State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Tab 62

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: August 17-18, 2016

Reference No.: 2.4c.
Infomation Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jennifer S. Lowden, Chief
Division of Right of Way
and Land Surveys

Subject: **TRANSBAY JOINT POWERS AUTHORITY AND GOLDEN GATE BRIDGE AND HIGHWAY TRANSPORTATION DISTRICT REQUEST FOR AN EXEMPTION OF THE 20 PERCENT DISCOUNT OF THE FAIR MARKET LEASE RATE PER CALIFORNIA TRANSPORTATION COMMISSION RESOLUTION G-03-03**

ISSUE:

The California Department of Transportation (Department) requests that the California Transportation Commission (Commission) consider an exemption to Commission Resolution G-03-03 and accept a 50 percent Fair Market Lease Rate (FMLR) discount lease, including the 50 year term for this airspace parcel by the Transbay Joint Powers Authority (TJPA), and the Golden Gate Bridge and Highway Transportation District (GGBHTD). The Department will request that the Commission approve this request at the next scheduled Commission meeting following this information item.

SUMMARY:

Executing a long term lease for these sites will enhance the San Francisco downtown area by creating a more livable, transportation friendly neighborhood. The TJPA, as the Alameda County (AC) Transit Bus Storage Facility, will make significant progress toward meeting State carbon dioxide (CO_2) emission reduction targets by removing 140 empty bus trips departing and returning to the East Bay every workday. By eliminating the 20-mile round trip to and from the current East Bay bus storage yard, each bus avoids emitting 0.03 tons (60 pounds) of carbon dioxide; on a yearly basis, across the fleet, this equals over 1,500 tons of CO_2. The new bus parking structure was designed with public transit in mind and it is projected to see the transit ridership base increase while the need for personal vehicles will decrease. Without the State's property, the AC Transit buses would be forced to continue storage operations at their East Bay storage and maintenance facility.

It is in the Department's best interest to authorize execution of the 50 year lease term proposed by GGBHTD and the TJPA, as, the State will still financially benefit by a secure, continued revenue stream.

BACKGROUND:

The Department's current Airspace Lease Policy for public entities is based on the California Streets and Highway (S&H) Code Section 104.12 (a) and (b), the Government Code Section 14013, and Commission Resolution G-03-03. S&H Section 104.12 (b) authorizes the Department to "make airspace available with or without charge to public entities for mass transit facilities." Commission Resolution G-03-03 sets forth that where the Department leases airspace to a public entity to fulfill a public purpose, the Department will receive FMLR for the property. Additionally, where the lease is to a public mass transportation agency, the Department may discount the rate by 20 percent from the FMLR with Commission approval.

In a letter sent to the Department Director Dougherty, dated March 11, 2016 (Exhibit C), TJPA and GGBHTD maintain the 20 percent discount of FMLR is too expensive for their budget for two State owned parcels in the City of San Francisco (City). Both seek a greater discount than what is reflected in the current Commission Resolution G-03-03. Currently, the State's parcel sought by TJPA is leased to a private parking company on a month to month lease. The original two year lease was won in an open public auction held by the Department's District 4 on October 9, 2013. Although the lease ended in late 2015, the tenant continued with a month to month lease until such a time as an agreement can be made with the Department and TJPA. The current lease rate for the 106,480 square foot (s.f.) site is $135,550/month (mo.) ($1.27/s.f./mo.) This calculates to $1.62 million per year back to the State Highway Account. TJPA intends to sublease the parcel to AC Transit for bus storage as part of the long planned Transbay terminal.

GGBHTD is the current tenant for the other State parcel in question. The current use is as bus storage. GGBHTD requests an amendment to their existing long term lease that would reflect a greater than 20 percent discount of Fair Market Lease Rate. GGBHTD maintains this is necessary due to the fact the District's budget also would not allow a FMLR with a 20 percent discount. Currently, GGBHTD is almost five years into a 25 year lease (plus two five-year options). At the lease initiation in 2011, the lease rate was determined by a FMLR appraisal written by the Department's District 4 Right of Way Appraisal staff. GGBHTD was provided a twenty percent discount from the FMLR per the Commission resolution G-03-03. The original lease agreement included a yearly Consumer Price Index (CPI) escalation and a FMLR re-evaluation every five years. The first re-evaluation is to be completed in November 2016. The current lease rate for the 116,450 s.f. site is $46,400/mo. ($0.40/s.f./mo.) This calculates to $556,800 per year back to the State Highway Account.

A recent FMLR appraisal for the TJPA parcel has been completed, and came in with a bid of $1.35/s.f./mo. The GGBHTD parcel is slightly lower at $1.14/s.f./mo. For the re-negotiated lease, GGBHTD seeks an amendment to increase the term to 50 years through 2066, with a 3.0 percent yearly escalation and no re-evaluation every five years. TJPA seeks the same terms as GGBHTD. The attached spreadsheet (Attachment E) provides the comparison of the current lease rates, the undiscounted FMLR, the 20 percent discounted FMLR, and the 50 percent discounted FMLR.

1. A Cooperative Agreement executed July 11, 2003 by the TJPA, City, and the Department (Exhibit D) details Department owned parcels to be transferred to the TJPA and the City to sell, with proceeds paying capital costs of the new Trans Bay Terminal. The Miscellaneous Provisions state that the Department will lease specific Airspace parcels between 2nd and 4th Streets to GGBHTD and TJPA for "purposes of bus storage and parking". The Miscellaneous Provisions state the Department will lease Airspace pursuant to the S&H Code Section 104.12 with "input from the California Transportation Commission". The primary planned use for the TJPA parcel is for bus storage, with a secondary use for the facility with two potential modes for off-hours public parking: 202 valet-parked spaces or 167 self-parked spaces. The Department has determined that the leasing of non-operating right of way to municipalities or other public agencies for "public purposes" such as parking is legal under Government Code Section 14013 and the existing cooperative agreement. While GGBHTD has no current plans for a secondary use of surplus area there is a possibility that any surplus space could also be used for public parking in the future. These proposed uses would generate revenue from the parcels leased to the mass transportation facilities. The gross revenues from the off-hours parking and commercial uses would be divided by TJPA and Department 60:40. The 60 percent allocated to TJPA will defray parking management costs incurred. If GGBHTD institutes a secondary use, the same provisions to split gross revenue would apply.

Attachments:
Exhibit A - TJPA Right of Way Lease Area Map
Exhibit B - GGBHTD Right of Way Lease Area Map
Exhibit C - AC Transit Letter to Caltrans Director, Malcolm Dougherty, March 11, 2016
Exhibit D - TJPA Cooperative Agreement, July 11, 2003
Exhibit E - FMLR Lease Comparison
Exhibit F – GGBHTD Lease Agreement, Decmeber 1, 2013

Exhibit A

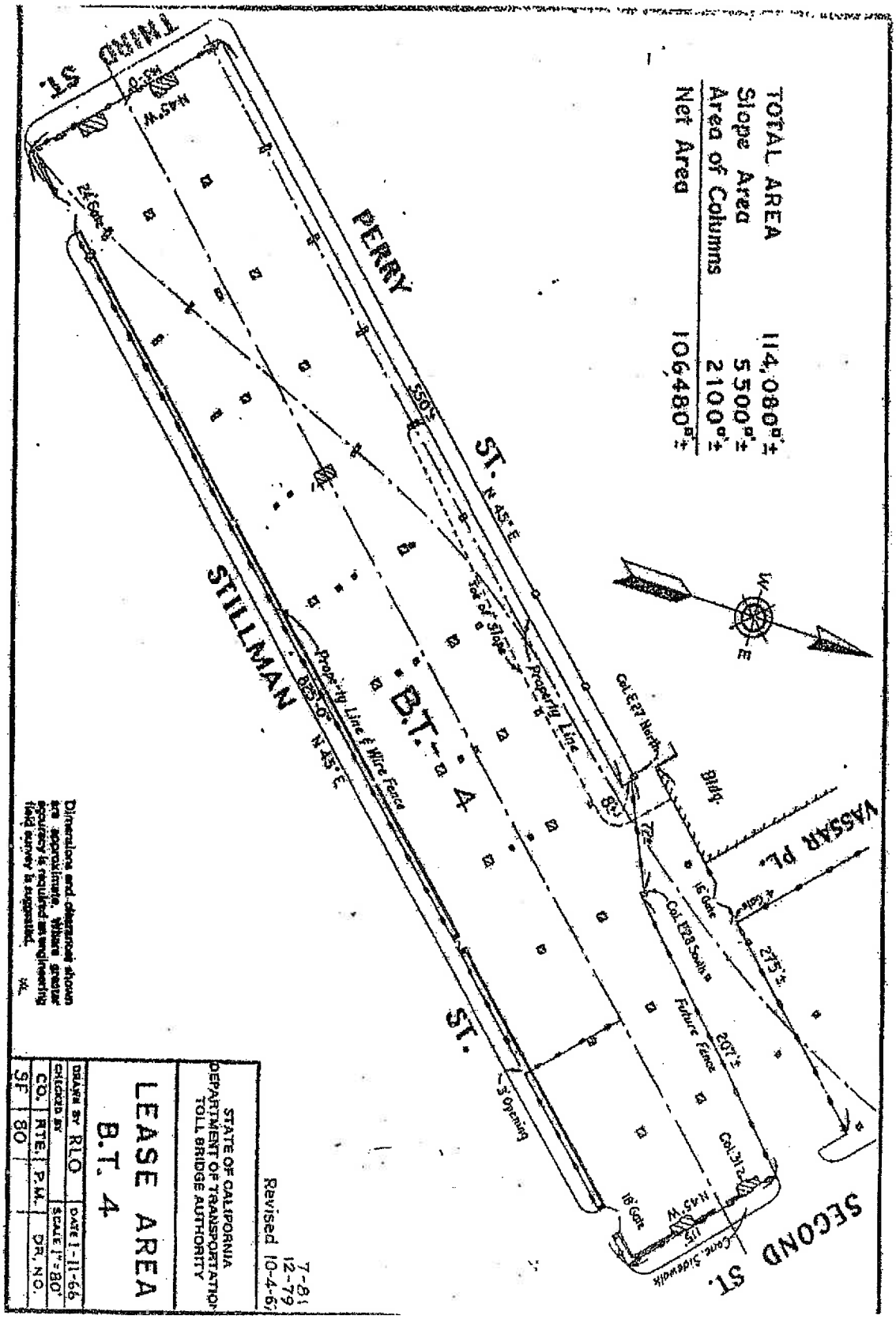
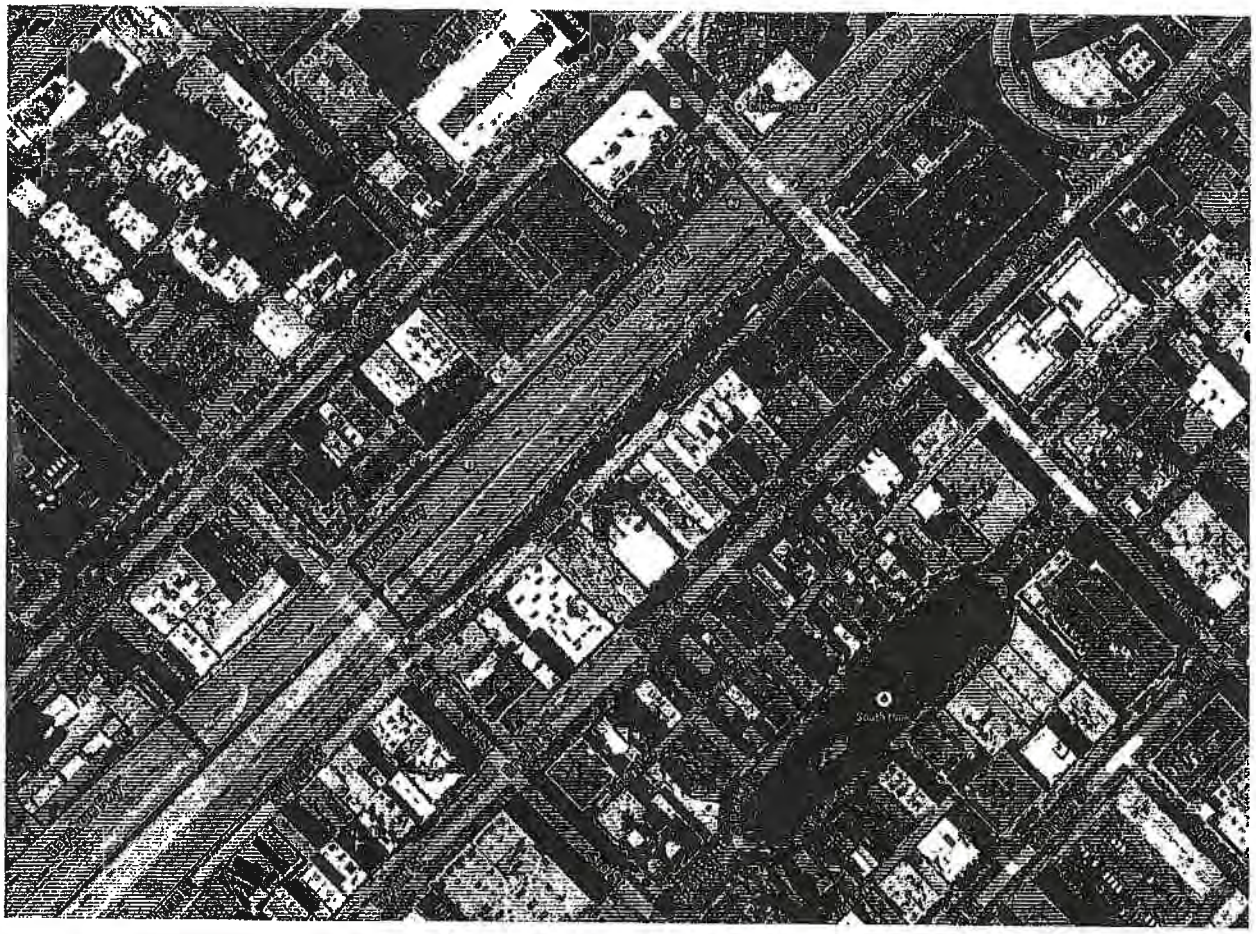

TOTAL AREA 114,080□'±
Slope Area 5500□'±
Area of Columns 2100□'±
Net Area 106480□'±
TWIRD ST.
PERRY ST.
STILLMAN ST.
SECOND ST.
VASSAR PL.
B.T. 4
Property Line & Wire Fence
Property Line
Toe of Slope
Future Fence
Bldg.
Conc. Sidewalk
Dimensions and clearances shown are approximate. Where greater accuracy is required an engineering field survey is suggested.
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
TOLL BRIDGE AUTHORITY
LEASE AREA
B.T. 4
DRAWN BY RLO
DATE 1-11-66
CHECKED BY
SCALE 1"=80'
CO. RTE. P.M. DR. NO.
SF 80
7-81
12-79
Revised 10-4-67

Exhibit A



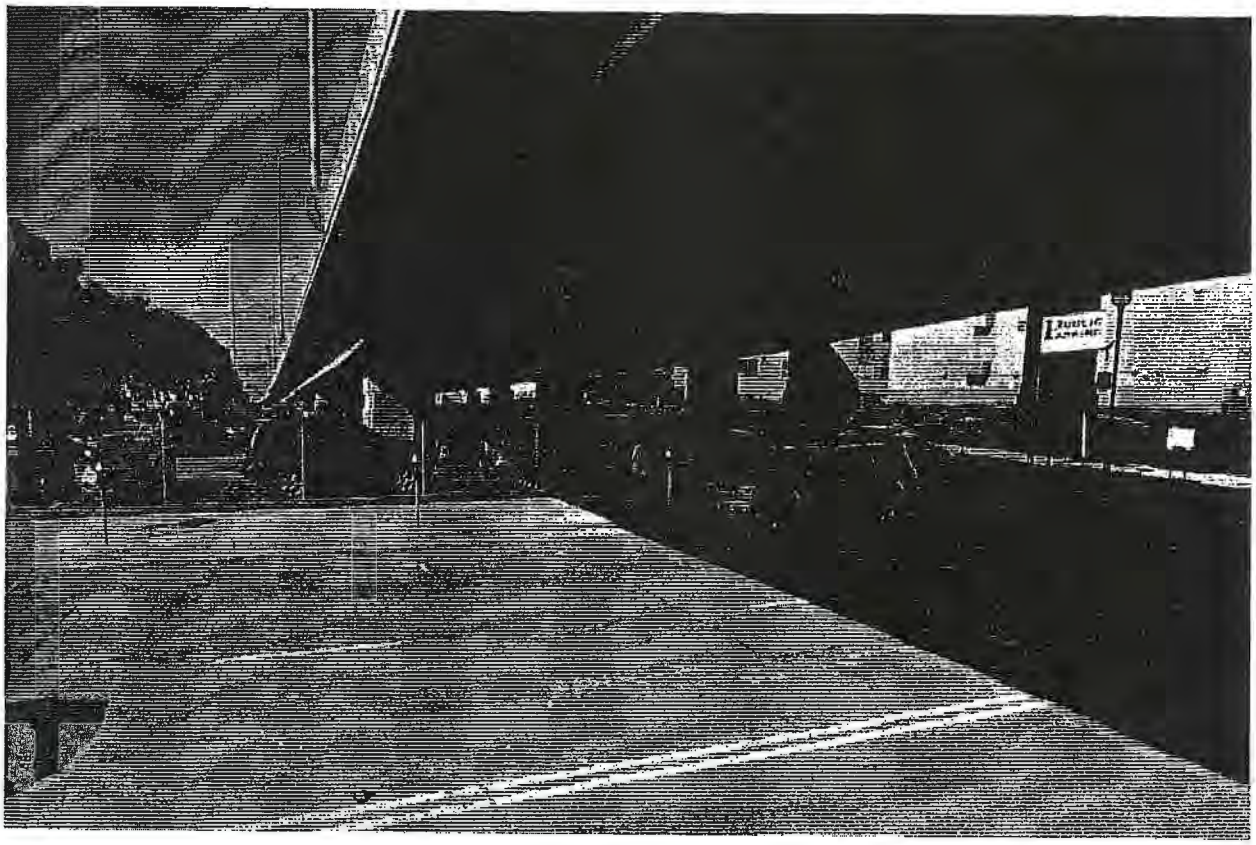


Exhibit A

Exhibit B

SF-BT-05
Between 3rd and 4th Streets and Perry and Stillman Streets

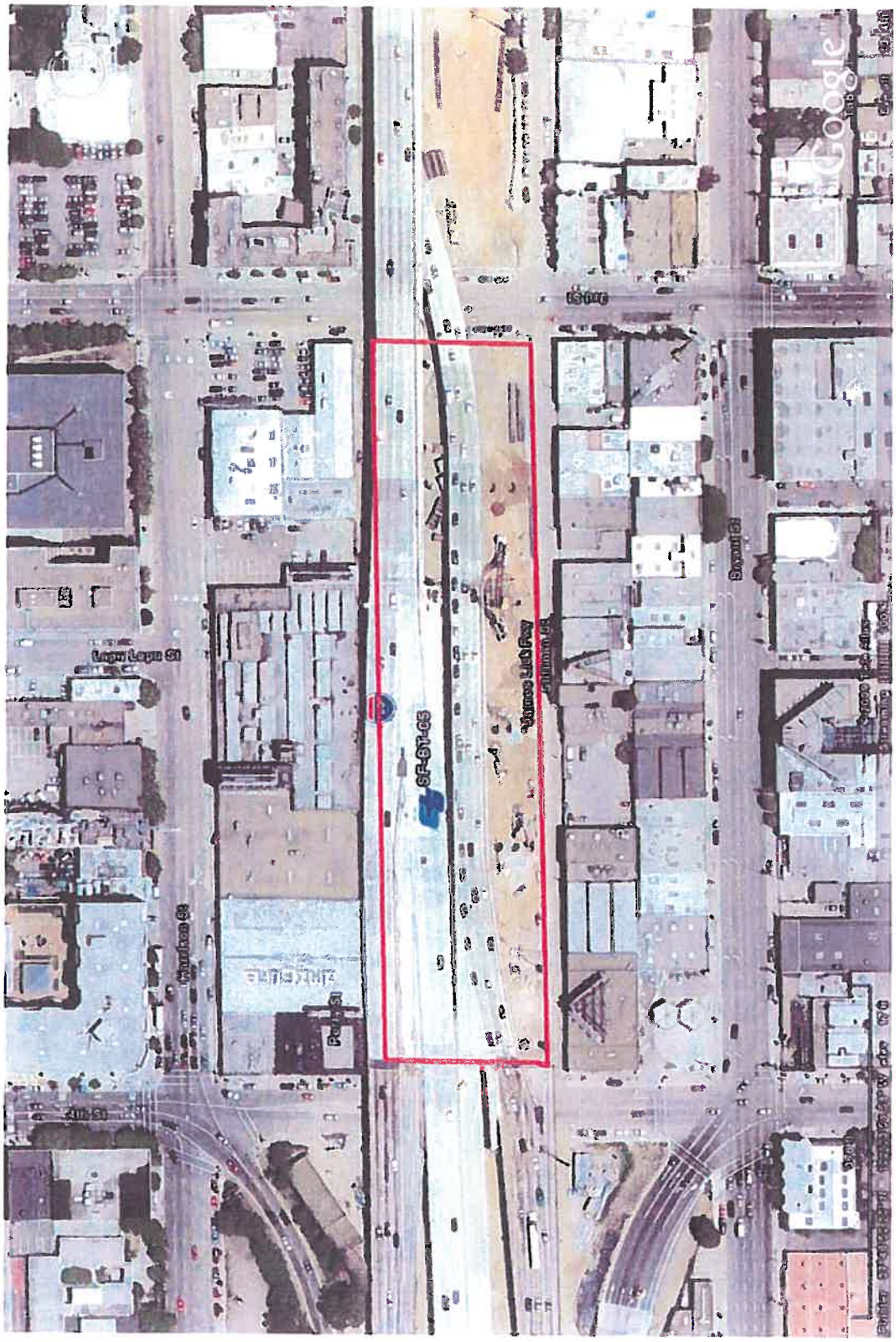
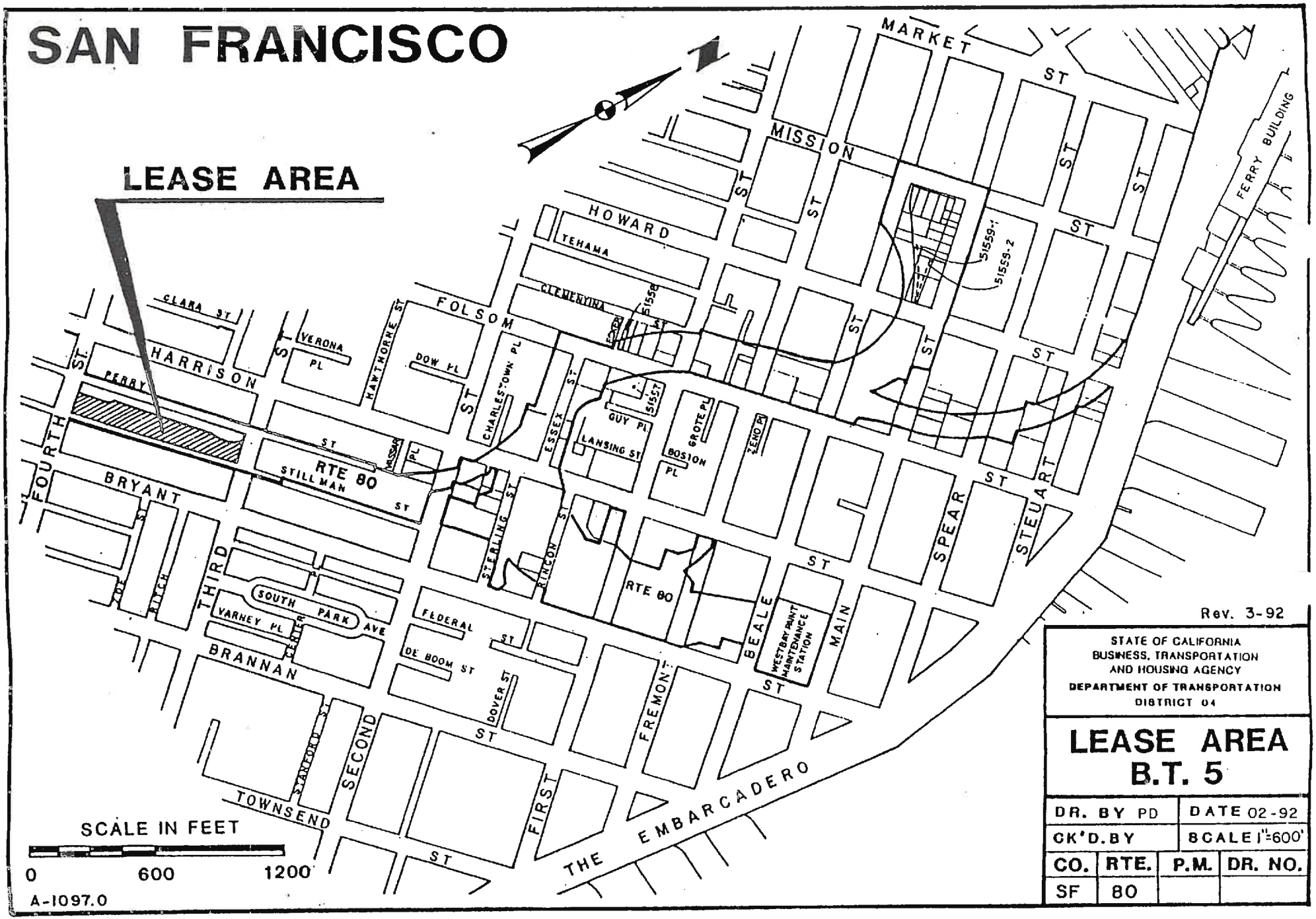


Exhibit B


SAN FRANCISCO
LEASE AREA
MARKET ST
MISSION ST
HOWARD ST
TEHAMA
CLEMENTINA
FOLSOM ST
HARRISON ST
CLARA ST
VERONA PL
HAWTHORNE ST
DOW PL
CHARLESTOWN PL
ESSEX ST
GUY PL
LANSING ST
GROTE PL
BOSTON PL
ZENO PL
PERRY
FOURTH ST
BRYANT ST
RTE 80
STILLMAN ST
STERLING ST
RINCON ST
THIRD ST
SOUTH PARK AVE
VARNEY PL
CENTER
FEDERAL ST
DE BOOM ST
DOVER ST
BRANNAN ST
STANFORD ST
SECOND ST
TOWNSEND ST
FIRST ST
FREMONT ST
BEALE ST
WESTBAY PAINT MAINTENANCE STATION
MAIN ST
SPEAR ST
STEUART ST
FERRY BUILDING
THE EMBARCADERO
51559-1
51559-2
SCALE IN FEET
0
600
1200
A-1097.0
Rev. 3-92
STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION
AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
DISTRICT 04
LEASE AREA
B.T. 5
DR. BY PD
DATE 02-92
CK'D. BY
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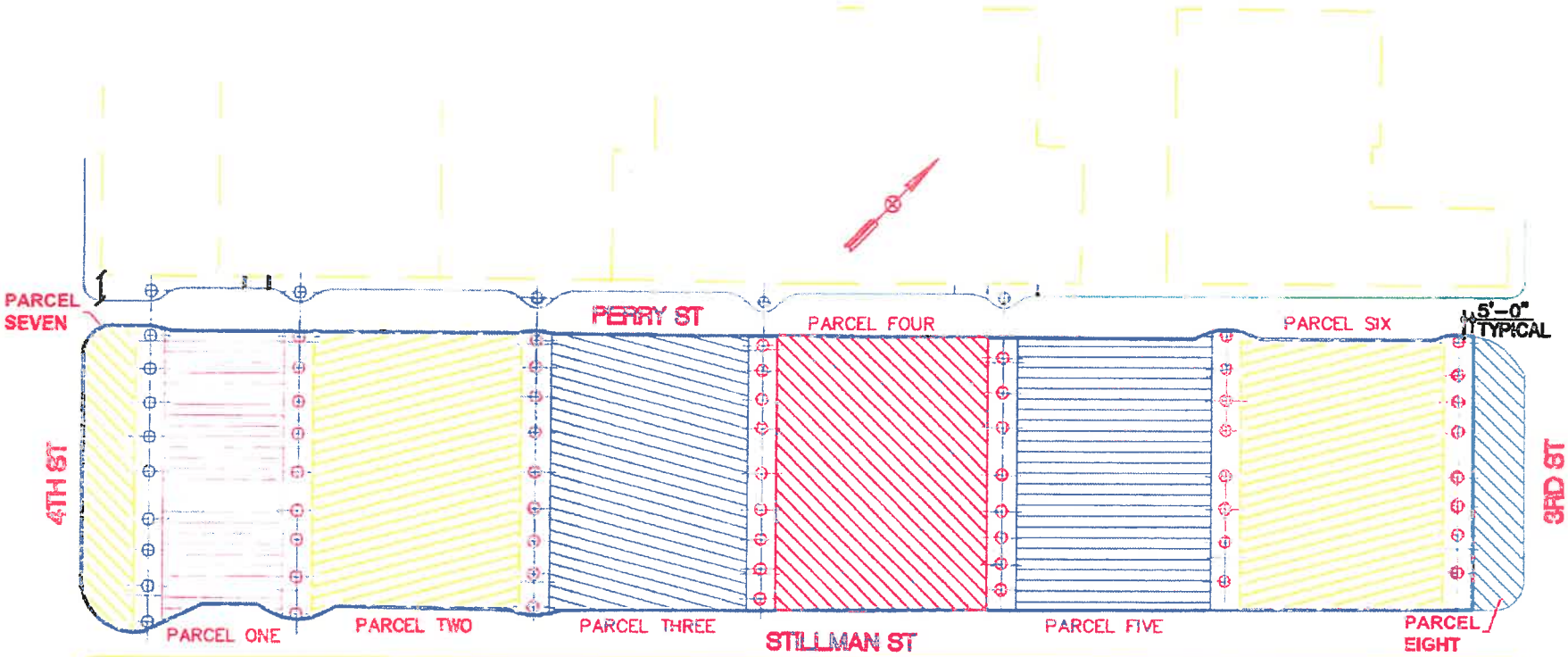
CO.
RTE.
P.M.
DR. NO.
SF
80

Exhibit B



AREA OF EIGHT PARCELS TOTAL=116,450.56 SQUARE FT

PARCEL ONE=11504.25	PARCEL FOUR=19820.88
PARCEL TWO=19673.79	PARCEL FIVE=18140
PARCEL THREE=18687.89	PARCEL SIX=18850.79
PARCEL SEVEN=5247.29	PARCEL EIGHT=4520.67

Exhibit B

Exhibit C

March 11, 2016

Malcolm Dougherty, Director
California Department of Transportation
1120 N Street
P. O. Box 942873
Sacramento, CA 94273-0001

Re: Lease Area No. 04-SF-BT-04 (AC Transit) and
Lease Area No. 04-SF-BT-05 (Golden Gate Transit)

Dear Mr. Dougherty:

We write seeking your assistance with a matter of great financial importance to our agencies, and one with major implications for the prime economic driver of the Bay Area economy - San Francisco. Our buses remove thousands of cars from Bay Area freeways every day playing a pivotal role in reducing both congestion and green house gas emissions. The economics and environmental benefits of this bus service are enhanced with affordable mid-day bus storage in downtown San Francisco. We ask that the rental rate for parking these buses on Caltrans' property under the elevated freeway be set at a rate that covers Caltrans' administrative cost of managing the parcels.

Fifteen years ago, then Governor Davis instructed Caltrans staff regarding transfer of lands in San Francisco to facilitate construction of the Transbay Terminal, including parcels of land under the I-80 approach to the Bay Bridge for use as bus storage by AC Transit and Golden Gate Transit. Golden Gate Transit has occupied its San Francisco Mid Day Bus Storage Lot, under a long term Lease with Caltrans, since 2011.

Lease discussions with Caltrans staff, the Transbay Joint Powers Authority and AC Transit on the parcel designated for AC Transit bus storage are currently underway. The AC Transit parcel will also provide access to the Transbay Transit Center (TTC) for Muni, Amtrak buses and emergency vehicles.

Collectively, our transit agencies benefit the Bay Area and San Francisco economy by delivering thousands of commuters to work in San Francisco, taking thousands of daily vehicle trips off Bay Area highways, reducing congestion and reducing green house gas emissions.

The monthly lease payment proposed by Caltrans for the AC Transit parcel is $135,550 ($1,626,600 annually). The proposed rent arguably reflects the current over heated real estate market in San Francisco. It does reflect the 20% public transit discount allowed by California Transportation Commission Resolution G-03-03. Any lease rate proposed for the AC Transit parcel would also apply to the rent of the Golden Gate Transit bus storage lot, as a rent adjustment is due this December.

Exhibit C

The proposed lease payment eliminates any financial benefit to AC Transit of having a bus storage facility in San Francisco. The proposed lease costs would increase AC Transit's Transbay service costs by approximately $96,000 per month, or $1.15 million annually. At that point, it makes no financial sense for AC Transit to use the bus storage facility. Its only viable option is then to maintain current operations and deadhead 98 trips daily; 25,500 trips on an annual basis across the Bay Bridge. The environmental benefits and vehicle miles traveled savings of a bus storage facility in San Francisco, approximately 366,000 miles annually, would not be realized.

Golden Gate Transit would likewise be unable to sustain an increase in rent of this magnitude. The costs of deadheading the 85 buses now parked in San Francisco back to San Rafael instead would be well in excess of $2 million annually. Adding all of these AC Transit and Golden Gate Transit bus trips to the street and freeway network would negatively impact traffic, the economic boom underway in the City, as well as negatively impact the state's green house gas reduction goals.

There are many more very real advantages that would be unrealized if AC Transit cannot move ahead with it bus storage facility in San Francisco. For example, AMTRAK and SFMTA would not realize efficiencies by accessing the TTC using the dedicated ramps from the AC Transit bus storage lot. SFMTA would not realize operational savings and environmental benefits by eliminating daily dead head trips to Treasure Island.

We recognize that Caltrans staff is following the Commission's policy in Resolution G-03-03. We ask the Department to relieve both of our sister transportation agencies from the requirement to pay fair market rent.

Our request is supported by state and federal law, both of which permit Caltrans to lease the parcel without charge, or federal approval, to a public transportation agency for a public transportation purpose (CA S&H Code § 104.12; 23 CFR § 710.405 (c)).

We refer back to AB 1419, passed on September 14, 2001, but subsequently returned by Governor Davis wherein he directed the Department with respect to the bus storage parcels to grant easements to the TJPA for use of the parcels for bus storage and other ancillary uses

> **"....without cost or charge, and the department may not require the authority to refund or reimburse any of the department's costs or lost revenues derived from or related to the easement area."**

While then Governor Davis returned AB 1419 to the Legislature without his signature due to concerns that it might affect the efforts to seismically retrofit the west approach to the San Francisco-Oakland Bay Bridge, in so doing he expressed his support for the TTC project generally and acknowledged that Caltrans already was authorized to make the property transfers contemplated by the bill. As part of his veto message he stated:

> **"....Accordingly, I am directing Caltrans to initiate procedures to transfer the property administratively with the necessary protections for the State that will allow an important regional transportation improvement to proceed."**

In our view, the Governor's direction to proceed administratively to accomplish the goals outlined in the legislation is exactly what we are asking the Department to do at this time.

In addition, we note that the March 2002 version of the Caltrans Airspace Agreements for Public Entities for New Mass Transit Facilities for Traffic Congestion Relief, Updated Pilot Guidelines, proposed only a nominal rent of $2,000 per year "if the mass transit agency can demonstrate there is a direct benefit to congestion relief for a particular proposed project". A "Downtown Bus Parking Facility that Permits Easier Access and Convenience for Patrons" is identified in these Guidelines as a direct benefit justifying the nominal rent.

Thus, at approximately the same time Resolution G-03-03 was adopted, Caltrans recognized that certain airspace parcels should be treated differently when such use supported overall State goals to reduce greenhouse gases by encouraging the development of mass transit systems.

In our view, the existing legal authority, the legislature's and Governor's clear intention, and the 2002 Caltrans Guidelines, all set forth a supportable policy basis for treating the parcels in question differently than other airspace properties Caltrans leases at fair market value.

In the end, the TJPA and AC Transit's interest in this whole matter is to find a way to facilitate the completion of the TTC - a project supported by both the State and Federal governments – in a manner that makes economic sense to the District as a primary tenant of the new facility. Similarly, having to eliminate the Golden Gate Transit and AC Transit San Francisco bus storage facilities due to rents unsupportable in public transit agencies' budgets, would be shortsighted and result in negative publicity.

The purpose of the Transbay Transit Center project is to support public transportation and relieve congestion on the East Bay – San Francisco corridor. The bus storage facilities of both Golden Gate Transit and AC Transit have always been an integral part of the TTC project.

The designs for the Bus Storage Facility are nearly complete and we do not want the lease issue to cause any delay to its construction. In order for the Facility to open in time for the December 2017 Terminal opening, the Transbay Joint Powers Authority needs to award a construction contract in June 2016. To do that, we will need a resolution on this issue by the end of March and so we appreciate your timeliness in response.

We thank you for your consideration. AC Transit and TJPA look forward to discussing this further with you in person at your earliest convenience.

Yours truly,

Michael A. Hursh
General Manager
AC Transit

Denis J. Mulligan
General Manager
Golden Gate Bridge Highway and Transportation District

Ed Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

David B. Kutrosky
Managing Director
Capitol Corridor Joint Powers Authority

cc: Mr. Will Kempton, Executive Director, California Transportation Commission
Ms. Yvonne B. Burke, Member, Committee on Mass Transportation/CTC
Mr. Carl Guardino, Member, Committee on Mass Transportation/CTC
Mr. Steve Heminger, Executive Director, Metropolitan Transportation Commission
Ms. Ayerdi-Kaplan, Executive Director, Transbay Joint Powers Authority
Mr. Mike Duman, Chief Operating Officer, Federal Highway Administration, CA Division
Mr. Bijan Sartipi, District Director, Caltrans District 4
Mr. Michael Rodrigues, Chief, Real Property Services, Caltrans Division of Right of Way
Mr. Brian Kelly, Secretary of Transportation, California State Transportation Agency

Exhibit D

4-SF-80-PM 5.1/5.4
Transbay Transit Terminal
4-400-0435V1
District Agreement No. 4-1981-C

015612

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into effective July 11, 2003, by and between the State of California, acting by and through its Department of Transportation ("State"), the City and County of San Francisco, a body politic and a municipal corporation of the State of California ("City"), and the Transbay Joint Powers Authority, a joint powers agency created under California Government Code Sections 6500 *et seq.* ("Authority") in order to facilitate construction of the Transbay Terminal Project as set forth below.

RECITALS

WHEREAS, the State owns and operates the Transbay Transit Terminal ("Transbay Terminal") in the City as a regional transit hub utilized by several transit providers, including the San Francisco Municipal Railway, the Golden Gate Bridge, Highway and Transportation District ("GGBHTD"), the Alameda-Contra Costa Transit District ("AC Transit"), the San Mateo County Transit District, and Greyhound Lines; and

WHEREAS, in January 2001, the *Transbay Terminal Improvement Plan* report of the Transbay Panel of the Metropolitan Transportation Commission ("MTC Report") proposed the "Great Expectations" conceptual design plan for a new multimodal terminal because the existing Transbay Terminal does not meet projected transit operational needs and is in need of significant remodeling or replacement to improve transit services in the San Francisco Bay Area; and

WHEREAS, on October 4, 2002, a draft Environmental Impact Statement, Environmental Impact Report, and Section 4(f) Evaluation ("EIS/EIR") was issued by the City, the San Francisco Redevelopment Agency ("Agency"), the Peninsula Corridor Joint Powers Board, and the Federal Transit Administration for the *Transbay Terminal-Caltrain Downtown Extension-Redevelopment Project* which includes consideration of the Transbay Terminal Project within its alternatives; and

WHEREAS, the State also owns and operates a system of ramps ("Loop Ramps") that connect the Transbay Terminal with the San Francisco-Oakland Bay Bridge ("SFOBB"); and

WHEREAS, the Transbay Terminal and Loop Ramps were constructed as part of the SFOBB in the 1930s; and

WHEREAS, the State owns land adjacent to the Transbay Terminal and Loop Ramps which was formerly occupied by the Terminal Separator Structure ("TSS"); and

WHEREAS, damage from the Loma Prieta Earthquake of 1989 resulted in the demolition of the majority of the TSS, leaving the State with vacant parcels of land; and

WHEREAS, the Agency is a body politic, duly authorized and activated by the City on August 10, 1948, pursuant to the provisions of the California Community Redevelopment Law, California Health & Safety Code Sections 33000 *et seq.*; and

WHEREAS, the Agency and City have established a Transbay Redevelopment Survey Area ("Survey Area") to focus on blight and the feasibility of redevelopment in the area roughly bounded by Mission, Main, Folsom and Second Streets which includes the Transbay Terminal, Loop Ramps, and vacant parcels of State land; and

WHEREAS, the Agency has initiated preparation of a proposed Transbay Project Area Redevelopment Plan for the Survey Area ("Redevelopment Plan") that has identified the

potential for a new regional transit terminal and for transit-oriented development on the vacant land within the Survey Area; and

WHEREAS, on April 4, 2001, the City, AC Transit, and the Peninsula Corridor Joint Powers Board created the Authority pursuant to the provisions of California Government Code Sections 6500 *et seq.*; and

WHEREAS, the Authority is authorized to develop, design, and construct and operate a new Transbay Terminal and ramps on the site of the existing structure; and

WHEREAS, the Transbay Terminal Project has the potential to provide expanded bus and rail service and direct access to and from the SFOBB, all of which would be more efficient and convenient for buses, trains, and the passengers utilizing those transit systems; and

WHEREAS, the Transbay Terminal Project has significant potential to ease traffic congestion on City streets and improve traffic flow to, from and on the SFOBB and City streets in and around the Survey Area; and

WHEREAS, the Transbay Terminal Project construction costs will be partly financed by funds generated by the adoption of the proposed Redevelopment Plan; and

WHEREAS, the proposed Redevelopment Plan will be structured to dedicate net tax increment and gross proceeds from sales of the State's vacant TSS and Transbay Terminal parcels to a new Transbay Terminal after adoption of a final Redevelopment Plan; and

WHEREAS, a new multimodal transit terminal which replaces the existing Transbay Terminal could benefit the State and the San Francisco Bay region by providing an improved mass transit hub and potential accommodation of future high-speed rail connections; and

WHEREAS, the State is already in the final bidding process for the West Approach Seismic Safety Project ("WASSP") which will seismically retrofit the West Approach to the

SFOBB, including the Loop Ramps (for purposes of this Agreement, retrofit of the east loop ramp shall be deemed to be an element of the WASSP notwithstanding the fact that some work is being processed as a separate project); and

WHEREAS, the WASSP is one of several separate seismic safety projects being performed by the State on separate elements of the SFOBB, all of which are designed to provide a lifeline connection between the East and West Bay areas in the event of a major earthquake and is critical to public safety and welfare; and

WHEREAS, the State requires use of some of the vacant TSS parcels, Loop Ramp parcels, and space within the existing Transbay Terminal buildings for purposes of construction, construction staging, storage and Resident Engineer offices, Public Information offices, and present and future parking for State operations in San Francisco during and after WASSP construction; and

WHEREAS, a portion of the TSS ("Folsom Leg") will be replaced on a portion of one of the vacant TSS parcels in a manner generally consistent with the plans set forth in the Final Environmental Impact Report and Statement prepared in 1996 to address demolition and/or replacement of the TSS; and

WHEREAS, the construction of the Folsom Leg has been combined with construction of the WASSP for purposes of construction efficiency and associated cost savings; and

WHEREAS, after construction of the WASSP and the Folsom Leg the State will no longer have a transportation need for any remaining vacant TSS parcels in the Survey Area and such parcels will no longer be a necessary part of the operating state highway system; and

WHEREAS, the State has determined that ownership and operation of a regional transit terminal is most appropriately a local or regional function; and

015612

WHEREAS, sale or development of vacant and/or underutilized parcels represents a significant source of potential funding for a new Transbay Terminal; and

WHEREAS, the State is authorized by California Streets and Highways Code Section 30410 to dispose of property, originally acquired for construction of the SFOBB that is no longer needed for State transportation purposes on any terms and conditions deemed appropriate by the Director of the State Department of Transportation, subject to approval by the California Transportation Commission ("CTC"), provided such terms and conditions are in the public interest; and

WHEREAS, the State is authorized by California Streets and Highways Code Section 73 to relinquish to any county or city any portion of any state highway which has been deleted from the state highway system, subject to approval by the CTC; and

WHEREAS, the use of revenues derived from the sale and development of property purchased by the State with gas tax revenues for the Transbay Terminal Project is consistent with Article XIX of the California Constitution; and

WHEREAS, California Streets and Highways Code Section 104.12 authorizes the State to lease its airspace within the right of way of the state highway system; and

WHEREAS, the State wishes to assist local and regional authorities in planning for an improved regional transit hub in downtown San Francisco; and

WHEREAS, the State can assist the City and the Authority in developing financial plans and in implementing planning measures by transferring specified parcels of State-owned property to the City and the Authority for the Transbay Terminal Project, provided that the WASSP costs and construction schedules are protected and that appropriate terms and conditions are applied to any transfers; and

WHEREAS, the parties recognize that if the City, the Authority, or the Agency do not utilize transferred parcels or gross proceeds from their sale solely to fund Capital Costs of a new Transbay Terminal within a reasonable timeframe as set forth in this Agreement, all unsold transferred real property and/or the remaining unexpended gross sale proceeds from all sold transferred real property plus interest on such proceeds at the maximum return available consistent with prudent fiscal management of municipal investments will be returned to the State; and

WHEREAS, the parties wish to set forth their respective obligations with respect to the transfer of property and the development, construction, and maintenance of a new Transbay Terminal and the WASSP; and

WHEREAS, the parcels shown on Exhibit A for transfer to the City are proposed for purposes of development to raise funds for the Transbay Terminal Project, and the parcels shown on Exhibit A for transfer to the Authority are proposed for replacement of the existing terminal facility and replacement or redesign of ramps; and

WHEREAS, the City and Authority would not enter this Agreement unless, within the purview of each party, they retained absolute discretion to: (1) determine the nature, size and scope of any proposed development consistent with the Transbay Terminal Project; (2) determine the nature and configuration of any new Transbay Terminal; (3) exercise the authority to carry out any required environmental review pursuant to state and federal law; and (4) abandon all study and planning efforts and to forego any development effort whatsoever connected with the Transbay Terminal Project; and

WHEREAS, the City, Authority and State understand and agree that gross revenues from existing parking lot leases to be assigned to the City and the Authority under this Agreement are

used by the State to fund the Public Transportation Account ("PTA"), a fund in the State Highway Account that is utilized to provide operating revenue to public transit providers; and

WHEREAS, the parties recognize that existing uses on transferred parcels must be maintained in order to protect revenues to the PTA pending imminent site development; and

WHEREAS, the State would not enter into this Agreement without assurance that: (1) construction and completion of the WASSP will be protected and prioritized above the Transbay Terminal Project; (2) a new Transbay Terminal consistent with the Transbay Terminal Project is likely to be constructed for the benefit of the region; (3) all State contributions to the Transbay Terminal Project will be adequately protected; and (4) the City and Authority will continue to fund the PTA by causing the deposit of gross lease revenues into the PTA as set forth herein.

IT IS NOW MUTUALLY AGREED AS FOLLOWS:

I. DEFINITIONS

A. "Transbay Terminal Project" or "New Transbay Terminal" means demolition of the existing Transbay Terminal and construction of a new multimodal transit terminal on the same site as set forth in the MTC Report and as augmented by the Caltrain Extension proposal adopted by the voters of the City as Proposition H in November, 1999, and as supported by the San Francisco Board of Supervisors in Resolution No. 104-01 in February, 2001, by the Alameda-Contra Costa Transit District in Resolution No. 984D in February, 2001, and by the Peninsula Corridor Joint Powers Board in Resolution No. 2001-70 in March, 2001; and

B. "Capital Costs" means expenditures for labor and materials used in the construction of the Transbay Terminal Project, as opposed to items other than labor and materials, such as fixtures, furniture and equipment; administrative costs; professional fees; relocation costs; financing costs and interest paid on permanent and construction loans; taxes and insurance during construction; and marketing, sales, or leaseup costs incurred to achieve occupancy or sale.

C. "Construction Contract Acceptance" or "CCA" means fulfillment of all construction contract obligations (completion of construction) for the WASSP by State's contractor, followed by acceptance of the work by the State, consistent with the terms of the contract.

D. "Operating Right of Way" means real property rights originally acquired for state highway purposes and continuing to be needed for such purposes lying within and directly beneath the drip-line boundary of a state highway or appurtenant ramp facility, and, for purposes of this Agreement, shall exclude property to be occupied by the Transbay Terminal or its ramps except in areas where those structures overlap with the operational boundaries of a state highway or appurtenant ramp facilities. For purposes of any transfer under this Agreement, the term "Operating Right of Way" shall also include, at the State's reasonable discretion, a border extending up to fifteen (15) feet from the drip-line boundary of any highway or ramp facility.

E. "Relocation Easement" means those easements which are of limited duration and are subject to potential relocation as set forth in Section III., Subsections E. and F. of this Agreement.

F. "Project Commencement Date" means the date on which the State has relinquished each and every temporary construction easement and Relocation Easement retained under Section III., Subsections C., E. and F. of this Agreement by (1) filing a Notice of Termination of Temporary Construction Easement with the City's Office of the Recorder, with a copy of the recorded Notice to the City, and by (2) delivering to City or Authority executed, and recorded quitclaim deeds extinguishing all such easement rights.

G. "Project Completion Date" means that date which is eight (8) years from the Project Commencement Date, taking into account any Permitted Delays as defined in Section III., Subsection H. below.

H. "State-owned Parcels" means certain State-owned property identified on Exhibit A, attached hereto and made a part hereof, together with all improvements and fixtures located on that real property, and any and all rights, privileges, and easements incidental or appurtenant thereto, including, without limitation, any and all development rights, air rights, subsurface mineral rights, easements, rights of way, or other appurtenances used in connection with the beneficial use and enjoyment of the real property, and further including any and all right, title, and interest in and to all roads and alleys adjoining or servicing the real property.

I. "Gross Sales Proceeds" means proceeds from the conveyance of State-owned Parcels from City, Authority or Agency to a third party, which proceeds are the result of City, Authority or Agency's good faith effort to obtain the fair market value from such third party for such State-owned Parcels, in light of applicable laws.

II. TRANSFER OF STATE-OWNED PARCELS

A. Transfer to City. Promptly and in no event later than one hundred twenty (120) days after City's written notice to State that the Federal Transit Administration has issued a Record of Decision on the EIS/EIR for the *Transbay Terminal - Caltrain Downtown Extension - Redevelopment Project*, together with a copy of said Record of Decision, State shall transfer to City all of State's right, title and interest in and to the State-owned Parcels designated as parcels A",B,C",I",M,N',O',O",P,P',Q,R, and S, as more particularly described in Exhibit A attached hereto and made a part hereof, together with any and all rights, privileges, and easements incidental or appurtenant thereto, excepting all reservations of easements for the benefit of the State as set forth in this Agreement. Transfers shall occur through execution and recordation of a Director's Quitclaim Deed by the Director of Transportation of the State of California or his designee in a form substantially similar to the document attached as Exhibit B. City agrees to accept all transferred parcels "as-is," subject to the terms and conditions of all existing written leases and written related agreements, whether recorded or unrecorded, copies of which shall be provided by State to City no later than the date of transfer of parcels, and the State shall in no event be responsible for any protected cultural items, human remains, or hazardous materials (the "Hazardous Materials" as defined in federal, state and local laws, ordinances, rules and regulations in any way regulating issues focused on human health or safety and industrial hygiene and pertaining to the protection of the environment or the pollution or contamination of the air, soil, surface water or groundwater) discovered on said State-owned Parcels except to the extent caused or contributed to by State, its agents, representatives, contractors, lessees, permitees, licensees or others acting under State authority after the effective date of this

Agreement. City's title shall be subject to the State's Power of Termination as set forth in Exhibit B.

B. Transfer to Authority. Promptly and not to exceed one hundred twenty (120) days following Authority's written notice to State that it is ready to accept conveyance of the State-owned Parcels, and provided that the City has given the written notice of issuance of a Record of Decision under Section II., Subsection A., State shall transfer to the Authority, all of State's right, title and interest in and to the State-owned Parcels designated as parcels A',C,D,E,F,G,H',I,N,O,P", and T as more particularly described in Exhibit A attached hereto and made a part hereof, together with any and all rights, privileges, and easements incidental or appurtenant thereto, excepting all reservations of easements for the benefit of the State as set forth in this Agreement. Authority may issue multiple notices, each one for conveyances of fewer than the total number of State-owned Parcels. Transfers shall occur through execution and recordation of a Director's Quitclaim Deed by the Director of Transportation of the State of California or his designee in a form substantially similar to the document attached as Exhibit B. Authority agrees to accept all transferred parcels "as-is," subject to the terms and conditions of all existing written leases and written related agreements, whether recorded or unrecorded, copies of which shall be provided by State to Authority no later than the date of transfer of parcels, and the State shall in no event be responsible for any protected cultural items, human remains, or hazardous materials (the "Hazardous Materials" as defined in federal, state and local laws, ordinances, rules and regulations in any way regulating issues focused on human health or safety and industrial hygiene and pertaining to the protection of the environment or the pollution or contamination of the air, soil, surface water or groundwater) discovered on said State-owned Parcels except to the extent caused or contributed to by State, its agents, representatives,

contractors, lessees, permitees, licensees or others acting under State authority after the effective date of this Agreement. Authority's title shall be subject to the State's Power of Termination as set forth in Exhibit B.

C. Assignment of Leases. On the date of recordation of each Quitclaim Deed under Section II., Subsections A. and B., the State shall transfer all right, title and interest in and to existing leases on State-owned Parcels to the City or the Authority as applicable, except on those portions of the State-owned Parcels where the State will retain fee ownership as set forth in Section III., Subsection A. of this Agreement. The State will assign said leases by executing an "Assignment of Lease" in the form attached hereto as Exhibit C, which is made a part hereof, at the time of each transfer. With respect to all leases so assigned, the City and Authority agree to the following:

1. All gross lease revenues received by City and Authority shall be remitted to the State for deposit in the PTA for the terms of the leases;

2. City and Authority shall provide updated copies of all lease agreements to the State as part of the semi-annual audit set forth in Section IV., Subsection A.

3. City and Authority shall only terminate or fail to renew the subject leases (a) for cause or, (b) for imminent (construction within 90 days) construction and development of the property for purposes of the Transbay Terminal Project, or, (c) for imminent (sale within 90 days) development to create funding for the New Transbay Terminal. In the event the lease is not renewed or is terminated for cause, or the premises subject to the lease otherwise becomes unoccupied, City and Authority shall use good faith, diligent efforts to enter into a new lease

with another party for substantially the same leasehold area on substantially the same terms and conditions, subject to termination under clauses (b) and (c) of the preceding sentence, and the City or Authority shall remit all gross lease revenues received under such new lease to the State in the same manner as the original lease.

4. Upon lease termination as permitted under clauses (b) and (c) of Section II., Subsection C.3. above, the State shall have no further right to any revenue from the formerly leased property.

5. City or Authority shall use their good faith, diligent efforts to reinstate any leasehold uses which are temporarily suspended by the State pursuant to its temporary construction easements as set forth herein, upon termination of such easements, until such time as the lease may be terminated as provided in Section II., Subsection C.3. above. Leasing and reinstatement efforts shall be in accordance with procedures set forth in Chapter 11 of the Caltrans Right of Way Manual, except that City or Authority shall offer displaced tenants first right to reoccupy only if the new use is the same as the previous use. All gross lease revenues collected by City or Authority from such reinstated leases on the transferred parcels shall be remitted to the State for deposit in the PTA.

6. If City transfers any ownership interest in any State-owned Parcels to Agency or Authority, or if Authority transfers any such interest to the City or Agency, the transfer must bind City, Agency or Authority to accept all parcels as-is (as set forth in Section II., Subsections A. and B. above), to accept assignment of leases (as set forth in Section II., Subsection C. above), to accept all relocation obligations set forth in Section III., Subsections E. and F. below, to accept the prohibition of Transfer of Development Rights set forth in Section III., Subsection

J. below, and must contain a Power of Termination as set forth in Section II., Subsections A. and B. above and Section III., Subsection G. below, all for the benefit of the State.

D. State Limitation on Leases. From and after execution of this Agreement until the date of transfer of title provided herein, State agrees that it shall not enter any new leases, extend any existing leases, or otherwise encumber any State-owned Parcels for a term of more than one year unless the State has a legally binding obligation, existing as of the date of execution of this Agreement to enter into such leases or lease extensions, and the State has disclosed such obligation(s) to City and Authority in writing on or before the date of execution of this Agreement. Such new leases and lease extensions shall be subject to Section II., Subsection C. above. All new leases(s) or lease extension(s) shall utilize State's standard form of lease agreement and include legally enforceable tenant waivers of relocation assistance in a form substantially similar to Exhibit E, attached hereto and made a part hereof.

III. LIMITATIONS ON TRANSFER. All transfers to City and Authority shall be subject to the following limitations:

A. State Fee Retained. State shall retain fee ownership for all portions of the State-owned Parcels which will remain part of the Operating Right of Way for Interstate Route 80, including all appurtenant ramps, after completion of CCA of the WASSP, as shown on Exhibit A.

B. Ramp Easements. With respect to State owned operating right of way adjacent to parcels A' and I, the State will convey any necessary easements to the City or Authority for purposes of construction, maintenance and operation of any ramps associated with the New

Transbay Terminal. Said conveyance will occur within 180 days from the date of submission of a request by the City or Authority to the State for the issuance of such an easement, and said easement will be issued subject to all reasonable terms and conditions deemed necessary by the State and the California Transportation Commission for the protection, operation and maintenance of adjacent State highways or ramps. Any request for such an easement must be accompanied by all necessary design information, as determined by the State.

C. Temporary Construction Easements. State shall retain temporary construction easements over parcels A',A",C,C",D,H',I,I",N,N',O,O",P',P",Q, and S, shown on Exhibit A, together with all necessary rights of access, for the purpose of constructing the WASSP and for operation of the Loop Ramps prior to retrofit or demolition. Said temporary construction easements shall terminate immediately upon CCA of the WASSP. The State shall record a Notice of Termination of Temporary Construction Easement in the office of the County Recorder within sixty (60) days of Construction Contract Acceptance and provide City with a conformed copy of the recorded Notice. City or Authority may request early termination of easements on parcels D,N,N',O,O",P', and P" related to retrofit of the east loop ramp provided that the request will not unduly delay completion of the WASSP. Early termination will be at the discretion of the State. All temporary construction easements, with the exception of any temporary construction easement on Parcel D, shall require the State to remove all construction equipment, materials and debris and return the site to a smoothly paved surface prior to recording any Notice of Termination.

D. Legal Office Parking Easement. State shall retain an easement over a portion of Parcel E shown on Exhibit A for twenty-eight (28) reserved, covered parking spaces in the New

Transbay Terminal garage for use at no cost by the State Department of Transportation Legal Office for so long as the Department's Legal Office remains in San Francisco. In the event said easement is temporarily unusable due to activity associated with the Transbay Terminal Project, comparable temporary alternate parking within one-half mile of the easement area will be provided by the City and/or Authority at no cost to the State.

E. Terminal Offices Relocation Easements – (Public Information and Resident Engineers). The State is currently using 1,400 square feet on a portion of Parcel T, shown on Exhibit A, for office space, and 12,000 square feet of Parcel D, shown on Exhibit A, for office space, including eighty (80) parking spaces. Transfer of these parcels will be subject to these existing uses until thirty (30) days after CCA of the WASSP for Parcel T, and 180 days after CCA of the WASSP for Parcel D and the State will reserve a Relocation Easement for such uses upon transfer. If City or Authority wish to relocate the State from Parcel T or Parcel D prior to 30 days and/or 180 days after CCA of the WASSP, respectively, then City or Authority shall provide State, at City's or Authority's sole expense, replacement office and contiguous parking facilities within one-half mile of existing facilities meeting State's reasonable approval as being functionally equivalent, with all tenant improvements, utilities, furniture, machinery and equipment in place, fully operational and ready for State's immediate occupancy and uninterrupted use until thirty (30) days after CCA of the WASSP for Parcel T and 180 days after CCA of the WASSP for Parcel D. Upon the sooner of relocation in accordance with this provision, or the above-referenced number of days after CCA of the WASSP, State shall execute, acknowledge and deliver to City or Authority quitclaim deeds extinguishing all easement rights to Parcel T and Parcel D.

F. Trailer Offices – Relocation Easement (Resident Engineers). The State is currently using 12,036 square feet of office space in temporary trailers and eighty (80) parking spaces for WASSP Resident Engineers on a portion of Parcel P shown on Exhibit A. The State will reserve a Relocation Easement for these uses which will expire 180 days after CCA of the WASSP. If City or Authority wish to relocate the State from Parcel P prior to 180 days after CCA of the WASSP, then City or Authority shall provide State, at City's or Authority's sole expense, replacement office and contiguous parking facilities within one-half mile of existing facilities meeting State's reasonable approval as being functionally equivalent, with all tenant improvements, utilities, furniture, machinery and equipment in place, fully operational and ready for State's immediate occupancy and uninterrupted use until 180 days after CCA of the WASSP. Upon the sooner of relocation in accordance with this provision, or 180 days after CCA of the WASSP, State shall execute, acknowledge, record and deliver to City or Authority a quitclaim deed extinguishing all easement rights to Parcel P.

G. State Power of Termination. The State shall retain a Power of Termination, in substantially the form set forth in Exhibit B, attached hereto, over every transferred parcel to assure that the City and Authority develop and operate the New Transbay Terminal by the Project Completion Date defined herein. The Power of Termination shall survive the Agency's exercise of any option to take a parcel from the City or the Authority. When the City, Authority or Agency subsequently sells any parcel for development, the Power of Termination on a particular parcel shall expire upon deposit of all Gross Sales Proceeds defined herein associated with the sale of a particular parcel into a trust account ("Trust Account") accessible only by the Authority for purposes of paying Capital Costs associated with the development of the New Transbay Terminal and access ramps. Concurrently with its deposit of a quitclaim deed to a

State-owned Parcel into escrow, the State shall execute, acknowledge and deposit into escrow a Relinquishment of the Power of Termination in substantially the form of Exhibit D hereto. The Trust Account shall be administered by a commercial or professional escrow agent and shall be interest bearing. Trustee shall be instructed to obtain the maximum return available consistent with prudent fiscal management of municipal investments. In the event the New Transbay Terminal facility is not constructed or operational, as set forth below, by the Project Completion Date for any reason other than a Permitted Delay, as defined in Section III., Subsection H. below, the State may exercise any unexpired Power of Termination and may take all monies in the Trust Account. The Power of Termination for every parcel transferred from State to City or Authority shall expire and the escrow agent shall be instructed to record the Relinquishment of Power of Termination as follows:

1. With respect to each State-owned Parcel or portion thereof transferred from City, Agency or Authority to a third-party, thirty (30) days from the date that the City, Agency or Authority provides written notice to the State of (i) the terms of the transfer and (ii) that the required deposit into the Trust Account (as set forth in this section) has occurred, provided that the State has not filed an objection within the thirty-day period. In any case where the State has filed an objection to recordation, the escrow agent may record appropriate documents upon receipt of notice that objections have been removed.

2. With respect to all other State-owned Parcels transferred from State to City or Authority, upon the sooner of (i) thirty (30) days from the date the Authority provides written notice to the State of the passing of the Project Completion Date unless the State has filed a written notice objecting to recordation with the agent, City, Agency and Authority, or (ii) thirty

(30) days from the date that the City or Authority provides written notice to the State that actual passenger bus service has commenced at the New Transbay Terminal constructed on the site of the existing terminal, provided that the State has not filed an objection within the thirty-day period set forth in 2(i) above and this paragraph. In any case where the State has filed an objection to recordation, the escrow agent may record appropriate documents upon receipt of notice that objections have been removed.

H. Permitted Delays. Except for acts or conditions caused by City or Authority, the Completion Date shall be extended:

1. For the length of the applicable construction contract extension, upon State's receipt of written notice prior to the Completion Date and within sixty (60) days of the date that an extension is granted to the contractor, that City or Authority have determined that a construction contractor on the Transbay Terminal Project or its access ramps is legally entitled to a delay of work for force majeure under the terms of the construction contract; or

2. For the length of time that State, in its sole discretion, determines should be granted to City or Authority to complete the Transbay Terminal Project for any other reason.

I. Tax Increment. The City covenants that all Net Tax Increment (defined below) generated from the development of State-owned Parcels, shall be provided to the Authority to use for any costs associated with the construction and design of the New Transbay Terminal and access ramps. As used in this Agreement, the term "Net Tax Increment" means all property tax increment revenues attributable to the State-owned Parcels allocated to and received by Agency, but specifically excluding therefrom the following: (i) charges for County administrative

charges, fees, or costs; (ii) the portion of the tax increment revenues that Agency is required by law to set-aside in Agency's Affordable Housing Fund, pursuant to the Community Redevelopment Law; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate Agency to pay from time to time in the future, including, for example, any payments which Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 *et seq.* of the Community Redevelopment Law.

J. Transfer of Development Rights. Prior to relinquishment of the State's Power of Termination on a particular State-owned Parcel, City, Agency and/or Authority shall not transfer development rights separately from title to any State-owned Parcel, and all such development rights shall run with the land.

IV. MISCELLANEOUS PROVISIONS

A. Audit Provision. City and Authority shall provide the Department with semi-annual audit level reports prepared by a reputable independent accounting firm in accordance with Generally Accepted Accounting Principles (GAAP) covering all business transactions related to the Trust Account and all lease revenue associated with Section II., Subsection C. State reserves the right to inspect, upon reasonable notice, all records of City and Authority relating to the Transbay Terminal Project.

B. California Environmental Quality Act/California Register. City and Authority will not make any substantial physical modifications to any State-owned Parcels or transfer any ownership interests in any State-owned Parcels, prior to appropriate environmental review and approval pursuant to the provisions of the California Environmental Quality Act and the California Register.

C. Airspace Leases to GGBHTD and Authority. The State shall lease State-owned Parcels J and K shown on Exhibit A to the GGBHTD and the Authority respectively, for purposes of bus staging and parking, for a period not to exceed 99 years, at a rate to be determined by the State pursuant to Streets and Highways Code Section 104.12 with input from the Airspace Advisory Committee of the California Transportation Commission, subject to all terms and conditions deemed reasonably necessary by the State for the protection, operation, maintenance and potential reconstruction of all State Highway facilities located within the leasehold area. Said leases shall be executed in time to commence upon the Project Completion Date or, if sooner, by the date passenger bus service commences at the New Transbay Terminal.

D. Indemnity (City). City and Authority will indemnify, defend and hold State harmless from any and all claims, losses, damages, suits, penalties, costs, expenses or liabilities (hereafter "Loss" or "Losses"), including, but not limited to, reasonable investigation costs, remediation costs, witness fees, and attorney's fees, excluding consequential damages, which arise out of or are connected with the actions of City, or Authority or their agents during any entry to or possession of the State-owned Parcels, including those State-owned Parcels for which State retains its temporary construction easements and leasehold rights, pursuant to the terms of this Agreement, or which Losses arise from City's or Authority's possession of the transferred

State-owned Parcels, except to the extent such Losses are caused or contributed to by the State, its agents, representatives, contractors, lessees, licensees, permitees or others acting under State authority.

E. Indemnity (State). Except to the extent Losses are attributable to City's or Authority's actions or ownership, State will indemnify and hold City and Authority harmless from any and all Losses, including claims or injury or death or damage to property, but excluding consequential damages, which are claimed or filed against City or Authority by virtue of State's ownership of the State-owned Parcels and which result from any event (excluding Hazardous Materials spilled, generated or discharged except to the extent caused or contributed to by State, its agents, representatives, contractors, lessees, licensees, permitees or others acting under State authority after transfer of the State-owned Parcels to City or Authority) occurring before recordation of the Deed relating to the State-owned Parcel on which the Loss occurred, and any and all Losses arising out of or connected with any actions of the State its agents, representatives, contractors, lessees, licensees, permitees or others acting under State authority during the State's use or possession of any State-owned Parcel pursuant to any easement or leasehold, regardless of whether the State has recorded any quitclaim deed or notice of termination of easement.

F. Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

G. Maintenance of the Property. Between the date of execution of this Agreement and the date a deed for a particular State-owned Parcel is recorded, the State shall maintain that property in good order, condition and repair, reasonable wear and tear excepted and, except as

otherwise provided herein, shall perform all work reasonably required to be done by the landlord under the terms of any lease and shall make all repairs, maintenance and replacements and otherwise operate the property in the same manner as if State were retaining said property for operating purposes.

H. Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one day after being deposited with a reliable overnight courier service, or (iii) five (5) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

For State –

State of California
Department of Transportation
P. O. Box 23440
Oakland, CA 94623-0440
Attention: Deputy District Director
Right of Way

State of California
Department of Transportation
Legal Division
P.O. Box 7444
San Francisco, CA 94120
Attention: Deputy Chief Counsel

For City –

Director of Economic Development
City and County of San Francisco
Room 448, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

015612

For Authority –

Secretary
Transbay Joint Powers Authority
Room 448, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Approval by City. Notwithstanding anything to the contrary contained in this Agreement, this Agreement and any obligation or liability of City hereunder is contingent upon approval of this Agreement and the transactions contemplated hereby by City's Board of Supervisors and Mayor, which they may give or withhold in their sole discretion.

J. Approval by Authority. Notwithstanding anything to the contrary contained in this Agreement, this Agreement and any obligation or liability of Authority hereunder is contingent upon approval of this Agreement and the transactions contemplated hereby by the Authority Board of Directors, which they may give or withhold in their sole discretion.

K. Approval by State. All of the State's obligations hereunder are contingent upon the approval of the California Transportation Commission, consultation with the State's Historic Preservation Officer, and all of State's obligations other than the obligation to transfer the State-owned Parcels to the City and Authority are also subject to the passage of annual State Budget Acts funding this process and budget capacity to expend funds allocated to State.

L. Severability. If any provision of this Agreement is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of the Agreement, and the remaining portions of this Agreement shall continue in full force and effect.

M. Interpretation. In the event of any ambiguity in this Agreement concerning transfer of any State-owned Parcel, or the relinquishment, termination or expiration of any easement or Power of Termination, this Agreement shall be interpreted in the manner most protective of the construction and completion of the WASSP.

N. Merger of Prior Agreements. This Agreement, including the attached exhibits, constitutes the complete and exclusive statement of the subject matter of this Agreement, and supersedes all negotiations or previous agreements between or among the parties with respect to all or any part of the terms and conditions contained herein. No extrinsic evidence of any kind (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial or administrative proceeding to contradict or vary the terms of this Agreement.

District Agreement No. 4-1981-C

015612

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

JEFF MORALES
Director of Transportation

By: _____
BIJAN SARTIPI
District Director

Approved as to form and procedure:

_____
Attorney
Department of Transportation

Certified as to budgeting of funds:

_____
District Budget Manager

Certified as to financial terms
and conditions:

_____
Accounting Administrator

CITY AND COUNTY OF SAN FRANCISCO

WILLIE L. BROWN
Mayor

_____

Recommended:

By: _____
Director of Property

Approved:

_____
Clerk of the Board of Supervisors

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

TRANSBAY JOINT POWERS AUTHORITY

By: _____
MARIA AVERDI
Executive Director

Exhibit E

Exhibit E

Airspace Lease Analysis - Transbay Terminal

Public Transportation Entity	Current Lease @$1.27/sf/mo.	Appraised FMLR @$1.35/sf/mo	FMLR @20% Discount	FMLR @50% Discount
TJPA Site				
Per Month	$135,230	$143,748	$114,998	$71,874
Per Year	$1,622,755	$1,724,976	$1,379,981	$862,488
	Current Lease @$0.40/sf/mo.	FMLR Lease @$1.14/sf/mo	FMLR @20% Discount	FMLR @50% Discount
GGBHTD Site				
Per Month	$46,580	$132,753	$106,202	$66,377
Per Year	$558,960	$1,593,036	$1,274,429	$796,518

Exhibit F

AIRSPACE LEASE

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: California Department of Transportation

Tenant: Golden Gate Bridge Highway and Transportation District

Premises: Located in the City of San Francisco, County of San Francisco, State of California, known as Lease Area No. 04-SF-BT-05 and more particularly described in Article 2.

Lease Term: 25 Years; plus two 5-Year Options

Commencing: Four (4) Months after Lease Execution by Both Parties or Construction contract acceptance of approved improvements, whichever first occurs. (Article 3)

Monthly Rent: $41,922.00/month (116,450sf x $0.45/sf/mo x 20% discount)

Security Deposit: $ N/A (Article 18)

Use: Bus Parking and Staging (Article 5)

Comprehensive General Liability Insurance: $5,000,000. (Article 10)

Insurance provider: Golden Gate Bridge Highway and Transportation District is Self Insured.

Address for Notices: (Article 18)

To Landlord:

Via US Mail:

Department of Transportation
Right of Way Airspace MS 11
P.O. Box 23440
Oakland, CA 94623-0440

In Person:

Department of Transportation
Right of Way Airspace MS 11
111 Grand Avenue
Oakland, CA 94612-3771

To Tenant: Golden Gate Bridge Highway and Transportation District
Presidio Station P. O. Box 9000
San Francisco, CA 94129
Attention: General Manager

Tenant Contact: Norma Jellison
Property Development and Management Specialist
Office Phone: (415) 257-4564

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.

(Lease Area No. 04-SF-BT-05)

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE LEASE

THIS LEASE, dated December 1, 2010 ("Execution Date"), is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION DISTRICT, hereinafter called "Tenant."

WITNESSETH

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 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 known as Airspace Lease Area No.04-SF-BT-05, situated in the City of San Francisco, County of San Francisco, said land or interest herein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof.

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

ALSO EXCEPTING THEREFROM all that portion of said property 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 said existing structure.

ARTICLE 3. TERM

The base term of this Lease shall be TWENTY-FIVE (25) YEARS from the Commencement Date. The Commencement Date shall be the earlier of: (1) four months after the Execution Date of the Lease; or (2) the date that all improvements that are necessary for Tenant to use the Premises for public transportation purposes have been completed.

In addition, Tenant shall have TWO (2) FIVE (5) year Options to extend the Lease on the same terms and conditions, subject to an adjustment in the Monthly Rate as provided for in Article 4. Tenant shall notify Landlord in writing 90 days prior to the expiration of the then applicable lease term of its exercise of the option.

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 $41,922.00, representing 116,450 square feet of rentable space, as shown on Exhibit B, multiplied by $0.36/SF per month ("Monthly Rental Rate"). The Monthly Rental Rate represents the fair market rental rate of $.45/SF per month established pursuant to a written appraisal approved by Landlord ("Fair Market Rental Rate or FMRR"), less a 20% discount, as authorized for public transportation agencies pursuant to California Transportation Commission policy G-03-03. Rent shall be paid in advance on the first day of each month, and continue during the term and any extensions. All rent shall be paid to Landlord at the following address: State of California, Department of Transportation, Attention: Cashier, P.O. Box 168019, Sacramento, CA 95816-3819 or State of California, Department of Transportation, 1820 Alhambra Boulevard, 2nd Floor, Sacramento, CA. Each payment shall state on the check the rental account number 04-A70001-05-22.

The Monthly Rent is subject to modification as provided for in Section 4.5 of this Article 4. In addition, subject to Section 16 below, in the event that Tenant subleases the Premises, the Monthly Rent may be adjusted as provided in Section 16.2.

4.2 Annual Rent Adjustment Based on CPI

Beginning one year following Commencement Date as defined in Article 3. Term, and continuing thereafter on each anniversary thereof ("Anniversary Date"), except for the year in which a Periodic Market Rate Adjustment takes effect, Monthly Rent shall be adjusted by the change in the Consumer Price Index ("CPI"). The change in the Consumer Price Index means the percentage increase or decrease from the last preceding Anniversary Date (or Commencement Date, for the first year of the Lease) to the current Anniversary Date of the Consumer Price Index - all urban consumers (San Francisco, Oakland, San Jose Area: Base 1984 = 100) ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics. Landlord shall tender written notice of any such change in the Monthly Rent to Tenant as soon as practicable after each Anniversary Date. Should the Bureau discontinue the publication of index, or publish the index less frequently, or alter the index in some other manner, the Landlord in its discretion, may adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

4.3 Periodic Market Rate Adjustments

Every five years, the FMRR rate will be re-determined by an appraisal. Tenant, at Tenant's sole expense, shall obtain and deliver in writing to Landlord a determination of the fair market rental value for the Premises based upon a written appraisal prepared by a independent MAI appraiser, licensed by the State of California, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute mutually acceptable to Landlord and Tenant. The appraiser shall be familiar with the San Francisco commercial market including the type of property appraised. The appraisal shall be based on comparable land leases for vacant land, comparably paved and improved land, or paved but otherwise unimproved land located in the general area of the Premises in San Francisco. The appraisal shall be completed 90 days before the end of each five-year period of the base 25 year term, and each subsequent five-year option period.

Landlord shall review said appraisal and shall not unreasonably decline to accept the determination of the FMRR. The FMRR will be adjusted to conform with California Transportation Commission policy G-03-03, as it may be amended, a subsequent CTC policy regarding rental rates charged to public agencies, or to conform with Section 4.5 below. Annual rental adjustments thereafter will be in accordance with Article 4.2, Annual Rent Adjustment Based on CPI, until the next Periodic Market Rate Adjustment.

4.4 Continuation of Existing Monthly Rent

Tenant shall continue to pay the Monthly Rent in effect during the prior year pending completion of the rent adjustment analysis, as provided in Sections 4.2 and 4.3. Any amounts owed to Landlord, or credits due to Tenant, shall be paid or credited promptly upon completion of the analysis, effective as of the Anniversary Date.

4.5 Monthly Rent Adjustment Due To Other Agreements

This Lease is subject to Agreements that may be reached with Other Public Agencies as follows:

Landlord and Tenant agree that in the event that the Transbay Joint Powers Authority or the Alameda Contra Costa Transit District negotiate a lease or agreement for bus parking and related public transportation purposes on a Landlord parcel bounded by 2nd, 3rd, Stillman and Perry Streets in San Francisco, resulting in an agreement for a lower rental rate, a longer term or any other terms that are more favorable to the tenant than those reflected in this Airspace Lease, this Airspace Lease shall be amended to incorporate such terms. The amendment shall take effect as of the effective date of the agreement between Landlord and the referenced public transportation agency(ies). Furthermore, this Airspace Lease shall be amended should the California Transportation Commission (CTC) amend the existing 20% rental rate discount authorized for public transportation agencies pursuant to CTC policy G-03-03. Should the CTC increase the discount, this Airspace Lease shall be amended to appropriately decrease the rent in conformity with the newly approved discount. Likewise, should the CTC decrease or eliminate the public transportation discount, this Airspace Lease shall be amended to appropriately increase the rent in conformity with the newly approved discount, or the discount shall be totally eliminated and the rent increased to the full pre-discount amount.

ARTICLE 5. USE

5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purposes of bus and vehicle parking, staging and dispatching, as a bus driver rest area, and for office functions related to Tenant's public transportation operations. Any other purpose requires the prior written consent of landlord. Tenant may locate on the Premises movable modular units in furtherance of the permitted purposes described herein. No semis, semi-trailers or other storage trailers or large containers are allowed on the Premises.

5.2 Condition of Premises

Tenant hereby accepts the Premises in the condition existing as of the Execution Date, 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 conditions "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.

Landlord shall disclose any and all known hazardous materials that are present at or on the property. The Landlord shall be responsible for any and all costs related to the presence of any hazardous materials existing at or on the property prior to the tenancy of the Tenant.

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 conflict in a material way with any applicable 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 materially violated any applicable 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 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.

Landlord acknowledges that vehicles will be parked on the Premises, which contain petroleum products. Tenant may use petroleum products in connection with its public transportation operations on the Premises, subject to compliance with all applicable federal, state and local requirements.

5.5 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.

5.6 Hazardous Materials

Tenant shall at all times and in all respects comply with all applicable 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 use of hazardous materials on the Premises during Tenant's period of use and possession of the Premises.

5.7 Signs

Not more than two (2) 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 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 entitles, including governmental approval and payment of any fees, as applicable.

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 18.11 from the date of completion of such removal.

5.8 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate and has furnished to Tenant, 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.

5.9 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.

5.10 Vending

Tenant shall be allowed to install vending machines inside its modular units for the sole purpose of providing food and beverages to bus drivers and other employees of Tenant using the facilities. No vending of any kind or character shall otherwise be conducted, permitted or allowed upon the Premises.

5.11 Water Pollution Control

Tenant shall conform fully to the requirements of the Caltrans statewide NPDES Storm Water Permit, Order No. 99-06-DWQ, NPDES No. CAS000003, adopted by the State Water Resources Control Board on July 15, 1999. This permit regulates storm water and non-storm water discharges associated with activities within Caltrans right-of-way. Tenant shall develop, implement and maintain a Facility Pollution Prevention Plan (FPPP), describing the pollution prevention practices associated with activities on facilities located within Caltrans right-of-way. Tenant shall comply with the statewide Permit by incorporating storm water management into its operational activities. The FPPP will accomplish compliance by implementing Best Management Practices (BMPs) described in the Caltrans Statewide Storm Water Management Plan (SWMP). Copies of the Permit and the Department of Transportation SWMP may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 98518, Telephone: 916-445-3520. Copies of the Permit and the SWMP are also available for review upon request.

Tenant shall not allow the unauthorized discharge of storm water runoff to private or public water drainage systems.

Tenant must comply with State and Federal storm water pollution control standards, including those of the State Water Resources Control Board, and the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under jurisdiction of the above agencies.

In order to minimize the discharge of pollutants, spilled, leaked fluids, and any other wastewater into the storm water drainage system, Tenant shall not allow vehicle or equipment washing, fueling, maintenance and repair on the Premises.

In order to minimize the discharge of pollutants to storm water resulting from contact with hazardous material, Tenant shall not allow the storage or stockpile of hazardous material on the Premises, except as provided in Section 5.4.

Landlord, or its agents or contractors, shall at all time have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. 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

No improvements of any kind 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.

Landlord and Tenant agree that Tenant may, subject to the issuance of an Encroachment Permit by Landlord, install improvements necessary for its public transportation operations, including but not limited to grading, paving, striping, new entrances, driveways, sidewalks, fences, gates, lighting and security measures and all associated utility connections.

6.1 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 the following:

(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) [subsection b intentionally deleted—public entities need not post a bond, but will provide copies of bonds posted by any contractor doing work on the Premsies.]

(c) Liability insurance as provided in Section 10.2.

(d) [subsection d intentionally deleted- not applicable]

(e) [subsection e intentionally deleted- not applicable]

(f) [subsection f intentionally deleted- not applicable]

(g) [subsection g intentionally deleted- not applicable]

(h) [subsection h intentionally deleted- not applicable]

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

Tenant agrees to diligently apply for and meet all requirements for issuance of Encroachment Permit and Landlord agrees to not unreasonably withhold, delay or condition the 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.

6.2 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

6.3 Standard of Construction

Tenant agrees that any improvements or construction upon the Premises shall: (a) be consistent with all fire safety requirements, (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 applicable laws, ordinances and regulations, federal, state, municipal or otherwise, that 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. Responsibility for any loss or damage caused by reason of the construction of said improvements shall be subject to th e indemnification provisions of Section 10.1.

6.4 "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.

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

All grading, paving, striping, new entrances, driveways, sidewalks, fencing, gates, lighting, security measures and associated Landlord approved improvements constructed and placed on the Premises pursuant to Article 6 shall, at the expiration or termination of this Lease, vest in Landlord. Tenant shall not remove any of these improvements from the Premises nor waste, destroy or modify them in any way. Tenant shall deliver these 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. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

Landlord and Tenant agree that in any event whereby Landlord requires early termination of this Lease, Landlord will reimburse to Tenant the then unamortized costs of all Landlord approved improvements installed by Tenant in accordance with a ten year amortization period.

8.2 Removal of Personal Property and Ownership at Termination

Any signs, movable modular units, or other appurtenances placed on the Premises by Tenant under this Lease are the personal property of Tenant. At the expiration or earlier termination of this Lease, Tenant shall remove all personal property placed on the Premises and shall restore the Premises to its previous condition, except surfacing, wheel rails, and column guards, at Tenant's sole expense. Any personal property not removed by Tenant after thirty (30)

days from Landlord's sending written notice to Tenant may be removed by Landlord. Tenant shall be liable to Landlord for all costs incurred by Landlord in effecting the removal of personal property and restoring the Premises. Landlord may, in its sole discretion, declare all personal property not removed by Tenant to be abandoned by Tenant and this property shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against it by Tenant or any other person.

8.3 Removal of Improvements at Termination

Upon the expiration , Landlord may, upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than one hundred and eighty (180) 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, improvements constructed or installed upon the Premises as approved by Landlord's approval process outlined in Article 6 Improvements, except for paving and substructure; 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, except for paving and substructure , ordinary wear and tear excepted, and shall, in any event, leave the Premise as improved by Landlord's approval process outlined in Article 6 Improvements as to paving and substructure. Should Tenant fail to so remove said improvements, except paving and substructure 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 except for paving and substructures.

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 location of the Premises as an adjunct of the California State Highway System.

Landlord and Tenant recognize that because of the length of the term of this Lease it may be necessary for Tenant to perform certain substantial maintenance, repair, rehabilitation or reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the improvements in order to ensure that the Premises are kept in first-class order, repair and condition.

"First-class order, repair and condition", as used herein, shall mean the maintenance, repair, renovation or replacement of buildings, equipment, furniture, fixtures, landscaping and appurtenances necessary to keep the Premises in efficient and attractive condition, given the nature and age of the improvements at any time during the term of this Lease. Landlord and Tenant do not intend by the immediately preceding sentence that a property item is not first-class merely because of ordinary and reasonable wear and tear that does not materially and

substantially reduce the attractiveness and utility of the item given the nature and age of the improvements at any time during the term of this Lease.

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 piers and columns, if any, of the Bay Bridge west approach structures 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 property owned by Landlord on the Premises, including, but not limited to, all piers and columns of the Bay Bridge west approach structure, caused by Tenant, subtenants, invitees or any other third parties, but excluding damage caused by Landlord or its contractors or invitees. At Tenant's request, Landlord will repair the damage to its property, and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

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 of the Premises.

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 fail 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 18.11 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.

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 active 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 the State 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, from, 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 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.

10.5 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.

10.6 Self-Insurance Coverage

Notwithstanding any other provision of this Agreement, the insurance required under Article 10 may include a self-insurance program, and Landlord hereby consents thereto. 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.

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.

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 applicable 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 applicable 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 upon providing ten (10) days' written notice to Tenant to cure, and Tenant fails to do so.

Landlord and Tenant acknowledge that Tenant is a governmental agency not subject to the payment of property taxes and/or possessory use taxes. Should Premises be subleased as outlined in Article 16, Assignments, Transfers, Subleases Encumbrances below, sublessee shall be fully responsible for payment of all applicable property and/or possessory use taxes or any other taxes applicable to the use of the Premises as a public parking lot, without contribution from either Landlord or Tenant.

ARTICLE 12. RIGHT OF ENTRY and TERMINATION OF LEASE

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. All agreements which Tenant enters into for the sublease or use of all or any part of the leased Premises shall contain a provision, approved by Landlord, which describes Landlord's right of entry as set forth in this Article.

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 and 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 180 days following termination of this Lease as provided in this Section 12.2.

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 part of the Premises, Landlord shall additionally state in such notice the extent of the permanent use and shall have the right to unilaterally modify the Lease to reflect the newly defined Premises, and if the entire Premises is affected, Landlord shall have the right to unilaterally 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. Tenant's sole remedy shall be the reduction in Monthly Rent as provided in Article 12.2(b) herein, and the agreed upon reimbursement for unamortized improvements costs as described in Article 8.1, if applicable, 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". Otherwise, 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". Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (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 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 preexisting 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 which 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 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, 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 minimum monthly rent stated in Section 4.1, as adjusted and reevaluated in accordance with Sections 4.2, 4.3, 4.4, and 16.2, shall be reduced by an amount equal to the proportion of the area 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, other than the agreed upon reimbursement of unamortized improvement costs as described in Article 8.1, if applicable, against Landlord for Tenant's inability to possess or use the entire area of the Premises. Otherwise, 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. At the conclusion of the retrofit work, Landlord shall restore the Premises and Tenant's improvements to their preexisting condition at no cost to Tenant.

12.4 Termination by Mutual Consent

Notwithstanding any provision herein to the contrary, this Lease may be terminated, and the provisions of this Lease may be altered, changed or amended by mutual consent of Landlord and Tenant.

12.5 Termination by One Party

Notwithstanding any provision herein to the contrary, this Lease may be terminated at any time by Tenant upon providing Landlord with ninety (90) days prior notice in writing, or by Landlord upon providing Tenant with ninety (90) days prior notice in writing, but in no event

shall the notice be given before March 1, 2035, except as provided for in Article 12.2, above. Notices of termination under this section shall be delivered in accordance with the provisions of Section 18.13 to the addresses set forth in Article 1. Notwithstanding the foregoing, Tenant may cancel this Lease with 90 days notice in the event that Tenant terminates its regional bus operations between San Francisco and the North Bay.

If at the time Tenant terminates this Lease, the entire cost of Tenant's improvements has not been amortized over the remaining term, those improvements shall become the property of Landlord, and Landlord shall not refund or otherwise reimburse Tenant for the remaining unamortized cost of the improvements.

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 minimum monthly rent and adjusted minimum 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

minimum monthly rent and adjusted minimum 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 minimum monthly rental shall be reduced as provided in this section.

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 and Article 16.2.

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 applicable provision of any applicable law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 5.3 of this Lease.

(e) The failure by Tenant to comply with the requirements regarding hazardous materials as set forth in Section 5.6 of this Lease.

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

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

(h) The failure by Tenant to observe and perform any material 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 <u>Landlord's Remedies</u>

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 fight 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.

ARTICLE 16. ASSIGNMENTS, TRANSFERS, SUBLEASES AND ENCUMBRANCES

16.1 Prohibition on Assignments, Transfers and Subleases

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.

Landlord may elect to consent to any such assignment, transfer or sublease if all of the following express conditions are satisfied:

(a) Landlord receives compensation from Tenant upon the assignment, transfer, sale or sublease of any of Tenant's rights in the Premises.

(b) The prospective assignee, transferee or subtenant is approved by Landlord, which may include completion of a Lease Application and meeting other requirements for eligibility to lease from the State of California.

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.

16.2 Sublease for Parking of Operable Vehicles

Notwithstanding the foregoing, Landlord and Tenant agree that Tenant may without any further written approval from Landlord, sublease all or a portion of the Premises for purposes of parking operable vehicles, conditioned upon Tenant complying with Landlord's procedures for advertising and soliciting bids for a parking sublease. Tenant's bid solicitation shall include a map of the Premises clearly showing the area available for sublease, the term of the sublease, and shall not include any conditions that do not appear to be commercially required but whose primary purpose is to solicit lower rent bids.

(a) Subtenant Has Exclusive Use of All of the Premises

In the event that Tenant subleases exclusive use of all of the Premises, the Monthly Rent set forth in Article 4 may be subject to modification as follows. The Sublease Rental Rate shall be that amount represented by the highest bid resulting from a public offering, by a process approved by Landlord, of the Premises for sublease, resulting in an executed sublease. If said Sublease Rental Rate is less than the FMRR as defined in Article 4 of this Lease, the Parties agree that the Monthly Rent shall be adjusted to equal the Sublease Rental Rate, which shall satisfy Tenant's Monthly Rent obligation per Article 4.1. In the event that the Sublease Rental Rate is more than the FMRR as defined in Article 4, any amount over the Monthly Rent will be shared equally (50-50) between Landlord and Tenant.

Example: As an example of the above "exclusive use of entire Premises" event: Tenant subleases entire premises. Assuming the FMRR Monthly Rent is $1000 and the highest bid offering for the entire Premises is $900, then the Monthly Rent shall be reset and reduced to $900. If the highest bid offering for the entire Premises is$1100, then the Monthly Rent shall remain $1000 and the extra $100 received shall be shared equally between the Landlord and Tenant. Landlord shall receive $50 and Tenant shall retain $50; hence the total amount paid to Landlord for the month will be $1050.

(b) Subtenant Has Exclusive Use of a Portion of the Premises

In the event that Tenant subleases exclusive use of a portion of the Premises, retaining the remainder for its continued exclusive use, the Monthly Rent set forth in Article 4 may be subject to modification as follows. The Sublease Rental Rate shall be that amount represented by the highest bid resulting from a public offering, by a process approved by Landlord, of the Premises for sublease, resulting in an executed sublease. If said Sublease Rental Rate is less than the FMRR as defined in Article 4 of this Lease, the Parties agree that the Sublease Rental Rate shall be used to calculate the proportionate monthly rent for the portion of the Premises so subleased, and the FMRR shall be used to calculate the proportionate monthly rent for the retained portion of the Premises. In the event that the Sublease Rental Rate is more than the FMRR as defined in Article 4, any amount over the FMRR will be shared equally (50-50) between Landlord and Tenant.

Example: As an example of the above "exclusive use of partial Premises" event: Tenant operations reduce need for the Premises to 75% of the leased area. Assuming the FMRR Monthly Rent is $1000, Tenant will now pay $750. If the highest bid offering for the remaining 25% of Premises is only $150, then the Monthly Rent shall be reset and reduced to $900. If the highest bid offering for the remaining 25% is $350, then the Monthly Rent Paid by Tenant shall

be $1000, plus the extra $100 received shall be shared equally between the Landlord and Tenant, so that the Landlord shall receive $50 and Tenant shall retain $50; resulting in the total amount paid to Landlord for the month being $1050.

(c) Subtenant Has Non-Exclusive Use of All or a Portion of the Premises

In the event that the Tenant subleases a nonexclusive use of all of or a portion of the Premises, and the Tenant reserves rights consistent with their operations, then the Tenant shall pay the Monthly Rent per Article 4 and Tenant shall share the sublease rent equally (50-50) with Landlord.

Example: As an example of the above "non-exclusive use" event: Tenant operations reduce need for the Premises to 75% of the leased area during daytime hours. Tenant subleases 25% of the Premises during daytime hours. Assuming the FMRR Monthly Rent is $1000 and Tenant receives an additional $500/mo. for the non-exclusive subleased use, Tenant shall continue to pay the entire Market Rent to Landlord plus half of the additional $500 received; hence the total amount paid to Landlord for the month will be $1250

16.3 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, transfer or assign 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, transfer or assignment, 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, transferee or assignee.

(d) A copy of all documents showing compliance by the prospective subtenant, transferee or assignee with all of the bid eligibility requirements contained in the bid package.

16.4 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever, except as otherwise permitted above in this Article 16.

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. ADDITIONAL PROVISIONS

18.1 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.

18.2 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.

18.3 Entire Agreement

This instrument along with any exhibits and attachments, including addenda 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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.

18.10 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 shall be increased by ten percent (10%) effective the first month of the holdover period. Landlord further reserves the right to review the rental rates of all holdover tenants periodically for the purpose of making reasonable adjustments to the monthly rental payments.

18.11 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.

18.12 Recording Memorandum of Lease

Following execution of this Airspace Lease, either party, at its sole expense shall be entitled to record a memorandum of lease agreement in the official records of the City and County of San Francisco. Upon termination or expiration of this Airspace Lease, Tenant shall execute and record a quitclaim deed as to its leasehold interest.

18.13 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.

18.14 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.

18.16 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. In the event of partial destruction of the Premises, rent shall abate for the portion of the Premises that is rendered unusable by the Tenant by reason of the destruction, until it is restored by Landlord. In the event of complete destruction, the Landlord has the option to restore or terminate the Lease, in which event Tenant shall be relieved from its rent obligation. 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.

18.17 Liens

(a) Exemption of Landlord from Liability

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 contractors, and from the cost of defending against such claims, including attorney fees.

In Witness Whereof Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: 11/23/2010

By: Linda Emadzadeh
LINDA M. EMADZADEH,
District Office Chief
R/W Airspace, Excess Lands and LPA

TENANT: GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION DISTRICT

Dated: 10/7/10

By: Denis Mulligan
DENIS J. MULLIGAN
Its: General Manager

Approved as to Form

By: _____
Its: Legal Counsel
MADELINE CHUN, Attorney to the District

Attest:

By: Janet S. Tarantino
JANET S. TARANTINO
Its: Secretary of the District

SF-BT-05
Between 3rd and 4th Streets and Perry and Stillman Streets

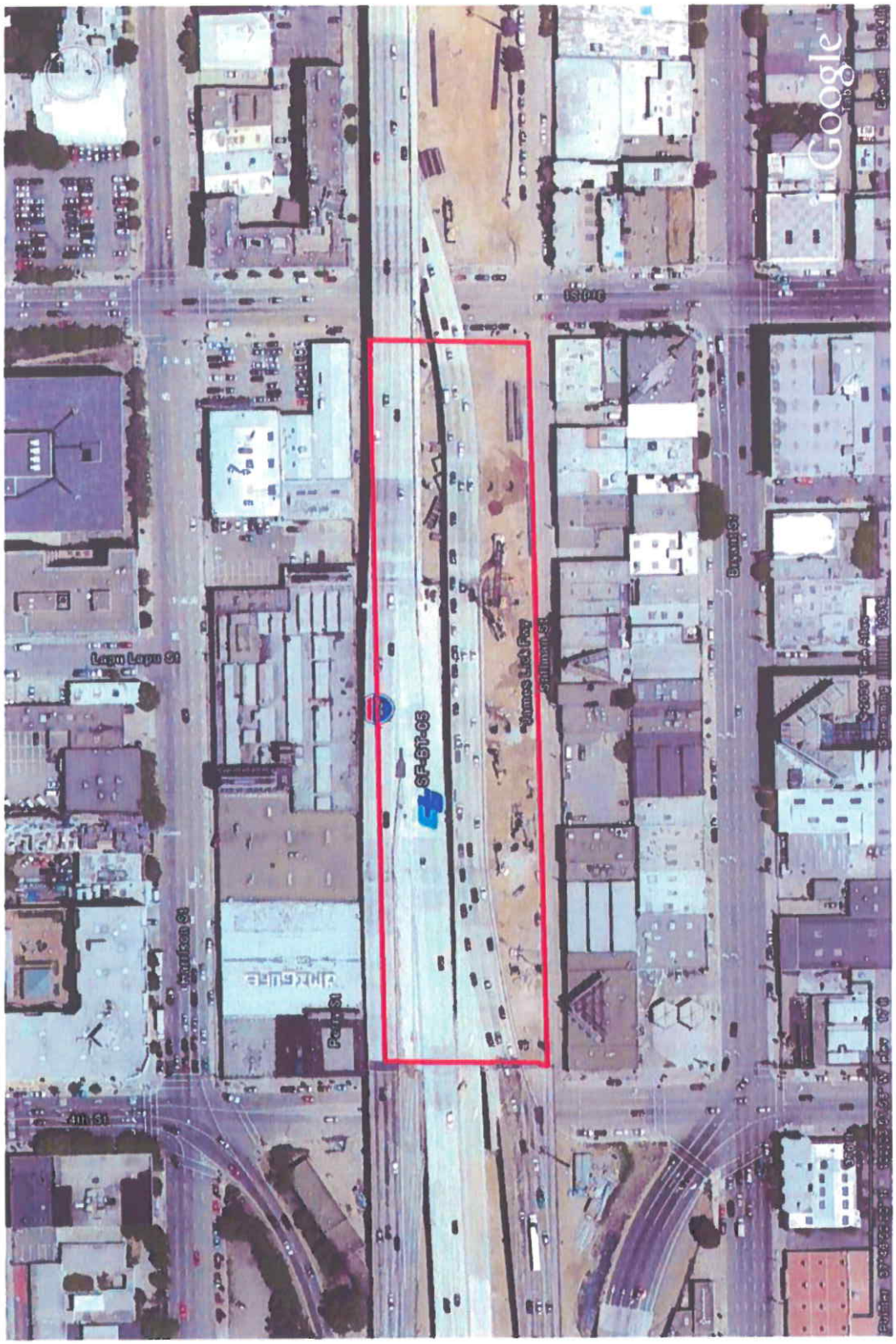
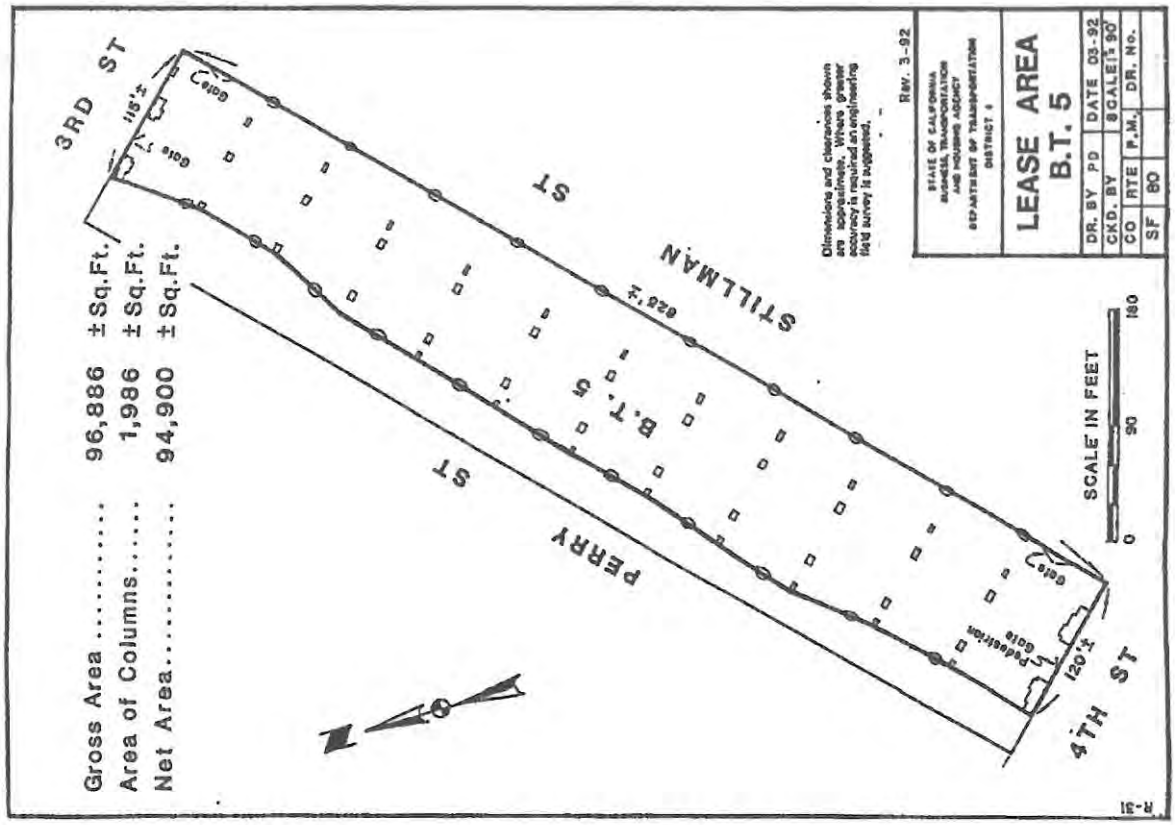
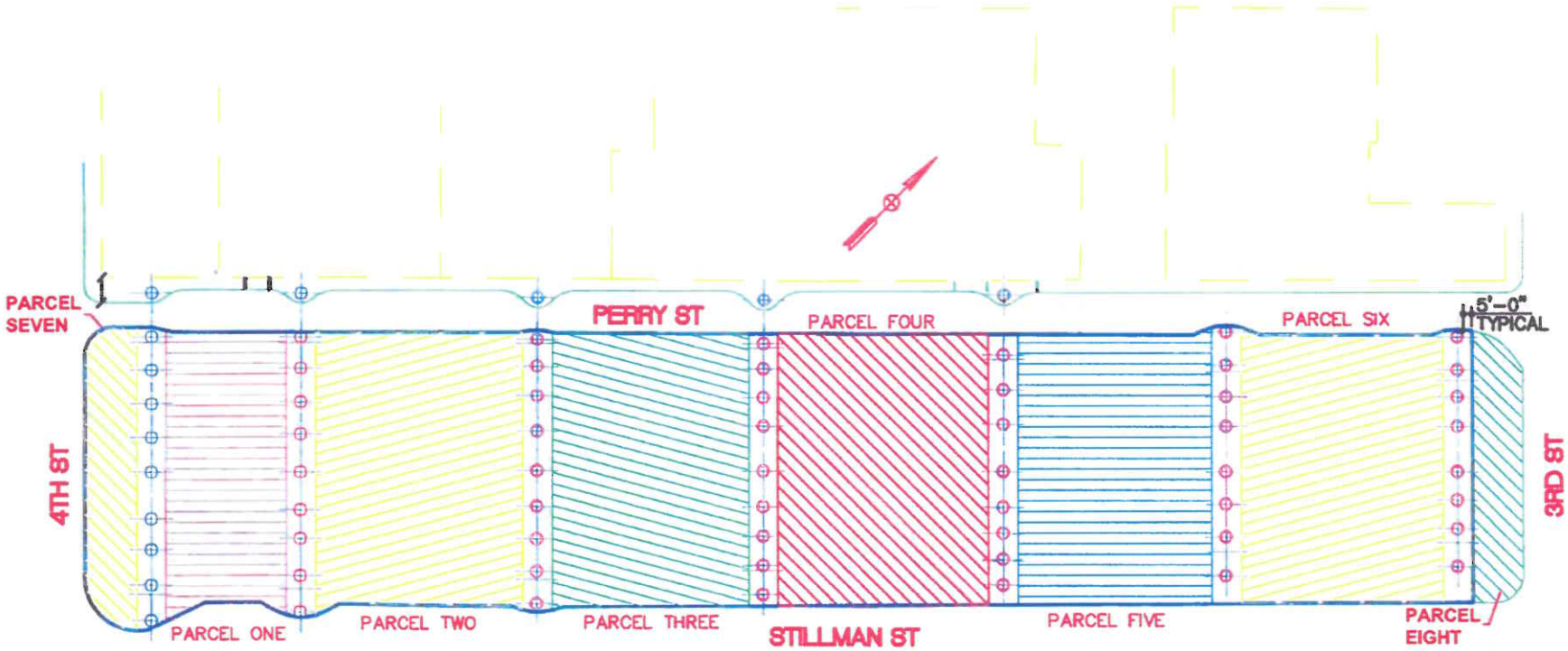


Exhibit A



Gross Area	96,886	±Sq.Ft.
Area of Columns.....	1,986	±Sq.Ft.
Net Area.....	94,900	±Sq.Ft.

Exhibit A
Reflects the ground conditions prior to West Approach project.
See Exhibit B for current conditions and square foot of lease area.



AREA OF EIGHT PARCELS TOTAL=116,450.56 SQUARE FT

PARCEL ONE=11504.25	PARCEL FOUR=19820.88
PARCEL TWO=19678.79	PARCEL FIVE=18140
PARCEL THREE=18687.89	PARCEL SIX=18850.79
PARCEL SEVEN=5247.29	PARCEL EIGHT=4520.67

Exhibit B

GAVIN NEWSOM
LIEUTENANT GOVERNOR

August 8, 2016

Mr. Bob Alvarado, Chair
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

RE: Transbay Transit Center Bus Storage Facilities

Dear Commissioner Alvarado:

I am writing to urge you and your fellow Commissioners to approve leases for the parcels that would be used for bus storage by the Alameda-Contra Costa Transit District and the Golden Gate Transit at the Transbay Transit Center at no cost.

The Transbay Transit Center is the type of project that embodies California's sustainable and environmental policy priorities by emphasizing infill development with a mix of commercial and residential building, centered on a regional mass transportation facility. It is therefore vital that we guarantee the Transit Center's operations are as cost-effective as possible in order to deliver the environmental benefits and congestion relief.

A long term no-cost lease would move the State closer to the aggressive greenhouse gas reduction targets set by successive governors and the legislature. We have made huge strides in reducing carbon emissions across many sectors but the transit sector remains the area where significant gains remain to be made.

This is part-accomplished by promoting the use of mass transit, removing over 1 million deadhead miles from our state and local roads and reducing carbon emissions by over 4,000 tons annually by eliminating the need to utilize storage areas in the east and north bay. Placing an undue economic burden on these operators undermines the State's ambitious goals and challenges its ability to provide a successful transit service in other service areas.

STATE CAPITOL, ROOM 1114, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 445-8994
WWW.LTG.CA.GOV

GAVIN NEWSOM
LIEUTENANT GOVERNOR

While I support the need to maximize the return on the use of state facilities for commercial purposes, we must also utilize state facilities for greatest good and in the best interest of California.

Sincerely

GAVIN NEWSOM
Lieutenant Governor of California

STATE CAPITOL, ROOM 1114, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 445-8994
WWW.LTG.CA.GOV

State Capitol
Sacramento, CA 95814

California Legislature

August 4, 2016

Mr. Bob Alvarado, Chair
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

RE: Transbay Transit Center Bus Storage Facilities
Lease Area No. 04-SF-BT-04 (AC Transit) and Lease Area No. 04-SF-BT-05 (Golden Gate Transit)

Dear Commissioner Alvarado:

We are writing to urge the Commission to approve a no or very low cost lease for the use of Parcels J and K referenced above, as identified in the July 11, 2003 Cooperative Agreement between Caltrans, the Transbay Joint Powers Authority and the City and County of San Francisco, for bus storage associated with the Transbay Transit Center. A no or low cost lease is consistent with the cooperative agreement entered into between the state and the Transbay Joint Powers Authority, the provisions of Street & Highways Code Section 104.12 (b), and the State's priorities to reduce congestion, petroleum use and greenhouse gas emissions.

The Transbay Transit Center is a visionary transportation project that is transforming downtown San Francisco. It will provide a modern regional transit hub connecting eight Bay Area counties and serving 11 transit systems. AC Transit and Golden Gate bus service will continue to provide the overwhelming majority of the Transbay commuter service when the Transit Center opens in December 2017, making it critical to provide affordable off-peak storage facilities in order to capture the environmental benefits, attract new riders, and increase service.

In 2002 the goal of modernizing the Transbay Terminal was started with the passage of AB 1419 (Aroner). While this bill was vetoed, Governor Davis in his veto message directed Caltrans to administratively implement the provisions of AB 1419. An administrative avenue was taken to avoid any conflicts with the retrofit work on the west approaches to the San Francisco-Oakland Bay Bridge. This includes provisions in AB 1419 for Caltrans to permit the use of property under elevated freeways for bus storage without cost or charge.

The ability for Caltrans to lease these parcels at no cost is specifically authorized in paragraph (b) of Streets & Highways Code Section 104.12. While the goal of leasing Caltrans parcels is to maximize the revenue for our highway system, existing law specifically authorizes Caltrans to enter into a lease with or without charge for public mass transit facilities. This exception to the fair market lease rate is critical to provide the financial resources that enable public transit

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operators to provide or expand transit service along congested highway corridors to the benefit of all highway users.

Executing a long term no cost lease will make a significant stride toward meeting Caltrans' emission reduction goals. Placing an economic burden on AC Transit and Golden Gate to utilize the bus parking facility at Transbay not only impacts the ability to provide transit service in other areas, it could force these operators to deadhead buses to the East Bay and North Bay during the off peak times. Use of the Transbay parking facility by AC Transit would eliminate over 25,500 trips across the Bay Bridge annually and over 366,000 miles traveled annually. This would eliminate over 1,500 tons of carbon emissions annually. For Golden Gate Transit, use of the current bus parking facility at Third and Perry Streets eliminates over 39,000 annual bus trips and 700,000 annual deadhead miles. The availability of the current GGT bus lot eliminates up to 2,660 tons of carbon emissions annually.

The use of these parcels as a bus storage facility with dedicated access to the Transbay Transit Center will serve the public good by promoting mass transit, reducing greenhouse gas emissions, and alleviating congestion on the Bay and Golden Gate Bridges. Therefore, we urge the Commission to approve a no, or low, cost lease for the bus storage facilities at the Transbay Transit Center.

Sincerely,

	David Chiu
	Bill Quirk
	Kansen Chu
	Mark Farrell
Lori Hancock	Rob Bonta
	Bill Odd

Cc: Members of the California Transportation Commission
Susan Branson, Executive Director, CTC
Brian Kelly, Secretary, California Transportation Agency
Malcolm Dougherty, Director, Caltrans
Bijan Sartipi, District 4 Director, Caltrans

_Assemblyman Marc Levine_____

_Senator Lois Wolk_____

_Assemblyman Tony Thurmond ___

_Senator Mike McGuire_____

_Senator Loni Hancock_____

_Assemblyman Jim Wood_____

_____

Assemblyman David Chiu _____

Assemblyman Bill Quirk_____

Assemblyman Kansen Chu_____

Senator Mark Leno_____

Assemblyman Rob Bonta_____

Assemblyman Bill Dodd_____

_____