

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: January 13, 2011**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approve Temporary Terminal Restroom Agreement.

**SUMMARY:**

The Staff has negotiated an Agreement re AC Transit Passenger Restrooms at the Temporary Terminal (“Restroom Agreement”) with AC Transit and Linc Facility Services (“Linc”). AC Transit’s General Counsel and Interim General Manager approved the Agreement on January 4, 2011. Linc approved the Restroom Agreement on January 5, 2011. The Restroom Agreement sets forth the parties’ rights and obligations for the opening of Temporary Terminal restrooms to AC Transit passengers on a limited basis.

**REPORT:**

The Temporary Terminal contains two restrooms that have the potential for use by passengers of AC Transit and AC Transit’s subtenant Westcat (“restrooms”). Prior to this Agreement, however, the restrooms have been locked and have been inaccessible to passengers and the public for security reasons. AC Transit has requested that the TJPA now allow limited access to the restrooms for AC Transit and Westcat’s passengers.

Greyhound offers restrooms to its passengers in its building at the south end of the Temporary Terminal. Greyhound’s restrooms, however, are not accessible to the public or to non-Greyhound passengers.

In September 2008, the TJPA and AC Transit entered into the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal (“Lease and Use Agreement”) that addressed, among other things, responsibility for operations, maintenance, and security at the Temporary Terminal. This Restroom Agreement is intended to supplement the Lease and Use Agreement with greater detail concerning the operation, maintenance, and security of the passenger restrooms and does not conflict with or supersede the Lease and Use Agreement.

On August 6, 2009, the TJPA and Linc entered into a Professional Services Agreement (“Linc Agreement”) that addressed, among other things, responsibility for operations, maintenance, and security at the Temporary Terminal. The Restroom Agreement is intended to supplement the Linc Agreement with greater detail concerning the operation, maintenance, and security of the passenger restrooms and does not conflict with or supersede the Linc Agreement.

The TJPA Staff, AC Transit, and Linc have developed the Restroom Agreement to provide restrooms to AC Transit passengers without unreasonably compromising security. The

Agreement provides that:

- Linc shall be responsible for security, janitorial, maintenance, and repairs of the restrooms under the Linc Agreement and without additional compensation.
- Access to the restrooms shall be limited to AC Transit passengers and the passengers of any other AC Transit subtenant between 7:00 am and 7:00 pm Monday through Friday. The public-at-large shall not be permitted to use the restrooms.
- The restroom doors shall remain locked and shall be equipped with a self-locking mechanism when the passenger leaves the restroom.
- The TJPA shall install a security camera that will be trained on the entrances to the restrooms.
- Linc will be responsible for loaning keys to AC Transit or subtenant passengers to unlock the restroom doors and retrieving the keys.
- To enhance security regarding the restrooms in the future, AC Transit and the TJPA will work toward an amendment to the Restroom Agreement that would establish AC Transit's Exclusive Use Space – the north two-thirds of the Temporary Terminal occupied by AC Transit – as a “passenger only” area.

**RECOMMENDATION:**

The Staff recommends that the Board authorize the Executive Director to execute the Restroom Agreement attached to this report.

**ENCLOSURES:**

1. Agreement Re AC Transit Passenger Restrooms at the Temporary Terminal
2. Resolution

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, AC Transit's Exclusive Use Space in the Temporary Terminal contains two restrooms that have the potential for use by passengers of AC Transit and AC Transit's subtenants; and

WHEREAS, Since the Temporary Terminal became operational, the restrooms have been locked and have been inaccessible to passengers and the public for security reasons; and

WHEREAS, AC Transit has requested that the TJPA now allow limited access to the restrooms for passengers of AC Transit and its subtenants; and

WHEREAS, The TJPA Staff, AC Transit, and Linc Facility Services have proposed an agreement to provide restrooms to AC Transit passengers without unreasonably compromising security; and

WHEREAS, In September 2008, the TJPA and AC Transit entered into the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal that addressed, among other things, responsibility for operations, maintenance, and security at the Temporary Terminal; and

WHEREAS, On August 6, 2009, the TJPA and Linc entered into a Professional Services Agreement wherein Linc assumed responsibility for operations, maintenance, and security at the Temporary Terminal; and

WHEREAS, The proposed restroom agreement is intended to supplement the Lease and Use Agreement and the Linc Agreement with greater detail concerning the operation, maintenance, and security of the passenger restrooms and does not conflict with or supersede the Lease and Use Agreement or Linc Agreement; and

WHEREAS, AC Transit and Linc have signed the attached agreement regarding restrooms for the passengers of AC Transit and its subtenants in the Temporary Terminal; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the attached Agreement regarding AC Transit Passenger Restrooms at the Temporary Terminal providing that: (a) Linc shall be responsible for security, janitorial, maintenance, and repairs of the restrooms under the Linc Agreement and without additional compensation; (b) access to the restrooms shall be limited to AC Transit passengers and the passengers of any other AC Transit subtenant between 7:00 am and 7:00 pm Monday through Friday; (c) the restroom doors shall remain locked and shall be equipped with a self-locking mechanism when the passenger leaves the restroom; (d) the TJPA shall install a security camera that will be trained on the entrances to the restrooms; (e) Linc will be responsible for loaning keys to AC Transit or subtenant passengers to unlock the restroom doors and retrieving the keys; (f) to enhance security regarding the restrooms in the future, AC Transit and the TJPA will work toward an amendment to the Restroom Agreement that would establish AC Transit's Exclusive Use Space – the north two-thirds of the Temporary Terminal occupied by AC Transit – as a "passenger only" area.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of January 13, 2011.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

**AGREEMENT RE AC TRANSIT PASSENGER RESTROOMS AT TEMPORARY  
TERMINAL**

This Agreement re AC Transit Passenger Restrooms at the Temporary Terminal (“Agreement”) dated December \_\_, 2010, is among the Transbay Joint Powers Authority, a joint powers authority duly created pursuant to Chapter 5, Division 7, Title 1 of the Government Code (“TJPA”), the Alameda-Contra Costa Transit District, a special district created under Part 1, Division 10, of the Public Utilities Code (“AC Transit”), and Linc Facility Services, a California corporation (“Linc”).

**RECITALS**

A. As part of the Transbay Transit Center Program (“Transbay Program”), the TJPA operates a Temporary Terminal at Main, Howard, Beale, and Folsom Streets (“Temporary Terminal”). AC Transit, Greyhound, and other public bus systems have operated from the Temporary Terminal since August 1, 2010.

B. In September 2008, the TJPA and AC Transit entered into the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal (“AC Transit Agreement”) that addressed, among other things, responsibility for operations, maintenance, and security at the Temporary Terminal. This Agreement regarding AC Transit passenger restrooms in the Temporary Terminal is intended merely to supplement the AC Transit Agreement with greater detail concerning the operation, maintenance, and security of the passenger restrooms and does not conflict with or supersede the AC Transit Agreement. This Agreement incorporates and is subject to the AC Transit Agreement.

C. On August 6, 2009, the TJPA and Linc entered into a Professional Services Agreement (“Linc Agreement”) that addressed, among other things, responsibility for operations,

maintenance, and security at the Temporary Terminal. This Agreement regarding AC Transit passenger restrooms in the Temporary Terminal is intended merely to supplement the Linc Agreement with greater detail concerning the operation, maintenance, and security of the passenger restrooms and does not conflict with or supersede the Linc Agreement. This Agreement incorporates and is subject to the Linc Agreement.

D. The Temporary Terminal contains two restrooms shown on the diagram attached as Exhibit A that have the potential for use by passengers of AC Transit and AC Transit's subtenant Westcat ("passenger restrooms"). Prior to this Agreement, however, the restrooms have been locked and have been inaccessible to passengers for security reasons. AC Transit has requested that the TJPA now allow limited access to the restrooms for AC Transit and Westcat's passengers.

E. It is the intent of the parties to this Agreement that the restrooms be available for use by AC Transit and Westcat bus passengers on a limited and controlled basis.

## **AGREEMENT**

**Section 1. Access .** Access to the passenger restrooms shall be limited to AC Transit and Westcat passengers and the passengers of any other authorized AC Transit transportation subtenant between the hours of 7:00 am and 7:00 pm Monday through Friday. The public-at-large shall not be permitted to use the passenger restrooms.

**Section 2. Keys.** The TJPA shall issue keys for the passenger restrooms to Linc security officers. A key control program shall be instituted whereby each key shall be numbered and the keys labeled "Do Not Duplicate." Linc shall conduct a strict accounting of the keys daily. AC Transit and subtenant passengers wishing to use the restrooms may request that Linc security officer(s) unlock the restroom door after demonstrating that they are an AC Transit or subtenant

passenger. To provide greater security regarding the passenger restrooms in the future, AC Transit and the TJPA will work toward an amendment to this agreement that would establish AC Transit's Exclusive Use Space in the Temporary Terminal as a "passenger only" area.

**Section 3. Security.** Linc shall be responsible for the security of the passenger restrooms under the Linc Agreement. The TJPA shall install new doors to the restrooms that will be self closing in compliance with ADA regulations and will have self locking handles that will automatically lock the restroom door after the passenger leaves. The new doors will have removable cores to accommodate quick replacement in the event that keys are lost. The doors will be equipped with a second, deadbolt lock. Linc security officers shall lock the deadbolt lock during the hours the restrooms are not open to passengers. The new doors will also be equipped with grates that will allow security personnel to determine whether someone is in the restroom and allow a distress call to be heard through the door. Linc shall install a security camera that will be trained only on the entrances to the restrooms and will be activated at all times the restrooms are open to passengers.

**4. Janitorial, Maintenance, and Repairs.** Linc shall be responsible for all janitorial, maintenance, and repairs of the passenger restrooms under Section 4 and Appendix A to the Linc Agreement.

**5. Insurance.** Linc shall be responsible for maintaining liability insurance to cover claims arising from use of the passenger restrooms under Section 15 of the Linc Agreement.

**6. Indemnity.** Linc shall be responsible for indemnifying AC Transit and the TJPA for claims arising from use of the passenger restrooms under Section 16 of the Linc Agreement.

**7. Term.** Unless modified or terminated by the parties, this Agreement shall remain in effect until the Temporary Terminal is closed. The Agreement can be modified only by a writing

signed by all parties. Where consistent with the AC Transit and Linc Agreements, any party may terminate the Agreement by giving written notice to the other parties. This Agreement will automatically terminate if either the AC Transit or Linc Agreement is terminated. If the Linc Agreement is terminated, the TJPA and AC Transit will meet to determine the appropriate procedure for operation, maintenance, and security of passenger restrooms at the Temporary Terminal.

**8. No Compensation.** The AC Transit Agreement and the Linc Agreement already provide in general for the rights and obligations that are described in greater detail in this Agreement. Accordingly, no party to this Agreement shall be entitled to any compensation or consideration for its performance under this Agreement other than as already provided in the AC Transit and Linc Agreements.

**9. Conflict with Other Agreements.** This Agreement is not intended to supersede or conflict with the AC Transit or Linc Agreements, but rather is intended to supplement those Agreements by providing greater detail for the operation and security of passenger restrooms in the Temporary Terminal. In the event of a conflict or inconsistency between this Agreement and the AC Transit or Linc Agreement, the AC Transit and Linc Agreements shall prevail.

**10. Successors and Assigns.** This Agreement shall be binding on any successors to the parties. No part of this Agreement may be assigned without the written agreement of all parties.

**11. Effective Date.** This Agreement shall be effective when all parties have signed the Agreement and the specified modifications have been made to the restroom doors and security camera system.

TRANSBAY JOINT POWERS AUTHORITY

Dated: December \_\_, 2010

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Maria Ayerdi-Kaplan, Executive Director

APPROVED AS TO FORM

By: \_\_\_\_\_  
Andrew W. Schwartz  
TJPA Counsel

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

Dated: December \_\_, 2010

  
\_\_\_\_\_  
Mary V. King, Interim General Manager

APPROVED AS TO FORM

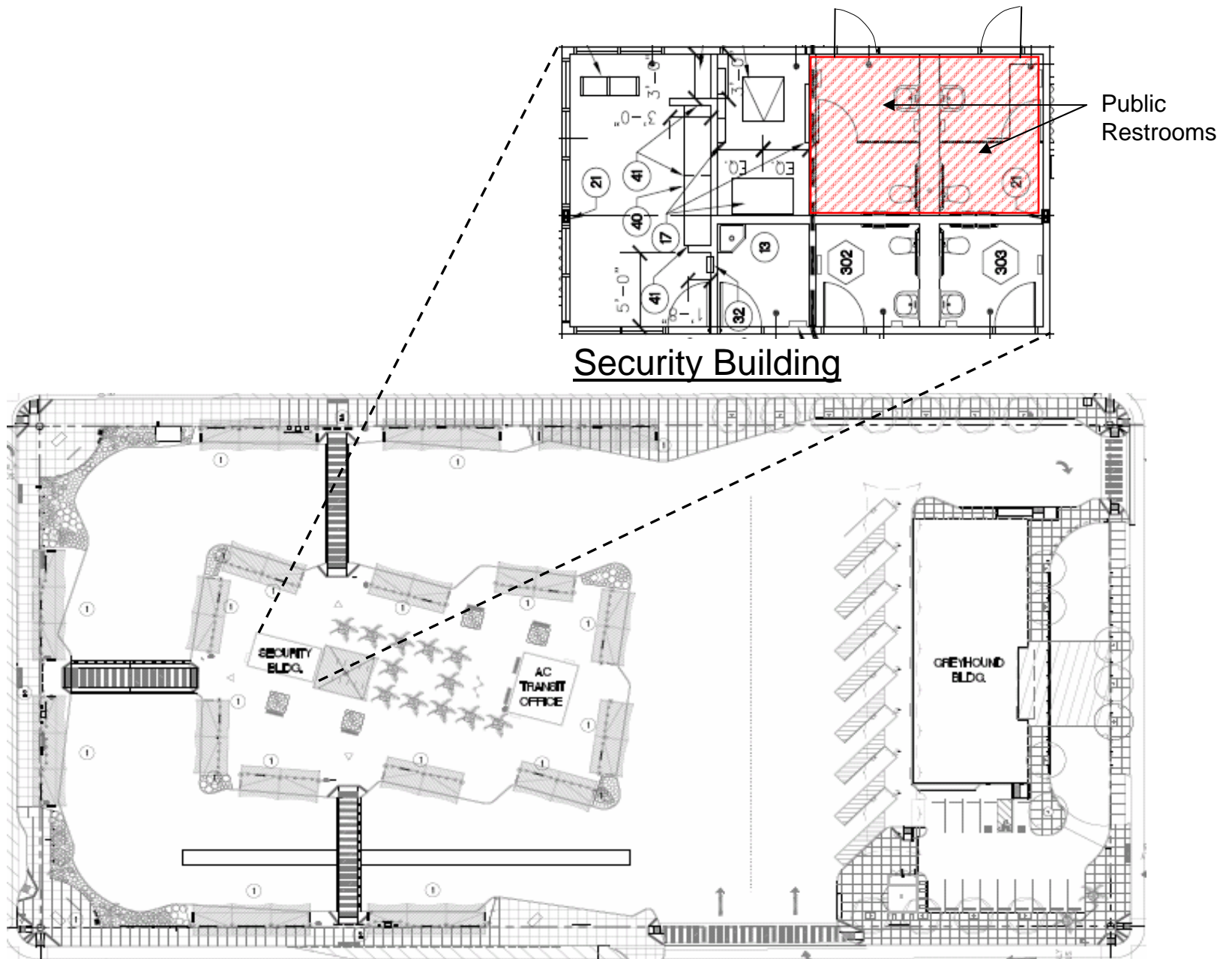
By:   
Kenneth C. Scheidig  
AC Transit General Counsel

LINC FACILITY SERVICES

Dated: December \_\_, 2010

\_\_\_\_\_  
(Title)





**Exhibit A: Temporary Terminal Site Plan**

Not To Scale



North