

Invitation for Proposal

Fiber & Wireless Commercial Opportunities

2017



San Francisco Bay Area Rapid Transit District (BART)
Commercial Communications Revenue Program
300 Lakeside Dr. 11th Floor
Oakland, CA 94612
TransitNetworks@bart.gov

WELCOME TO PROPOSERS

The San Francisco Bay Area Rapid Transit District (“District”, or “BART”) would like to welcome you to the Commercial Communications Revenue Program (“CCRP”) 2017 Invitation for Proposal. BART is seeking commercial proposals for licensed use of BART’s unique Bay Area assets for commercial fiber and wireless communications.

If your firm has interest in doing business with BART in the area of Fiber and Wireless Communications, please follow the instructions in this Invitation to submit a Proposal. Proposals will then be prioritized and ranked based on the responses to this Invitation.

This Invitation is seeking to identify revenue generating opportunities for BART. BART does not intend to finance the construction or pay any fees associated with license agreements stemming from this Invitation.

Qualified Proposers will demonstrate an ability to produce revenue for BART in constructing and/or operating communication networks on BART’s Right-of-Way.

This Invitation for Proposals will not lead to award of a contract. This process will identify and rank Proposals in a subsequent phase. Following BART’s evaluation, BART may enter into BART Commercial License Agreements (BCLAs) that are subject to, among other things, design review, permitting, insurance and the California Environmental Quality Act (CEQA) requirements.



Figure 1. Computer Design Rendering – New BART Rail Car – Bombardier

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1.1 Getting to Know BART

The San Francisco Bay Area Rapid Transit District (“District”, or “BART”) is a heavy-rail metro operator in the San Francisco Bay Area. BART operates service in 5 counties and more than 25 towns/cities. BART’s average weekday ridership is nearly 450,000 and total weekly ridership exceeds 2.4M passengers. BART connects to two international airports (SFO, OAK) and operates the subway systems in downtown San Francisco and Oakland. There are current extensions under construction toward San Jose, CA and Antioch, CA. By 2020, BART will operate nearly 150 miles of track, one-third of which is underground.

BART presents a unique commercial fiber and wireless opportunity. BART is a fixed heavy-rail operation – meaning that the entire Right-of-Way is fenced and not available to pedestrian and roadway traffic. In addition, as we say in transit, “where transit goes, community grows”. BART’s Right-of-Way extends directly through the densest housing and job markets in the San Francisco Bay Area. There are 1.4M households within 2km (1.24 miles) of BART.

BART also operates a tunnel network under the San Francisco Bay connecting San Francisco and Oakland. BART is soliciting proposals that include, among other things, combinations of commercial fiber and wireless initiatives that could be installed or added to existing facilities in the BART system, subject to District license agreements.

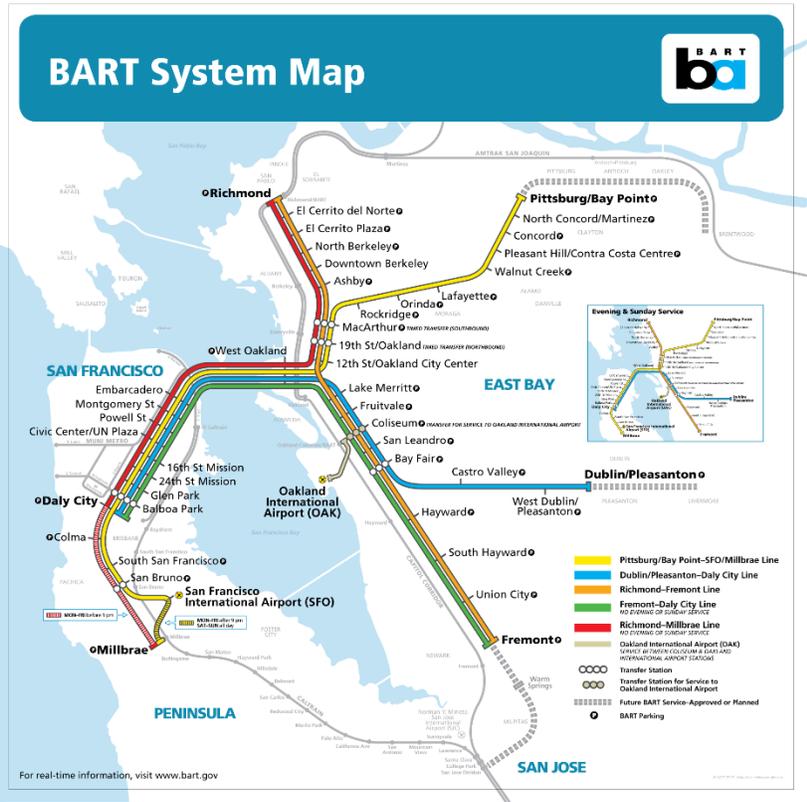


Figure 2. BART System Map

2.1 2017 Opportunities – Business Unit Categories (BUCs)

In this Invitation, BART is seeking to prioritize potential license agreement opportunities in four (4) distinct Business Unit Categories (“BUC” or “BUCs”). Proposers may elect to respond to any selection of BUCs listed. All BUCs will be scored according to the same general criteria.

The 2017 BUCs include:

- BUC 1: Underground Wireless – San Francisco Municipal Transportation Agency (SFMTA) Distributed Antenna System (DAS)
- BUC 2: Wayside Wireless Communications
- BUC 3: Station/Train Wireless – 45 Stations / 1,000 Cars
- BUC 4: Fiber Optics – 150 Miles

Sections 2.1.1-4 outline the details of each BUC. Proposers may select any portion of work within each BUC, and may also propose other service concepts or infrastructure ideas within each BUC. For instance, in “BUC 4: Fiber Optics – 150 Miles”, a Proposer may choose to only propose 10 miles of fiber optic cable at only 432 strands of fiber.

The BUCs are intended to frame the evaluation of proposals received. Each BUC contains a general scope of work – Proposers are encouraged to propose concepts that best suit their technologies and systems – However, the primary determining factor in prioritizing potential license agreements for 2017, will be revenue to BART.

2.1.1 BUC 1: Underground Wireless – SFMTA DAS

NOTE: All proposals in this BUC should be inclusive of all SFMTA tunnels. The anticipated on-air date for the SFMTA underground cellular system is on or before July 9, 2018. Design and implementation can begin immediately following execution of a license agreement with BART.

In 2017 BART executed an agreement with the San Francisco Municipal Transportation Agency (“SFMTA” or “MUNI”) to manage commercial fiber and wireless contracts in the SFMTA tunnels. These tunnels include the West Portal Tunnel, Sunset Tunnel and the Central Subway (marked in red in Figure 3 below).

This opportunity is immediately available. Proposers may include both fiber and wireless infrastructure in the SFMTA tunnels. All Proposers should assume that a cellular Distributed Antennae System (DAS), or similar, is required to support a neutral host environment for all major cellular carriers. BART will consider proposals that offer a “Neutral Host” or “Teaming” agreement, as well as a “Managed Service Provider” model for this BUC.

The SFMTA tunnels contain a limited amount of fiber optic cable, as well as a 1 5/8” Radiax Cable. The total distance is just under 10 miles. The tunnel bores are mixed single and double bores. All wireless systems proposed will be subject to interference and testing procedures to ensure that SFMTA wireless operational networks are not disturbed.

Proposers may propose utilizing the currently installed fiber, power and Radiax, or the construction of new infrastructure.

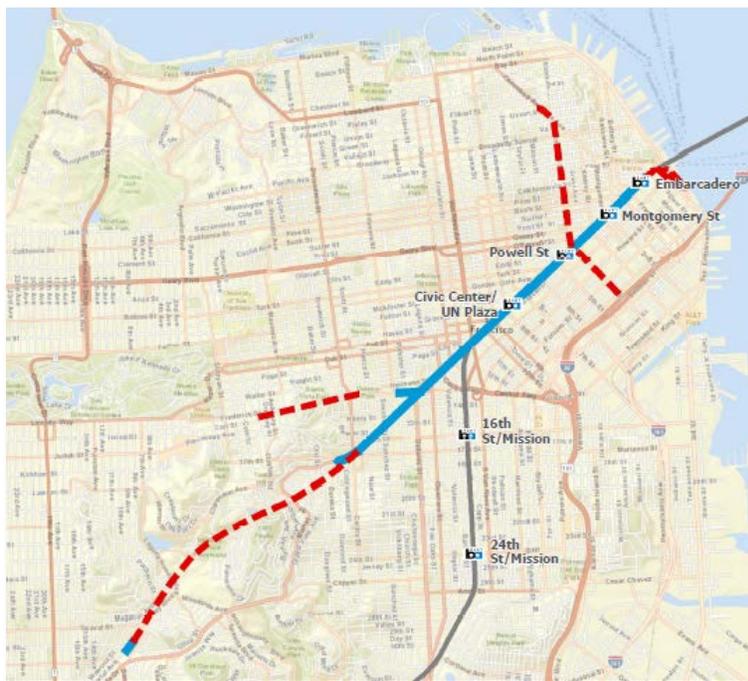


Figure 3. Blue (BART Property) and Red (SFMTA Tunnels) Sections indicate SFMTA DAS Desired Coverage.

2.1.2 BUC 2: Wayside Wireless Communications

NOTE: Proposals in this BUC may include any number of wayside solutions. The projected on-air date for wayside solutions is before Fall 2019.

BART has an operational need to deliver a variety of network services to moving trains along the BART Right-of-Way. Assuming that network connectivity is provided every 800 meters, BART estimates that it would take 167 wayside network locations to provide seamless connectivity along the Right-of-Way.

The construction of this network may provide support for both BART Operations and commercial services. BART is interested in exploring these combined features through proposals submitted in response to this Invitation. BART's operational interest in this network is within the 4.9 GHz & 5.8 GHz bands.

Where available, Proposer may propose licensing BART space in existing telecommunication rooms, power connections and fiber egresses points along the BART Right-of-Way.

Proposers may propose network infrastructure along the Right-of-Way that would provide BART and Proposer with the flexibility to accomplish mutual objectives.

BART's passenger density generates a high degree of burden on neighboring cellular infrastructure. This burden causes a degradation of network capacity for surrounding homes and businesses. As BART continues to construct new stations, and increase ridership, we believe it is imperative to promote high capacity wireless networks to support our patrons and neighbors. BART is interested in proposals offering wireless infrastructure that would help alleviate the local density demands near BART.

This Invitation for Proposals will not lead to award of a contract. This process will identify and rank Proposals. In a subsequent phase, following BART's evaluation, BART may enter into BART Commercial License Agreements (BCLAs) that are subject to, among other things, design review, permitting, insurance and the California Environmental Quality Act (CEQA) requirements.

2.1.3 BUC 3: Station/Train Wireless – 45 Stations / 1,000 Cars

NOTE: Proposals in this BUC should include all BART stations. The anticipated on-air date for stations is before Fall 2018. Proposals related to the rail cars are optional.

BART is seeking proposals for Station wireless services. Ideally, proposals should include the saturation of all floors of each station with location aware wireless networks. BART is interested in industry proposals for wireless services such as wayfinding, mobile device applications and mobile payment.

On average, each station is roughly 1,000 feet long and consists of 2-4 floors. Proposers may propose to utilize, where available, BART's existing conduit, Information Technology (IT) closets, power infrastructure and fiber back haul as needed.

In addition, BART has recently ordered a new fleet of vehicles. In the coming years, BART will replace the existing fleet of train vehicles with the new Fleet of the Future from Bombardier Transit Corporation. The new vehicles are equipped with wireless networking equipment. BART intends to use this wireless equipment to send operational signals to and from the trains.

If a proposal includes a combination of BUC 2 and BUC 3, Proposers may be able to extend high-bandwidth, secure, isolated and seamless wireless services to the new trains. If reasonably proposed, BART may elect to execute a design change order to the new Fleet of the Future to support commercial wireless services in the trains.

2.1.4 BUC 4: Fiber Optics – 150 Miles

NOTE: Proposals in this BUC may include any number of fiber strands and any length of mileage. The anticipated on-air date for fiber optics is before Summer 2018.

BART is seeking proposals for the construction of commercial fiber optic routes and egresses along the BART Right-of-Way. Proposals may include cable stand counts as high as 1,728 strands (6x 288 cables). However, 432 and 864 cables may be permitted in some areas of BART, although, 288 cables provide greater flexibility in physical clearance.

Since 1994, BART has been in the business of licensing Dark Fiber opportunities to commercial telecommunication firms. BART's unique footprint, provides an excellent long-haul Bay Area backbone – moving through 5 counties and 25 cities.

BART allows a wide variety of fiber pathway types in its Right-of-Way. Proposals may include low cost, wall-anchored installation methods such as “J-Hook” and “Snake Tray” or more complex fixed conduit, walker duct, or buried structure alternatives.

In general, BART prefers non-conductive, fiberglass core cable, such as Corning Single-Mode, Gel-Free, Loose Tube, Low Smoke Zero-Halogen, or similar – see standards below:

Fiber Optic Standards

*National Electrical Code® (NEC®) OFCR-LS, CSA OFC FT4-ST1;
Sunlight Resistant (SUN RES);
IEEE-383/IEEE-1202 flame test;
Suitable for Direct Burial (DIR BUR);
IEC 60332-3, IEC 60754-2, IEC 61034;
MSHA 30 CFR Part 7-K, Section 7.408
Design and Test Criteria ANSI/ICEA S-104-696; UL
13; UL 444; UL 1277; UL 1685; CSA C22.2 No. 230 and No. 232*

Where available, BART is prepared to consider proposals to license existing fiber pathways, or allow Proposers to propose the construction of new fiber pathways.

BART is interested in allocating 72 strands of dark fiber for future non-commercial operational purposes. If Proposers are jointly proposing BUC 2 and BUC 4 – BART is also interested in parallel dark fiber at each wayside pole location to support future attachment rights as described in BUC 2. Proposers should consider this request when calculating their revenue offer to BART.

3.1 Proposal Submission Instructions

Proposals can be brief. When structuring the proposal consider the high-level business objectives listed in Sections 3.1.1-2. BART is not expecting proposals to include a detailed design packet or site specific construction plans at this point.

3.1.1 General Inclusions

The following information should be included in each Proposal:

1. Firm's Qualifications, Experience & References
 - a. Years of Firm's Experience
 - b. Relevant Experience Examples & Core Businesses
 - c. Similar Project Success within the last 3 years
 - d. Number of projects using proposed solutions
 - e. Size of Firm and Availability of Resources
 - f. Geographic Reach of Firm
 - g. Financial Strength – Ability to complete scope of proposal
2. Firm's Key Personnel, Project Team and Organizational Structure
 - a. Include relevant work experience and qualifications for:
 - i. Project Manager
 - ii. Construction Manager
 - iii. System Integration Architect
 - iv. Other Relevant Personnel
 - b. Proposed Subcontractors
 - c. Roles and Responsibilities between BART and Proposer

3.1.2 BUC Specific Inclusions

The following information should be included for each BUC:

3. Proposed Revenue for BART over 20 Years
 - a. Total revenue to BART over 20 years
 - i. Explain assumptions in detail (*Such as up-front payments, fixed annual payments, revenue share, material benefits to BART*)
4. Proposed Services
 - a. Percentage of BUC participation (*100% BUC 1, 50% BUC 2, 100% BUC 3, 25% BUC 4*)
 - b. Proposed Customization and Development
 - c. Quality Assurance and Testing
 - d. Digital Advertising Strategy
 - e. Interoperability with BART
 - f. Financial Technology Strategy
5. Project Conceptual Design
 - a. Include a basic design of the proposed infrastructure. This design should include the “look and feel” of all fixed assets. This document is not a construction design document. Simple renderings or concept animations will suffice. Proposals

should describe the physical and visual impact of all proposed infrastructure. Proposers may include several options in this section.

6. Project Plan and Schedule
 - a. Project Management Methodology
 - b. Risk Management Methodology
 - c. High-Level Schedule
 - i. Assume that all wayside construction work will be done at night during non-revenue hours. Assume no more than 2 hours of work on weekday nights, 3 hours on Saturday morning and 5 hours on Sunday morning.
 - d. Design Modularity
 - e. Level of flexibility in accommodating other service providers on proposed infrastructure (neutral host capacity, bandwidth, passive/active connections, etc.)

3.1.3 Technical Questions

Proposers may contact BART to clarify any technical questions related to this Invitation for Proposal. Inquiries should be made to TransitNetworks@bart.gov to the attention of Greg Tedesco, Program Manager of BART's Commercial Communications Revenue Program (CCRP).

4.1 Review Schedule

All Proposals are due on or before **4pm PST on Monday April 10, 2017**.

Proposals should be electronically submitted to TransitNetworks@bart.gov,

SUBJECT: "CCRP PROPOSAL" or sent via courier to:

BART CCRP

300 Lakeside Dr. 11th Floor

Oakland, CA 94612

BART estimates that the initial review of the Proposals will be complete by Monday April 17, 2017. BART will then notify the top qualifying respondents on or before Friday April 21, 2017 and enter into final negotiations. BART expects to extend new 2017 license agreement opportunities by order of prioritized rank on or before Monday May 15, 2017. BART may elect to grant additional time to review Proposals if needed.

5.1 License Agreement Opportunities

BART will score and prioritize the Proposals and enter into BART Commercial License Agreements (BCLAs) according to the priority ranking established from this exercise. In general, BART intends to negotiate BART Commercial License Agreements (BCLAs) that establish terms and conditions as well as an expedited design and permitting phase to begin construction or installation.

This Invitation for Proposals will not lead to award of a contract. This process will identify and rank Proposals in a subsequent phase. Following BART's evaluation, BART may enter into BART Commercial License Agreements (BCLAs) that are subject to, among other things, design review, permitting, insurance and the California Environmental Quality Act (CEQA) requirements.

6.1 BART Sample Requirements

The following attached documents represent the typical requirements that a Proposer may be subject to, depending on infrastructure proposed, before entering into a BART Commercial License Agreement (BCLA). Proposers should expect that, if a license agreement is executed by the District, it may be subject to requirements substantially similar to the items listed below. Depending on the scope of what is proposed, there may be additional requirements added to the License Agreement.

The documents listed below are provided for information only.

Sample Documents Attached:

Application for Permit of Plan Review

General Terms and Conditions Relating to BART Permits

Insurance

Permit to Enter (Permanent Improvements)

Permit to Enter (Work)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



APPLICATION FOR PERMIT OR PLAN REVIEW (CONSTRUCTION)

Date: _____

Attention: Manager, Real Estate and Property Development Department

For BART use only

PERMIT No. _____

Application is made for permission to perform the following in the BART Right of Way:

Check all that applies:

- Excavate
Construct Temporary Improvement
Construction Permanent improvement
Permit to _____

Submitted Document

- Drawings - 6 sets (11x17 preferred)
Plans and Specs. - 6 sets
others _____ (6 sets)

Start Date _____

End Date _____

Estimated Duration _____

Detailed scope of work (describe in details all work requested for permit):

List/Describe type of Equipment to be used:

Approximate cost of work in the permit area \$ _____

Type of construction (check all that applies)

Type of Pipe

Underground

Surface

Surface type to be disturbed (if any) _____

Excavation

Length _____

Width _____

Depth _____

Conduit

Type of Conduit _____

No. of Ducts _____

Buried Cable _____

Others _____

Method of work: _____

Is the proposed work in the BART operating envelope? Yes No

Is the proposed Permit Area within 50 feet (Vertical or Horizontal) of Trackway? Yes No

If yes to any of the above, evidence of Railroad Protective Liability coverage may be required.

Applicant agrees to submit the As-built drawings (if required) after final inspection and sign-off. Failure to submit As-built may result in forfeiture of refundable deposit. Please allow 4 to 6 weeks for processing this application. Expect refundable deposit about 30 days after sign-off

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Environmental Review

Specify any review for CEQA _____

Identify any document certification _____

Project Approval Date _____

Specify any change to existing landscape or irrigation _____

Will any excavated material be transported off of Permit Area Yes No

Does the proposed work involve fuel or known hazardous material on BART premises? Yes No

If yes, please specify and/or explain (Including any fuel storage capacity).

Name of Applicant (print company or agency)

Joint construction applicant

Address (Print)

Address (Print)

By (authorized signature)

Phone

By (authorized signature)

Phone

Name & Title (Print)

Name & Title (Print)

For official use only

Permit No. _____

Date Issued: _____

Work Order No. _____

Reviewed by

ROW Management _____

Traction Power _____

Application receipt date: _____

Mechanical Engineering _____

Safety _____

Refundable deposit _____

Civil/ Engineering _____

Engineering Liaison _____

Completion date _____

Electrical Engineering _____

Field. Management _____

As-built submittal date _____

Electrical Engineering _____

Insurance Department. _____

Deposit Return Date _____

As-Built Drawings required Yes No

Location: _____ Inspector/ Safety Monitor's name _____

Line _____

Mile Post _____ Inspector/Safety Monitor Sign-off _____

Date: _____

Notes: _____

Applicant agrees to submit the As-built drawings (if required) after final inspection and sign-off. Failure to submit As-built may result in forfeiture of refundable deposit. Please allow 4 to 6 weeks for processing this application. Expect refundable deposit about 30 days after sign-off



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

GENERAL TERMS AND CONDITIONS RELATING TO UTILITY PERMITS

EXHIBIT "B"

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

1. DEFINITION:

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

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

2. REVOCABILITY AND MODIFICATION:

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

3. NEW WORK PERFORMED ON EXISTING PERMIT:

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

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

4. ACCEPTANCE OF PROVISIONS:

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

5. NO PRECEDENT ESTABLISHED:

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

6. NOTICE PRIOR TO STARTING WORK:

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

7. PERMIT AT SITE OF WORK:

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

8. PERMITS FROM OTHER AGENCIES:

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

9. PROTECTION OF TRAFFIC WHEN APPLICABLE:

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

10. RAIL CLEARANCE AT OR NEAR GRADE:

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

11. LIMIT OF EXCAVATION AT OR NEAR GRADE:

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

12. STANDARDS OF CONSTRUCTION:

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

13. APPROVAL BY BART:

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

14. CLEAN UP OF RIGHT-OF-WAY:

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

15. MAINTENANCE:

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

16. RESTORATION:

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

17. CARE OF DRAINAGE:

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

18. SUBMISSION OF PLANS:

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

19. EXPENSE OF INSPECTION, PREPARATION, AND ADMINISTRATION:

On installations made under request of Permittee which require the presence of any employee of BART as inspector, the cost of such inspection during the work shall be paid by Permittee upon presentation of bills therefor. In addition, Permittee agrees to promptly pay BART for costs involved in the preparation, administration and processing of the Permit and its provisions upon presentation of bills therefor per the fee schedule in Resolution No. 4989, adopted by the District's Board of Directors.

20. LIABILITY FOR DAMAGES:

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

21. FUTURE MOVING OF INSTALLATIONS:

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

22. ROUTINE MAINTENANCE OF PERMITTEE'S FACILITIES:

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

23. PIPES, CONDUITS AND MISCELLANEOUS FACILITIES:

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

24. POLES, WIRES, CABLES AND OVERHEAD STRUCTURES:

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

25. CLEARANCE OF TREES:

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

26. TRIMMING OF TREES:

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

27. SERVICE CONNECTIONS:

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

Permit No.
Permit Description:

INSURANCE

At all times during the life of this Permit, or as may further be required by this Permit, Permittee at its own cost and expense, shall provide the insurance specified as follows:

1. Evidence Required

At or before execution of this Permit, Permittee shall provide District with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Permittee's insurance complies with this Article, including a copy of all required endorsements. Permit number (?????????) shall be included in the space provided on the standard Certificate of Insurance form provided.

2. Notice of Cancellation, Renewal, Reduction or Material Change in Coverage.

All policies shall be endorsed to provide District with thirty (30) days prior written notice of any cancellation, reduction or material change in coverage. Notices shall be sent to the Department Manager, Insurance, San Francisco Bay Area Rapid Transit District, P. O. Box 12688, Oakland, California 94604-2688. The Permittee shall annually submit to the District's Department Manager, Insurance, certifications confirming that the insurance required has been renewed and continues in place (if required).

3. Qualifying Insurers

All policies shall be issued by California admitted companies which hold a current policy holders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

4. Insurance Required

- A. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as applicable.

1. Coverage shall include:
 - a) Premises and Operations;
 - b) Products/Completed Operations;
 - c) Broad Form Property Damage;
 - d) Blanket contractual liability coverage;
 - e) Personal Injury liability; and
 - f) Cross-Liability and Severability of Interests.
 - g) Explosion, Collapse and Underground (XCU) *
2. Such insurance shall include the following endorsements:
 - a) Inclusion of District, its directors, officers, representatives, agents and employees as additional insured as respects to Permittee's ongoing and completed operations in connection with this Permit;
 - b) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of District will be called upon to contribute to a loss.
3. For all applications involving construction or demolition work within 50 feet, vertically or horizontally, of the BART trackway and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing, the General Liability Insurance must not exclude coverage therein. In cases where this coverage is excluded from the policy, the following policy coverage is required:
 - a) Railroad Protective Liability for bodily injury (including death), property damage, and physical damage, including loss of use thereof, to railroad property with limits of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence and SIX MILLION DOLLARS (\$6,000,000) in the aggregate annually applicable to all operations of Permittee and its contractors or subcontractor(s) within 50 feet vertically or horizontally of BART's trackway. BART shall have the right to approve of the policy wording. The named insured shall be San Francisco Bay Area Rapid Transit District. Prior to commencing work or entering BART property, Permittee or its contractor shall file the original copy of the policy with BART's Department Manager, Insurance. This coverage shall be maintained for the term of this Agreement (Permit).
 - B. Automobile Liability for bodily injury (including death) and property damage which provides a coverage limit of at least One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.
 1. With respect to the removal and transport of hazardous material or hazard-containing material, the policy shall include:

- a. Coverage for the accidental release of hazardous waste defined in California Health and Safety Code (H & S) Section 25117 and listed in Title 22 California Code of Regulations Section 66260.10 and consequential containment, cleanup, disposal and penalties associated therewith.
- b. Pollution Liability - Broadened coverage for covered autos which includes "covered pollution costs or expenses," which mean any cost or expense arising out of:
 - (1) Any request, demand or order; or
 - (2) Any claim or suit by or on behalf of a governmental authority demanding that the insured or others test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of pollutants.
- C. Statutory Workers' Compensation and Employer's Liability Insurance for not less than One Million Dollars (\$1,000,000) per accident applicable to Employer's Liability coverage for all employees engaged in services or operations under this Permit. The policy shall include broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees. Should any such work be subcontracted, Permittee shall require each subcontractor of any tier to similarly comply with this Article, all in strict compliance with federal and state law.
- D. Pollution Liability Insurance for bodily injury (including death) and property damage, including natural resource damage and third party diminution in value claims. Coverage limits shall not be less than One Million Dollars (\$1,000,000.) per occurrence for accidental release of hazardous materials as defined in California Health and Safety Code (H&S) Section 25117 and listed in the Title 22 California Code of Regulations Section 66260.10 and consequential containment, clean-up, disposal and penalties associated therewith.

5. Special Provisions

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Permittee, and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to this Permit, including but not limited to the provisions concerning indemnification.
- B. The District acknowledges that some insurance requirements contained in this article may be fulfilled by a funded self-insurance program of the Permittee. However, this shall not in any way limit liabilities assumed by the Permittee under this Permit. Any self-insurance program must be approved by the District.
- C. Should any of the work be contracted, Permittee shall require each of its contractors or subcontractors of any tier to provide the aforementioned coverage.

- D. District reserves the right to terminate or suspend the Permit in the event of non-compliance with the insurance requirements of this Article. In no event shall any suspension entitle Permittee to an extension of the term of the Permit specified in this Article.

* (Note: XCU coverage (Section 4.A.1.g); Transport of hazardous material or hazard-containing material (Section 4.B.1); and Pollution Liability Insurance (Section 4.D) are only required when applicable (excavation, borings, etc.). Coverage limits may be increased, at the discretion of the District's Risk Manager, relative to risk involved).

SAMPLE

**PERMITTEE
ADDRESS
CITY, STATE ZIP**

PERMIT NO.

PERMIT TO ENTER (PERMANENT IMPROVEMENTS)

Subject to the following covenants, terms, conditions and restrictions, the San Francisco Bay Area Rapid Transit District (hereinafter "District" or "BART") hereby grants permission to Permittee (hereinafter "Permittee") (collectively, the "Parties") to construct, maintain and use , (hereinafter the "Improvements") upon District property located and in the City of , County of , (hereinafter "Premises"), as shown on Exhibit "A," attached hereto and incorporated herein by reference.

1. Subject to Section 20 below, the term of this Permit shall commence on October 24, 20 and end ON DATE, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. Said notice shall be sent certified mail, return receipt requested, to:

PERMITTEE
ADDRESS
Attn:

or

Real Estate and Property Development Department
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 22nd Floor
Oakland, California 94612
Attention: Sean Brooks, Manager

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

2. The fee for this Permit shall be calculated pursuant to the **attached** Fee Schedule in effect when staff time is expended, pursuant to the policy adopted by the BART Board of Directors in Resolution No. 4989. An application fee pursuant to such Fee Schedule shall be paid prior to issuance of this Permit. Fees to

reimburse BART for plan review and inspection will be billed to Permittee upon completion of the Work and shall be paid to BART within thirty (30) days of the invoice date. A 10% late fee will be assessed on the balance if payment is not received within said 30 days of the invoice date. The late fee will be increased to 20% on the original balance if payment is not received within 60 days of the invoice date. BART reserves all rights to pursue all appropriate remedies to collect outstanding payments and penalties that have not been paid by Permittee within 90 days of the invoice date.

3. Permittee's right to use this area shall be non-exclusive and non-transferable, and shall be for the sole purpose of constructing, maintaining and using the Improvements. In no event shall District's property be deemed to be a public right-of-way. Overnight parking is prohibited on District's property.
4. Conditions of Use:
 - 4.a, 4.b, 4.c, etc. (conditions specific for permitted use).
 3. Permittee shall have Underground Service Alert and an independent utility locator service mark out the trench locations prior to digging.
 4. Permittee shall provide (a) construction schedule, (b) phasing plan, (c) a signage plan, and (d) traffic control plan which provides for bicycle and pedestrian access during the course of construction. Traffic control plan shall be prepared, signed and stamped by a licensed engineer.
 4. Any change in the scope of this permit shall be subject to a separate amendment.
 5. For BART's upcoming seismic retrofit program, BART requires a minimum 20 feet of work area around the face of each pier. If applicable, upon 60 days written notification from BART, Permittee shall be required, at its sole expense, to move the Improvements prior to BART's retrofit work. In connection with retrofit work and other construction, re-construction or maintenance work by BART, Permittee shall comply with Section 21 of the "General Terms and Conditions Relating to Utility Permits," attached hereto as Exhibit "B" and incorporated herein by reference.
 6. Permittee agrees that, as an essential condition to issuance of this Permit, BART shall not assume any responsibility or liability to Permittee or any other person for damage to Permittee's facilities caused by BART, subject to the following limitation. Except for claims arising out of BART's gross negligence or willful misconduct, Permittee shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including any and all cost and expenses in connection therewith), incurred by reason of any act, or failure to

act, of BART, its officers, agents, employees and subcontractors or any of them, in connection with Permittee's facilities. Except for claims arising out of BART's gross negligence or willful misconduct, Permittee agrees at its own cost, expense and risk to defend any and all claims, actions, suits or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of BART's act or failure to act in connection with Permittee's facilities, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

7. Conditions of this Permit shall be binding on all future owners of the Improvements. Permittee shall notify the Manager of the Real Estate and Property Development Department of any change in ownership of the Improvements.
8. The cost of repair and any and all losses caused by Permittee's damage to any BART property or facility, or resultant loss of service, shall be at the sole expense of Permittee. Any damage to BART property or facilities shall be repaired or remedied by either Permittee or BART, at BART's discretion, and at Permittee's sole cost and expense. Permittee agrees to reimburse BART promptly for any such damage.
9. Permittee shall have the duty and agrees to exercise reasonable care to properly maintain District's property pursuant to this Permit, including, but not limited to, removing debris dumped or placed on the Premises during the term of this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of District's property.
10. Permittee acknowledges that said Improvements constitute an encroachment upon BART's property and agrees to construct, repair, maintain and use said Improvements in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits" and all applicable state and local laws. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.
11. Permittee agrees to notify District's Construction Liaison, Marielle A. Cuison, mcuison@bart.gov, at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee will obtain all necessary permits and pay all fees in connection therewith. Permittee shall not engage in any activity on District property until all necessary permits, licenses and environmental clearances have been obtained.
12. Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Permit and in compliance with all federal, state and local laws and

regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.

13. BART shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.
14. Permittee shall be responsible for and bear the entire cost of removal and disposal, in compliance with Environmental Laws, for all Hazardous Materials and non-hazardous wastes introduced to the Premises during Permittee's use and possession of the Premises. Permittee shall also be responsible for any remediation on or off the Premises necessitated by such Hazardous Materials or non-hazardous wastes. As used herein, "remediation" includes any investigation or post-cleanup monitoring that may be necessary in compliance with Environmental Laws. For purposes of disposal, Permittee shall be the generator of any such Hazardous Materials and shall provide a generator identification number on manifests for such disposal as required by Environmental Laws.
15. To the extent that any New Environmental Condition is caused by, or any Pre-existing Environmental Condition is contributed to or exacerbated by, Permittee's acts or omissions (including those of its employees, contractors and agents) during its use and possession of the Premises, Permittee shall, at BART's discretion, either (a) perform remediation of such New Environmental Condition or Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by District in performing remediation of such New Environmental Condition or Pre-Existing Environmental Condition. A "New Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises as of the commencement date of this Permit. A "Pre-Existing Environmental Condition" is

defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises prior to the commencement date of this Permit.

16. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, contractors and agents) or from any New Environmental Condition to the extent caused by, or any Pre-existing Environmental Condition to the extent contributed to or exacerbated by, the acts or omissions of Permittee (including those of its employees, contractors and agents) during its use and possession of the Premises.
17. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, except to the extent such losses are caused by the gross negligence or willful misconduct of the District. Permittee agrees at their own cost, expense and risk to defend any and all actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.
18. To the extent that a governmental agency with jurisdiction requires remediation of any Pre-Existing Environmental Condition that is discovered as a result of Permittee's activities pursuant to this Permit, and is not contributed to or exacerbated by the acts or omissions of Permittee, its employees, contractors or agents, Permittee shall, at BART's discretion, either (a) perform remediation of such Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such Pre-Existing Environmental Condition.
19. Permittee shall comply with the federal Clean Water Act of 1977 and all laws, ordinances, rules and regulations applicable to the Project ("Applicable Law") including, without limitation, any building, zoning or environmental laws, including applicable Storm Water Pollution Prevention Plans ("SWPPP"). Permittee shall provide any notice(s) required by any Applicable Law. Permittee is responsible for identifying and implementing California Stormwater Quality Association

(CASQA) Best Management Practices (BMPs) to prevent pollutant discharges to the storm drain system. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.

20. Permittee agrees that no easement, lease or other property right is acquired by Permittee through this Permit.
21. Upon any use of BART property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, BART may terminate this Permit immediately.
22. Upon Permit expiration, Permittee shall leave the completed Improvements on the Premises, and within 30 days shall otherwise restore to its former condition all BART property which has been disturbed by Permittee, except as provided otherwise in the Permit. Restoration shall include, but not be limited to, removal of all equipment, materials, debris and the like, and repair of any damage. If Permittee fails to restore BART property as required herein, BART may perform such restoration or removal at Permittee's sole expense. If the Permit expires or is terminated prior to the completion of Improvements, BART may elect, at its sole discretion, to require Permittee to leave the Improvements on the Premises or remove them and restore the Property.
23. Insurance shall be provided by Permittee as stated in Exhibit "C" attached hereto and incorporated herein by reference. Insurance shall be approved by BART's Insurance Manager prior to any use of the Premises.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By _____
Sean Brooks, Manager
Real Estate and Property Development Department

Date _____

ACCEPTED
[PERMITTEE]

By _____

Date _____

Name _____

Title _____

Permittee
Address

PERMIT NO.

PERMIT TO ENTER (WORK)

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

1. Subject to Section 17 below, the term of this Permit shall commence on [?], 200?, and end on [?], 200?, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. Said notice shall be sent certified mail, return receipt requested, to:

[Name]
[Address]
[Attn:]

or

Real Estate and Property Development Department
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 22nd Floor
Oakland, California 94612
Attention: Sean Brooks, Manager

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

2. The fee for this Permit shall be calculated pursuant to the attached Fee Schedule

in effect when staff time is expended, pursuant to the policy adopted by the BART Board of Directors in Resolution No. 4989. An application fee pursuant to such Fee Schedule shall be paid prior to issuance of this Permit. Fees to reimburse BART for plan review and inspection will be billed to Permittee upon completion of the Work and shall be paid to BART within thirty (30) days of the invoice date. A 10% late fee will be assessed on the balance if payment is not received within said 30 days of the invoice date. The late fee will be increased to 20% on the original balance if payment is not received within 60 days of the invoice date. BART reserves all rights to pursue all appropriate remedies to collect outstanding payments and penalties that have not been paid by Permittee within 90 days of the invoice date.

3. Permittee's right to use this area shall be non-exclusive and non-transferable, and shall be for the sole purpose of performing the Work. In no event shall BART's property be deemed to be a public right-of-way. Overnight parking is prohibited on BART's property.
4. Conditions of Use:
 4. Permittee shall have Underground Service Alert and an independent utility locator service mark out the trench locations prior to digging.
 4. Permittee shall provide (a) construction schedule, (b) phasing plan, (c) a signage plan, and (d) traffic control plan which provides for bicycle and pedestrian access during the course of construction. Traffic control plan shall be prepared, signed and stamped by a licensed engineer.
 - 4 BART shall not be responsible for any impact to the Permittee's work due to BART operations, acts of God, or the acts of third parties.
 4. Any change in the scope of this permit shall be subject to a separate amendment.
 5. The cost of repair and any and all losses caused by Permittee's damage to any BART property or facility, or resultant loss of service, shall be at the sole expense of Permittee. Any damage to BART property or facilities shall be repaired or remedied by Permittee or BART, at BART's discretion, and at Permittee's sole cost and expense. Permittee agrees to reimburse BART promptly for any such damage.
 6. Permittee shall have the duty and hereby agrees to exercise reasonable care to properly maintain BART's property pursuant to this Permit, including but not limited to, removing debris dumped or placed on the Premises during the term of

this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of BART's property.

7. Permittee acknowledges that said Work constitutes an encroachment upon BART's property and agrees to perform said Work in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits," attached hereto as Exhibit "B" and incorporated herein by reference, and all applicable state and local laws. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.
8. Permittee agrees to notify BART's Construction Liaison in the Construction Services Division, Marielle A. Cuison, mcuison@bart.gov, at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee must obtain any and all necessary permits and pay all fees in connection therewith. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.
9. Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Permit and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.
10. BART shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.
11. Permittee shall be responsible for and bear the entire cost of removal and

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

12. To the extent that any New Environmental Condition is caused by, or any Pre-existing Environmental Condition is contributed to or exacerbated by, Permittee's acts or omissions (including those of its employees, contractors and agents) during its use and possession of the Premises, Permittee shall, at BART's discretion, either (a) perform remediation of such New Environmental Condition or Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such New Environmental Condition or Pre-Existing Environmental Condition. A "New Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises as of the commencement date of this Permit. A "Pre-Existing Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises prior to the commencement date of this Permit.
13. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, contractors and agents) or from any New Environmental Condition caused by, or any Pre-existing Environmental Condition contributed to or exacerbated by, the acts or omissions of Permittee (including those of its employees, contractors and agents) during its use and possession of the Premises.
14. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, except to the extent such losses are caused by the gross negligence or willful misconduct of BART. Permittee agrees at its own cost, expense and risk to defend any and all actions,

suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

15. To the extent that a governmental agency with jurisdiction requires remediation of any Pre-Existing Environmental Condition that is discovered as a result of Permittee's activities pursuant to this Permit, and is not contributed to or exacerbated by the acts or omissions of Permittee, its employees, contractors or agents, Permittee shall, at BART's discretion, either (a) perform remediation of such Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such Pre-Existing Environmental Condition.
16. Permittee agrees that no easement, lease or other property right is acquired by Permittee through this Permit.
17. Upon any use of BART property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, BART may terminate this Permit immediately.
18. Insurance shall be provided by Permittee as stated in Exhibit "C," attached hereto and incorporated herein by reference. Insurance shall be approved by BART's Insurance Manager prior to any use of the Premises.
19. Permittee shall comply with the federal Clean Water Act of 1977 and all laws, ordinances, rules and regulations applicable to the Project ("Applicable Law") including, without limitation, any building, zoning or environmental laws, including applicable Storm Water Pollution Prevention Plans ("SWPPP"). Permittee shall provide any notice(s) required by any Applicable Law. Permittee is responsible for identifying and implementing California Stormwater Quality Association (CASQA) Best Management Practices (BMPs) to prevent pollutant discharges to the storm drain system. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.
20. Counterparts. This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when there exist copies hereof which, when taken together, bear the authorized signatures of each of the parties hereto. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this

Permit.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By _____
Sean Brooks, Manager
Real Estate and Property Development Department

Date _____

ACCEPTED
PERMITTEE

By _____

Date _____

Title _____

SAMPLE