarding an invoice, interpretation of this Agreement or its performance, or the alleged failure of a party to perform, the party raising the question or making the allegation must give prompt written notice of the issue to the other party. The appropriate project managers from BART and the SFMTA, or other designated staff, shall in good faith meet with each other to resolve the contested issues. If the project managers from the SFMTA and BART are unable to resolve the dispute, the matter shall be forwarded to the Senior Manager, Capital Finance, for the SFMTA and the applicable Group Manager for BART. A final administrative review would be to the Chief Financial Officer for the SFMTA and the Chief Planning, Development and Construction Officer for BART. If they are unable to resolve the dispute, the Parties may mutually agree to pursue alternative dispute resolution. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

H. Compliance with Laws. In the performance of this Agreement, each party shall comply with all applicable local, state and federal laws, including the City's Charter.

I. Governing Law. The formation, interpretation and performance of this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles.

J. Headings. All article and section headings and captions contained in this Agreement are for reference only and will not be considered in construing this Agreement.

K. Entire Agreement. This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

L. Severability. Should the application of any provision of this Agreement 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 Agreement will not be affected or impaired thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

M. Successors; No Third-Party Beneficiaries. The terms of this Agreement will be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, will be construed to give any person or entity (other than the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

N. Incorporation of Recitals. The Recitals are incorporated into this Agreement.

O. Survival of Terms. The obligations of the parties and the terms of the following provisions of this Agreement will survive and continue following expiration or termination of this Agreement: Sections III.A-D; IV.C-E; VI; VII; X.C,D,G-I,K,L,O.

This Agreement has been executed as of the date first noted above.

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

**SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT**

By: _____
Edward D. Reiskin
Director of Transportation

By: _____
Grace Crunican
General Manager

AUTHORIZED BY:

**MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

APPROVED AS TO FORM:

Office of the General Counsel

Resolution No: _____
Adopted: _____
Attest: _____

By: _____
Byron K. Toma
Attorney

Roberta Boomer, Secretary
SFMTA Board of Directors

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

Clerk of the Board

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

Attachment A – Sample Reimbursement Request

[Insert Letterhead here]

[Insert Date Here]

[Insert Invoice # Here]

Attention: Jonathan Rewers
 San Francisco Municipal Transportation Agency
 One South Van Ness Avenue, 8th floor
 San Francisco, CA 94103

Description of Services: *Contract payments for projects.*

	<u>Expenditures</u>	<u>Remaining Balance</u>
Total Amount of Award		\$
Total Expenditures as of [date]		
Less: Previous Billings		
Total Amount of this Billing		
Balance available after this billing		\$

Maximum Soft Cost Billable

Soft Cost Expenditures as of [date]		
Less: Previous Soft Cost Billings		
Amount of Soft Costs this Billing		
Soft Cost balance available after this billing		

Detail of Expenditures (copies of invoices & other documents supporting expenditures attached)						

Narrative Report

Percent complete on conceptual design phase:
Current expected completion date for conceptual design phase:
Project status:
Project activities since last invoice:

Approved by BART

BART attestation: By signing below I attest that this invoice includes only eligible capital expenses incurred exclusively for the Market Street Canopy Projects. I am authorized on behalf of BART to sign this attestation:

(Signature, date, & Print Name and title) _____
Date

Approved by SFMTA

(Signature, date, & Print Name and title) _____
Date

Attachment B – Scope, Schedule, Budget

Project Name:	BART/Muni Market Street Entrance Modernization
Implementing Agency:	San Francisco Bay Area Rapid Transit District (BART)
Project Location:	Embarcadero, Montgomery, Powell, & Civic Center BART/Muni Stations
Supervisory District(s):	3, 6
Project Manager:	Mark Dana
Phone Number:	(510) 287-4745
Email:	mdana@bart.gov
Brief Project Description (50 words max):	Design and construction of entrance canopies at the four downtown BART/Muni stations (Embarcadero, Montgomery, Powell, Civic Center).
Detailed Scope (may attach Word document): Please describe the project scope, benefits, coordination with other projects in the area (e.g. paving, MuniForward, Vision Zero), and how the project would meet the Prop AA screening and prioritization criteria as well as other program goals (e.g., short-term project delivery to bring tangible benefits to the public quickly). Please describe how this project was prioritized. Please attach maps, drawings, photos of current conditions, etc. to support understanding of the project.	The Market Street Entrance Modernization Project will provide new, street-level canopies at each of the entrances. The current, open design of the existing entrances does not provide protection for the escalators from weather. The scope consists of off-site fabrication and the installation of a new fiber reinforced plastic ceiling and support system for the canopies with a glass enclosure, new lighting system and light fixtures, and a real-time display unit. The later-installed canopies will incorporate lessons learned from the canopy installations at Powell and Civic Center Stations.
Prior Community Engagement/Support (may attach Word document): Please reference any community outreach that has occurred and whether the project is included in any plans (e.g. neighborhood transportation plan, corridor improvement study, station area plans, etc.).	This is an approved project to be funded by proceeds of the 2014 SF Prop A GO Bond, along with ongoing coordination with SFMTA, SFPW, Better Market Street

BART/Muni Market Street Entrance Modernization

PROJECT COST ESTIMATE*		FUNDING SOURCE BY PHASE	
Phase	Cost	2014 San Francisco Transportation and Road Improvement Bond (SF GO Bond)**	BART Prop 1B and Measure RR
Planning/Conceptual Engineering	\$2,000,000	\$1,000,000	\$1,000,000
Environmental Studies (PA&ED)			
Design Engineering (PS&E)	\$3,500,000	\$1,750,000	\$1,750,000
Right-of-way			
Construction (incl. CM, PM @ 25%)	\$84,500,000	\$42,250,000	\$42,250,000
TOTAL	\$90,000,000	\$45,000,000	\$45,000,000

*Base contract only; does not include Options.

**Up to \$45,000,000 reduced by cost of issuance (est. \$675,000) and subject to appropriation by the City and County of San Francisco.

2014 SAN FRANCISCO TRANSPORTATION AND ROAD IMPROVEMENT BOND EXPENDITURES BY FISCAL YEAR (CASH FLOW)										
Phase	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	TOTAL
Planning/Conceptual Engineering	\$1,000,000									\$1,000,000
Environmental Studies (PA&ED)										
Design Engineering (PS&E)	\$750,000	\$1,000,000								\$1,750,000
Construction	\$1,000,000	\$1,800,000	\$4,000,000	\$8,000,000	\$8,000,000	\$8,000,000	\$6,000,000	\$4,500,000	\$950,000	\$42,250,000
TOTAL	\$2,750,000	\$2,800,000	\$4,000,000	\$8,000,000	\$8,000,000	\$8,000,000	\$6,000,000	\$4,500,000	\$950,000	\$45,000,000

BART/Muni Market Street Entrance Modernization

Partner Agencies: Please list partner agencies and identify a staff contact at each agency.	SFMTA, SFPW
Type of Environmental Clearance Required:	CEQA Categorical Exemption for pilot canopies, filed December 21, 2015; CEQA Neg. Dec. for remainder of project (approved June 28, 2018)

Project Delivery Milestones Phase*	Status	Work	Start Date		End Date	
	% Complete	In-house, Contracted, or Both	Quarter	Calendar Year	Quarter	Calendar Year
Planning/Conceptual Engineering (typically 30% design)	100%	both	3	2017	1	2018
Environmental Studies (PA&ED)	100%	both			2	2018
Design Engineering (PS&E)	65%	both	2	2018	2	2019
Right-of-way	0%	N/A	N/A	N/A	N/A	N/A
Advertise Construction	0%	both	3	2019	3	2019
Construction Period(e.g. NTP to Completion)	0%	both	2	2020	4	2025
Open for Use	N/A	N/A	N/A	N/A	4	2025