

**STAFF REPORT FOR CALENDAR ITEM NO.: 9.3
FOR THE MEETING OF: March 9, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a 25-year Airspace Lease with Caltrans for the property under I-80 between Third, Second, Perry, and Stillman Streets (“Premises”), with an anticipated Commencement Date in April 2017 for monthly rent of \$24,160 escalated by 3% annually for the construction and operation of the Bus Storage Facility (“Facility”), for use by AC Transit and other bus systems to store commuter buses between weekday peak periods.

REPORT:

The TJPA will build the Facility and at completion of construction sublease the Facility to AC Transit. This sublease will be brought to the TJPA Board for approval following approval by the AC Transit Board; currently this is scheduled for the April 12 AC Transit Board meeting. The sublease will pass on the terms of TJPA’s Airspace Lease to AC Transit, and require AC Transit to pay the monthly rent for the Facility upon commencement of operations. Since the TJPA has already received a financial commitment letter from AC Transit (Attachment 3) regarding the sublease, staff is recommending that the Board approve the Airspace Lease with Caltrans and award of the Bus Storage Construction contract at this March Board meeting to maintain schedule.

The key terms of the Airspace Lease are as follows:

1. The term of the Airspace Lease is 25 years, commencing when the TJPA receives an encroachment permit from Caltrans for construction of the Facility on the Premises.
2. The monthly rent for the Premises will start at \$24,160 and will increase annually by 3%. The rent is the fair market rent established by a Caltrans appraisal, less an 85% discount authorized by the California Transportation Commission.
3. Caltrans approves the sublease of the Premises to AC Transit as long as AC Transit pays to Caltrans the monthly rent required by the Airspace Lease. Caltrans would be entitled to any rent received by the TJPA in excess of the monthly rent payable under the Airspace Lease.
4. The TJPA accepts the Premises as-is, with all faults.
5. The TJPA must obtain a Caltrans encroachment permit before starting construction of the Facility. The TJPA’s plans for construction of the Facility must be approved by Caltrans, the State Fire Marshal, the State Architect and the Federal Highway Administration before Caltrans will issue an encroachment permit. The TJPA and Caltrans must amend an existing cooperative agreement for construction management oversight services to include the entire Bus Storage Facility premises and to increase the amount to be reimbursed to Caltrans for oversight services.

6. The TJPA must start construction of the Facility within 180 days after the Airspace Lease is executed. If the construction of the Facility proves economically infeasible, the TJPA may terminate the Airspace Lease.
7. The Facility improvements will belong to Caltrans at the expiration of the Airspace Lease. The TJPA may not remove the Facility improvements at the expiration of the Airspace Lease unless Caltrans demands their removal.
8. The TJPA shall be responsible for maintenance and repair of the Premises.
9. Caltrans may retake possession of the Premises on 180 days' notice if needed for an approved and funded highway transportation project.

At the request of AC Transit, the TJPA will be responsible for the monthly rental cost during construction. During the time of construction, the monthly rent of \$24,160 will be paid from the Program Reserve. This amount will add up to approximately \$440,000 expended over a maximum of 18 months; AC Transit will commence paying rent when they take possession of the Facility. AC Transit will also be responsible, under its sublease, for operations and maintenance of the Facility.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute the Airspace Lease with an anticipated Commencement Date in April 2017 for monthly rent of \$24,160, as escalated, and a 25-year term.

ATTACHMENTS:

1. Resolution
2. Airspace Lease
3. AC Transit Financial Commitment Letter

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The TJPA is developing the Transbay Transit Center Program (“Transbay Program”) and as part of the Transbay Program, the TJPA is the designer of, and will build for AC Transit to exclusively operate a Bus Storage Facility at Second, Stillman, Third and Perry Streets (“Bus Storage Facility”) in the City and County of San Francisco, State of California; and

WHEREAS, AC Transit provides bus services between Alameda and Contra Costa counties and the City and County of San Francisco under the authority of Public Utilities Codes sections 25801 et seq.; and

WHEREAS, AC Transit will operate and maintain the Bus Storage Facility for, among other things, the promotion, accommodation and development of regional and intercity bus and commuter transportation and commerce; and

WHEREAS, The California Transportation Commission approved a request to authorize execution of a long-term lease with the TJPA on October 20, 2016, and approved terms and conditions of the new lease to the TJPA on January 19, 2017; and

WHEREAS, The TJPA has full power and authority to enter into this Agreement, and the right to sublease the Bus Storage Facility to AC Transit; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute an Airspace Lease (Lease Area No. 04-SF-BT-04) with the State of California Department of Transportation for a monthly lease starting at \$24,160 per month, which is a rate discount of 85% of the Fair Market Lease Rate, escalated yearly by a three percent fixed escalation rate, and for a term of 25 years to use for parking and staging for public mass transit vehicles operating through the Transbay Transit Center, including administrative offices, bus driver rest area, various site improvements and incidental automobile parking.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 9, 2017.

Secretary, Transbay Joint Powers Authority

(Lease Area No. 04-SF-BT-04)
(Account No. 04-A70001-04-24)

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE LEASE

THIS LEASE, dated _____ (“Execution Date”) is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and the TRANSBAY JOINT POWERS AUTHORITY, hereinafter called "Tenant."

W I T N E S S E T H

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: California Department of Transportation

Tenant: Transbay Joint Powers Authority

Premises: 04-SF-BT-04 located in the City and County of San Francisco, State of California, and more particularly described in Article 2.

Lease Term: 25 Years, commencing on the “Commencement Date”, which shall be the earlier of: (1) the date of the issuance of the Caltrans Encroachment Permit permitting commencement of construction for the bus storage facility; or (2) the date that Tenant takes possession of the Premises thereby requiring Landlord’s existing public parking tenant to vacate the Premises. (Article 3).

Monthly Rent: \$ 24,160 (119,300 sf x \$1.35 per month x 85% discount) subject to annual escalation

Security Deposit: \$ 0.00 (Article 18)

Use: Parking and staging facility for public mass transit vehicles operating through the Transbay Transit Center, including administrative offices, bus driver rest area, and incidental automobile parking associated with same (Article 5)

Comprehensive General Liability Insurance: \$5,000,000. (Article 10)
Insurance provider: Special District Risk Management Authority.
Policy number: LCA-SDRMA-201617.

Business Automobile Liability Insurance: \$1,000,000. (Article 10)
Insurance provider: Special District Risk Management Authority.
Policy number: LCA-SDRMA-201617.

Workers' Compensation Insurance: \$1,000,000. (Article 10)
Insurance provider: Special District Risk Management Authority.
Policy number: WCP-SDRMA-201617.

Addresses for Notices: (Article 19)

To Landlord:

Department of Transportation
Right of Way Airspace Development MS 11
US Mail: PO Box 23440, Oakland, CA 94623-0440
Street Address: 111 Grand Avenue, 13th floor Oakland, CA 94612-3771

To Tenant: Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, California 94105
Email: MZabaneh@TransbayCenter.org Phone: 415-597-4620

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appear. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, that certain premises with an approximate area of 119,300sf known generally as Freeway Lease Area No. 04-SF-BT-04, situated under the Bay Bridge West Approach SF-80 elevated freeway structure between 2nd and 3rd Streets in the City and County of San Francisco ("Premises"), said land or interest therein being shown on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.

EXCEPTING THEREFROM all those portions of the above-described Premises occupied by the supports and foundations of the existing structure.

ALSO EXCEPTING THEREFROM all that portion of the Premises above a horizontal plane 5 feet below the underside of the superstructure of the existing structure, which plane extends to a line 10 feet, measured horizontally, beyond the outermost protrusion of the superstructure of the structure.

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. Tenant is hereby advised that the Premises have NOT been inspected by a CASp.

ARTICLE 3. TERM

The Lease shall be effective on the Execution Date. The term of this Lease shall be for 25 Years, commencing on the Commencement Date, which shall be the earlier of: (1) the date of the issuance of the Caltrans Encroachment Permit permitting commencement of construction for the bus storage facility; or (2) the date that Tenant takes possession of the Premises thereby requiring Landlord's existing public parking tenant to vacate the Premises.

ARTICLE 4. RENT

4.1 Monthly Rent

Tenant shall pay to Landlord as Monthly Rent, without deduction, setoff, prior notice, or demand, the sum of \$24,160, representing 119,300 square feet of net rentable area, as shown on Exhibit A, multiplied by \$0.2025/sf per month (“Monthly Rental Rate”). The Monthly Rental Rate represents the fair market rental rate of \$1.35/sf per month established pursuant to a written appraisal approved by Landlord (“Fair Market Rental Rate or FMRR”), less an 85% discount, as authorized by the California Transportation Commission at its October 20, 2016 meeting.

Monthly rent for the first month or portion of it shall be paid on the Term Commencement Date, and shall be due thereafter on the first day of each subsequent month. Monthly Rent for any partial month shall be prorated at the rate of 1/30th of the Monthly Rent per day. All rent checks shall have printed on their face the following tenancy reference number **04-A70001-04-24** and shall be paid to Landlord at the following address: State of California, Department of Transportation, Attention: Cashier, P. O. Box 168019, Sacramento, CA 95816-8019.

4.2 Annual Rent Adjustment

Beginning one year following the Commencement Date as defined in Article 3, Term, and continuing thereafter on each anniversary thereof (“Anniversary Date”), Monthly Rent provided for in Section 4.1 shall be adjusted by a fixed escalation rate of three percent (3%) rounded up or down to the closest \$5. Landlord shall not be required to provide any further notice to Tenant regarding annual rent adjustments during the Lease term. Table 4.2.1 provides Tenant’s Monthly Rent obligation for the 25 year term.

Table 4.2.1

<u>Lease Year</u>	<u>Monthly Rent</u>	<u>Lease Year</u>	<u>Monthly Rent</u>
Year 1	\$24,160.00	Year 14	\$35,475.00
Year 2	\$24,885.00	Year 15	\$36,540.00
Year 3	\$25,630.00	Year 16	\$37,635.00
Year 4	\$26,400.00	Year 17	\$38,765.00
Year 5	\$27,190.00	Year 18	\$39,930.00
Year 6	\$28,005.00	Year 19	\$41,125.00
Year 7	\$28,845.00	Year 20	\$42,360.00
Year 8	\$29,710.00	Year 21	\$43,630.00
Year 9	\$30,600.00	Year 22	\$44,940.00
Year 10	\$31,520.00	Year 23	\$46,290.00
Year 11	\$32,465.00	Year 24	\$47,680.00
Year 12	\$33,440.00	Year 25	\$49,110.00
Year 13	\$34,445.00		

4.3 Landlord's Compensation upon Sublease of Tenant's Leasehold

(a) In the event that Tenant voluntarily subleases any of Tenant's rights in the Premises, Tenant shall pay to Landlord compensation in connection with the transaction in an amount equal to 100 percent (100%) of any and all consideration, whether in present payments or in future payments, which Tenant

receives from a subtenant in excess of the amount of Monthly Rent Tenant is obligated to pay to Landlord under this Lease.

(b) Payment by Tenant of the amount of compensation required under this Section 4.3 is a condition to Landlord's giving its consent to any sublease under Article 16, and Landlord may withhold its consent to any such sublease until this compensation has been paid. In addition, before Landlord gives its consent to any such transaction, Tenant shall deliver to the subtenant a written summary of all sums due and owing to Landlord under this section and shall deliver to Landlord a written acknowledgement by the subtenant that said person affirms that the sums are due and owing to Landlord and that said person accepts responsibility for ensuring that such sums are paid directly to Landlord.

4.4 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new Monthly Rent as a condition to Landlord's approval of any use of the Premises not specifically permitted by Section 5.1 and as a condition to any amendment to or changes in the uses permitted by that section.

4.5 Reevaluation on Transfer

Landlord expressly reserves the right to establish a new Monthly Rent as a condition to Landlord's specific approval of any transfer, or assignment of this Lease or any subletting of all or any portion of the Premises; provided, however, that Tenant shall have the right from time to time, upon notice to, but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant for any or all of the uses permitted under this Lease without any such new Monthly Rent and without obtaining Landlord's consent. In particular, Tenant shall have the right to sublet the Premises to the Alameda Contra-Costa Transit District (AC Transit) under the terms and conditions provided in Section 16.2 without any change in the Monthly Rent and without otherwise obtaining Landlord's consent.

ARTICLE 5. USE

5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of operating a parking and staging facility for public mass transit vehicles routing through the Transbay Transit Center, including administrative offices, bus driver rest area, and incidental automobile parking associated with same, and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new Monthly Rent as a condition to Landlord's approval of any use of the leased Premises not specifically permitted by this section.

5.2 Condition of Premises

Tenant hereby accepts the Premises in the **AS-IS** condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the

condition of the Premises or the suitability thereof for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

Except as may be otherwise expressly provided in this Lease, the taking of possession of the Premises by Tenant shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and Tenant agrees to accept the Premises in its presently existing condition "as is", and that the Landlord shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to the execution of this Lease (including investigation of the surface, subsurface and groundwater for contamination and hazardous materials) and is satisfied that the Premises will safely support the type of improvements, if any, to be constructed and maintained by Tenant upon the Premises, that the Premises is otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that Tenant accepts all risks associated therewith.

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of any hazardous material has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous materials on or beneath the Premises; (3) Landlord has provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and analyze the soil and groundwater on the Premises for the presence of hazardous materials; (4) by signing this Lease Tenant represents to Landlord that, except as otherwise may be stated on "Exhibit C" attached hereto and by this reference incorporated herein, Tenant does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Premises; and (5) with respect to any hazardous material which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant has listed the hazardous material on attached "Exhibit C" and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous material at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations. The phrase "hazardous material," as used herein, has the same meaning as that phrase has in Section 5.7 of this Lease.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to the Landlord to take all actions necessary, off as well as on the Premises to improve and continuously use the Premises as required by this Lease and in compliance with all applicable laws and regulations.

5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether

Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

5.4 [omitted]

5.5 Petroleum Products

Tenant shall not install facilities for, nor operate on the Premises, a gasoline or petroleum supply station. Tenant shall not permit on the Premises any vehicles used or designed for the transportation or storage of gasoline or petroleum products. Tenant shall also not permit on the Premises any bulk storage of gasoline or petroleum products.

5.6 Explosives and Flammable Materials

The Premises shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials, explosives or other materials or other purposes deemed by Landlord to be a potential fire or other hazard to the transportation facility. The operation and maintenance of the Premises shall be subject to regulations of Landlord so as to protect against fire or other hazard impairing the use, safety and appearance of the transportation facility. The occupancy and use of the Premises shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

5.7 Hazardous Materials

Tenant shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. section 1251, et seq.), Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.), Safe Drinking Water Act (42 U.S.C. section 300f, et seq.), Toxic Substances Control Act (15 U.S.C. section 2601, et seq.), Clean Air Act (42 U.S.C. section 7401, et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601, et seq.), Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code section 25249.5, et seq.), other applicable provisions of the California Health and Safety Code (section 25100, et seq., and section 39000, et seq.), California Water Code (section 13000, et seq.), and other comparable state laws, regulations and local ordinances relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances" under any such laws, ordinances or regulations (collectively "Hazardous Materials Laws"). As used in the provisions of this Lease, "hazardous materials" include any "hazardous substance" as that term is defined in section 25316 of the California Health and Safety Code and any other material or substance listed or regulated by any Hazardous Materials Law or posing a hazard to health or the environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the Premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the Premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the Premises.

In the event Tenant breaches any of the provisions of this Section, this Lease may be terminated immediately by Landlord and be of no further force or effect. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the Premises during Tenant's period of use and possession as owner, operator or Tenant of the Premises. Tenant shall also be responsible for any clean-up and decontamination on or off the Premises necessitated by the introduction of such hazardous materials on the Premises. Tenant shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Premises by any party other than Tenant during any period prior to commencement of Tenant's period of use and possession of the Premises as owner, operator or Tenant.

Tenant shall further hold Landlord, and its officers and employees, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the Premises during Tenant's period of use and possession of the Premises.

5.8 Signs

Not more than four (4) advertising signs of a size not greater than thirty (30) square feet of surface area may be erected on the Premises. The wording on these signs shall be limited to Tenant's name or trade name, the words "Parking," or "Auto Parking," a statement of rates, and a directional arrow. The location of all these signs shall be subject to Landlord's prior approval. None of these signs shall be attached to or painted on any bridge structure or building without the express written consent of Landlord. All of these signs shall also comply with all applicable requirements of local governmental entities, including governmental approval and payment of any fees.

Except as set forth in the previous paragraph of this Section, Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the Premises without the prior written approval of Landlord. Tenant shall not place, construct or maintain upon the Premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the Premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

5.9 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public. Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant.

5.10 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the Premises. Tenant may from time to time require interim storage of disabled buses until they can be reasonably towed/removed from the Premises, but in no event shall such storage for transport back to Tenant's maintenance facilities be for periods longer than 48 hours.

5.11 Vending

Tenant shall be allowed to install vending machines inside its administrative offices for the sole purpose of providing food and beverages to bus drivers and other employees of Tenant using the facilities. No other third party vending of any kind or character shall be conducted, permitted or allowed upon the Premises without the prior express written consent of Landlord.

5.12 Water Pollution Control

Tenant shall comply with all applicable State and Federal water pollution control requirements regarding storm water and non-storm water discharges from the tenant's leasehold area and will be responsible for all applicable permits including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit, and permits and ordinances issued to and promulgated by municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water and non-storm water to sewer systems, storm drain systems, or any watercourses under the jurisdiction of the above agencies. Copies of the current storm water related NPDES permits are available on the State Water Resources Control Board's website at http://www.swrcb.ca.gov/water_issues/programs/stormwater/.

Tenant understands the discharge of non-storm water into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-storm water into the storm sewer system, vehicle or equipment washing, fueling, maintenance and repair on the Premises is prohibited.

In order to prevent the discharge of pollutants to storm water resulting from contact with hazardous material, the storage or stockpile of hazardous material on Premises is strictly prohibited.

Tenant shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: Parking and Storage marked "Exhibit B." Tenant shall identify any other potential sources of storm water and non-storm water pollution resulting from Tenant's activities on the Premises, which are not addressed by the BMPs, contained in the attached Fact Sheet(s), and shall implement additional BMPs to prevent pollution from those sources. Additional BMPs may be obtained from 2 other manuals:

(1) Right of Way Property Management and Airspace Storm Water Guidance Manual available for review online at: www.dot.ca.gov/hq/row/rwstormwater, and

(2) Construction Site Best Management Practices Manual, available for review online at: www.dot.ca.gov/hq/construc/stormwater/manuals.htm.

In the event of conflict between the attached fact sheet(s), the above-referenced manuals, and this Lease, this Lease shall control.

Tenant shall provide Landlord with the Standard Industrial Classification (SIC) code applicable to Lessee's facilities and activities on the lease Premises. A list of SIC codes regulated under the General Industrial Permit SIC codes may be found at the State Water Resources Control Board website: http://www.waterboards.ca.gov/water_issues/programs/stormwater/gen_indus.shtml. Other SIC codes may be found at www.osha.gov/pls/imis/sicsearch.html.

Landlord, or its agents or contractors, shall at all times have the right to enter and inspect the Premises and the operations thereon to assure compliance with the applicable permits, and ordinances listed above. Inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises.

ARTICLE 6. IMPROVEMENTS

6.1 No Improvements Without Prior Written Consent of Landlord

Tenant has provided to Landlord for review and approval design plans and specifications for the Transbay Transit Center Program Bus Storage Project Contract No. 16-XX-BSF-000. Landlord may consent to the proposed improvements upon issuance of an executed Encroachment Permit.

No additional improvements of any kind beyond the scope of work included and approved within Contract No. 16-XX-BSF-000 shall be placed in, on, or upon the Premises, and no alterations shall be made in, on, or upon the Premises without the prior written consent of Landlord and the concurrence of the Federal Highway Administration. Tenant may, at its sole expense, install and maintain any additional fencing and entrances that may be required by its use of the Premises, subject to the approval of the location by Landlord, the Federal Highway Administration and the City and County of San Francisco; provided that Tenant shall at its sole expense construct and maintain sidewalks and driveways at the locations where the additional entrances are installed. In the event Tenant violates any of the provisions of this Article, this Lease may be terminated immediately by Landlord and be of no further force or effect.

6.2 Encroachment Permit

Tenant, prior to construction or alteration of any improvements on or of the leased Premises, shall obtain an executed Encroachment Permit from Landlord.

Issuance by Landlord of an Encroachment Permit shall be contingent upon Tenant's providing, at Landlord's sole discretion, all or a combination of, the following, to the extent applicable:

- (a) Final construction plans and detailed specifications. All such plans and specifications submitted by Tenant to Landlord shall be subject to the review and approval of Landlord, the State Fire Marshal and if on an interstate freeway the Federal Highway Administration.
- (b) [omitted – public entities need not post a bond, but will provide copies of bonds posted by any contractor doing work on the Premises.
- (c) Liability insurance as provided in Article 10.
- (d) [omitted].
- (e) [omitted].
- (f) [omitted].
- (g) [omitted].
- (h) [omitted].

(i) Evidence of compliance with the applicable provisions of all federal, state and local environmental statutes, laws, regulations and ordinances.

Tenant agrees to diligently apply for and meet all requirements for issuance of the Encroachment Permit and Landlord agrees to not unreasonably withhold issuance of said Encroachment Permit. Tenant is obligated to deliver to Landlord the documents described in subdivisions (a) through (i) of this section regardless of whether an Encroachment Permit may have been issued inadvertently before these documents have been provided to Landlord.

6.3 Planning and Zoning

Tenant's use and proposed improvements shall be subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises.

6.4 Standard of Construction

Tenant agrees that any improvements or construction upon the Premises shall: (a) be consistent with all fire safety requirements including State Fire Marshall approval, (b) be subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, and (c) in every material respect comply with the laws, ordinances and regulations, federal, state, municipal or otherwise, that may govern construction of the same. Tenant shall not construct or place on the leased Premises any improvements which impair Landlord's ability to maintain, operate, use, repair or improve any part of the transportation facility situated on the leased Premises or on adjoining real property. Tenant shall save Landlord harmless of and from any loss or damage caused by reason of the construction of said improvements.

6.5 Soil Testing

At Tenant's sole cost and expense, Tenant shall secure soil compaction tests and other tests as necessary for construction of Tenant's improvements and for the support of the improvements on the underlying land or structures thereon. Tenant shall notify Landlord of the location of all test borings, which shall not interfere in any manner with the operation of the facility by Landlord. Tenant hereby agrees that Landlord is making no representation regarding existing soil compaction or structural capability of the land or any existing structure thereon. Responsibility for any loss or damage caused by inadequate soil compaction or other structural capacity for Tenant's proposed improvements shall be subject to the indemnification provisions of Section 10.1

6.6 Commencement of Construction

Tenant shall commence construction of the improvements described in Tenant's final construction plans and detailed specifications within 180 days after the Execution Date of this Lease. For the purposes of this Article, construction shall be deemed to have commenced upon the issuance by Landlord of an Encroachment Permit under Section 6.1 and 6.2. In the event construction is not commenced within the time set forth herein, this Lease may be terminated by Landlord and thereafter be of no further force and effect.

6.7 Completion of Construction and Occupancy of Improvements

Construction of the improvements shall be completed consistent with the approved construction plans within two years after the commencement of construction. Tenant shall not occupy or use any of the improvements until Tenant has received final building approval and a Certificate of Occupancy from the appropriate local agency and Landlord has issued to Tenant an executed Encroachment Permit Completion Notice. In the event Tenant violates any of the provisions of this section, this Lease may be terminated by Landlord and be of no further force and effect.

6.8 "As-Built" Plans

Within ninety (90) days after completion of construction of improvements or alterations, Tenant shall furnish Landlord, at Tenant's expense, one set of "As-Built" plans, according to a scale and size designated by Landlord, showing said improvements as constructed in detail, including the location of underground and aboveground utility lines.

6.9 Termination If Required Construction Proves Economically Infeasible

This Lease requires Tenant to submit plans for any proposed improvements and construction activities conducted on the Premises and to obtain an Encroachment Permit prior to beginning any construction related activities on the Premises. If Landlord's Encroachment Permits office reviews Tenant's plans, and thereafter requires Tenant to construct certain improvements or to employ certain construction methods as a condition of the Encroachment Permit, or if other circumstances arise related to construction or operation of the improvements, and such Landlord requirements or other circumstances related to construction or operation of the improvements prove economically infeasible to Tenant, Tenant shall have the option to elect not to proceed with the construction and to terminate this Lease.

ARTICLE 7. SURRENDER OF PREMISES AT EXPIRATION OR TERMINATION OF LEASE

At the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield up to Landlord the Premises together with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted.

ARTICLE 8. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY

8.1 Ownership of Improvements During Term

All improvements constructed on the Premises by Tenant as permitted or required by this Lease shall, during the term of this Lease, be and remain the property of Tenant; provided, however, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease and Tenant's interest in such improvements shall terminate upon the expiration or earlier termination of this Lease. Following completion of construction, Tenant shall not remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as specifically permitted by this Lease. At the expiration or termination of this Lease, all improvements constructed on the Premises by Tenant shall vest in Landlord. Tenant shall deliver said improvements to Landlord in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by

Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. In the event said improvements are not delivered to Landlord in good condition and repair, reasonable wear and tear excepted, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made, plus interest as provided in Section 22.11 from the date of completion of work. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

8.2 Removal of Personal Property and Ownership at Termination

At the expiration or earlier termination of this Lease, Landlord may, at Landlord's sole election, require the removal from the Premises, at Tenant's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of the term of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination. Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section 8.2.

Tenant may remove any personal property from time to time within forty-five (45) days of the expiration of the term. Tenant shall repair all damage (structural or otherwise) caused by any such removal. Any personal property not removed by Tenant within forty-five (45) days following expiration of the term shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, become the Landlord's property, free and clear of all claims to or against them by Tenant or any other person.

8.3 Removal of Improvements at Termination

Upon the expiration or earlier termination of this Lease, Landlord may, upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than three hundred sixty (360) days after the expiration or earlier termination of this Lease, all structures, buildings and improvements of any kind whatsoever placed or maintained on the Premises, whether below, on or above the ground by Tenant, including, but not limited to, foundations, structures, buildings, utility lines, switchboards, transformer vaults and all other service facilities constructed or installed upon the Premises; and Tenant shall, upon the expiration or earlier termination of this Lease, immediately restore, and quit and peacefully surrender possession of the Premises to Landlord in at least as good and usable condition, acceptable to Landlord, as the same was in at the time of first occupation thereof by Tenant or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should Tenant fail to so remove said structures, buildings and improvements and restore the Premises, Landlord may sell, remove or demolish the same, and in the event of said sale, removal or demolition, Tenant shall reimburse Landlord for any cost or expense thereof in excess of any consideration received by Landlord as a result of such sale, removal or demolition. Tenant's rent obligation shall continue during the period of time Tenant is restoring the Premises until the date Tenant surrenders possession of the Premises to Landlord in its fully restored condition.

8.4 Liens

Exemption of Landlord from Liability

(a) Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the Premises for work undertaken by Tenant or Tenant's agents, and from the cost of defending against such claims, including attorney fees.

(b) [omitted]

ARTICLE 9. MAINTENANCE AND REPAIRS

9.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the Premises, and keep it free of all grass, weeds, debris, and flammable materials of every description. Tenant shall ensure that the Premises is at all times in an orderly, clean, safe, and sanitary condition. Landlord requires a high standard of cleanliness, consistent with the location of the Premises as an adjunct of the California State Highway System.

Tenant hereby expressly waives the right to make repairs at the expense of Landlord and waives the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto.

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of all structures located on the Premises from damage incident to Tenant's use of the Premises and any improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned by Landlord on the Premises, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or other third parties. At Tenant's request, Landlord will repair the damage to its property on the Premises, and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

Tenant shall be responsible for the care, maintenance, and any required pruning of trees, shrubs, or any other landscaping on the Premises. Tenant assumes the liability for any damage or injury caused by any falling branches or other such materials from any tree or shrub on the Premises whether the branches fall due to lack of maintenance or act of god or any other natural or unnatural causes. Tenant's liability insurance required within Article 10 shall cover any damage caused by any falling tree or shrub branches or other materials on the Premises, except as limited in Article 10; and, furthermore, per the same Article 10, Tenant covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost, and obligation on account of any injuries or losses caused by any falling branches or material from any tree or shrub on the Premises, except as limited in Article 10.

Tenant shall designate in writing to Landlord a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

9.2 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If within ninety (90) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

9.3 Retention of Existing Improvements

Landlord may at its option retain existing State improvements including fencing, lighting and irrigation facilities. If Landlord elects to retain any improvements, Tenant shall remove same and deliver same to Landlord's nearest maintenance station at no cost to Landlord.

ARTICLE 10. INSURANCE

10.1 Exemption of Landlord from Liability

This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operation or use of the Premises by Tenant, its agents, customers or business invitees, excepting only that resulting from the gross negligence or willful misconduct of Landlord, its employees, agents or officers. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses except for liability, injury, loss or damage caused by Landlord's active negligence or willful misconduct.

10.2 Commercial General Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease comprehensive bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the Premises, including any and all liability of Landlord for damage to vehicles parked on the Premises. Such insurance shall be in an amount of not less than \$5,000,000 combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name Landlord as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable

to Landlord within not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

10.3 Business Automobile Liability Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease business automobile liability insurance in an amount not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 each occurrence.

10.4 [omitted]

10.5 Workers' Compensation Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease workers' compensation insurance, including employers' liability, in an amount not less than \$1,000,000 for each accident, covering all employees employed in or about the Premises to provide statutory benefits as required by the laws of the State of California. Said policy shall be endorsed to provide that the insurer waives all rights of subrogation against Landlord.

10.6 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, this Lease may be terminated immediately by Landlord after providing ten (10) business days' written notice to Tenant to cure, and Tenant fails to do so. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the Premises and the improvements erected thereon and shall prevent members of the public from gaining access to the Premises during any period in which such insurance policies are not in full force and effect.

10.7 Waiver of Subrogation

Tenant hereby waives any and all rights of recovery against Landlord, or against the officers, employees, agents and representatives of Landlord, for loss of or damage to Tenant or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. Tenant shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in the Lease.

10.8 Self-Insurance Coverage

Notwithstanding any other provision of this Agreement, the insurance required under Article 10 may include a self-insurance program, subject to Landlord's prior express written consent and approval. No such self-insurance program shall diminish the rights and privileges to which Landlord would otherwise have been entitled to under the terms of this Agreement had there been a third-party insurer.

Tenant's self insurance shall include such coverage as would have been covered by Commercial General Liability Insurance with respect to the Premises with limits of liability not less than Five Million Dollars (\$5,000,000) per occurrence with no aggregate limit. Tenant shall provide Landlord with a certificate of self-insurance specifying the extent of self-insurance coverage hereunder and containing a waiver of subrogation provision reasonably satisfactory to Landlord. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this Article effective on that termination date. Execution of this Lease shall be Tenant's acknowledgment that Tenant will be bound by all laws as if the Tenant were an insurer as defined under California Insurance Code Section 22 (7-1.12B(5)).

ARTICLE 11. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon the Premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to the Premises, buildings, improvements or structures. Specifically, and without placing any limitation on Tenant's obligations under the immediately preceding sentence, Tenant shall pay when due, before delinquency, any and all possessory interest taxes, parking taxes, workers' compensation, taxes payable to the California Franchise Tax Board, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the Premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant defaults in the payment of any of the obligations set forth in this Article, this Lease may be terminated immediately by Landlord after providing ten (10) business days' written notice to Tenant to cure, and Tenant fails to do so.

ARTICLE 12. RIGHT OF ENTRY

12.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

Landlord, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the Premises and any building or improvements situated thereon at any and all reasonable times during the term of this Lease for the purpose of inspecting the same without interference or hindrance by Tenant, its agents or representatives.

Landlord further reserves the right of entry for the purpose of inspecting the Premises, or the doing of any and all acts necessary or proper on said Premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that Landlord reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the property which Tenant has failed to perform after the expiration of the applicable cure period specified in Article 9.

12.2 Future Transportation Projects

(a) Landlord's Right to Possession of Premises.

Tenant understands and acknowledges that Landlord may, during the Term of this Lease, construct an "Approved and Funded Transportation Project", which may require the temporary or permanent use of all or a portion of the Premises. An "Approved and Funded Transportation Project" is defined as a proposed transportation facility to be constructed by Landlord that has been environmentally cleared, has all necessary permits or approvals, where the funds necessary to construct the facility have been authorized and are available to Landlord (regardless of the source of the funds) and where Landlord after consideration of all of the available sites, has reasonably determined that the transportation facility requires the use of all or a portion of the Premises, and where construction of the transportation facility can reasonably be expected to be commenced within one hundred eight (180) days following termination of this Lease as provided in this Article.

In the event Landlord determines that the Premises or any portion thereof will be affected by an "Approved and Funded Transportation Project", Landlord shall immediately notify Tenant of its intent to take possession of all or a portion of the Premises and shall provide Tenant with at least one hundred eighty (180) days written notice within which to vacate the required area. Landlord's notice to Tenant shall indicate the area of the Premises to be taken. If possession is to be a temporary use of all or part of the Premises, Landlord shall additionally state in such notice to Tenant Landlord's reasonable estimate of the period of time of such temporary use by Landlord. If possession is to be a permanent use of all or a portion of the Premises, Landlord shall additionally state in such notice the extent of the permanent use and shall have the right to modify the Lease to reflect the newly defined Premises, and if the entire Premises is affected, Landlord shall have the right to terminate the Lease. Upon the date Landlord is entitled to possession of the Premises, or portion thereof, Tenant shall peaceably surrender possession of the Premises, or portion thereof, and comply with the restriction as stated in the notice. The failure

of Tenant to vacate the required area of the Premises shall constitute a material default and breach of this Lease entitling Landlord to exercise its rights and remedies.

(b) Reduction of Monthly Rent if Lease Remains Effective

For the period during which Landlord has taken possession of the Premises under this section, and if this Lease remains effective, Tenant shall be entitled to receive a reduction in Monthly Rent for the term of Landlord's use of the area of the Premises used by Landlord. The rent will be reduced by the same percentage as the useable square footage reduction as required by State's project.

(c) Tenant's Sole Rights; Tenant's Waiver.

Landlord's taking of possession of the Premises under this Section 12.2 does not constitute a taking or damaging entitling Tenant to compensation under any Condemnation provisions. The reduction in Monthly Rent as provided herein shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use part or all of the area of the Premises as a result of an "Approved and Funded Transportation Project." Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the Premises or improvements thereon, and damages to any other property, project or operations including any claim for loss of business goodwill or resulting from Tenant's inability to use or possess all or any portion of the Premises as a result of an "Approved and Funded Transportation Project". In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (United States Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the Premises an "Approved and Funded Transportation Project". Landlord agrees to instruct its authorized representatives to minimize the effect of any required construction on Tenant's use of the Premises, both in the construction phase and in the permanent effect on the Premises in connection with an "Approved and Funded Transportation Project". Landlord agrees that, if possible, it will minimize the effect of any required construction on Tenant's use of the Premises, both in the construction phase and in the permanent effect on the Premises in connection with an "Approved and Funded Transportation Project" and will restore the Premises and Tenant's improvements to their pre-existing condition at no cost to Tenant in the event that Landlord requires the temporary use of all or a portion of the Premises.

12.3 Maintenance Work and Retrofitting of Freeway Structures

Tenant understands and agrees that Landlord may be required to perform maintenance or retrofit work on all or a part of the freeway structures that are situated on and above the Premises. Landlord shall have the right to impose such restrictions on Tenant's right to enter, occupy, and use the Premises and to maintain the existing improvements or construct improvements thereon as Landlord deems are necessary to enable it to complete construction of all freeway maintenance or structural retrofit work without interference from Tenant.

In the event Landlord determines that it needs to obtain possession of all or a portion of the Premises, or needs to place restrictions on Tenant's use of the Premises, Landlord shall, if possible, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the Premises and comply with the restrictions as stated therein. The Monthly Rent stated in Section 4.1, as adjusted in Section 4.2, shall be reduced by an amount equal to the proportion which

the area of the portion of the Premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased Premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the Premises. Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the Premises, and waives its right to use or possess any portion of the Premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the Premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the Premises.

Tenant shall conduct its operations on the Premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the Premises. Tenant acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by Tenant on the Premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except that at the conclusion of the retrofit work, Landlord shall restore the Premises to their preexisting condition at no cost to Tenant.

12.4 Reinstitution of Lease.

If Landlord takes possession of all or a portion of the Premises in accordance with the preceding provisions of this Article 12, Landlord shall notify Tenant that Landlord has completed the use or work requiring such repossession within thirty days after Landlord completes such use or work, and if requested by Tenant in writing within ninety days thereafter, either (i) in the case of a partial repossession by Landlord, Tenant shall be entitled to lease the entire Premises (i.e., the initial Premises leased before Landlord's repossession) and pay the corresponding minimum monthly rent for the remainder of the Lease term and (ii) in the case of a total repossession by Landlord and termination of the Lease, Landlord shall enter into a new lease with Tenant with respect to the entire Premises with substantially the same terms and conditions as set forth in this Lease (except that the expiration date of the new lease shall be extended one day for each day between the date of Landlord's repossession and the commencement date of the new lease, which shall be Landlord's only obligation to Tenant in the case it repossesses all of the Premises).

ARTICLE 13. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

13.1 Definitions

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by a public entity having that power, that is, a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the leased Premises.

(c) "Substantial taking" means a taking of a portion of the leased Premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

13.2 Termination of Lease as to Part Condemned

In the event the whole or any part of the Premises is taken by condemnation by a public entity, other than Landlord, in the lawful exercise of its power of eminent domain, this Lease shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by the public entity.

13.3 Partial Taking

If a part of the leased Premises is taken by condemnation but there is no substantial taking of the Premises, Tenant shall continue to be bound by the terms, covenants, and conditions of this Lease. However, if the fair rental value of the remainder will be less than the rent required by this Lease, the Monthly Rent shall be reduced to an amount equal to the fair rental value as of the date possession of the part is taken by the public entity.

If the part taken by condemnation constitutes a substantial taking of the leased Premises, Tenant may elect to:

(a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or

(b) Continue to occupy the remainder of the Premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the Monthly Rent shall be reduced to the fair rental value as of the date possession of the part is taken by the public entity.

Tenant shall give notice in writing of its election to terminate this Lease hereunder within thirty (30) days of the date possession of the part is taken by the public entity. If Tenant fails to give Landlord its written notice of termination within the time specified, this Lease shall remain in full force and effect except that the Monthly Rental shall be reduced as provided in this section.

If it continues to occupy the remainder, Tenant, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the leased premises as nearly as possible to its value, condition and character immediately prior to such taking; provided, however, that in the case of a taking for temporary use, Tenant shall not be required to effect restoration until such taking is terminated. Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by the public entity.

13.4 Adjustment of Rent

Should a portion of the Premises be condemned and the rent be reduced as provided above, the reduced rent shall continue to be subject to adjustment and reevaluation in accordance with Article 4.

13.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the Premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased Premises located within the part taken by the public entity. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the

California Code of Civil Procedure. Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "condemnation bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the Premises as defined in Article 4 above.

If all or a portion of the leased Premises is condemned at a time when Tenant possesses an interest in real property located outside the leased Premises (hereinafter called "outside property"), Tenant may claim entitlement to an award of damages accruing to the outside property by reason of the severance therefrom of the condemned portion of the leased Premises as provided in the Eminent Domain Law (California Code of Civil Procedure Sections 1230.010 through 1273.050).

ARTICLE 14. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping services and all other materials and utilities supplied to the Premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

ARTICLE 15. DEFAULT

15.1 Default

The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant.

(a) Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof has been given by Landlord to Tenant.

(b) The abandonment or vacation of the Premises by Tenant. Failure to occupy and operate the Premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.

(c) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

(d) The failure by Tenant to comply with any provision of any law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 5.3 of this Lease.

(e) [omitted].

(f) The failure by Tenant to comply with the requirements regarding hazardous materials as set forth in Article 5 of this Lease.

(g) The construction by Tenant of any improvements on the Premises contrary to the provisions of Article 6 of this Lease.

(h) The failure by Tenant to pay any tax, assessment, imposition, levy or charge of any kind as set forth in Article 11 of this Lease.

(i) The failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

15.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach, terminate Tenant's right to possession by any lawful means, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

(e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (a) and (b), above, the "worth at the time of award" is computed by including interest on the principal sum at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of default. As used in subparagraph (c), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

15.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one-half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one-half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

15.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 19.11 from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

ARTICLE 16. ASSIGNMENTS, TRANSFERS, SUBLEASES AND ENCUMBRANCES

16.1 [omitted]

16.2 Voluntary Assignments and Subleases for Mass Transit Uses

Tenant shall not voluntarily assign or transfer all or any part of its interest in this Lease or in the Premises, or sublet all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration.

Notwithstanding the foregoing, Landlord acknowledges that Tenant intends to sublease the entire Premises to the Alameda-Contra Costa Transit District (AC Transit) for the same use as specified in Section 5.1. Landlord consents to the sublease subject to Tenant satisfying the following express conditions:

- (a) Landlord receives compensation from Tenant upon the assignment, transfer, sale or sublease of any of Tenant's rights in the Premises per the provisions of Article 4.3.
- (b) [omitted].

Except as expressly provided herein, Tenant's failure to obtain Landlord's required written approval prior to any assignment, transfer or sublease shall render such assignment, transfer or sublease void. Occupancy of the Premises by a prospective transferee, subtenant or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's

consent to any assignment, transfer or sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, sublease and transfer of rights under this Lease and shall be severally binding upon each and every party thereto. Any document to transfer, sublet, or assign the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

16.3 Voluntary Subleases for Non-Mass Transit Uses

Tenant shall not voluntarily sublease any part of its interest in this Lease or in the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration.

Landlord may, with the approval of the California Transportation Commission, elect to consent to any such sublease if all of the following express conditions are satisfied:

(a) The proposed subtenant is the successful high bidder through a public auction with written auction rules to be pre-approved by Landlord.

(b) The prospective subtenant completes a Lease Application and meets all of the requirements for eligibility to lease from the State of California.

(c) Per the provisions of Section 4.3, all sublease compensation collected by Tenant from Subtenant shall be considered additional rent for Tenant's possession of the Premises that is the subject of this Lease, and such compensation shall be paid monthly in full to Landlord in addition to and together with the rent amount described in Article 4 herein.

(d) Tenant provides the negotiated sublease agreement to Landlord

(e) The California Transportation Commission votes to authorize Landlord to consent to the proposed sublease proposal.

Tenant's failure to obtain Landlord's required written approval (which also requires CTC approval) prior to any sublease shall render such sublease void. Occupancy of the Premises by a prospective subtenant before approval of the sublease by Landlord and the CTC shall constitute a breach of this Lease. Landlord's consent to any sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every sublease and transfer of rights under this Lease and shall be severally binding upon each and every party thereto. Any document to sublet the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

16.4 Assignment of Rent from Subtenants

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

16.5 Information to be Supplied to Landlord

Tenant shall supply Landlord with all information Landlord determines to be necessary on all persons or firms to which Tenant proposes to sublet any of its interest in the Premises, or which might

establish rights to enter, control, or otherwise encumber the Premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease, Tenant shall provide Landlord with:

- (a) a copy of all documents relating thereto,
- (b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
- (c) a copy of the financial statement of the prospective subtenant.
- (d) a copy of all documents showing compliance by the prospective subtenant with all of the bid eligibility requirements contained in the bid package.

16.6 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever.

ARTICLE 17. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors, (3) such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the Premises, and (4) Tenant shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 18. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum of \$ 0.00 as a Security Deposit. Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith, Landlord may use, apply or retain all or any part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant's default or use it to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied, Tenant shall within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Lease term and after Tenant has vacated the Premises.

ARTICLE 19. ADDITIONAL PROVISIONS

19.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term.

19.2 Captions, Attachments, Defined Terms

The captions of the Articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addenda and schedules initiated by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

19.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the Premises are merged in or revoked by this agreement.

19.4 Severability

If any terms or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

19.5 Costs of Suit

If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof,

and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

19.6 Time, Joint and Several Liability

Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

19.7 Binding Effect; Choice of Law

The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

19.8 Waiver

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

19.9 Surrender of Premises

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

19.10 Holding Over

If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant, condition and agreement contained herein, except that the Monthly Rental Rate set forth in Section 4.1 may be increased by Landlord effective the first month of the holdover period, or upon 30 days notice any time thereafter.

19.11 Interest on Past Due Obligations

Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the due date. Payment of such interest together with the amount due shall excuse or cure any default by Tenant under this Lease.

19.12 Recording

Neither Landlord nor Tenant shall record this Lease.

19.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

19.14 No Reservation

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

19.15 Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

19.16 Force Majeure

If either Landlord or Tenant shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse Tenant from prompt payment of any taxes, insurance or any other charge required of Tenant, except as may be expressly provided in this Lease.

In Witness Whereof Landlord and Tenant have executed this Lease as of the dates set forth below and the Execution Date is as of the date first written above.

LANDLORD: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: _____

By: _____

LINDA EMADZADEH,
District Office Chief
R/W Local Programs, Utilities, and Airspace

TENANT: TRANSBAY JOINT POWERS AUTHORITY

Dated: _____

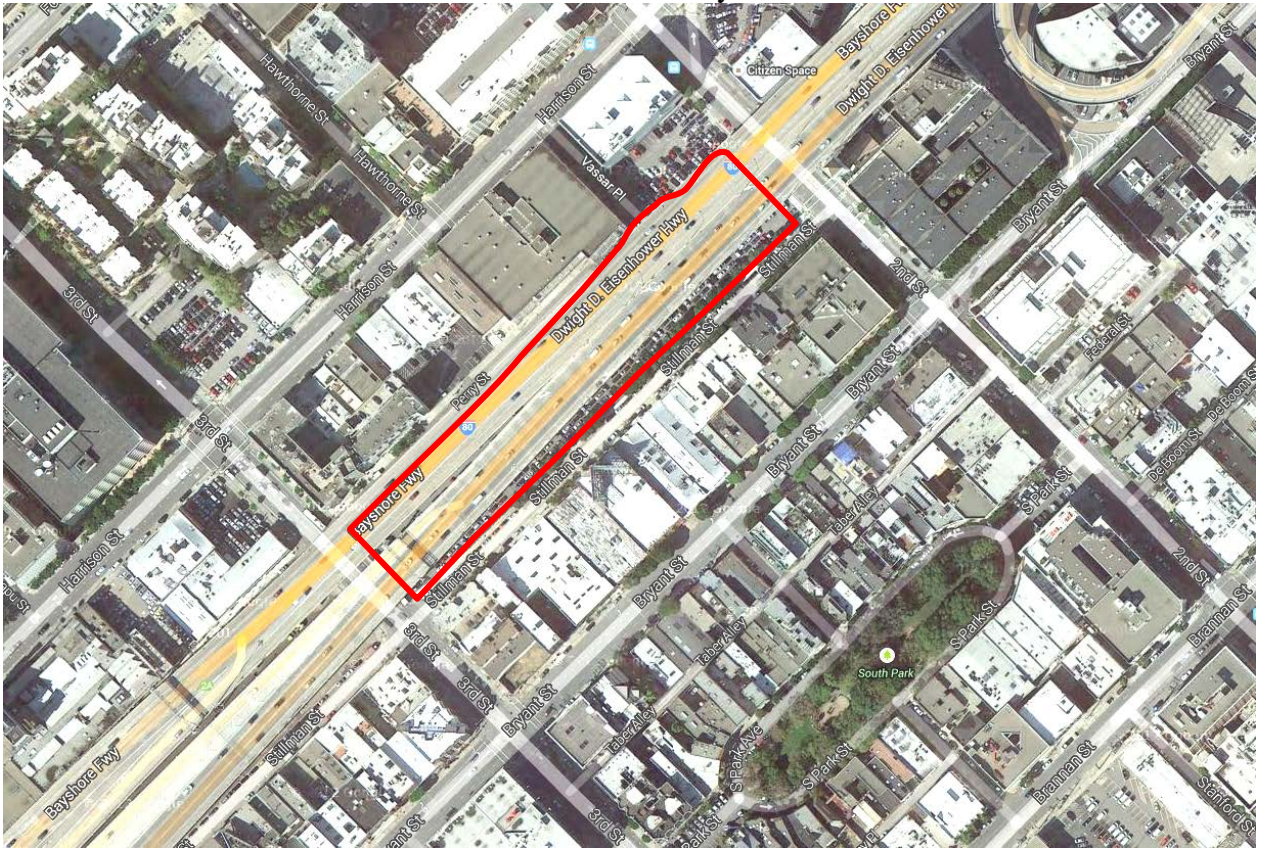
By: _____

MARK ZABANEH
Executive Director

EXHIBIT A

SF-BT-04

Between 2nd and 3rd Streets and Perry and Stillman Streets



Premises western limit extends to the east side of the freeway columns depicted by red line (as delineated on the ground by the existing fence).

From 2nd St. looking south by Stillman St.

Stormwater Pollution Prevention

Parking Lots

Leaking Vehicles

Clean parking lots on a regular basis to prevent accumulated wastes and pollutants from being discharged into storm drain systems during rainy conditions. When cleaning heavy oily deposits, use absorbent materials on oily spots prior to sweeping or washing. Dispose of used absorbents appropriately.

Allow sheet runoff to flow into biofilters (vegetated strip and swale) and/or infiltration devices. Utilize sand filters or oleophilic collectors for oily waste in low concentrations. Clean out oil/water/sand separators regularly, especially after heavy storms.

Have designated personnel conduct inspections of the parking facilities and storm drain systems associated with them on a regular basis. Inspect cleaning equipment/sweepers for leaks on a regular basis.

Have spill cleanup materials readily available and in a known location. Cleanup spills immediately and use dry methods if possible. Properly dispose of spill cleanup material.



Trash

- Post "No Littering" signs and enforce anti-litter laws.
- Provide trash receptacles in parking lots to discourage litter. Clean out and cover trash receptacles frequently to prevent spillage. Regularly inspect, repair, and/or replace trash receptacles.
- Routinely sweep, shovel and dispose of litter in the trash. Remove litter and debris from drainage grates, trash racks and ditch lines to reduce discharge to the storm water drainage systems and watercourses.
- Provide regular training to field employees and/or contractors regarding cleaning of paved areas and proper operation of equipment.

Stormwater Pollution Prevention

Vehicle or Equipment Storage

Oil Leaks

Place drip pans under leaking vehicles. Drain all vehicles in long-term storage. Clean storage facilities on a regular basis to prevent accumulated wastes and pollutants from being discharged into conveyance systems during rainy conditions. When cleaning heavy oily deposits, use absorbent materials on oily spots prior to sweeping or washing. Dispose of used absorbents appropriately.

Use dry cleaning methods as much as possible. When wet cleaning methods are necessary, storm drains should be blocked and the wash water should be collected and pumped to the sanitary sewer or discharged to a pervious surface. After cleaning, remove blocks from storm drains. Wash water should not be allowed to enter the storm drains. Do not discharge wash water to the sanitary sewer before contacting the local sewer authority.

Train employees on proper spill containment and cleanup. Have spill cleanup materials readily available and in a known location. Cleanup spills immediately using dry methods if possible. Properly dispose of spill cleanup material. Designate personnel to conduct inspections of the facility and stormwater conveyance systems associated with them. Inspect cleaning equipment/sweepers for leaks on a regular basis.



Allow sheet runoff to flow into biofilters (vegetated strip and swale) and/or infiltration devices. Utilize sand filters or oleophilic collectors for oily waste in low concentrations. Clean out oil/water/sand separators regularly, especially after heavy storms.

Caked Dirt on Tires

- Conduct regular cleaning. Sweeping or vacuuming the storage facility is encouraged over wet cleaning methods. Sweep all storage lots at least once before the onset of the wet season. Establish frequency of sweeping based on usage and field observations of sediment accumulation.



- Washing or rinsing of equipment shall be performed in designated areas and the resulting runoff shall not be discharged to the storm drain system.
- Train employees on appropriate Best Management Practices, storm water discharge prohibitions, and wastewater discharge requirements.

EXHIBIT C

Transbay Transit Center Program, Soil Investigation Report, Bus Storage Area, Block 3763, Lot 112 under Interstate 80 between Second and Third Streets, San Francisco, CA (March 2010)



Alameda-Contra Costa Transit District

Mike Hursh, General Manager

November 18, 2016

Mr. Mark Zabaneh
Interim Executive Director
Transbay Joint Powers Authority (TJPA)
201 Mission Street
Suite 2100
San Francisco
California 94105

RE: AC Transit's Financial Commitment to the Bus Storage Facility (BSF)

Thank you for your continued coordinated efforts to work with AC Transit on the financing and construction of the Transbay Transit Center. We see this project as a true partnership between agencies to build a world-class bus facility for our passengers, making transit an even more attractive regional commute option.

The purpose of this letter is to confirm our financial commitment to operate the BSF; accepting responsibilities for the operations, maintenance and lease costs of the facility.

Following the successful outcome at the California Transportation Commission October meeting, I am pleased to provide AC Transit's full commitment to sub-lease the BSF from TJPA with the following terms:

1. AC Transit will initiate rent payments once Bus Storage Facility operations commence.
2. The lease will be at 85% discount of the Fair Market Value (FMV).
 - o Caltrans stated FMV at \$135,550 per month
 - o 15% of FMV = \$20,332.50 per month
3. The lease term will be 25 years with an escalation rate of a maximum 3 percent tied to the Consumer Price Index, and no reevaluation over the lease term.
4. Once Caltrans and TJPA execute the lease, AC Transit will codify the rent payments in a sub-lease amendment to the TJPA 2008 Lease and Use Agreement.

The primary function of the BSF is to provide midday storage for 49 buses. The District will realize operational savings associated with reduction in deadhead costs for these buses. These savings will allow us to fund the lease along with the estimated operations and maintenance costs, so we can confidently commit to covering these costs.

We look forward to continuing the exciting transition work into the Transbay Transit Center and starting operations in 2018.

Sincerely,

A handwritten signature in blue ink, appearing to read 'm. hursh'.

Michael A. Hursh
General Manager