

Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
SFMTA Real Estate Section  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Senior Manager

with a copy to:

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

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(Space above this line reserved for Recorder's use only)

LICENSE AGREEMENT FOR ACCESS AND INSTALLATION OF  
SUBSURFACE GROUTING PIPES AND SETTLEMENT MONITORS  
[721-725 Filbert Street, APN 0101-031]

THIS LICENSE AGREEMENT FOR ACCESS AND INSTALLATION OF  
SUBSURFACE GROUTING PIPES AND SETTLEMENT MONITORS (this "Agreement"),  
dated for reference purposes only as of 14<sup>th</sup> March 2013 (the "Agreement Date"),  
is made by and between The Boschetto Family Partnership, L.P., a California limited partnership  
("Owner"), and the City and County of San Francisco, a municipal corporation, acting by and  
through its Municipal Transportation Agency ("City").

RECITALS

A. Owner owns the real property commonly known as 721-725 Filbert Street, in San  
Francisco, California, and more particularly described in the attached Exhibit A (the  
"Property").

B. City will be performing certain subsurface work on the portion of 1731-1741  
Powell Street (APN 0101-004) that abuts the Property as part of City's construction of its Central  
Subway Project (the "Project") and, in connection with the construction of the Project, City  
wishes to perform the Work (as defined in Section 2).

C. City needs access to the Property for the performance of the Work, and Owner  
agrees to provide such access on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for  
such other good and valuable consideration, the receipt and adequacy of which are hereby  
acknowledged, Owner and City hereby agree as follows:

1. License; Fee. Owner hereby grants City a temporary, non-exclusive and non-possessory right for City and its employees, contractors, subcontractors, representatives, agents or consultants (collectively, "**City's Agents**") to enter upon and use the Property for the limited purposes, and subject to the terms, conditions and restrictions, set forth below. This Agreement gives City a license only and does not constitute the grant of any ownership, leasehold, easement or other property interest or estate in all or any portion of the Property. City shall deliver a license fee of \$7,000 to Owner at the time this Agreement is fully executed and delivered.

2. Permitted Uses of the Property. City and City's Agents shall have the right to enter the Property for the purpose of performing the following work (collectively, the "**Work**"), which shall all be at City's sole cost and expense:

(i) Installing subsurface, thin-diameter grout piping (collectively, the "**Pipes**") in the portion of the Property depicted on the attached Exhibit B and in substantial compliance with the Work Plan (as defined in Section 3(c)) and filling the Pipes with grout as needed;

(ii) Installing settlement monitor markers, crack gauges and automated motorized total stations (collectively, the "**Exterior Monitors**") on the exterior of the building located on the Property (the "**Building**") in substantial compliance with the Work Plan;

(iii) Installing liquid level monitors and related tubing, tape extensometers, tilt meters and crack gauges (collectively, the "**Interior Monitors**") in the Building locations specified in the Equipment Map (as defined in Section 3(d)), and installing any Additional Interior Crack Gauges (as defined in Section 3(d)) and any Additional Interior Monitors (as defined in Section 3(d));

(iv) Repairing and maintaining the Exterior Monitors, the Interior Monitors, any Additional Interior Crack Gauges, and any Additional Interior Monitors (collectively, the "**Monitoring System**"), taking readings from the Monitoring System, and removing the Monitoring System;

(v) Performing any other activities shown and/or described in the Work Plan in substantial compliance with the Work Plan; and

(vi) Performing any of City's rights or obligations under this Agreement.

Owner acknowledges that City will need physical access to the Monitoring System during the term of this Agreement for maintenance, repair, and eventual removal, together with physical access to any Additional Interior Crack Gauges during the term of this Agreement to take readings therefrom. Owner agrees that it shall not, nor permit any other party to, cover or otherwise permanently block access to the Monitoring System.

3. General Conditions for Performance of the Work.

(a) Permits and Approvals. City shall obtain, at its sole cost and expense, all applicable permits, licenses and approvals (collectively, "**Approvals**") of any regulatory agencies required for the performance of the Work by or for City. Owner shall cooperate in good faith with City to submit any necessary consents or other documents reasonably required to enable City or City's Agents to apply for and obtain such Approvals.

(b) Baseline Report. Prior to installing the Pipes or any Monitoring System components at the Property, City shall inspect the Property (the "**Pre-Construction Inspection**") during a mutually agreeable time and shall prepare a written report detailing the condition of the



Property as of the date of the Pre-Construction Inspection (the "**Baseline Report**"). City shall provide Owner with at least ten (10) days' prior written notice of the date that City intends to perform such inspection, and Owner shall have the right to accompany the persons performing such inspection for City. City shall deliver the draft Baseline Report to Owner for review, and Owner shall notify City in writing (the "**Owner Report Comments**") of any item that needs to be modified, deleted or added in the draft Baseline Report to accurately describe the condition of the Property as of such inspection date. The Owner shall deliver the Owner Report Comments to City within ten (10) days of receiving the draft Baseline Report from City. If Owner does not timely deliver the Owner Report Comments to City, the draft Baseline Report shall be deemed to be the final Baseline Report. If the Owner timely delivers Owner Report Comments to City, City shall respond to Owner in writing within ten (10) days of receiving the Owner Report Comments (the "**City Report Comments**"), and the draft Baseline Report, the Owner Report Comments and the City Report Comments shall be collectively deemed to be the final Baseline Report. The final Baseline Report shall be completed, with a copy thereof delivered to Owner, before City commences with the installation of the Pipes or the Monitoring System.

(c) Work Plan. City has delivered the final plans and specifications for the Work to Owner, which were Pages BP-001, BP-011, BP-021, BP-022, BP-023, BP-101, BP-102, BP-103, of the plans prepared by PB Telamon for Contract 1278, dated May 31, 2013 (the "**Work Plan**"). Owner acknowledges the Work Plan contains sensitive security information and Owner shall not disclose the Work Plan to any other party without City's prior written consent unless Owner is legally required to make such disclosure under applicable law.

(d) Equipment Map. Prior to City commencing with the installation of the Monitoring System, City shall deliver a depiction of the proposed locations for the Interior Monitors (the "**Draft Equipment Map**") to Owner for review, and Owner shall notify City in writing of any Owner comments to the Draft Equipment Map (the "**Owner Map Comments**"); provided, however, that Owner shall not unreasonably withhold its consent to any of the Interior Monitor locations proposed by City. If the Baseline Report reveals interior Building cracks that City reasonably determines should be monitored, City shall have the right to install crack gauges provided that Owner consents to the location of such crack gauges, which consent shall not be unreasonably withheld (the "**Additional Interior Crack Gauges**"). If City reasonably determines that the monitoring of any Building settlement would be better conducted by replacing or supplementing the Interior Monitors with additional or alternative interior monitoring equipment, and such supplementation or replacement would not have a materially greater impact on Building operations than the Interior Monitors, City may install such supplemental or replacement interior monitoring equipment if Owner consents to the location thereof, which consent shall not be unreasonably withheld (the "**Additional Interior Monitors**"). The proposed location of any proposed Additional Interior Crack Gauges and any Additional Interior Monitors shall be included in the Draft Equipment Map.

Owner shall deliver the Owner Map Comments to City within ten (10) days of receiving the Draft Equipment Map from City. If Owner does not deliver the Owner Map Comments to City within such ten (10) day period, the Draft Equipment Map shall be deemed to be the "**Equipment Map**" hereunder. If the Owner timely delivers Owner Map Comments to City within such ten (10) day period, City shall revise the Draft Equipment Map and resubmit same to Owner for review, which review shall be completed as set forth in the preceding two sentences of this Section 3(d). This review and approval process shall continue until all updates and revisions to the Draft Equipment Map are finalized by City and approved by Owner, and such finalized report shall be deemed to be the "**Equipment Map**" hereunder. Once established, the Equipment Map shall not be further modified unless City and Owner agree to such modification in writing. If City and Owner mutually agree in writing to modify the placement of any of the Interior Monitors at any time after establishing the Equipment Map, the Equipment Map shall be



accordingly modified. Commencement of the installation of the Monitoring System may begin only following establishment of the Equipment Map.

(e) Exercise of Due Care; Existing Utilities. City shall use, and shall cause City's Agents to perform, all Work in a good and workmanlike manner and to use due care and commercially reasonable efforts at all times to avoid any damage or harm to the Property in performing the Work. City shall locate any utilities located within the portion of the Property that will be affected by the Work and protect them from damage.

(f) Installation Work Schedule. City shall complete its installation of the Pipes and the Monitoring System no later than December 31, 2014; provided, however, that such date shall be automatically extended to the extent necessary due to any reasonably unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond City's reasonable control. City shall notify the Owner if City determines that completion of such installation work will be materially delayed.

(g) Restoration of the Property. At the times immediately following the completion of the installation of ANY OF the Pipes and the Monitoring System, the completion of any maintenance or repairs to the Monitoring System, the reading of any Additional Interior Crack Gauges, and the removal of the Removable Monitoring Components, City shall remove any debris on the Property resulting from such activity, and restore any physical damage to the Property caused by such activity or by the acts City or City's Agents in performing such activity, to the condition existing immediately prior to City's use hereunder (except for reasonable use and wear and damage by fire or other casualty that is not caused by City or City's Agents) to the Owner's reasonable satisfaction. Notwithstanding anything to the contrary in the foregoing sentence, City shall have the right to leave the Pipes on the Property at all times and to leave the entire Monitoring System on the Property during the Term (as defined in Section 4). City shall not store or place any debris upon the Property during the course of any demolition or removal work performed in connection with the Work.

(h) Notification of Commencement of Work; Coordination for Access. Owner shall cooperate with City and City's Agents in scheduling the Work on the Property. Owner shall grant City and the City's Agents permission and reasonable access to the Building and any other improvements on the Property to the extent reasonably necessary to perform any of the Work, including the ability to access the existing entrances at the Building and the Property, subject to the rights of tenants that have written leases to occupy the Property at the time of such access.

City shall perform the Work in a manner that will not obstruct access to the Building for deliveries and customers during the hours between 8:00 am and 5:00 pm, excepting any holidays. City shall promptly maintain and clean any area of the Property soiled or stained by the performance of any of the Work and remove any debris dropped on the Property in the performance of any of the Work.

(i) No Liens. City shall keep the Property free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Property pursuant to this Agreement. In the event any such liens are recorded, removal thereof shall be the sole cost and responsibility of City with no cost to Owner.

(j) Repair of Damage. If any portion of the Property or any property of Owner located on or about the Property is damaged by any of the activities conducted by City or City's Agents hereunder, City shall, at its sole cost, repair any and all such damage and restore the Property to the condition it was in immediately prior to such damage (subject to reasonable use

and wear or any damage caused by a casualty that is not caused by the performance of the Work), provided, however, that City shall have no obligation to repair any damage to the extent that it resulted from the negligence or willful misconduct of Owner or any of its employees, contractors, subcontractors, representatives, agents, tenants or invitees.

(k) Monitoring System Components. The Monitoring System may be comprised of various components and connective tubing between any such components, as required. The placement and description of the Monitoring System components are shown on the Work Plan. City shall not relocate any of the Monitoring System components installed in or on the Building without obtaining Owner's prior written consent to such relocation.

4. Term. This term of this Agreement (the "**Term**") shall commence on the date it is fully executed and shall expire on December 31, 2014 (the "**Termination Date**"); provided, however, that City shall have an option to extend the Termination Date for a period of up to one (1) additional year under the same terms and conditions stated herein. City shall exercise, if at all, such extension option by giving Owner a written notice of extension at least thirty (30) days prior to the original Termination Date. Owner acknowledges and agrees that City's notice of its intent to exercise such extension option shall be exercisable by the Director of Transportation of City's Municipal Transportation Agency.

5. City's Right to Terminate Work. City shall have no obligation to commence or complete any of the Work. Without limiting the foregoing, City reserves the right, at its sole option, to withdraw from the Work at any time prior to completion if City determines, in its sole and absolute discretion, that it is inappropriate or impractical to complete the Work for any reason whatsoever, including, by way of example only and without limitation, economic unfeasibility, unavailability of funds, impracticality or difficulty of site conditions, or City's re-evaluation of the need for the Work. If City elects to terminate the Work prior to completion, City shall restore the Property to its substantially same physical condition prior to the commencement of Work (except for City's right to leave the Pipes and except for reasonable use and wear and damage by fire or other casualty) to the extent the Property is affected by the Work. If the Pipes have not been installed prior to such early termination date, then within fifteen (15) days of such early termination date, Owner shall return an amount equal to the license fee referenced in Section 1.

6. Project Contacts. City has designated Mark Benson (the "**Construction Manager**"), as the individual for Owner to contact if any problems with respect to the Property arise while City is conducting the Work. Prior to commencement of any of the Work, City shall provide Owner with the telephone numbers of the Construction Manager. City may change the designation and telephone numbers of the Construction Manager by delivering written notice of such change to Owner. Owner has designated B.E. Properties, Inc. (the "**Property Manager**"), and Tom Hung as the individual for City to contact if any problems with respect to the Property arise while City is conducting the Work. Prior to commencement of any of the Work, Owner shall provide City with the telephone numbers of the Property Manager. Owner may change the designation and telephone numbers of the Property Manager by delivering written notice of such change to City.

7. Remaining Improvements. City shall remove the Monitoring System prior to the end of the Term. If the Pipes are installed in substantial compliance with the Work Plan, the City shall have the right to leave them on the Property after the expiration of the Term. As of the expiration of the Term, the Pipes shall be deemed part of the Property and owned in fee by Owner and City shall have no remaining interest or obligations thereto. Owner may remove the Pipes any time after they are installed to accommodate excavation work on the Property by or on behalf of Owner; provided, however, that Owner shall perform such removal work in a manner that does not damage the Project or any City property abutting the Project. City's rights in connection with any such excavation and removal of any remaining Pipes shall be governed by



the provisions of Section 832 of the California Civil Code, as such section may be amended or replaced.

8. Insurance. Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement. City shall cause the third party general contractor performing any of the Work ("**City Contractor**") to procure and keep in effect during any construction work performed prior to the termination of this Agreement, at no expense to Owner, insurance in the following amounts and coverages: (i) comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence for bodily injury and property damage, including coverages for independent contractors, contractual liability, broad form property damage, personal injury, explosion, collapse, and underground (XCU), products, and completed operations with respect to the Project; (ii) comprehensive automobile liability insurance with limits of not less than \$2,000,000 each occurrence for bodily injury and property damage, including coverages for owned, hired and non-owned vehicles, as applicable; and (iii) worker's compensation insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident, or satisfactory evidence of self-insurance.

9. Compliance with Laws. City shall, at its expense, conduct and cause to be conducted all activities on the Property allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. City shall, at its sole expense, procure and maintain in force at all times during its use of the Property any and all licenses or approvals necessary to conduct the activities allowed hereunder.

10. Surrender. Within thirty (30) days after completion of the Work or the earlier termination of this Agreement, City shall surrender the Property in substantially the same condition as received, free from hazards and clear of all debris, except for City's right to leave the Pipes and except for reasonable use and wear and damage by fire or other casualty. At such time, City shall, at its sole cost, remove all of its property from the Property and repair any damage to the Property caused by such removal. City's obligations under this Section shall survive any termination of this Agreement.

11. Condition of Property. Owner has provided City with all information in its possession regarding the environmental condition of the Property, the condition of the Property soils, the foundation and structural integrity of the Building, and the location of underground utilities and underground storage tanks that may be in or under the portions of the Property affected by the Work. Owner has no actual knowledge of the presence of any Hazardous Material (defined as follows) in the soil or groundwater beneath the Property.

**"Hazardous Material"** means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances in the Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or



imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property.

City accepts the Property in its "AS IS" condition, without representation or warranty of any kind by Owner other than any made in this Agreement, and subject to all applicable laws, rules and ordinances governing the use of the Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. Notwithstanding anything to the contrary in the foregoing, City shall have no obligation to remediate any Hazardous Materials existing on the Property prior to the commencement of the Work; provided, however, that City shall remediate any such pre-existing Hazardous Material to the extent it was released through the performance of the Work.

12. Indemnity. City shall indemnify, defend and hold harmless Owner and its employees, contractors, subcontractors, representatives, and agents, and their successors and assigns (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all claims, demands, losses, damages, liens, causes of action, legal actions, judgments, awards, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "**Losses**") caused by (1) physical damage to the Property caused by the performance of the Work, (2) personal injury or death caused by the performance of the Work, (3) disruption in utility service to the Property caused by the performance of the Work, (4) City's default in its obligations hereunder, or (5) any release of Hazardous Materials in or on the Property as a result of the actions of City or City's Agents on the Property pursuant to this Agreement. Notwithstanding anything to the contrary in the foregoing, City's obligations hereunder shall not include any Loss to the extent it results from (i) the willful misconduct or negligence of any Indemnified Party, (ii) the discovery of any pre-existing Hazardous Material or deficient condition affecting the Property, or (iii) the non-negligent release of any pre-existing Hazardous Material existing on the Property discovered by City through the performance of the Work; provided, however, that once City learns of such pre-existing Hazardous Material, City shall modify its performance of the Work to prevent any further release thereof. Owner must give notice of any claim for Losses it may have against City under this indemnity within one hundred eighty (180) days after learning of the Loss. City's obligations under this Section shall terminate on the first anniversary of the date that this Agreement expires or terminates.

13. Ownership; Transfer by Owner. Owner represents and warrants to City that it is the sole owner in fee of the Property, that no other person or entity has any ownership or possessory interest in the Property, that Owner has full right and authority to grant the license contained in this Agreement to City without the consent of any other person or entity, and that the person signing on behalf of Owner has the authority to bind Owner to this Agreement. If Owner's title to or possession of all or any portion of the Property is sold, conveyed or otherwise transferred for any reason before the termination of this Agreement, Owner shall assign its rights and obligations under this Agreement to the new owner (who shall assume Owner's obligations hereunder) and shall immediately notify City in writing of such assignment and assumption and the name and address of the new owner.

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



15. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, virgin redwood wood product.

16. Notification of Limitations on Contributions. Through its execution of this Agreement, Owner acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

17. Notices. Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and shall be deemed duly given: (i) when delivered if personally delivered to the recipient; (ii) when transmitted by facsimile device during normal business hours, provided such device generating a written confirmation of such transmission and receipt and the original notice is deposited in first class mail within the first business day immediately following such transmission by facsimile; (iii) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (iv) on the earlier of actual receipt or three (3) days following deposit in United States registered or certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth below. Any party may change its address for notices by giving written notice to the other parties in the manner set forth below.

If to City: San Francisco Municipal Transportation Agency  
SFMTA Real Estate Section  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Senior Manager  
Fax No.: 415-701-4341

San Francisco Municipal Transportation Agency  
Central Subway Project  
821 Howard Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94103  
Attention: Alex Clifford  
Fax No.: (415) 701-5222

If to Owner: The Boschetto Family Partnership, L.P.  
411 Parrot Dr.  
San Mateo, CA 94402  
c/o Mike Boschetto

B.E. Properties Inc.  
582 Market Street, Suite 1405  
San Francisco, CA 94104  
Attention: John W. Zellerbach  
Email: [jwz@beproperties.net](mailto:jwz@beproperties.net)  
Cell No.: (415) 317-3151  
Cc: Michelle Owczarzak  
Email: [mdofinancial@live.com](mailto:mdofinancial@live.com)  
Cell No.: (219) 308-0233



18. Attorneys' Fees. If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

19. Assignment. City shall have the right to assign its rights and obligations under this Agreement to a City Contractor provided that either City or City Contractor shall deliver written evidence of City Contractor's assumption of all such rights and obligations to Owner.

20. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or contemplated hereunder may be made by the Director of Transportation of City's Municipal Transportation Agency or any other authorized City official. All approvals and determinations of Owner requested, required or contemplated hereunder may be made by Mike Boschetto through B.E. Properties, Inc. (d) This instrument (including the exhibits hereto) contains the entire agreement between the parties with respect to the Work and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (f) Time is of the essence. (g) This Agreement shall be governed by California law and City's Charter. (h) If Owner consists of more than one person, then the obligations of each person shall be joint and several. (i) City shall have the right to record this Agreement or any memorandum hereof provided, however, that at any time after this Agreement terminates, City shall deliver documentation reasonably necessary to remove the lien resulting from any such recorded document to Owner within thirty (30) days of receiving Owner's written request therefor. (j) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, administrators, executors and assigns. Any reference in this Agreement to "City" or "Owner", respectively, shall be deemed to include and apply to any successor, heir, administrator, executor or assign of such party. (l) This Agreement does not create a partnership or joint venture between Owner and City as to any activity conducted by City on, in or relating to the Property. (m) Nothing herein shall be deemed a gift or dedication of any portion of the Property to the general public or for the general public, it being the intention of the parties that the license granted hereunder and any other rights granted hereby shall be limited to and for the purposes specified herein. (n) This Agreement shall become effective only when duly signed and delivered by the parties. (o) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**OWNER:**

The Boschetto Family Partnership L.P.,  
a California limited partnership

By: 

Mike Boschetto  
General Partner

Date: 6/20/13

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its  
Municipal Transportation Agency

By: 

Edward D. Reiskin  
Director of Transportation, SFMTA

Date: 8/14/13

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By: 

Carol Wong  
Deputy City Attorney



**ACKNOWLEDGMENT**

State of : California

County of San Francisco

On June 20<sup>th</sup>, 2013, before me

Patricia J. Richman,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Michael Boschetto,  
Name(s) of Signer (s)

satisfactory

personally known to me  
 proved to me on the basis of

evidence

to be the person(s) whose name(s) is/are  
subscribed to the within instrument and  
acknowledged to me that he/she/ they  
executed the same in his/her/their

authorized

capacity(ies), and that by his/her/their  
signature(s) on the instrument the

person(s),

or the entity upon behalf of which the  
person(s) acted, executed the instrument.



WITNESS my hand and official seal

Signature of Notary Public

Place Notary Seal Above

**ACKNOWLEDGMENT**

State of California  
County of San Francisco

On August 14, 2013 before me, Kathleen V. Bianchi, Notary Public, personally appeared John Haley, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen V. Bianchi (Seal)





State of California            )  
  ) ss  
County of San Francisco        )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California            )  
  ) ss  
County of San Francisco        )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

### **Legal Description of Property**

The land referred to is situated in the State of California, City and County of San Francisco, and is described as follows:

BEGINNING at a point on the southerly line of Filbert Street, distant thereon 195 feet and 2-1/4 inches easterly from the easterly line of Mason Street; and running thence easterly along said line of Filbert Street 79 feet and 9-3/4 inches; thence at a right angle southerly 137 feet and 6 inches; thence at a right angle westerly 79 feet and 9-3/4 inches; thence at a right angle northerly 137 feet and 6 inches to the point of beginning.

BEING a portion of 50 Vara Block No. 154.

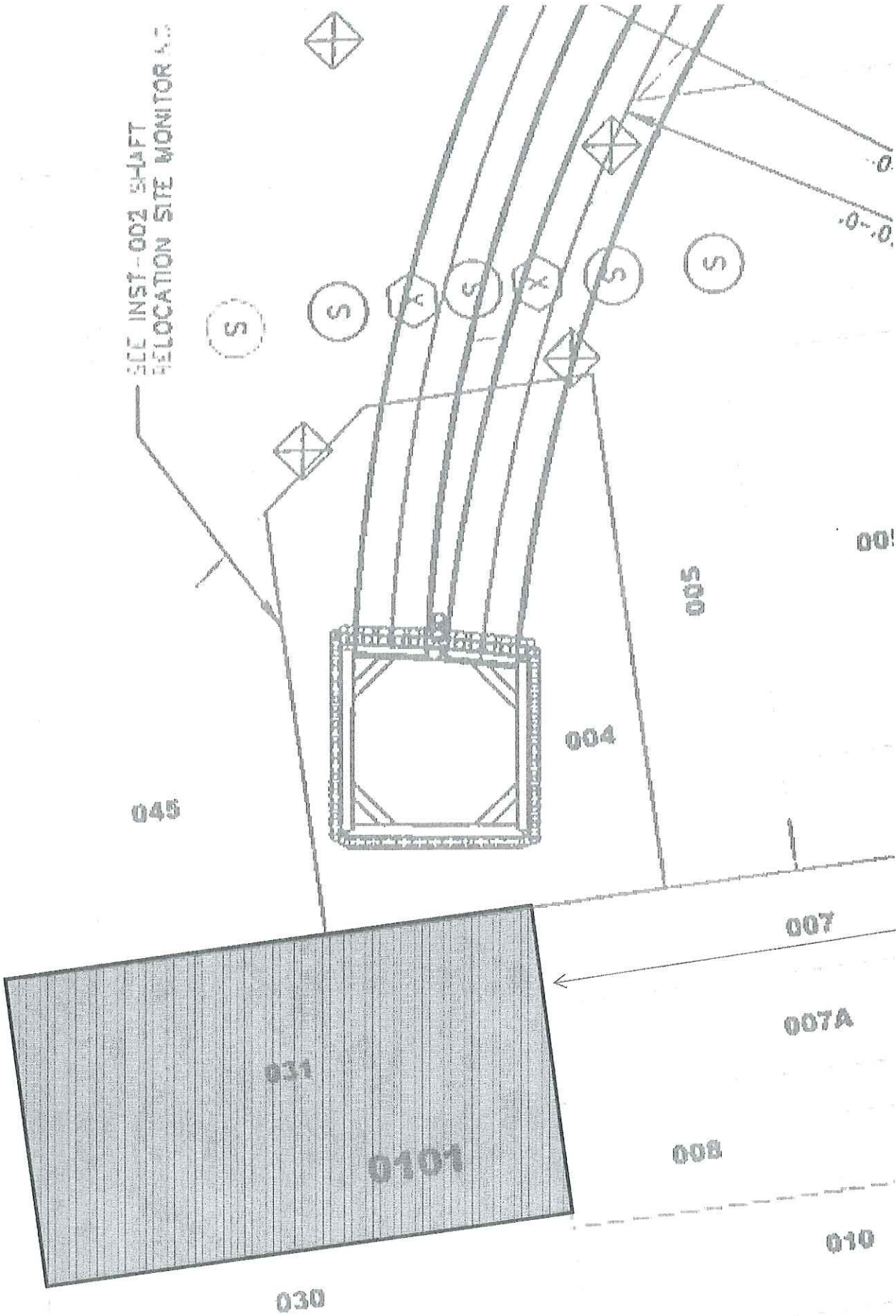
APN: Block 0101, Lot 031



**EXHIBIT B**

**Location of Pipes**

[see attached]



Central Subway Temporary Construction License  
 725 Filbert Street  
 Exhibit B - Location of Pipes

Location of pipes