

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.3**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorize the Director of Transportation to execute an Agreement for the Purchase and Sale of Real Estate (PSA) with the State of California, by and through its Director of Transportation (Caltrans), to purchase Caltrans property near the intersection of Indiana and Cesar Chavez Streets, and to approve and recommend approval to the Board of Supervisors that the Director of Transportation enter into (1) an Airspace Lease (Lease) with Caltrans for Lease Area No. 04-SF-280-08 (Lease Parcels) for a 50-year term, plus two 15-year extension options, (2) an Indiana Street Access License Agreement (Access License) for Caltrans access from Indiana Street to the Lease Parcels during the Lease term, and (3) a Cesar Chavez Access Easement Agreement (Easement) for Caltrans access from Cesar Chavez Street to the Lease Parcels after the Lease terminates.

**SUMMARY:**

- The SFMTA currently uses 2.44 acres of Caltrans property for its Islais Creek Motor Coach Operation and Maintenance Facility
- The SFMTA and Caltrans negotiated a PSA for 1.11 acres of the Caltrans property for \$1,150,000, plus interest.
- The SFMTA and Caltrans negotiated a Lease for approximately 1.46 acres of the Caltrans property, with proposed monthly rent of \$0.25 per sq.ft., with 3% annual increases, and appraised rental value adjustments
- The Lease requires approval by the Board of Supervisors.
- Caltrans requires public street access to the Lease Parcels and its freeway structures and supports. The Access License Agreement provides such access during the Lease term.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Map of Islais Creek Facility
3. Final Notice of Determination of a Mitigated Negative Declaration
4. Agreement for the Purchase and Sale of Real Estate between Caltrans and City
5. Airspace Lease Agreement between Caltrans and City
6. Indiana Street Access License Agreement
7. Cesar Chavez Access Easement Agreement

**APPROVALS:**

DIRECTOR



**DATE**

9/12/2017

SECRETARY



9/12/2017

**ASSIGNED SFMTAB CALENDAR DATE:** September 19, 2017

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### **PURPOSE**

Authorize the Director of Transportation to execute an Agreement for the Purchase and Sale of Real Estate (PSA) with the State of California, acting by and through its Director of Transportation (Caltrans), to purchase Caltrans property near the intersection of Indiana and Cesar Chavez Streets (portion of APN 4382-003), and to approve and recommend approval to the Board of Supervisors that the Director of Transportation enter into (1) an Airspace Lease (Lease) with Caltrans for Lease Area No. 04-SF-280-08 (Lease Parcels) for a 50-year term, plus two 15-year extension options, (2) an Indiana Street Access License Agreement (License Agreement) for Caltrans' access from Indiana Street to the Lease Parcels during the Lease term, and (3) a Cesar Chavez Access Easement Agreement (Easement) for Caltrans' access from Cesar Chavez Street to the Lease Parcels after the Lease terminates.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This item will meet the following goals and objectives of the SFMTA FY2013-18 Strategic Plan:

Goal 1: Create a safer transportation experience for everyone:

Objective 1.3 Improve the safety of the transportation System.

Goal 2: Make transit, walking, bicycling, taxi, ridesharing & car-sharing the preferred means of travel:

Objective 2.2 Improve transit performance.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.2 Increase the transportation system's positive impact to the economy.

Objective 3.3 Allocate capital resources effectively.

Objective 3.4 Deliver services efficiently.

Goal 4: Create a workplace that delivers outstanding service:

Objective 4.2 Create a collaborative and innovative work environment.

This item will support the following Transit First Policy Principles:

Transit First Policy Principle 1: To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

Transit First Policy Principle 9: The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

**DESCRIPTION**

The Islais Creek Motor Coach Operation and Maintenance Facility (Islais Creek Facility) is located at the corner of Cesar Chavez and Indiana Streets, with a capacity of 104 60-foot and 20 40-foot hybrid motor coaches. The Phase I fuel and wash buildings are in service; the Phase II maintenance portion is under construction with an in-service date of December 2017. The SFMTA's newest division, the Islais Creek Facility is an essential part of the SFMTA's portfolio, providing updated maintenance capability to SFMTA's expanding hybrid motor coach fleet to assist in meeting increasing ridership projections.

The Islais Creek Facility occupies 8.47 acres (including 0.18 acres of open space), of which the City owns and the SFMTA has jurisdiction over 5.84 acres. The remaining approximately 2.63 acres (2.44 acres of bus parking area and 0.18 acres of open space) below and adjacent to I-280 are currently owned by Caltrans. A map of the Islais Creek Facility highlighting the Caltrans property is included as Enclosure 2.

Beginning in 1999, the SFMTA and Caltrans discussed and negotiated the purchase of the Caltrans property for the Islais Creek Facility. No agreement was reached through March 2004, when Islais Creek construction was scheduled to commence. To avoid delays in constructing the Islais Creek Facility, on April 4, 2004, the SFMTA Board approved Resolution 04-048 urging the Board of Supervisors to adopt a Resolution of Necessity (RON) authorizing and directing the City Attorney to commence eminent domain proceedings against Caltrans for the Caltrans property. After further discussions with Caltrans, the SFMTA decided not to pursue eminent domain and Caltrans instead granted the SFMTA a Right of Entry (ROE) dated February 5, 2007, to allow construction to proceed on the Caltrans property as of January 31, 2007.

Although the SFMTA has been able to use the Caltrans property under the ROE since January 31, 2007, the ROE required that the SFMTA and Caltrans negotiate in good faith for the SFMTA's purchase of portions of the Caltrans property and lease the remainder. Negotiations have been ongoing since then.

The map shows the portion of Caltrans property (Fee Parcels) that Caltrans will sell to the SFMTA pursuant to the Agreement for the Purchase and Sale of Real Estate (PSA), and the portion of Caltrans property (Lease Parcels) that Caltrans will lease to SFMTA pursuant to the Airspace Lease. As a condition of the PSA, Caltrans requires general access over the Islais Creek Facility from a public street to the Lease Parcels. This access will be provided through the License Agreement and Easement discussed further in this report.

This calendar item covers the four agreements requiring SFMTA Board action for the purchase and lease of the Caltrans property: 1) PSA, 2) Lease, 3) License Agreement, and 4) Easement.

1) PSA

The PSA would allow the SFMTA to purchase the Fee Parcels, which are proposed to

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remain part of the Islais Creek Facility. The PSA purchase price is based on the following facts:

- 1) Caltrans must make the portion of the Fee Parcels depicted in the map as the “Open Space Fee Parcel” available to the SFMTA free of charge for public access purposes under Permit No. M92-10 issued to Caltrans from the San Francisco Bay Conservation and Development Corporation (BCDC). Accordingly, the purchase price for the Open Space Fee Parcel will be \$1.
- 2) To determine the value of the remainder of the Fee Parcels, the SFMTA commissioned an appraisal in August 2011, which valued them at \$913,000. This appraisal was revised in 2013 due to Caltrans’s objection to the appraisal instructions. The revision, using Caltrans’ appraisal instructions and dated September 23, 2013, returned an appraised value of \$1,115,000. The SFMTA and Caltrans eventually agreed on a price of \$1,150,000 for the Fee Parcels (with \$1 allocated to the Open Space Fee Parcel), plus the interest accruing on such amount at a rate equal to the California Surplus Money Investment Fund (SMIF) from January 31, 2007, through the closing date. That amount was approved by the California Transportation Commission (CTC) on October 8, 2014.
- 3) SMIF rates are provided following the closure of each quarter. As of the time of writing this calendar item, the SMIF rate for the period from July 1, 2017 to September 30, 2017, was not yet available. When it is available, SFMTA staff proposes to insert the updated rate and extrapolate that rate forward for the 30-day period from September 30, 2017 to November 1, 2017. That projected outstanding interest from January 31, 2007, through November 1, 2017, is \$165,961.

Although the SFMTA Board of Directors has authority to purchase the Fee parcels at the Purchase Price, entering into the License Agreement and Easement required as a condition of closing under the PSA requires approval of the Board of Supervisors.

2) Lease

The proposed Airspace Lease would allow the SFMTA to lease the Lease Parcels for parking and storage of public transportation and related vehicles and use the Open Space Lease Parcel for public access purposes. The proposed lease term is 50 years, with two 15-year extension options for a total of up to 80 years.

Caltrans must make the portion of the Lease Parcels depicted in Enclosure 2 as the “Open Space Lease Parcel” available to the SFMTA free of charge for public access purposes under Permit No. M92-10 issued to Caltrans from BCDC. Accordingly, the rent for the Caltrans Open Space Lease Parcel will be \$1.

To determine the rent for the remainder of the Lease Parcels, the SFMTA commissioned an appraisal in May 2014 that determined a fair market rental value of \$0.25/square foot. With the \$1 Open Space Lease Parcel, the proposed lease rate for the Lease Parcels is \$191,241



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annually (\$0.25 per square foot), with 3% annual increases and Caltrans' right to readjust the rent to appraised fair market value no more than once every ten years after the first ten lease years. In addition, the SFMTA would pay for its use of the Lease Parcels since 2007 through a one-time payment equal to \$0.25 per square foot, plus interest on such amount between January 31, 2007, and November 1, 2017, which is projected to be a total of \$2,188,066.23.

As noted above, SMIF rates are provided following the closure of each quarter. As of the time of writing this calendar item, the SMIF rate for the period from July 1, 2017 to September 30, 2017, was not available. When it is available, SFMTA staff proposes to insert the updated rate and extrapolate that rate forward for the 30-day period from September 30, 2017 to November 1, 2017.

As a condition of the Lease, Caltrans requires that the SFMTA maintain and repair bike path improvements that the SFMTA installed on Caltrans property adjacent to the Lease Parcels for the Islais Facility Project's open space requirements. The SFMTA is also required to maintain those bike path improvements under the BCDC permit issued to it for the Islais Creek Facility. Caltrans further requires that the SFMTA remove debris and trim vegetation in the "Maintenance Area" shown in the map and adjacent to the Lease Parcels. The Maintenance Area is comprised of approximately 23,517 square feet.

This Lease requires approval by the Board of Supervisors.

3) Indiana Street Access License Agreement

Caltrans currently has an access easement from Cesar Chavez Street to the Lease Parcels over a 41' wide area along the length of the Islais Creek Facility's northern boundary (1962 Easement) for highway maintenance purposes. Caltrans believes the owner of the Fee Parcels also holds an easement over a 41' by 40' portion of the Islais Creek Facility (the 1932 Easement) for general access between the Fee Parcels and Cesar Chavez Street. With the sale of the Fee Parcels to the SFMTA, Caltrans believes it will lose access between the Lease Parcel and a public street for non-highway maintenance purposes.

Caltrans initially required a floating access easement over the Fee Parcels to provide for such access. After negotiations, Caltrans agreed to terminate the 1962 Easement and the floating access easement in exchange for a license to access the Lease Parcels from Indiana Street during the term of the Lease, and an easement to access from the Lease Parcels from Cesar Chavez Street over a fixed 2,098 square foot portion of the Islais Creek Facility (the Future Easement Area) once access license terminates. The Future Easement Area is depicted in Enclosure 2.

The Access License provides the terms and conditions of such access license, and limits it to Caltrans' reserved rights to access the Lease Parcels in the Lease and a path designated by the Islais Creek Facility Superintendent of Facilities. Once approved and recorded, the Access License will terminate, upon either termination of the Lease, or the SFMTA's installation of a

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curb cut at the boundary of Cesar Chavez Street and the New Access Easement Area, whichever occurs later.

The Access License requires approval by the Board of Supervisors.

### 4) Cesar Chavez Access Easement Agreement

After the Lease terminates, Caltrans will access the Lease Parcels via the Future Easement Area on the terms of the Access Easement. The Easement Agreement provides the terms of such access and the termination of the 1962 Easement and Caltrans' reserved floating access easement over the Fee Parcels. The Easement will be restricted to vehicular and pedestrian access. The Easement Agreement also prevents Caltrans from using the Future Easement Area until the Access License terminates. Until that time, the SFMTA may use the Future Easement Area for any purpose and for any improvements; provided that when the Access License terminates, the SFMTA must remove any improvements it installed on or over the Future Easement Area to the extent they interfere with Caltrans' easement rights. The Access Easement requires approval by the Board of Supervisors.

## **STAKEHOLDER ENGAGEMENT**

The SFMTA conducted significant outreach to the community and other stakeholders during the design and development of the Islais Creek Facility, and continues to be engaged with the community, including Friends of Islais Creek and the Port of San Francisco Southern Waterfront Advisory Committee, during the current Phase II construction. The community was instrumental in the design of the open space south of the Islais Creek Facility. Earlier this year, Friends of Islais Creek contacted Supervisor Malia Cohen's office, objecting to the elimination of a balcony overlooking Islais Creek, as well as the SFMTA's proposed reservation policy. The balcony was eliminated by the SFMTA in response to the Department of Building Inspection's code compliance comments. SFMTA staff has engaged the Friends of Islais Creek twice this year on this issue (6/15/17 and 7/24/17), and is planning to meet with the Friends of Islais Creek and Supervisor Cohen's office again in October of this year. The potential resolution involves allowing managed public access to a different balcony overlooking Islais Creek, which is currently designated for staff only, and for the SFMTA to employ a more public and community focused policy to community access of the facility. The SFMTA is committed to working diligently with the community to find a mutually agreeable solution. The community is aware of, and supportive of, the land use transactions discussed in this Calendar Item. The SFMTA has been using the Caltrans property for the Islais Creek Facility since 2007, and these agreements will not change that use.

## **ALTERNATIVES CONSIDERED**

Since 1998, the SFMTA has had a MOU with the Port of San Francisco for 1399 Marin Street, a 3.18 acre site across Indiana Street from the Islais Creek Facility. However, that site is subject to State public trust, which does not allow it to be used for a bus maintenance facility. The Islais

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Creek Facility is bordered to the south by Islais Creek (which flows into the San Francisco Bay), to the east by a Caltrans I-280 Highway off-ramp, and to the north by Cesar Chavez Street, so other expansion opportunities beside the subject sites are not available. The Caltrans property is the only property that is directly adjacent to the Islais Creek Facility and not owned by City.

## **FUNDING IMPACT**

The acquisition and interest due for the purchase of the Caltrans property will be funded by the Islais Creek Project budget. The rent past due and interest due for the Lease, plus the initial six months of rent, will be funded by the Islais Creek Facility project budget. After six months, the rent will be paid through the SFMTA operating budget.

## **ENVIRONMENTAL REVIEW**

The proposed PSA and Lease are subject to the California Environmental Quality Act (CEQA). The San Francisco Planning Department issued a Final Mitigated Negative Declaration (FMND) under CEQA on June 20, 1989 (Case No. 88.700ER) for the construction and operation of a coach operations and maintenance facility (Project) on the site and acquisition of the Caltrans property. On April 6, 1990, the Board of Supervisors adopted the FMND when it approved the Project, and adopted findings under CEQA (Resolution No. 243-90). The SFMTA's Environmental Review Team has confirmed there are no new facts or circumstances that require additional environmental review. The proposed PSA and Lease are covered under this FMND.

As part of the approval of this item, the SFMTA Board of Directors would adopt the FMND findings as its own, and to the extent the above actions are associated with any mitigation measures, the SFMTA Board of Directors would adopt those measures as conditions of this approval. In addition, by letter dated May 31, 2005, the City's Planning Department determined the acquisition of the Caltrans property conforms to the City's General Plan.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

On October 8, 2014, the CTC approved the sale of the Fee Parcels for the Purchase Price. The Lease, the Indiana Street Access License Agreement, and the Cesar Chavez Access Easement Agreement must also be approved by the Board of Supervisors.

## **RECOMMENDATION**

The recommendation is to authorize the Director of Transportation to enter into the PSA to purchase Caltrans property near the intersection of Indiana and Cesar Chavez Streets, and to approve, and urge approval of the Board of Supervisors and the Mayor, the Lease, the Access License, and the Easement Agreement.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, Approximately 2.44 acres of the Islais Creek Operations and Maintenance Facility (Facility) is on property (Caltrans Property) owned by the State of California (Caltrans); and

WHEREAS, Beginning in 1999, the SFMTA and Caltrans negotiated for the SFMTA's acquisition of the Caltrans Property for the Facility, but no agreement was reached by the time Facility construction was scheduled to commence; and

WHEREAS, To avoid construction delays, Caltrans granted the SFMTA a Right of Entry (ROE) to use the Caltrans Property as of January 31, 2007, subject to the SFMTA's obligation to negotiate in good faith for the purchase and lease of the Caltrans Property, with interest on the purchase price and rental rate to be calculated from January 31, 2007, at the rate used for the California Surplus Money Investment Fund (SMIF); and

WHEREAS, SFMTA and Caltrans staff negotiated the purchase and sale of approximately 48,177 square feet of the Caltrans Property ("Fee Parcels") under an Agreement for the Purchase and Sale of Real Estate (PSA) for \$1,150,000, plus interest at the SMIF rate from January 31, 2007, through the closing date (estimated to be \$165,961 through November 1, 2017), which price was approved by the California Transportation Commission on October 8, 2014, with the Fee Parcels to be used for a public purpose for at least fifteen years following the closing date; and

WHEREAS, SFMTA and Caltrans staff negotiated the lease of approximately 63,747 square feet of the Caltrans Property (Lease Parcels) under a 50-year Airspace Lease (Lease), plus two 15-year extensions, at an initial rent of \$0.25 per square foot per month for the Lease Parcels (\$214,671 per year), with annual escalations of 3% and Caltrans' right to adjust the rent to appraised fair market value no more than once every ten years after the first ten lease years; and

WHEREAS, The Lease includes a one-time payment for the SFMTA's use of the Lease Parcels from January 31, 2007, to the lease commencement date at a rate of \$0.21 square feet per month, with interest at the SMIF rate from January 31, 2007, through the commencement date (estimated to be \$2,188,066.23 if the commencement date is November 1, 2017); and

WHEREAS, The Lease requires the SFMTA to maintain and repair bike path improvements installed by the SFMTA on Caltrans property west of the Lease Parcels and comprised of approximately 23,517 square feet (Maintenance Area), which improvements were required under certain regulatory approvals for the construction of the Facility, and to also remove debris and trim vegetation in the Maintenance Area; and

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WHEREAS, As a condition of the PSA, Caltrans requires general access from a public street over the Facility to the Lease Parcels; and

WHEREAS, Caltrans agrees to terminate an existing access easement for highway maintenance purposes over the length of the northern boundary of the Facility and a general floating access easement on the Fee Parcels in exchange for an access license over a SFMTA-designated path over the Facility from Indiana Street to the Lease Parcels during the term of the Lease on the terms of the Indiana Street Access License Agreement (License Agreement) and an access easement over a 2,098 square foot portion of the Facility from Cesar Chavez Street to the Lease Parcels after the License Agreement terminates on the terms of the Cesar Chavez Street Access Easement Agreement (Easement Agreement); and

WHEREAS, The San Francisco Planning Department issued a Final Mitigated Negative Declaration (FMND) under CEQA on June 20, 1989 (Case No. 88.700ER) for the construction and operation of a coach operations and maintenance facility and acquisition of property on the site, which acquisitions would be effected by the PSA and the Lease, and on April 6, 1990, the Board of Supervisors adopted the FMND when it approved the project, and adopted findings under CEQA (Resolution No. 243-90), and the PSA and Lease are covered under the FMND, and the SFMTA's Environmental Review Team has confirmed there are no new facts or circumstances that require additional environmental review; and

WHEREAS, By letter dated May 31, 2005, the City's Planning Department determined the SFMTA's acquisition of the Caltrans property conforms to the City's General Plan; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to enter into an Agreement for the Purchase and Sale of Real Estate for DD030660-01-02, DD 030660-01-03 and DD 030667-01-01 near the intersection of Indiana and Cesar Chavez Streets (portion of APN 4382-003) with Caltrans, with the Fee Parcels to be used for a public purpose for at least fifteen years after the closing date, approves an Airspace Lease with Caltrans for Lease Area No. 04-SF-280-08 for a 50-year term, plus two 15-year extension options; an Indiana Street Access License Agreement for Caltrans access from Indiana Street to the Lease Parcels during the Lease term; and a Cesar Chavez Access Easement Agreement for Caltrans access from Cesar Chavez Street to the Lease Parcels after the Lease terminates and urges the Board of Supervisors and the Mayor to approve the Lease, the Access License, and the Easement Agreement; and, be it further

FURTHER RESOLVED, That the SFMTA Board of Directors has reviewed and considered the Final Mitigated Negative Declaration for the Muni Diesel Coach Operating Division and Central Maintenance Facility project and adopts the CEQA findings of the Board of Supervisors as its own, and to the extent the above actions are associated with any mitigation measures within the jurisdiction of the SFMTA, the SFMTA Board of Directors adopts those measures as conditions of this approval; a copy of the Planning Commission Resolution, the

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CEQA findings, and the CEQA determination are on file with the Secretary to the SFMTA Board of Directors, may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference; and

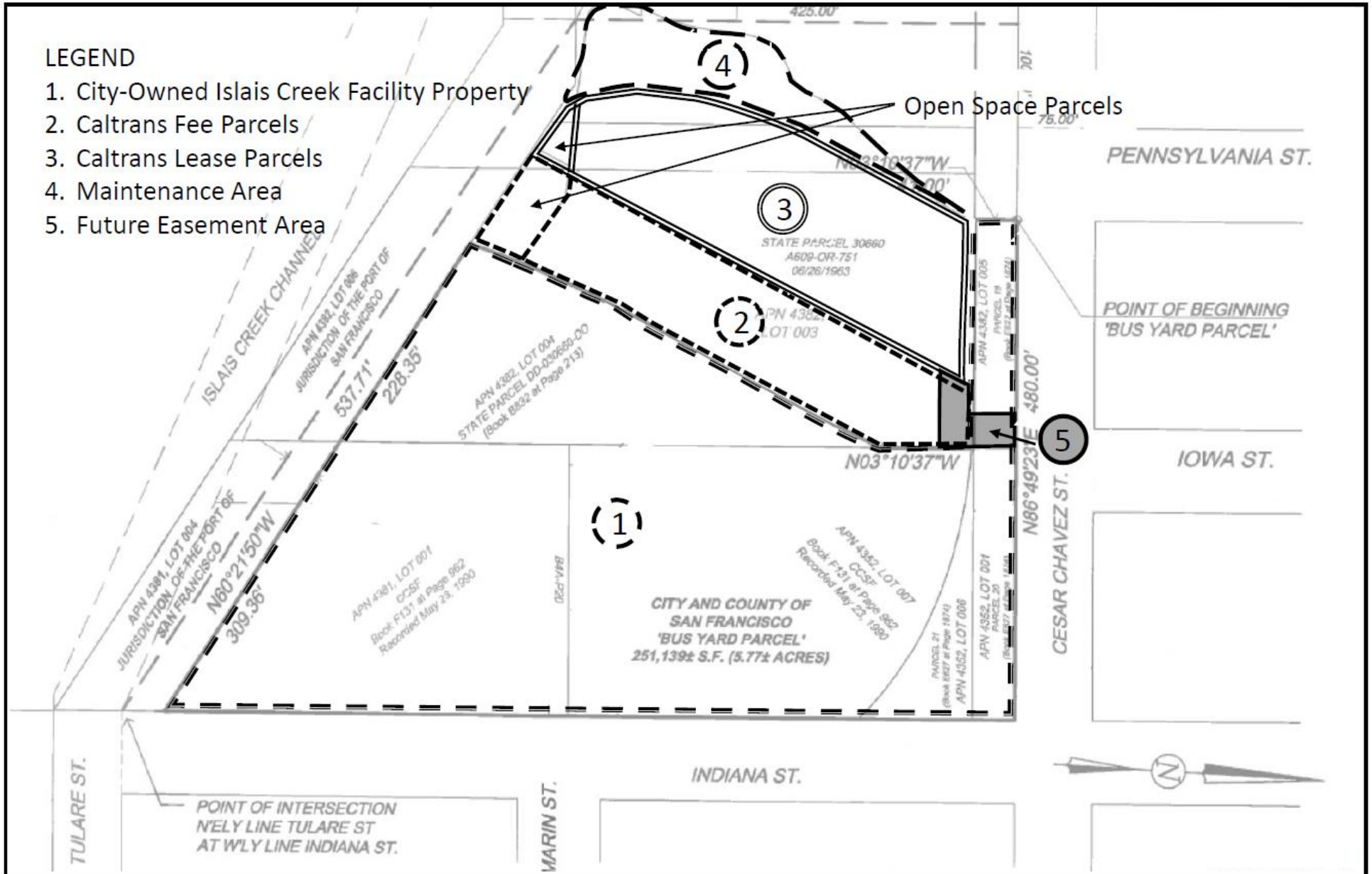
FURTHER RESOLVED, That the SFMTA Board of Directors finds that the acquisition of the Caltrans property is consistent with the City's General Plan for the same reasons as set forth in the City Planning Department letter of May 31, 2005, and hereby incorporates such findings by reference as though fully set forth in this Resolution.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 19, 2017.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

Enclosure 2  
 Graphic Map of Islais Creek Facility



Enclosure 3  
Final Notice of Determination of a Mitigated Negative Declaration

[THIS ENCLOSURE PROVIDED UNDER SEPARATE COVER]



Enclosure 4  
Agreement for the Purchase and Sale of Real Estate

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE  
WITH GRANT OF ACCESS EASEMENT AND ACCESS LICENSE

by and between

STATE OF CALIFORNIA, Acting By and Through Its Director of Transportation  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

DD030660-01-02, DD 030660-01-03 and DD 030667-01-01 at Indiana and Cesar Chavez Streets  
San Francisco, California  
(Portion of Block 4382, Lot 003)

\_\_\_\_\_, 2017

**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE  
WITH GRANT OF ACCESS EASEMENT AND ACCESS LICENSE**

(DD 030660-01-02, DD 030660-01-03, and DD 030667-01-01 at  
Indiana and Cesar Chavez Streets, San Francisco)  
(Portion of Block 4382, Lot 003)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE AND GRANT OF ACCESS EASEMENT AND ACCESS LICENSE ("Agreement") dated for reference purposes only as of \_\_\_\_\_, 2017, is by and between the STATE OF CALIFORNIA, acting by and through its Director of Transportation ("State"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

RECITALS

A. State owns that certain real property located in the City and County of San Francisco and comprised of approximately 48,177 square feet of land, as more particularly described in Director's Deed 030660-01-02 attached hereto as Exhibit A (the "Land"), and City

owns that certain real property adjacent to the Land and commonly known as Block 4382, Lot 005, as more particularly described in Exhibit B to this Agreement ("Lot 5").

B. State and City entered in a Right of Entry on April 5, 2007 (the "Right of Entry"), wherein State granted City, its employees, agents, consultants and contractors the right to enter and use the Land and adjacent State land further described in such Right of Entry and commonly referred to as State's Airspace Parcel FLA 04-280-8A & 8B (the "State's Lease Parcels").

C. City constructed its Islais Creek Motor Coach Operation and Maintenance Facility on the Land, the State's Lease Parcels, and adjacent City property (the "Remaining Bus Yard Property"), and City wishes to purchase the Land pursuant to the terms of this Agreement.

D. State agrees to sell the Land to City pursuant to the terms of this Agreement, and has obtained all approvals necessary for this transaction, including any required by the California Transportation Commission ("CTC").

E. City understands that if State sells the Land to City, State requires access to the State's Lease Parcels either via Indiana Street or Cesar Chavez Street, and City is amenable to providing such access by (1) granting State an easement over Lot 5 and the Land to provide access between the State's Lease Parcels and Cesar Chavez Street in the form attached to this Agreement as Exhibit C (the "Cesar Chavez Access Easement"); and (2) granting State a license over the Land and the Remaining Bus Yard Property in the form attached to this Agreement as Exhibit D (the "Indiana Street Access License") to provide interim access between the State's Lease Parcels and Indiana Street until the requisite curb cut for access to the State's Lease Parcels via Cesar Chavez Street is installed by City pursuant to the terms of the Cesar Chavez Access Easement. Both the Cesar Chavez Access Easement and the Indiana Street Access License are contemplated by City and the State as part of the purchase and sale of the Land pursuant to this Agreement.

#### WITNESSETH

Now, therefore, in consideration of the respective agreements contained below, State and City agree as follows:

#### 1. PURCHASE AND SALE

State agrees to sell and convey to City, and City agrees to purchase from State, subject to the terms, covenants and conditions hereinafter set forth, the following (collectively, the "Property"):

- (a) the Land;
- (b) all State's interest in the improvements and fixtures located on the Land, if any (the "Improvements"); and
- (c) all existing rights, privileges, and easements incidental or appurtenant to, the Land including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or

other appurtenances used in connection with the beneficial use and enjoyment of the Land, and any and all of State's right, title and interest in and to all roads and alleys (collectively, the "Appurtenances").

## 2. PURCHASE PRICE

### 2.1 Purchase Price

The total purchase price for the Property is \$1,150,000.00 (the "Purchase Price"), plus an amount equal to the interest calculated on the Purchase Price for the period between January 31, 2007, and the Closing Date (as defined in Section 5.2), pursuant to Section 1268.350 of the California Code of Civil Procedure (the "Interest"). By way of example, if the Closing Date had been on June 30, 2017, the Interest would have been \$161,849.18. Such amount will be increased by the Interest that accrues between June 30, 2017, and the Closing Date.

On the Closing Date, City shall pay State an amount equal to the Purchase Price and the Interest. All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds to State.

## 3. TITLE TO THE PROPERTY

### 3.1 Conveyance of Title to the Property

At the Closing, State shall convey to City, or its nominee, marketable title to the Land and the Improvements and the Appurtenances, if any, by duly executed and acknowledged Director's Deed 030660-01-02 attached hereto as Exhibit A, subject to the Title Conditions (as defined in Section 3.2).

### 3.2 Title Insurance

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title-Company (the "Title Company") to issue to City, at City's sole expense, an ALTA extended coverage owner's policy of title insurance (2006 Form) (the "Title Policy") in the amount of the Purchase Price and the Interest, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, free of the liens of any kind and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and encumbrances except solely for the following (such exceptions approved by City are collectively referred to herein as the "Title Conditions "): (i) the lien of real property taxes, not yet due or payable, provided City shall be shown as exempt from such taxes in the Title Policy, (ii) the lien of the Indiana Street Access License and the Cesar Chavez Access Easement, and (iii) exception numbers [REDACTED] and [REDACTED] in Schedule B of the preliminary report prepared by Title Company for the Land and dated [REDACTED] (the "Preliminary Report").

The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Land by or for State, shall not contain any exclusion from coverage for bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Land and such special endorsements as City may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

## 4. CONDITIONS PRECEDENT

#### 4.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Land (collectively, "Buyer Conditions Precedent"):

(a) State shall have delivered to Buyer a copy of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Land and are not disclosed by the Preliminary Report ("Documents") and other information relating to the Land that is specifically requested by City or State in writing prior to the Closing Date (collectively, the "Other Information") and City shall have reviewed and approved of the Documents, or, if State does not know of any Documents and there is no Other Information, a written certification of State to that effect.

(b) State shall not be in default in the performance of any covenant or agreement to be performed by State under this Agreement, and all of State's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(c) The physical condition of the Land shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, except as may be changed by City's activities, and there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Land or the ability of City to operate the Land for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of any of the Land or of any building or environmental code requirements applicable to any of the Land.

(d) State shall have delivered an Airspace Lease for the State Lease Parcels to City (the "Lease"), duly executed by State and in a form and on terms mutually acceptable to State and City.

(e) State shall have delivered the items described in Section 5.3 below on or before the Closing.

(f) Title Company shall be committed at the Closing to issue to City, the Title Policy as provided in Section 3.2 and to perform the obligations of the Real Estate Reporting Person (as defined in Section 6.4).

(g) The transactions contemplated herein and the Lease shall have been approved by all applicable City and State departments and agencies, including, without limitation, the San Francisco Municipal Transportation Agency, the City's Board of Supervisors and Mayor, and the CTC, each in their respective sole discretion.

The Buyer Conditions Precedent are solely for the benefit of City. If any Buyer Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Buyer Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Buyer Condition Precedent described in Section 4.1(g) above may not be waived. The waiver of any Buyer Condition Precedent shall not relieve State of any liability or obligation with respect to any representation, warranty, covenant or agreement of State. If City shall not have approved or waived in writing all of the Buyer Conditions Precedent in Sections 4.1(a) through (f) above by the Closing Date, then this Agreement shall automatically terminate. Alternatively, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City, to allow such Buyer Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Buyer Conditions Precedent have not

been satisfied.

If the sale of the Land is not consummated because of a material default under this Agreement on the part of State, or if a Buyer Condition Precedent cannot be fulfilled, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to State, whereupon neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

#### 4.2 Cooperation with City

State shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Buyer Conditions Precedent including, without limitation, execution of any documents, but State's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Buyer Condition Precedent.

#### 4.3 State's Conditions to Closing.

State's obligation to sell the Land to City pursuant to this Agreement is conditioned on the following (collectively, "State Conditions Precedent"):

(a) The transaction contemplated herein and the Lease shall have been approved by all applicable City and State departments and agencies, including, without limitation, the San Francisco Municipal Transportation Agency and the CTC, in their respective sole discretion.

(b) City shall not be in default in the performance of any covenant or agreement to be performed by City under this Agreement.

(c) City shall have delivered the items described in Section 5.4 below on or before the Closing and Title Company shall be committed to perform the obligations of the Real Estate Reporting Person.

The State Conditions Precedent are solely for the benefit of State. If any State Condition Precedent is not satisfied, State shall have the right in its sole discretion either to waive in writing the State Condition Precedent in question and proceed with the sale or, in the alternative, terminate this Agreement, provided that the State Condition Precedent described in subsection (a) above may not be waived. The waiver of any State Condition Precedent shall not relieve City of any liability or obligation with respect to any representation, warranty, covenant or agreement of City. If State shall not have approved or waived all of the State Conditions Precedent by the Closing Date, then this Agreement shall automatically terminate. Alternatively, the Closing Date may be extended, at State's option, for a reasonable period of time specified by State, to allow such State Conditions Precedent to be satisfied, subject to State's further right to terminate this Agreement upon the expiration of the period of any such extension if all such State Conditions Precedent have not been satisfied.

If the sale of the Land is not consummated because of a material default under this Agreement on the part of City, or if a State Condition Precedent cannot be fulfilled, State may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to City, whereupon neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending State's action for specific performance and/or damages hereunder, including, without limitation, State's costs and expenses incurred hereunder.

#### 4.4 Cooperation with State

City shall cooperate with State and do all acts as may be reasonably requested by State

with regard to the fulfillment of any State Conditions Precedent including, without limitation, execution of any documents, but City's representations and warranties to State shall not be affected or released by State's waiver or fulfillment of any State Condition Precedent.

## 5. ESCROW AND CLOSING

### 5.1 Escrow

City shall open escrow by depositing a fully executed copy of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. State and City agree to execute such mutually agreed additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the additional mutually agreed supplementary instructions shall control the transaction.

### 5.2 Closing Date

The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company, on the twenty-first (21<sup>st</sup>) day immediately following the full execution of this Agreement, or on such other date as City and State may mutually agree (the "Closing Date"), subject to the provisions of Article 4. The Closing Date may not be extended without the prior written approval of both State and City, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

### 5.3 State's Delivery of Documents

At or before the Closing, State shall deliver the following to City through escrow:

- (a) an original copy of the Director's Deed 0030660-01-02, duly executed by State and acknowledged;
- (b) an original copy of the Cesar Chavez Access Easement, duly executed by State and acknowledged;
- (c) an original copy of the Indiana Street Access License, duly executed by State and acknowledged;
- (d) originals of the Documents and any other items relating to the ownership of the Property not previously delivered to City;
- (e) such resolutions, authorizations, or other documents or agreements relating to State as City may reasonably require to demonstrate the authority of State to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of State to act for and bind State;
- (f) the closing statement prepared by Title Company in form and content satisfactory to City and State; and

(g) funds sufficient to pay for State's share of proration costs pursuant to Article 6, if any.

#### 5.4 City's Delivery of Documents and Funds

At or before the Closing, City shall deliver the following to State through escrow:

(a) an original copy the certificate of acceptance of Director's Deed 0030660-01-02, duly executed by City's Director of Property and the Director of Transportation of City's Municipal Transportation Agency;

(b) an original copy of the Cesar Chavez Access Easement, duly executed by City and acknowledged;

(c) an original copy of the Indiana Street Access License, duly executed by City and acknowledged;

(d) the closing statement prepared by Title Company in form and content satisfactory to City and State;

(e) an amount equal to the Purchase Price and Interest;

(f) the first month's rent (or portion thereof) owing as of the Closing Date under the Lease and the payment City owes to State under the Right of Entry for City's use of the State's Lease Parcels between February 5, 2007 and the Closing Date, which by way of example, would be \$2,181,229.92 if the Closing Date had been June 30, 2017;

(g) such resolutions, authorizations, or other documents or agreements relating to City as State may reasonably require to demonstrate the authority of City to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of City to act for and bind City; and

(h) funds sufficient to pay for State's share of proration costs pursuant to Article 6, if any.

## 6. EXPENSES AND TAXES

### 6.1 Apportionments

Prior to the Closing Date, State shall have no obligation to maintain the Land and shall take no acts that interfere with City's current use of the Land, except as permitted under the Right of Entry. There shall be no proration for the Land utilities, normal property operation and maintenance expenses and other recurring costs, which shall be borne by City as January 31, 2007.

### 6.2 Closing Costs

City shall pay the premium for the Title Policy and the cost of the endorsements thereto, and escrow and recording fees. State shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Land, including, without limitation, any prepayment fees, penalties or charges.



### 6.3 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party. The provisions of this Section shall survive the Closing.

### 6.4 Real Estate Reporting Person

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to State, in connection with the Closing. Title Company is the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person, as defined in the Reporting Requirements (the "Real Estate Reporting Person") for such transaction. Title Company shall perform all duties required of the Real Estate Reporting Person for the Closing under the Reporting Requirements. State and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

## 7. REPRESENTATIONS AND WARRANTIES

State represents and warrants to and covenants with City as follows:

(a) To the best of State's knowledge, there are now, and at the time of the Closing will be, no material physical defects of the Land, and no violations of any laws, rules or regulations applicable to the Land.

(b) The Documents and Other Information furnished to City are all of the relevant documents and information pertaining to the condition of the Land to the extent available to State, and are and at the time of Closing will be true, correct and complete copies of such documents.

(c) No document or instrument furnished or to be furnished by the State to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) State does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Land.

(e) Except as otherwise described in the Preliminary Report, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Land, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Land to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Land's boundary nor any claims or actions involving the location of any fence or boundary. This provision is not in reference to the easement that City will grant to State pursuant to the Cesar Chavez Access Easement or the license that City will grant to State pursuant to the Indiana Street Access License, both of which are contemplated by City and the State as part of the purchase and sale of the Land pursuant to this Agreement.

(f) There is no litigation pending or, after due and diligent inquiry, to the best of

State's knowledge, threatened, against State or any basis therefor that arises out of the ownership of the Land or that might detrimentally affect the use or operation of the Land for its intended purpose or the value of the Land or the ability of State to perform its obligations under this Agreement.

(g) State is the legal and equitable owner of the Land, with full right to convey the same, and without limiting the generality of the foregoing, State has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Land.

(h) All documents executed by State which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by State; are, or at the Closing will be, legal, valid and binding obligations of State, enforceable against State in accordance with their respective terms; are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which State is a party or to which State or the Land is subject.

(i) State knows of no facts nor has State failed to disclose any fact that would prevent City from using and operating the Land after Closing as a bus storage and maintenance facility. However, State makes no representation or warranty as to the suitability of the Land for City's intended purposes, nor is State aware of all City's intended uses of the Land.

(j) State hereby represents and warrants that during the period of State's ownership of the Land prior to January 31, 2007, the date City received the right to possession of the Land under the Right of Entry, State had not taken any actions causing any disposals, releases or threatened releases of hazardous substances or hazardous waste on, from, or under the Land. State further represents and warrants that State has no knowledge of any disposal, release or threatened release of hazardous substances or hazardous waste on, from, or under the Land which may have occurred prior to State taking title to the Land. City has had exclusive possession and use of the Land pursuant to the Right of Entry since January 31, 2007, and State makes no representations or warranties, and assumes no liability, either express or implied, as to any actions by City which may have caused any disposals, releases or threatened releases of hazardous substances or hazardous waste on, from, or under the Land.

The Purchase Price reflects the fair market value of the Land if remediation is not required for any contamination on the Land. If the Land is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, City and State reserve their rights to recover its clean-up costs from those who caused or contributed to the contamination as allowed by law.

(k) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Land, except for any leases or occupancy agreements entered in to between City and State or disclosed by the Preliminary Report. At the time of Closing there will be no outstanding written or oral contracts made by State that have not been fully paid for and State shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Land prior to the time of Closing. There are no obligations in connection with the Land which will be binding upon City after Closing.

(l) State is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

## 8. AS IS CONDITION

CITY ACCEPTS THE PROPERTY IN ITS "AS IS" CONDITION, AND

ACKNOWLEDGES AND AGREES THAT NEITHER STATE NOR ANY OF ITS AGENTS HAVE MADE, AND STATE HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, EXCEPT AS EXPRESSLY SET FORTH ABOVE.

Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Property, if any, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is City's sole obligation to conduct an independent investigation of the Property and all matters relating to its use as intended. City, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights to the Property if necessary for City's intended use of the Property.

9. MAINTENANCE; POSSESSION

Possession of the Land was delivered to City on January 31, 2007, pursuant to the Right of Entry. State shall have no maintenance obligations as to the Land under this Agreement prior to the Closing Date. After the Closing Date, State shall have no maintenance obligations as to the Land except as otherwise set forth in the Cesar Chavez Access Easement or Indiana Street Access License.

10. GENERAL PROVISIONS

10.1 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 (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section  
Facsimile No.: (415) 701-4743

with copy to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Carol Wong  
Facsimile No.: (415) 554-4757

State: Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

State of California Director of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440  
Facsimile No.: (510) 286-5482

with copy to: State of California Department of Transportation Legal Division

111 Grand Ave, Suite 11-100  
Oakland CA, 94612  
Facsimile No.: (510) 433-9167

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be delivered by facsimile, sent to the facsimile number listed above, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

#### 10.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

#### 10.3 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and State.

#### 10.4 Continuation and Survival of Representations and Warranties

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of State in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

#### 10.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

#### 10.6 Merger of Prior Agreements

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

#### 10.7 Parties and Their Agents; Approvals

As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or

through City's Director of Property unless otherwise provided herein, subject to applicable law.

#### 10.8 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

#### 10.9 Sunshine Ordinance

State understands that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are deemed public records subject to public disclosure by City under its Sunshine Ordinance and/or the California Public Records Act. State hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

#### 10.10 Non-Liability of State and City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Agreement, (a) no elective or appointive board, commission, member, officer, employee or agent of City, operating in the course and scope of their position, shall be personally liable to State, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to State, its successors and assigns, or for any obligation of City under this Agreement, and (b) no elective or appointive board, commission, member, officer, employee or agent of State, operating in the course and scope of their position, shall be personally liable to City, its successors and assigns, in the event of any default or breach by State or for any amount which may become due to City, its successors and assigns, or for any obligation of State under this Agreement.

#### 10.11 Counterparts and Copies

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.

#### 10.12 Authority to Sign

City and State represent and warranty that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and to legally bind their respective entities to the obligations set forth herein.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

The parties have duly executed this Agreement as of the respective dates written below.

STATE:

RECOMMENDED FOR APPROVAL:

STATE OF CALIFORNIA  
Department of Transportation

By: \_\_\_\_\_  
Suzann Goodhue  
Senior Right of Way Agent  
Acquisition Services

By: \_\_\_\_\_  
Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

CITY:

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

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Date: \_\_\_\_\_

San Francisco Municipal Transportation  
Agency Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

**EXHIBIT A**

**Form of Directors Deed**

RECORDING REQUESTED BY  
State of California

WHEN RECORDED RETURN TO  
Department of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440

Attention: RW Excess Lands

Documentary Transfer Tax: \$  
Gov. Code 6103

Space above this line for Recorder's Use

**DIRECTOR'S DEED**

000009

OCT - - 2014

District	County	Route	Post	Number
04	SF	280	5.1	DD-030660-01-02

(030660-01-02, 030660-01-03, 030667-01-01)

The STATE OF CALIFORNIA, acting by and through its Director of Transportation, does hereby grant to

The City and County of San Francisco, a Municipal Corporation

all that real property in the City of San Francisco, County of San Francisco

State of California, described as:

Please see EXHIBIT "A" attached.

MAIL TAX  
STATEMENTS TO:

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
 COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR  
 COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES  
REMAINING THEREON AT TIME OF SALE.

\_\_\_\_\_  
Signature of declarant or agent determining tax-firm name

CITY OF SAN FRANCISCO  UNINCORPORATED



EXHIBIT "A"

PARCEL 1 (030660-01-02):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly corner of that parcel of land as described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet to the POINT OF BEGINNING; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660-DD); thence along last said line, the following two courses: 1) from a radial line that bears North 71°47'13" West, northerly along a curve to the right with a radius of 1150.00 feet, through an angle of 8°32'59", an arc length of 171.62 feet to a point of reverse curvature, 2) from a tangent curve to the left with a radius of 2565.00 feet, through an angle of 4°48'41", an arc length of 215.41 feet to the easterly line of said State Parcel 30660; thence along last said line, North 03°10'37" West, 89.26 feet to the northerly line of said State Parcel 30660, thence along last said line, South 86°49'23" West, 60.00 feet; thence South 24°57'05" West, 441.54 feet to the POINT OF BEGINNING.

CONTAINING an area of 0.981 acres, more or less.

RESERVING unto the State of California, it's successors or assigns, a non-exclusive EASEMENT for ingress and egress and incidents thereto by the most reasonable and practicable means, upon, over, and across all of that parcel of land as described herein above.

PARCEL 2 (030660-01-03):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly corner of that certain parcel of land described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660-DD) thence along last said line, from a radial line that bears North 71°47'13" West, southerly along a curve to the left with a radius of 1150.00 feet, through an angle of 2°37'37", an arc length of 52.73 feet to the POINT OF COMMENCEMENT.

CONTAINING an area of 0.125 acres, more or less.

PARCEL 3 (030667-01-01):

The State of California, acting by and through its Director of Transportation, does hereby remise, release, and quitclaim unto the hereinabove named grantee, all right, title and interest in and to the portion of that parcel of land as described in the instrument (State Parcel 30667) to the State of California, recorded December 24, 1962 in Book A520 at Page 480, Official Records of the County of San Francisco, more particularly described as follows:

BEGINNING at the southerly terminus of that course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence northeasterly along the easterly line of said parcel, from a radial line that bears S. 69°50'53" E., along the curve to the left with a radius of 2529.00 feet, through an angle of 0°02'18", an arc length of 1.69 feet to the easterly prolongation of that course described as "South 86°49'23" West, 410 feet" in said parcel; thence along said easterly prolongation, S. 86°49'23" W., 0.67 feet to the northerly terminus of said course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence along last said course, S. 03°10'37" E., 1.55 feet to the POINT OF BEGINNING.

CONTAINING 1 square feet, more or less.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State freeway.

The bearings and distances used in the above descriptions are on the California Coordinate System of 1927, Zone 3. Multiply the above distances by 1.0000717 to obtain ground level distances.

It is expressly made a condition herein that the conveyed property be used exclusively for a public purpose for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for a public purpose, during this fifteen (15)-year period, the State may exercise its power of termination. In the event the State exercises its power of termination, all title and interest to said property shall revert to the State of California, Department of Transportation, and that the interest held by the grantee(s), named herein, or its/their assigns, shall cease and terminate.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature \_\_\_\_\_

*Alice Zhong*

Licensed Land Surveyor

Date \_\_\_\_\_

08/15/2014



Subject to special assessments if any, restrictions, reservations, and easements of record.

This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.

WITNESS my hand and the seal of the Department of Transportation of the State of California, this 23 day of OCTOBER 2014.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND PROCEDURE

[Signature]  
ATTORNEY  
DEPARTMENT OF TRANSPORTATION

[Signature]  
MALCOLM DOUGHERTY,  
Director of Transportation  
By [Signature]  
MARK L. WEAVER, Attorney in Fact  
Deputy District Director  
Right of Way and Land Surveys

**ACKNOWLEDGMENT**

State of California }  
County of ALAMEDA } SS

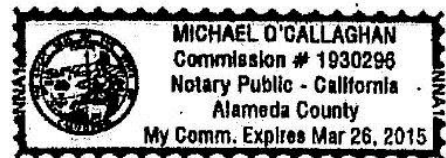
On OCTOBER 24, 2014 before me, MICHAEL O'CALLAGHAN, NOTARY PUBLIC, personally  
(Here Insert name and title of the officer)  
appeared MARK L. WEAVER

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

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)

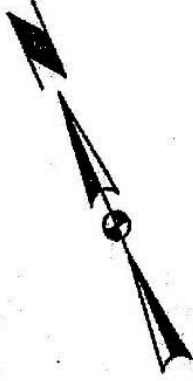


THIS IS TO CERTIFY that the California Transportation Commission has authorized the Director of Transportation to execute the foregoing deed at its meeting regularly called and held on the 8th day of October 2014, in the city of Glendale.

Dated this 8th day of October 2014.

[Signature]  
ANDRE BOUTROS, Executive Director  
CALIFORNIA TRANSPORTATION COMMISSION

**COUNTY & CITY OF  
SAN FRANCISCO**



**DD-030660-01-02**

1.106 ACRES

Pennsylvania Ave.

◆ To Bay Bridge ◆

Cesar Chavez St.  
(Army St.)

Marin St.

Napoleon St.

Evans Ave.

**State Route 280**

◆ To San Jose

Cesar Chavez St.

STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION  
AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION  
DISTRICT 4

**DIRECTOR'S DEED  
DD-030660-01-02**

DR. BY: A.Z.	DATE: 08/2014
CKD. BY:	NO SCALE
CO. RTE.	P.M. DR. No.
<b>SF 2805.11 OF 2</b>	

NO SCALE

Formerly Tulare St.

Isla's Creek Channel

Indiana St.

Marin St.

Davidson Ave.

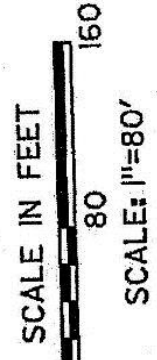
Rankin St.

Evans Ave.

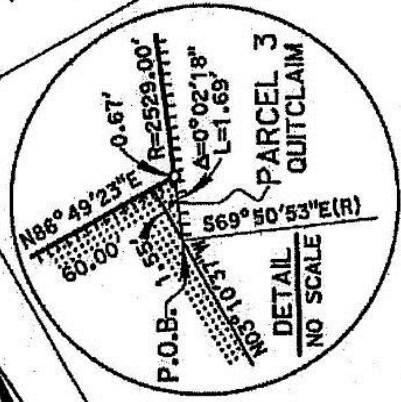


**CITY OF SAN FRANCISCO**

PARCEL 1: 030660-01-02 0.981 ACRES  
 PARCEL 2: 030660-01-03 0.125 ACRES  
 PARCEL 3: 030667-01-01 150. FT.



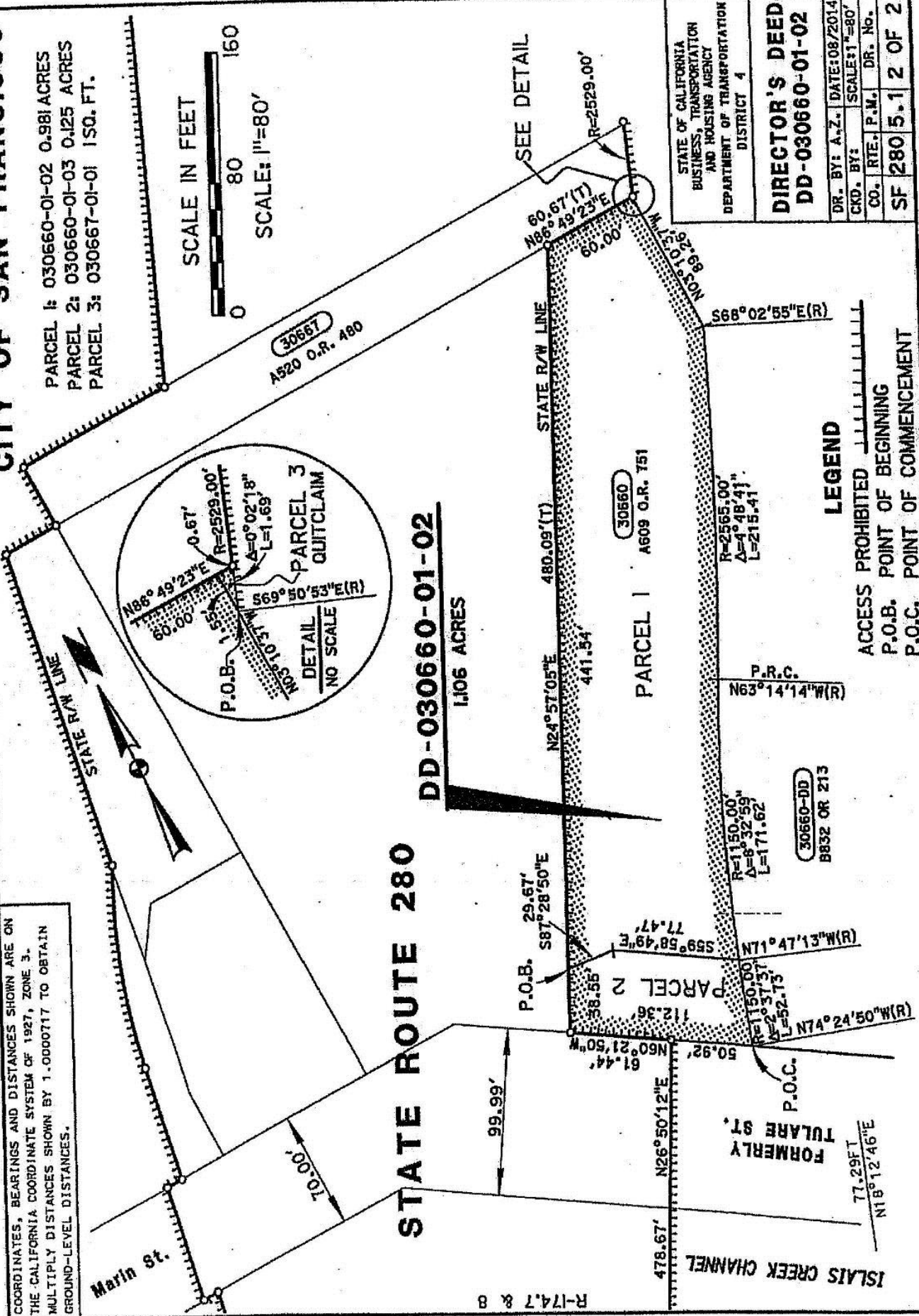
COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1927, ZONE 3. MULTIPLY DISTANCES SHOWN BY 1.0000717 TO OBTAIN GROUND-LEVEL DISTANCES.



**STATE ROUTE 280**

**DD-030660-01-02**

1.106 ACRES



STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF TRANSPORTATION DISTRICT 4	
<b>DIRECTOR'S DEED</b> <b>DD-030660-01-02</b>	
DR. BY: A.Z.	DATE: 08/2014
CKD. BY:	SCALE: 1"=80'
CO. RIE, P.M.	DR. No.
SF 280 5.1 2 OF 2	

**LEGEND**

- ACCESS PROHIBITED
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

ISLAIS CREEK CHANNEL

FORMERLY  
TULARE ST.

R-174.7 & B

**EXHIBIT B**  
**Legal Description of Lot 5**

**For APN/Parcel ID(s): Lot 005, Block 4382**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF ARMY STREET (AS WIDENED) WITH THE WESTERLY LINE OF IOWA STREET; AND RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF ARMY STREET 390 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 41 FEET; THENCE AT A RIGHT ANGLE EASTERLY 190 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 180 FEET TO THE EASTERLY LINE OF IOWA STREET; THENCE NORTHERLY ALONG THE LAST MENTIONED LINE 41 FEET TO THE SOUTHERLY LINE OF ARMY STREET; THENCE WESTERLY ALONG THE LAST MENTIONED LINE 80 FEET TO THE POINT OF BEGINNING.

BEING PART OF POTRERO NUEVO BLOCKS NOS. 327 AND 294, AND A PORTION OF PENNSYLVANIA AVENUE (NOW CLOSED), AND A PORTION OF IOWA STREET (NOW CLOSED).

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE LINES OF PARCEL 3 AS DESCRIBED IN THE DEED TO E.W. NEWELL, ET AL., RECORDED OCTOBER 22, 1926, BOOK 1333, PAGE 494, OFFICIAL RECORDS.

**EXHIBIT C**

**Form of Cesar Chavez Access Easement**

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

Recording requested by and when recorded mail to:

City and County of San Francisco  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

with a copy to:

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

---

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

CESAR CHAVEZ ACCESS EASEMENT AGREEMENT  
(Portion of APN Block 4382, Lots 003 and 005)

This Cesar Chavez Access Easement Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Municipal Transportation Agency, and the State of California, acting by and through its Director of Transportation ("**Caltrans**"), is executed as of \_\_\_\_\_, 2017 (the "**Effective Date**").

RECITALS

A. City owns that certain real property in San Francisco, California, which is commonly known as a portion of APN Block 4382, Lot 005, which abuts a portion of Cesar Chavez Street, and is further described on the attached Exhibit A-1 and depicted on the attached Exhibit B (the "**City Lot 5**").

B. City owns that certain real property in San Francisco, California, which is commonly known as a portion of APN Block 4382, Lot 003, which abuts a portion of City Lot 5, and is further described on the attached Exhibit A-2 and depicted on the attached Exhibit B (the "**Former Caltrans Property**"). City acquired the Former Caltrans Property from Caltrans pursuant to that certain Director's Deed (DD-030660-01-02) ("**Director's Deed**") recorded in the Official Records of San Francisco County concurrently with this Agreement.



C. State owns that certain real property depicted on the attached Exhibit B (the "**State Property**"), which partially abuts a portion of the southern boundary of the City Lot 5 and the western boundary of the Former Caltrans Property, and which State leases to City pursuant to an Airspace Lease between City and State, dated as of \_\_\_\_\_, 2017, for an initial term of fifty (50) years, as such initial term may be extended by City's two 15-year options to extend such term (the "**Lease**").

D. City owns that certain real property located between the eastern boundary of the Former Caltrans Property and Indiana Street, as further depicted on the attached Exhibit B (the "**City Bus Yard**"), and City and State have entered into an access agreement dated as of the Effective Date (the "**Indiana Street Access License**") to provide for State's ingress and egress between the State Property and Indiana Street by crossing the City Bus Yard and the Former Caltrans Property until City completes the Curb Cut Work (as defined in Section 3(a) below), unless City's obligation as to the Curb Cut Work is waived by State in writing, and the Lease expires or is terminated.

E. City and State wish to enter into this Agreement to (i) provide State with an easement for ingress and egress between the State Property and Cesar Chavez Street over the surface of the twenty-four foot (24') wide area on City Lot 5 and the Former Caltrans Property described on the attached Exhibit C (the "**Easement Area**") and depicted on the attached Exhibit B on the terms specified in this Agreement, and (ii) terminate the easement granted to State over portions of City Lot 5 by Western Pacific Railroad Company and recorded in the Official Records of San Francisco County at Book A520, Page 480 on December 24, 1962 (the "**1962 Easement**") and the easement reserved by State on "Parcel 1" of the Former Caltrans Property under the Directors Deed, as further described in Exhibit A to the Directors Deed.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and State hereby agree as follows:

1. Grant of Easement; Termination of 1962 Easement and Reserved Director's Deed Easement. Pursuant to the terms and conditions specified in this Agreement, City grants to State an easement for ingress and egress over the surface of the Easement Area for the exercise of its rights and obligations hereunder. On the full execution of this Agreement, City shall record it in the Official Records of San Francisco, and on such recordation, the 1962 Easement and the non-exclusive easement reserved in the Director's Deed shall automatically terminate. State shall concurrently execute and record a Quitclaim Deed terminating any and all interest in the 1962 Easement and the non-exclusive easement reserved on "Parcel 1" of the Former Caltrans Property in the Director's Deed.

2. Use of the Easement Area.

(a) Subject to City's rights under Section 3(c) below, State may use the Easement Area only for (i) commercial and regular vehicular and pedestrian ingress to the State Property from Cesar Chavez Street, and egress from the State Property to Cesar Chavez Street, by State

and any of its employees, agents, representatives, contractors, subcontractors, tenants, and licensees (each, an "**Agent**") or invitees (but not the general public) and (ii) the performance of State's obligations under this Agreement (collectively, the "**Permitted Uses**"), all in compliance with all applicable laws. Notwithstanding anything to the contrary in the foregoing sentence, during the period the Indiana Street Access License is in effect, State and its Agents and invitees shall not use the Easement Area pursuant to this Agreement and shall only access the State Property from Indiana Street on the terms and conditions set forth in the Indiana Street Access License.

(b) In entering the Easement Area pursuant to this Agreement, the State shall use, and shall cause its Agents and invitees to use, reasonable efforts to minimize any interference in the use of the Easement Area by City or its Agents. The State shall conduct, and shall cause its Agents and invitees to conduct, entry on the Easement Area in a safe and reasonable manner that avoids damage to the Easement Area and any improvements, fixtures, equipment or personal property located on, under or about the Easement Area (collectively, the "**Improvements**"), and shall not operate or place vehicles or equipment in the Easement Area that exceed the loading standards established by AASHTO-H20 or its equivalent. State acknowledges that the Permitted Uses do not include the installation of utilities or the parking or storage of vehicles, equipment or other property within the Easement Area, except temporarily as reasonably necessary for the performance of State's obligations under Section 3(b).

(c) During the term of the Indiana Street License, City shall have the right to use the Easement Area for any purpose and to install, maintain, modify, and remove any improvements; provided, however, as of the date the State commences use of the Easement Area pursuant to this Agreement, and during State's use of the same pursuant to this Agreement, City (i) shall remove any improvements installed by City on or over the Easement Area to the extent they interfere with the Permitted Uses, and (ii) shall not do anything in, on, or about the Easement Area that would unreasonably interfere with State's Permitted Uses of the Easement Area, subject to City's rights under Section 3(c) below.

(d) City shall have the right to install one or more gates on the Easement Area, provided that as of the date the State commences use of the Easement Area pursuant to this Agreement, and during State's use of the same pursuant to this Agreement, City shall provide State with the means to open such gates at will. In opening any such gates, State shall close, and cause its Agents and invitees to close, the gates after passing through them.

### 3. Maintenance, Repair, and Relocation.

(a) Prior to the termination of the Indiana Street Access License and the commencement of the State's Permitted Uses of the Easement Area, City shall install, at its sole cost, a curb cut that has a minimum width of twenty-four (24) feet (or the applicable commercial driveway standard in place at the time the cut is made) and is suitable for regular and commercial vehicular ingress and egress from Cesar Chavez Street onto the Easement Area at the boundary of the Easement Area and Cesar Chavez Street (the "**Curb Cut Work**"). Completion of the Curb Cut Work shall be a condition of terminating the Indiana Street Access License unless State waives City's obligation to perform the Curb Cut Work in writing. Immediately prior to the date

the State commences use of the Easement Area pursuant to this Agreement, City shall cause the Easement Area to be in a paved and level condition.

(b) Except for City's obligations under Section 3(a) above and Section 3(d) below, City shall have no obligation to maintain the Easement Area; provided, however, that City shall not take any action that makes the surface of the Easement Area unsuitable for pedestrian and regular and commercial vehicular access purposes, subject to City's rights under Section 3(d) below. If City takes any such action, City shall promptly repair the Easement Area to restore it to a condition suitable for pedestrian and regular and commercial vehicular access purposes, and shall provide State with reasonable alternative access for the same purposes as provided for in this Agreement until such time as the Easement Area is restored.

(c) If the Easement Area or any of the Improvements is damaged by the use of the Easement Area by State or its Agents or invitees, State shall promptly notify City of such damage. State shall repair and restore such damaged portion of the Easement Area or Improvements at its sole cost to the condition they were in immediately prior to such damage, subject to City's prior written consent to State's plans and specifications for such repairs and restoration. If State fails to timely perform such repair and restoration obligation within a reasonable time, City may, at its sole discretion, remedy such failure at the State's expense at any time thereafter with at least thirty (30) days' prior written notice of City's intention to cure such failure (unless City determines such failure will cause immediate danger to health or property, in which case no such notice shall be required).

Notwithstanding anything to the contrary in the foregoing paragraph, if City's subsurface sewage transport storage structures and sewer line in the Easement Area (the "**Sewer Facilities**") are damaged by use of the Easement Area by State or its Agents or invitees, City may elect, in its sole discretion, to repair and restore such damaged Sewer Facilities at State's cost. City's election to cure any of the State's failure to perform its repair obligations or to repair and restore any damaged Sewer Facilities under this Section shall not be construed as a waiver of any of City's legal rights or remedies, nor imply any duty of City to do any act that the State is obligated to perform hereunder. State shall pay to City, promptly upon demand, all actual costs incurred by City in remedying or attempting to remedy such default or in repairing and restoring any damaged Sewer Facilities pursuant to this Section.

(d) City shall have the right to restrict the State's vehicular and pedestrian access on the Easement Area to the extent reasonably necessary to accommodate City's inspection, repair, maintenance and replacement of the Sewer Facilities and any pavement in the Easement Area (the "**City Work**") by delivering no less than fifteen (15) days' prior written notice of such restriction to State; provided that no such prior written notice shall be required in the event of an emergency. Notwithstanding anything to the contrary in the foregoing sentence, City shall reasonably accommodate any State vehicular and pedestrian access on the Easement Area required for freeway maintenance and repair activities during the period of any such City Work and shall provide alternative ingress and egress to the State Property during such period(s). If the Easement Area is damaged by any City Work, City shall restore the Easement Area to the condition it was in immediately prior to the commencement of such City Work.

4. Hazardous Materials. State shall not use, store, locate, handle or cause or permit the dumping or other disposal or release of any Hazardous Material (defined as follows) on or about the Easement Area. If there is a leakage or spill of Hazardous Materials on the Easement Area as a result of the activities of State or its Agents (a "**State Release**"), State shall bear the cost and expense to remediate such leakage or spill in compliance with applicable laws; provided, however, that State shall have no obligation under this Agreement to remediate any pre-existing Hazardous Materials discovered on the Easement Area through the investigation or remediation of a State Release except to the extent such pre-existing Hazardous Materials were caused by the activities of State or its Agents.

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area. Notwithstanding anything to the contrary in this Section, motor vehicles and equipment driven by State or its Agents across the Easement Area pursuant to this Agreement may contain gasoline or petroleum products to the extent they are for the exclusive use of such vehicle or equipment.

If State defaults in its obligations under this Section, then State shall indemnify, defend and hold harmless City against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent such Claims arise from the negligence or misconduct by City or its Agents. "**Claims**" shall mean all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind. State's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement or the easement granted hereunder.

5. Insurance.

(a) City acknowledges that State is self-insured and shall not be required to carry any insurance policies with respect to this Agreement. If fee ownership of the State Property is vested in any party other than the State of California (each, a "**Successor Owner**"), City shall have the right to require such Successor Owner to procure, carry, and cause its Agents (each, a "**Successor Third Party**") to procure and carry, insurance coverage, at its sole expense and in form and amounts and from an insurer reasonably required by City, at all times of entry on the Easement Area by such Successor Owner or Successor Third Party, or their respective Agents or

invitees, pursuant to this Agreement. City shall also have the right to require that upon City's request a Successor Owner or Successor Third Party shall deliver to City certificates and endorsements of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If such party fails to procure such insurance, or to deliver such policies, endorsements, or certificates, City shall have the right to procure, at its option, such insurance on such defaulting party's behalf, and to require that such party pay the City for the cost thereof within five (5) days of City's delivery of bills therefor.

(b) If any Agent of State (each, a "**State Third Party**") enters the Easement Area pursuant to this Agreement, such State Third Party shall procure at its expense and keep in effect at all times of such entry, the insurance policy or policies that State requires of such State Third Party, and to name City as an additional insured on such policy(ies), during such State Third Party's entry and use of the Easement Area. Such State Third Party shall deliver a certificate of insurance in form satisfactory to City evidencing such coverage.

(c) Compliance by a State Third Party, Successor Owner, or Successor Third Party with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each State Third Party, Successor Owner, and Successor Third Party shall be responsible, at its expense, for separately insuring its personal property.

(d) Notwithstanding anything to the contrary contained herein, by entry on the Easement Area by any State Third Party, Successor Owner, or Successor Third Party, such party shall be deemed to have waived any right of recovery against City for any loss or damage such party sustains with respect to the Easement Area, whether or not such loss is caused by the fault or negligence of such party, to the extent such loss or damage is covered by any insurance policy that the damaged party is required to hold under this Agreement or is otherwise actually recovered from any valid and collectible insurance policy covering such damaged party. If fee ownership of the State Property is vested in any party other than the State of California City shall have the right to require each Successor Owner, or Successor Third Party to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to its entry on the Easement Area; provided, however, that failure to do so shall not affect the above waiver.

(e) City shall have the right to periodically review the limits and types of insurance to be carried by any Successor Owner or Successor Third Party pursuant to this Section. If, at the time of such review, the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or with coverage materially greater than the amount or coverage then required under this Agreement for risks comparable to those associated with the entry on the Easement Area pursuant to this Agreement, then City in its sole discretion shall have the right to increase the amounts or coverage such Successor Owner or Successor Third Party is required to carry under this Agreement to conform to such general commercial practice.

(f) Nothing herein is intended nor shall be construed to impose any obligation on the State of California as to a Successor Owner's or Successor Third Party's compliance with requirements imposed by City.

6. Indemnity. State shall indemnify, defend, and hold harmless City and City's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than State against City or any of City's Agents and arising out of or relating to the use of the Easement Area by State or any of State's Agents, except to the extent caused by the intentional acts or negligence of City or any of City's Agents; provided, however, that State shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the easement granted hereunder.

City shall indemnify, defend, and hold harmless State and State's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than City against State or any of State's Agents arising out of or relating to the use of the Easement Area by City or any of City's Agents, except to the extent caused by the intentional acts or negligence of State or any of State's Agents; provided, however, that City shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the easement granted hereunder.

7. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Senior Manager, Real Estate Section

with a copy to: City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

If to State: Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys  
State of California Director of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440

with copy to:

State of California Department of Transportation  
Legal Division  
111 Grand Ave, Suite 11-100  
Oakland CA, 94612

8. Waiver of Claims. State covenants and agrees that City shall not be responsible for or liable to State for, and hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims incurred by State for any injury, accident or death of any person or loss or damage to any property in or about the Easement Area, except to the extent such Claims are within the indemnification obligations in Section 6 above, or are caused by City's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of City or its Agents. City covenants and agrees that State shall not be responsible for or liable to City for, and hereby waives all rights against State and its Agents and releases State and its Agents from, any and all Claims incurred by City for any injury, accident or death of any person or loss or damage to any property in or about the Easement Area, except to the extent such Claims are within the indemnification obligations in Section 6 above, or are caused by State's breach of its obligations under this Agreement or negligent, unlawful, or wrongful acts or omissions of State or its Agents.

Neither party shall be liable under any circumstances to the other party for any consequential, incidental or punitive damages (all as defined under law), arising from such party's breach of its obligations under this Agreement or the acts or negligence of such party or its Agents or invitees.

9. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the parties' respective successors and assigns with respect to City Lot 5, the Former Caltrans Property, and the State Property. This Agreement is for the exclusive benefit of State and its successors and assigns to the State Property and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

10. Condition of the Property. Subject to City's performance of its obligations under Section 3(a) above, STATE ACCEPTS THE EASEMENT AREA IN ITS "AS IS" CONDITION FOR STATE'S USES PURSUANT TO THIS AGREEMENT, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE EASEMENT AREA. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Easement Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is State's sole obligation to conduct an independent investigation of the Easement Area and all matters relating to its use hereunder, including, without limitation, the suitability of the Easement Area for such uses. State, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights to the Easement Area if necessary for State's use of the Easement Area in the manner contemplated hereby.

11. Possessory Interest Taxes. State recognizes and understands that this Agreement may create a possessory interest subject to property taxation for any State Third Party, Successor Owner, or Successor Third Party, and that such party may be subject to the payment of property taxes levied on such interest under applicable law. State shall include language in any future lease or similar use agreement with a State Third Party that requires such State Third Party to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the Easement Area under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the Easement Area that may be imposed on such State Third Party by applicable law. Each Successor Owner or Successor Third Party shall pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the Easement Area under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the Easement Area that may be imposed on such party by applicable law. Such party shall pay all of such charges when they become due and payable and before delinquency. Nothing herein is intended or shall be construed to constitute consent by the State of California to imposition of any tax or assessment of any kind on it.

12. Prohibited Activities.

(a) State shall not use or apply, or allow its Agents to use or apply, any pesticides on the Easement Area without the prior written consent of City, which consent shall be conditioned upon the incorporation of the proposed pesticide use into the City integrated pest management policy applicable to the Easement Area pursuant to Chapter 3 of the San Francisco Environment Code, as may be modified or replaced.

(b) State acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Easement Area. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004.

(c) State acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Easement Area.

13. General Provisions.

(a) This Agreement may be amended or modified only by a writing signed by City and State and recorded in the Official Records of the City and County of San Francisco.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.

(c) This Agreement contains the entire agreement between the parties with respect to the matters set forth herein and all prior negotiations, discussions, understandings and agreements are merged herein.



(d) City's obligations under this Agreement shall be governed by City's Charter and California law.

(e) This Agreement shall be governed by California law.

(f) This Agreement does not create a partnership or joint venture between City and State as to any activity conducted by State on, in or relating to the Easement Area.

(g) City's obligations hereunder are contingent upon approval of this instrument by the San Francisco Municipal Transit Agency's Board of Directors and the City's Board of Supervisors and Mayor, each in their respective sole discretion, and the easement granted hereunder and this Agreement shall be null and void if such approval is not obtained.

(h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder.

(i) All representations, warranties, waivers, releases, and indemnities given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the easement granted hereunder.

(j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement.

(k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.

(l) State represents and warrants to City that the execution and delivery of this Agreement by State and the person signing on behalf of State below has been duly authorized to legally bind the State to the obligations herein, and City represents and warrants to State that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized to legally bind City to the obligations herein.

(m) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.

(n) This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect

the purposes of the parties and this Agreement.

(o) State understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Easement Area and not as a regulatory agency with police powers.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**STATE:**

STATE OF CALIFORNIA  
Department of Transportation

By: \_\_\_\_\_  
Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Suzann Goodhue  
Senior Right of Way Agent  
Acquisition Services

APPROVED AS TO FORM AND PROCEDURE:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

[CITY SIGNATURE ON FOLLOWING PAGE]

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Authority

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:  
Secretary, SFMTA Board of Director

By: \_\_\_\_\_  
John Updike  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California )  
 ) ss  
County of San Francisco )

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

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

WITNESS my hand and official seal.

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

**EXHIBIT D**

**Form of Indiana Street Access License**

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

Recording requested by and when recorded mail to:

City and County of San Francisco  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

with a copy to:

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

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

INDIANA STREET ACCESS LICENSE AGREEMENT  
(Islais Creek Operations and Maintenance Facility)  
(Portions of APN Block 4382, Lots 003, 004 and 005;  
APN 4352, Lots 001 and 007; APN 4381, Lot 001)

This Indiana Street Access License Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Municipal Transportation Agency, and the State of California, acting by and through its Department of Transportation ("**State**"), is executed as of \_\_\_\_\_ (the "**Effective Date**").

RECITALS

A. Pursuant to Director's Deed 030660-01-02 recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2017 (the "**Recording Date**"), City acquired that certain real property described on the attached Exhibit A (the "**Acquired Fee Property**") from State, the eastern boundary of which abuts the City property described on the attached Exhibit B (the "**Bus Yard Property**"). The Acquired Fee Property and the Bus Yard Property shall be collectively referred to as the "**City Property**" and is generally depicted on the attached Exhibit C.

B. The western boundary of the City Property abuts certain real property commonly known as Lease Area No. 04-SF-280-08, which is owned by the State, generally depicted on the

attached Exhibit C (the "**State Property**"), and leased by City pursuant to an Airspace Lease between City and State, dated as of \_\_\_\_\_, for an initial term of fifty (50) years, as such initial term may be extended by City's two 15-year options to extend such term (the "**Lease**").

C. City granted State an easement to provide access between the State Property and Cesar Chavez Street pursuant to an Access Easement Agreement recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2017 (the "**Cesar Chavez Access Easement Agreement**"), but State's right to use such easement does not commence until the termination of this Agreement.

D. City and State wish to provide for State's commercial and regular vehicular and pedestrian access to the State Property by crossing the City Property from Indiana Street during the term of the Lease pursuant to its reserved entry rights under the Lease, and for any period of time (the "**Extended Period**") between the expiration or termination of the Lease and City's performance, or State's written waiver, of the Curb Cut Work (as defined in Section 3(a) of the Cesar Chavez Access Easement Agreement) on the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and State hereby agree as follows:

1. License. Pursuant to the terms and conditions specified in this Agreement, City grants to State a license ("**License**") for commercial and regular vehicular and pedestrian ingress and egress over and across the City Property to access State Property pursuant to its reserved entry rights under the Lease during the term of the Lease, and for the exercise of State's rights and obligations as to the State Property and highway facilities during any Extended Period, on the terms and conditions of this Agreement.

2. Term. The License is irrevocable for the duration of its term, which shall commence on the date this Agreement is fully executed and shall terminate upon the date (the "**Termination Date**") the Lease has expired or terminated and City has completed, or State has provided a written waiver of City obligation to perform, the Curb Cut Work. Following the Termination Date, State shall execute any document reasonably requested by City to evidence the termination of this Agreement, which document shall be in a form sufficient for recordation in the Official Records of San Francisco County.

3. Access Conditions.

(a) During the term of the Lease, State, its employees, agents, representatives, contractors, subcontractors, licensees or other authorized persons (each, an "**Agent**") may cross the City Property to access the State Property pursuant to the terms of this Agreement at the times State is permitted to enter the State Property pursuant to Article 12 of the Lease. During any Extended Period, State and its Agents may cross the City Property to access the State



Property pursuant to the terms of this Agreement. State and City shall use reasonable efforts to cooperate and coordinate access by State and its Agents across the City Property pursuant to this Agreement. Except in the event of an emergency where State must access the State Property due to an immediate threat to public health or safety, or unless otherwise agreed to by City, State shall provide no less than seventy-two (72) hours prior written notice of its intent to enter the City Property pursuant to this Agreement.

Access over the City Property by State and its Agents shall be performed at all times in a lawful, safe, and prudent manner that allows for the State's access as specified herein and minimizes interference with City's use of the City Property and avoids damage to the City Property and any improvements, fixtures, equipment or personal property located thereon (collectively, the "**Improvements**"). Any entry on the City Property by State or its Agents pursuant to this Agreement shall be from the City Property's Indiana Street entrance and over a route that is designated by the City Property Superintendent of Facilities, or his or her designee, which route shall be lawful, suitable, and safe for pedestrian and commercial and regular vehicular access.

(b) City shall have the right to use the City Property for any purpose and to install, maintain, modify, replace, and remove any Improvements, including the gated fence restricting entry to the City Property from Indiana Street, provided that City does not interfere with State's entry on, across and over the City Property for access purposes pursuant to this Agreement.

4. Maintenance and Repair. The unimproved portions of the City Property are currently paved with concrete and City currently intends to maintain such paving as needed for its use of the City Property as a bus maintenance and storage yard; provided, however, that City shall have no obligation to maintain such pavement if City determines it is not necessary for City's use of the City Property. However, City shall continue to provide a route that is lawful, suitable and safe for commercial and regular vehicular and pedestrian ingress and egress over and across the City Property to access the State Property. If the City Property or any of the Improvements is damaged by any entry on the City Property by State or its Agents pursuant to this Agreement, State shall repair such damaged portion of the City Property or Improvements to the condition it was in immediately prior to such damage. If State fails to timely perform such repair obligation within a reasonable time, City may, at its sole discretion, remedy such failure at the State's expense at any time thereafter with at least thirty (30) days' prior written notice of City's intention to cure such failure (unless City determines such failure will cause immediate danger to health or property, in which case no such notice shall be required). City's election to cure any State failure to perform its repair obligations under this Section shall not be construed as a waiver of any of City's legal rights or remedies, nor imply any duty of City to do any act that the State is obligated to perform hereunder. State shall pay to City, promptly upon demand, all reasonable costs incurred by City in remedying or attempting to remedy such default. Such costs, however, shall not include City administrative staff or personnel time.

If any party performs labor at the City Property for State or its Agents pursuant to State's obligations under this Section, and such labor is in connection with any improvements that are a "public work" as defined under California Labor Code Section 1720 *et seq.*, the performing party shall be paid not less than the general prevailing rate of per diem wages determined pursuant to

California Labor Code Section 1770 *et seq.* State shall include, in any contract for any improvements to the City Property pursuant to this Section that are a public work, a requirement that all persons performing labor under such contract shall be paid not less than such general prevailing rate of per diem wages for the labor so performed. State shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the City Property.

5. Hazardous Materials. State shall not use, store, locate, handle or cause or permit the dumping or other disposal or release of any Hazardous Material (defined as follows) on or about the City Property. If there is a leakage or spill of Hazardous Materials on the City Property as a result of the activities of State or its Agents (a "**State Release**"), State shall bear the cost and expense to remediate such leakage or spill in compliance with applicable laws; provided, however, that State shall have no obligation under this Agreement to remediate any pre-existing Hazardous Materials discovered on the City Property through the investigation or remediation of a State Release except to the extent such pre-existing Hazardous Materials were caused by the activities of State or its Agents

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the City Property or are naturally occurring substances in the City Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the City Property. Notwithstanding anything to the contrary in this Section, motor vehicles and equipment driven by State or its Agents across the City Property pursuant to this Agreement may contain gasoline or petroleum products to the extent they are for the exclusive use of such vehicle or equipment.

If State defaults in its obligations under this Section, then State shall indemnify, defend and hold harmless City against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent such Claims arise from the negligence or misconduct by City or its Agents. "**Claims**" shall mean all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind. State's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement.

6. Insurance.

(a) City acknowledges that State is self-insured and shall not be required to carry any insurance policies with respect to this Agreement. If fee ownership of the State Property is vested in any party other than the State of California (each, a "**Successor Owner**"), City shall have the right to require such Successor Owner to procure, carry, and cause its Agents (each, a "**Successor Third Party**") to procure and carry, insurance coverage, at its sole expense and in form and amounts and from an insurer reasonably required by City, at all times of entry on the City Property by such Successor Owner or Successor Third Party, or their respective Agents or invitees, pursuant to this Agreement. City shall also have the right to require that upon City's request a Successor Owner or Successor Third Party shall deliver to City certificates and endorsements of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If such party fails to procure such insurance, or to deliver such policies, endorsements, or certificates, City shall have the right to procure, at its option, such insurance on such defaulting party's behalf, and to require that such party pay the City for the cost thereof within five (5) days of City's delivery of bills therefor.

(b) If any Agent of State (each, a "**State Third Party**") enters the City Property pursuant to this Agreement, such State Third Party shall procure at its expense and keep in effect at all times of such entry, the insurance policy or policies that State requires of such State Third Party, and to name City as an additional insured on such policy(ies), during such State Third Party's entry and use of the City Property pursuant to this Agreement. Such State Third Party shall deliver a certificate of insurance in form satisfactory to City evidencing such coverage.

(c) Compliance by a State Third Party, Successor Owner, or Successor Third Party with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each State Third Party, Successor Owner, and Successor Third Party shall be responsible, at its expense, for separately insuring its personal property.

(d) Notwithstanding anything to the contrary contained herein, by entry on the City Property by any State Third Party, Successor Owner, or Successor Third Party pursuant to this Agreement, such party shall be deemed to have waived any right of recovery against City for any loss or damage such party sustains with respect to the City Property, whether or not such loss is caused by the fault or negligence of such party, to the extent such loss or damage is covered by any insurance policy that the damaged party is required to hold under this Agreement or is otherwise actually recovered from any valid and collectible insurance policy covering such damaged party. If fee ownership of the State Property is vested in any party other than the State of California, City shall have the right to require each Successor Owner, or Successor Third Party to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to its entry on the City Property pursuant to this Agreement; provided, however, that failure to do so shall not affect the above waiver.

(e) City shall have the right to periodically review the limits and types of insurance to be carried by any Successor Owner or Successor Third Party pursuant to this Section. If, at the time of such review, the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or with coverage materially greater than the amount or

coverage then required under this Agreement for risks comparable to those associated with the entry on the City Property pursuant to this Agreement, then City in its sole discretion shall have the right to increase the amounts or coverage such Successor Owner or Successor Third Party is required to carry under this Agreement to conform to such general commercial practice.

(f) Nothing herein is intended nor shall be construed to impose any obligation on State of California as to a Successor Owner's or Successor Third Party's compliance with requirements imposed by City.

7. Indemnity. State shall indemnify, defend, and hold harmless City and City's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than State against City or any of City's Agents and arising out of or relating to the use of the City Property by State or any of State's Agents pursuant to this Agreement, except to the extent caused by the intentional acts or negligence of City or any of City's Agents; provided, however, that State shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the License.

City shall indemnify, defend, and hold harmless State and State's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than City against State or any of State's Agents arising out of or relating to the use of the City Property by City or any of City's Agents pursuant to this Agreement, except to the extent caused by the intentional acts or negligence of State or any of State's Agents; provided, however, that City shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the License.

8. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City:	San Francisco Municipal Transportation Agency 1301 Cesar Chavez Street San Francisco, CA 94124 Attn: Superintendent, Islais Creek Operations and Maintenance Facility
-------------	---

with a copy to: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

If to State: Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys  
State of California Department of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440

with copy to: State of California Department of Transportation  
Legal Division  
111 Grand Ave, Suite 11-100  
Oakland CA, 94612

9. Waiver of Claims. State covenants and agrees that City shall not be responsible for or liable to State for, and hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims incurred by State for any injury, accident or death of any person or loss or damage to any property in or about the City Property pursuant to this Agreement, except to the extent such Claims are within the indemnification obligations in Section 7 above, or are caused by City's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of City or its Agents.

City covenants and agrees that State shall not be responsible for or liable to City for, and hereby waives all rights against State and its Agents and releases State and its Agents from, any and all Claims incurred by City for to any injury, accident or death of any person or loss or damage to any property in or about the City Property pursuant to this Agreement, except to the extent such Claims are within the indemnification obligations in Section 7 above, or are caused by State's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of State or its Agents.

Neither party shall be liable under any circumstances to the other party for any consequential, incidental or punitive damages (all as defined under law), arising from such party's breach of its obligations under this Agreement or the acts or negligence of such party or its Agents or invitees.

10. Run with the Land; Exclusive Benefit of Parties; No Public Dedication. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns to the City Property or the State Property. This Agreement is not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the City Property to or for the benefit of the general public.

11. As Is Condition. SUBJECT TO CITY'S CONTINUING OBLIGATION TO PROVIDE

ACCESS ONTO, ACROSS, AND OVER CITY PROPERTY THAT IS LAWFUL, SUITABLE, AND SAFE FOR PEDESTRIAN AND COMMERCIAL AND REGULAR VEHICULAR ACCESS, STATE ACCEPTS THE USE OF CITY PROPERTY UNDER THIS AGREEMENT IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE CITY PROPERTY. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the City Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the City Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

12. Possessory Interest Taxes. State recognizes and understands that this Agreement may create a possessory interest subject to property taxation for any State Third Party, Successor Owner, or Successor Third Party, and that such party may be subject to the payment of property taxes levied on such interest under applicable law. State shall include language in any future lease or similar use agreement with a State Third Party that requires such State Third Party to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the City Property under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the City Property that may be imposed on such State Third Party by applicable law. Each Successor Owner or Successor Third Party shall pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the City Property under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the City Property that may be imposed on such party by applicable law. Such party shall pay all of such charges when they become due and payable and before delinquency. Nothing herein is intended or shall be construed to constitute consent by the State of California to imposition of any tax or assessment of any kind on it.

13. Prohibited Activities.

(a) State shall not use or apply, nor allow its Agents to use or apply, any pesticides on the City Property without the prior written consent of City, which consent shall be conditioned upon the incorporation of the proposed pesticide use into the City integrated pest management policy applicable to the City Property pursuant to Chapter 3 of the San Francisco Environment Code, as may be modified or replaced.

(b) State acknowledges and agrees that no advertising of alcoholic beverages is allowed on the City Property. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004.

(c) State acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the City Property.

14. General Provisions.

- (a) This Agreement may be amended or modified only by a writing signed by City and State and recorded in the Official Records of the City and County of San Francisco.
- (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.
- (c) This Agreement contains the entire agreement between the parties with respect to the matters set forth herein and all prior negotiations, discussions, understandings and agreements are merged herein.
- (d) City's obligations under this Agreement are subject to the requirements of City's Charter.
- (e) This Agreement shall be governed by California law.
- (f) This Agreement does not create a partnership or joint venture between City and State as to any activity conducted by State on, in or relating to the City Property.
- (g) City's obligations hereunder are contingent upon approval of this instrument by the San Francisco Municipal Transit Agency's Board of Directors and the City's Board of Supervisors and Mayor, each in their respective sole discretion.
- (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder.
- (i) All representations, warranties, waivers, releases, and indemnities given or made in this Agreement shall survive the termination of this Agreement.
- (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement.
- (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.
- (l) State represents and warrants to City that the execution and delivery of this Agreement by State and the person signing on behalf of State below has been duly authorized to legally bind the State to the obligations herein, and City represents and warrants to State that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized to legally bind City to the obligations herein.
- (m) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same

instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.

(n) This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

(o) State understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the City Property and not as a regulatory agency with police powers.

(p) This Agreement is personal to State and shall not be assigned, conveyed or otherwise transferred by State under any circumstances. Any attempt to assign, convey or otherwise transfer this Agreement shall be null and void and cause the immediate termination and revocation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**STATE:**

STATE OF CALIFORNIA  
Department of Transportation

By: \_\_\_\_\_  
Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Suzann Goodhue  
Senior Right of Way Agent  
Acquisition Services



APPROVED AS TO FORM AND PROCEDURE:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

[CITY SIGNATURE ON FOLLOWING PAGE]

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Authority

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:  
Secretary, SFMTA Board of Director

By: \_\_\_\_\_  
John Updike  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California )  
) ss  
County of San Francisco )

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

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

WITNESS my hand and official seal.

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

Enclosure 5  
Lease Agreement

(Lease Area No. 04-SF-280-08)  
(Account No. 04-SF-280-08-02)

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
**AIRSPACE LEASE**

THIS LEASE, dated \_\_\_\_\_, 2017, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and THE CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Municipal Transportation Agency, hereinafter called "Tenant."

W I T N E S S E T H

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

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: California Department of Transportation

Tenant: City and County of San Francisco, acting by and through its Municipal Transportation Agency

Premises: The portion of Lease Area No. SF-280-08 comprised of approximately 63,747 square feet and shown as the "Parking Area" on the attached Exhibit A, located under SF-280 near Indiana and Cesar Chavez Streets, in the City and County of San Francisco, State of California.

Maintenance Area: The portion of Lease Area No. SF-280-08 comprised of approximately 23,517 square feet and shown as the "Maintenance Area" on the attached Exhibit A, which consists of an area that is comprised of approximately 2,594 square feet ("Bike Path Area") improved by Tenant with a public pedestrian and bicycle pathway and landscaping prior to the Commencement Date and an adjoining open space that is comprised of approximately 20,925 square feet ("Open Space").

Lease Term: Fifty (50) years with two 15-year extension options, commencing November 1, 2017, and initially expiring on November 1, 2067 unless extended (Article 3)

Minimum Monthly Rent: \$15,937

Adjustment to Rent: Minimum 3% fixed annual increase beginning on second year of Lease

term

Rent Reevaluation: Beginning on the 11<sup>th</sup> Lease Year, market evaluation no more than once every ten (10) Lease Years, with new rent under such evaluation to begin the first month of the Lease Year immediately following such evaluation. (Article 4)

Security Deposit: None

Use of Premises: Tenant parking and storage of public transportation and related vehicles

Use of Maintenance Area: Maintenance of Bike Path Improvements (as defined in Article 2) and removal of debris and trimming of vegetation

Insurance: Self-Insurance (Article 10)

Addresses for Notices: (Article 19)

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

To Tenant: City and County of San Francisco  
Municipal Transportation Agency  
1301 Cesar Chavez Street  
San Francisco, CA 94124  
Attn: Superintendent, Islais Creek Operations and Maintenance Facility

with a copy to: City and County of San Francisco  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Senior Manager – SFMTA Strategic Real Estate

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

## ARTICLE 2. PREMISES; MAINTENANCE AREA

### 2.1 Leased Premises

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term of this Lease, at the rent, and upon the covenants and conditions hereinafter set forth, that certain Premises known as the "Parking Area" of Freeway Lease Area No. 04-SF-280-08, comprised of approximately 63,747 square feet and situated in the City and County of San Francisco. Said land or interest therein 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 Premises occupied by the supports and foundations of the existing Landlord highway structure thereon and all that portion of the Premises above a horizontal plane 5 feet below the underside of the superstructure of the existing Landlord highway structure, which plane extends to a line 10 feet, measured horizontally, beyond the outermost protrusion of the superstructure of the structure.

## 2.2 License for Maintenance Area

Permit No. M90-23, issued by the San Francisco Bay Conservation and Development Commission ("BCDC") to Tenant and the Port of San Francisco, requires that Tenant install and maintain a public access pedestrian and bicycle pathway and landscaping on the Bike Path Area. Permit No. M92-10, issued by BCDC to Landlord, requires that Landlord make the Bike Path Area available to Tenant at no charge for public access purposes. Tenant installed the pathway and related landscaping depicted on the attached "Exhibit C" ("Bike Path Improvements") on the Bike Path Area prior to the Commencement Date under the Right of Entry granted by Landlord to Tenant and dated February 5, 2007, and will need continued access for the maintenance and repair of the Bike Path Improvements. Tenant agrees to remove debris from and trim vegetation in the Open Space at the same time it is removing debris from and trimming vegetation in the Bike Path Area.

In consideration of such matters, Landlord grants a license to the Maintenance Area to Tenant for the maintenance and repair of the Bike Path Improvements, the removal of debris, and trimming of vegetation in the Open Space, and Tenant hereby accepts such license, during the term of this Lease and upon the covenants and conditions hereinafter set forth, for the "Maintenance Area" of Freeway Lease Area No. 04-SF-280-08, comprised of approximately 23,517 square feet and situated in the City and County of San Francisco, said land or interest therein 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 Maintenance Area occupied by the supports and foundations of the existing Landlord highway structure thereon and all that portion of the Maintenance Area above a horizontal plane 5 feet below the underside of the superstructure of the existing Landlord highway structure, which plane extends to a line 10 feet, measured horizontally, beyond the outermost protrusion of the superstructure of the structure.

## 2.3 Existing Encumbrances

This Lease is subject to the following (collectively, the "Existing Encumbrances"): (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to Tenant or of

which Tenant has notice, constructive or otherwise including, without limitations, those (if any) shown on attached Exhibit A. Landlord hereby represents that, except for this Lease, it has not issued any leases, permits, easements or any other agreements that provide any third party with the right to use or occupy any portion of the Premises or the Maintenance Area during the term of this Lease. If Tenant discovers any Existing Encumbrance that materially prevents Tenant from using the Premises for the uses permitted under Section 5.1 of this Lease, Tenant shall have the right to terminate this Lease by delivering written notice of such termination to Landlord.

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

### ARTICLE 3. TERM

The initial term of this Lease shall be for fifty (50) years, commencing on November 1, 2017 ("Commencement Date"). A "Lease Year" shall mean each twelve month period between November 1 and October 31 during the term of this Lease.

The term of this Lease shall expire on the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date ("Expiration Date"), unless earlier terminated by Tenant or by Landlord pursuant to the terms of this Lease. At Tenant's option, this Lease may be extended by up to two 15-year extension periods (each, an "Option Term") by Tenant delivering written notice of its exercise of such option no less than 180 days prior to the date such option term is to commence.

### ARTICLE 4. RENT

#### 4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$15,937.00 per month in advance on the first day of each month, commencing on the first full month immediately following the Commencement Date and continuing during the term of this Lease; provided, however, that minimum monthly rent for the first month of any rent adjustment under Section 4.4 or 4.6 shall be paid on or before the fifteenth (15<sup>th</sup>) business day of such month. Such rate was calculated at \$.25 per square foot for 63,747 square feet of the Premises.

Minimum monthly rent for the first month or portion of it shall be paid on or before the fifteenth (15<sup>th</sup>) business day following the Commencement Date. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day. All rent checks shall have printed on their face the following tenancy reference number 04-SF-280-08-02 and shall be paid to Landlord at the following address:

Via Mail:  
Department of Transportation  
Attn: Cashier  
P.O. Box 168019



Sacramento, CA 95816-8019

Via Hand Delivery:  
Department of Transportation  
Attn: Cashier  
1820 Alhambra Blvd., 2<sup>nd</sup> Floor  
Sacramento, CA 95816

OR Department of Transportation  
Right of Way Airspace Development  
111 Grand Avenue, MS 11  
Oakland, CA 95612

#### 4.2 Rent Adjustments

On each anniversary of the Commencement Date (each, an “Adjustment Date”), the minimum monthly rent provided for in Section 4.1 shall be subject to adjustment (rounded to nearest \$1) at three percent (3%) of the minimum monthly rent payable for the month immediately preceding such Adjustment Date.

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment on each anniversary of the Commencement Date (each, an “Adjustment Date”), either via a fixed three percent (3%) increase (rounded to closest \$1) or via an amount derived from a reevaluation which may occur at Landlord’s option per Sections 4.4, 4.5 or 4.6. Table 4.2.1 below provides the Tenant’s minimum rent obligation for the initial 10 years of the Lease term, unless a new fair market rent is derived via reevaluation under Section 4.4 or 4.5. If a new rent is not determined for any new Lease Year under Sections 4.4, 4.5 or 4.6, the rent for such new Lease Year will continue to adjust annually at the set 3% fixed amount until a reevaluation, if any, takes place at any time thereafter.

Table 4.2.1

<u>Lease Year</u>	<u>Time Period</u>	<u>Rent</u>
Year 1	November 1, 2017 through October 31, 2017	\$15,937.00
Year 2	November 1, 2018 through October 31, 2018	\$16,415.00
Year 3	November 1, 2019 through October 31, 2019	\$16,908.00
Year 4	November 1, 2020 through October 31, 2020	\$17,415.00
Year 5	November 1, 2021 through October 31, 2021	\$17,937.00
Year 6	November 1, 2022 through October 31, 2022	\$18,475.00
Year 7	November 1, 2023 through October 31, 2023	\$19,030.00
Year 8	November 1, 2024 through October 31, 2024	\$19,601.00
Year 9	November 1, 2025 through October 31, 2025	\$20,189.00
Year 10	November 1, 2026 through October 31, 2026	\$20,794.00
Year 11	November 1, 2027 through October 31, 2027	\$21,418.00 ( <u>Subject to Reevaluation</u> )

#### 4.3 Payment of Rent for Right of Entry Period

Prior to the Commencement Date, Tenant occupied the Premises pursuant to a Right of Entry granted by Landlord and dated as of February 5, 2007. As required by such Right of Entry, Tenant shall make a one-time payment of \$2,188,066.23 for its use of the Premises from January 31, 2007 through the Commencement Date. Such payment shall be delivered to Landlord at the Landlord

address set forth in Section 4.1 within the fifteen (15) business day period immediately following the Commencement Date.

#### 4.4 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new minimum monthly rent as a condition to Landlord's approval of any use of the Premises not specifically permitted by Section 5.1 and as a condition to any amendment to or changes in the uses permitted by that section, provided such new minimum monthly rent must be no more than fair market rent, which Tenant shall have the right to confirm through a fair market rent appraisal prepared by a California-licensed commercial real estate appraiser.

#### 4.5 Reevaluation on Transfer

Landlord expressly reserves the right to establish a new minimum monthly rent as a condition to Landlord's specific approval of any transfer, or assignment of this Lease or any subletting of all or any portion of the Premises; provided, however, that Tenant shall have the right from time to time, upon notice to, but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant for any or all of the uses permitted under this Lease without any such new minimum monthly rent and without obtaining Landlord's consent.

#### 4.6 Periodic Reevaluations

Commencing on the tenth (10<sup>th</sup>) Lease Year, Landlord expressly reserves the right to establish a new minimum monthly rent once during every successive ten (10) Lease Year period, at the option of Landlord, provided such new minimum monthly rent must be no more than fair market rent, which Tenant shall have the right to confirm through a fair market rent appraisal prepared by a California-licensed commercial real estate appraiser using instructions consistent with the Caltrans Right of Way Manual (each, an "Appraisal"). If Tenant's fair market rent Appraisal is lower than Landlord's fair market rent Appraisal by less than 10%, the new rent shall be the median between the two values. If the difference is greater than 10%, then a third appraiser of Landlord's choosing will determine which of the two is the fair market rental value. Tenant will bear the cost of the third appraiser.

#### 4.7 Landlord's Compensation upon Assignment, Transfer or Sublease of Tenant's Leasehold

(a) In the event that Tenant voluntarily assigns, transfers or subleases any of Tenant's rights in the Premises, Tenant shall pay to Landlord compensation in connection with the transaction in an amount equal to fifty percent (50%) of any and all consideration, whether in present payments or in future payments, which Tenant receives from an assignee, transferee or subtenant in excess of the amount of rent Tenant is obligated to pay to Landlord under this Lease.

(b) Payment by Tenant of the amount of compensation required under this Section 4.5 is a condition to Landlord's giving its consent to any assignment, transfer or sublease under Section 16.2, and Landlord may withhold its consent to any such assignment, transfer or sublease until this compensation has been paid. In addition, before Landlord gives its consent to any such transaction,

Tenant shall deliver to the assignee, transferee or subtenant a written summary of all sums due and owing to Landlord under this section and shall deliver to Landlord a written acknowledgement by the assignee, transferee or subtenant that said person affirms that the sums are due and owing to Landlord and that said person accepts responsibility for ensuring that such sums are paid directly to Landlord.

## ARTICLE 5. USE

### 5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of Tenant parking and storage of public transportation and related vehicles belonging to Tenant and its contractors and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent as a condition to Landlord's approval of any use of the Premises not specifically permitted by this section. The Maintenance Area shall be used by Tenant only and exclusively for the maintenance and repair of the Bike Path Improvements and the removal of debris and vegetation.

### 5.2 Condition of Premises

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

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

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

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of any hazardous material has come to be located on or beneath the Premises; (2) Landlord has

provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and analyze the soil and groundwater on the Premises for the presence of hazardous materials; (3) by signing this Lease Tenant represents to Landlord that, as a result of its investigation of the Premises for the uses specified in Section 5.1, Tenant learned of the presence of the hazardous materials stated on "Exhibit D" attached hereto and by this reference incorporated herein on the Premises, which Tenant remediated to the extent required under all applicable laws, regulations, permits, approvals and authorizations for the construction and operation of the Initial Improvements. The phrase "hazardous material," as used herein, has the same meaning as that phrase has in Section 5.6 of this Lease.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to the Landlord to take all actions necessary, off as well as on the Premises to improve (to the extent Tenant desires to improve the Premises) 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 the Maintenance Area or permit anything to be done in or about the Premises which will in any way conflict 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 or the condition or use of the Maintenance Area. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

### 5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the Premises or the Maintenance Area, 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. Notwithstanding anything to the contrary in this subsection, motor vehicles and equipment on the Premises and the Maintenance Area may contain gasoline or petroleum products to the extent for the exclusive use of such vehicle or equipment.

### 5.5 Explosives and Flammable Materials

Neither the Premises nor the Maintenance Area shall 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 Landlord highway structure located on the Premises. The operation and maintenance of the Premises and any entry on the

Maintenance Area shall be subject to the air space lease regulations of Landlord so as to protect against fire or other hazard impairing the use, safety and appearance of the Landlord highway structure located on the Premises. The occupancy and use of the Premises or entry on the Maintenance Area pursuant to this Lease 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 Landlord highway structure located on the Premises.

## 5.6 Hazardous Materials

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

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the Premises or cause the deposit or disposal of any hazardous materials on the Maintenance Area; provided, however, that Tenant shall have no obligation to prevent any such deposit or disposal resulting from the Landlord highway structure on the Premises or any use thereof or from the use of the Premises by Landlord or its employees, agents, representatives or invitees. 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; provided, however, that Landlord shall provide Tenant with no less than 10 days' prior written notice of any such sampling or testing.

In the event Tenant breaches any of the provisions of this Section with respect to the Premises or the Maintenance Area and fails to cure such breach within 90 days of receiving written notice of such breach from Landlord, 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 not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Maintenance Area by any party other than Tenant or its agents, contractors, or employees during any period.

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

## 5.7 Signs

Not more than four (4) facility signs of a size not greater than thirty (30) square feet of surface area may be erected on the Premises. 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 Landlord highway structure without the express written consent of Landlord. All of these signs shall also comply with all applicable requirements of local governmental entities, including governmental approval and payment of any fees.

Except as set forth in the previous paragraph of this Section, Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the Premises without the prior written approval of Landlord. Landlord shall make all reasonable efforts to notify Tenant in writing of Landlord's approval or disapproval of a proposed sign, banner, or flag on or before the thirtieth (30<sup>th</sup>) day immediately following Tenant's delivery of written request for Landlord's approval. Tenant shall not place, construct or maintain upon the Premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the Premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

## 5.8 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the air space lease rules and regulations that Landlord shall from time to time promulgate for the protection of the Landlord freeway structure on the Premises 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. If such new rules and regulations materially impact Tenant's use of the Premises or Maintenance Area, Tenant shall have the right to terminate this Lease together with the associated license for the Maintenance

Area by delivering written notice of such termination to Landlord within the 90-day period immediately following Tenant's receipt of such new rules and regulations.

#### 5.9 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the Premises.

#### 5.10 Vending

No third party vending of any kind or character shall be conducted, permitted or allowed upon the Premises without the prior express written consent of Landlord.

#### 5.11 Water Pollution Control

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

Tenant understands the discharge of non-storm water into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-storm water into the storm sewer system, vehicle or equipment washing, fueling, maintenance and repair on the Premises is prohibited unless Tenant has a water discharge permit for such activity. In order to prevent the discharge of pollutants to storm water resulting from contact with hazardous material, the storage or stockpile of hazardous material on Premises is strictly prohibited.

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

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

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

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

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

Landlord, or its agents or contractors, shall at all times have the right to enter and inspect the Premises and the operations thereon to assure compliance with the applicable permits, and ordinances listed above. Inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises provided, however, that Landlord shall provide Tenant with no less than 10 days' prior notice of invasive sampling and testing. Invasive sampling and testing is that which involves drilling rigs or other similarly intrusive activities and equipment.

## 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 and the concurrence of the Federal Highway Administration. Tenant may, at its sole expense, install and maintain any additional fencing and entrances that may be required by its use of the Premises, subject to the approval of the location by Landlord, the Federal Highway Administration and the City of San Francisco and County of San Francisco, acting in its regulatory capacity; provided that Tenant shall at its sole expense construct and maintain sidewalks and driveways at the locations where the additional entrances are installed. In the event Tenant violates any of the provisions of this Article and fails to timely cure such violation on receiving written notice thereof from Landlord, this Lease may be terminated immediately by Landlord and be of no further force or effect.

### 6.1 Initial Improvements

Prior to the Commencement Date, Tenant installed paving, fencing and lighting at the Premises (the "Initial Improvements") pursuant to a Right of Entry issued by Landlord to Tenant for the Premises on February 5, 2007. Depictions of the Initial Improvements are attached as "Exhibit B" to this Lease. 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 other than the Initial Improvements without the prior written consent of Landlord. Tenant shall be solely responsible for maintaining the Initial Improvements and all improvements constructed by Tenant on the Premises in a good and clean condition as specified in Article 8 below.

Tenant shall be liable for any and all improvement construction activities, permitted or not, that occur on the Premises during the term of this Lease, and shall indemnify and hold Landlord harmless from any claims of liability with respect to the Initial Improvements or any other improvements installed by Tenant arising solely from Landlord's ownership of the Premises during the term of this Lease. Tenant's obligations pursuant to the foregoing sentence shall not apply to any claims of



liability arising from any acts at the Premises by Landlord or its officers, employees, or agents, from any gross negligence or willful misconduct by Landlord or its officers, employees, or agents, from any liability arising from the operation of any highway structure on the Premises, or arising during any period during which Landlord has possession of the Premises.

## 6.2 Subsequent Improvements

If Tenant desires any additional improvements in, on, or upon the Premises, or any alterations to said Premises, including landscaping, Tenant shall prepare development plans describing the proposed additional improvements or alterations, and shall submit such development plans to Landlord, for review by Landlord and Federal Highway Administration ("FHWA"). Tenant shall not make any additional improvements or alterations, including landscaping, without the review and approval of the Landlord and FHWA documented by the issuance of a Caltrans Encroachment Permit.

Tenant shall begin the construction of any additional improvements on the Premises within 90 days after obtaining an appropriate encroachment permit to construct such additional improvements from the Landlord. All work shall be completed according to the development plan within 360 days of the issuance of such encroachment permit.

Tenant shall be liable for any and all construction performed by or for Tenant, permitted or not, that may occur on the Premises and its improvements during the term of this Lease, and shall indemnify and hold Landlord harmless from any claims of liability with respect to such construction activities arising solely from Landlord's ownership of the Premises during the term of this Lease. Tenant's obligations pursuant to the foregoing sentence shall not apply to any claims of liability arising from any acts at the Premises by Landlord or its officers, employees, or agents, from any gross negligence or willful misconduct by Landlord or its officers, employees, or agents, from any liability arising from the operation of any highway structure on the Premises, or arising during any period during which Landlord has possession of the Premises.

## 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

The Initial Improvements and all improvements constructed and affixed 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 installed by Tenant and affixed to the Premises are real property.

## 8.2 Removal of Personal Property and Ownership at Termination

Any signs or other appurtenances that are not affixed to, but 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 the condition it was in on the Commencement Date, at Tenant's sole expense; subject to any affixed improvements Tenant leaves at the Premises pursuant to Section 8.1. 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 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 by Tenant or Tenant's agents within the Premises, and from the cost of defending against such claims, including attorney fees.

### (b) Tenant's Obligations

In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration or installation by Tenant or Tenant's agents, Tenant shall either:

- (1) Record a valid Release of Lien, or
- (2) Deposit sufficient cash with Landlord to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to a lienholder claim, or
- (3) Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Premises from the claim of the lien and from any action brought to foreclose the lien.

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination if Tenant fails to cure such matter within 60 days of receiving written notice thereof from Landlord.

## ARTICLE 9. MAINTENANCE AND REPAIRS

## 9.1 Tenant's Obligations

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

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

Tenant shall take all steps necessary to protect effectively all highway improvements on the Premises from damage incident to Tenant's use of the Premises, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to Landlord's highway structure on the Premises, including, but not limited to, all fences, guardrails, piers and columns, if any, caused by Tenant, subtenants, invitees or other third parties. 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 be responsible for the care, maintenance, and any required pruning of trees, shrubs, or any other landscaping on the Premises. Tenant assumes the liability for any damage or injury caused by any falling branches or other such materials from any tree or shrub whether the branches fall due to lack of maintenance or act of god or any other natural or unnatural causes. Tenant's liability insurance required within Article 10 shall cover any damage caused by any falling tree or shrub branches or other materials; and, furthermore, per the same Article 10, Tenant covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost, and obligation on account of any injuries or losses caused by any falling branches or material from any tree or shrub.

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 and will be responsible for the removal of debris and trimming of vegetation in the Maintenance Area pursuant to Section 2.2 above.

## 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 ten (10) business days after Landlord sends written notice to repair, Tenant fails to commence to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

## 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 or its agents, contractors, employees, or invitees. Tenant hereby covenants and agrees to defend, indemnify and save harmless Landlord, its officers, employees, and agents from any and all liability, loss, cost, and all other claims or obligations of every kind on account of any such injuries or losses.

Landlord agrees to defend, indemnify and save harmless Tenant, its officers, employees, and agents from claims, suits or actions for personal injury or damage to property arising from the activities of Landlord or its officers, employees, and agents at the Premises, except to the extent such claims, suits or actions arise (i) by reason of the negligence of Tenant, its officers, employees, invitees, and agents, or (ii) from a temporary or permanent loss of possession of the Premises by Tenant under Article 12.

### 10.2 Commercial General Liability Insurance

Except as otherwise provided in Section 10.8, 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, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing

of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

### 10.3 Business Automobile Liability Insurance

Except as otherwise provided in Section 10.8, 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 [Intentionally deleted]

### 10.5 Workers' Compensation Insurance

Except as otherwise provided in Section 10.8, Tenant shall obtain and keep in effect at all times during the term of this Lease workers' compensation insurance, including employers' liability, in an amount not less than \$1,000,000 for each accident, covering all employees employed in or about the Premises to provide statutory benefits as required by the laws of the State of California. Said policy shall be endorsed to provide that the insurer waives all rights of subrogation against Landlord.

### 10.6 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, and fails to cure such matter within 30 days of receiving written notice of such failure from Landlord, this Lease may be terminated immediately by Landlord and be of no further force or effect. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the Premises and the improvements erected thereon and shall prevent members of the public from gaining access to the Premises during any period in which such insurance policies are not in full force and effect.

### 10.7 Waiver of Subrogation

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

### 10.8 Self-Insurance Coverage

Notwithstanding any other provision of this Agreement, the insurance required under Article 10 may include a self-insurance program, which Landlord must specifically pre-approve. 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.

Landlord acknowledges Tenant maintains a self-insurance program and agrees that Tenant shall not be required to carry any third party insurance with respect to this Lease at any time that Tenant maintains such self-insurance. Landlord agrees Tenant's self-insurance is sufficient to meet Tenant's insurance obligations under this Lease if the self-insurance provides coverage as broad as a Commercial General Liability insurance policy, as provided on ISO Form CG 0001 or equivalent, for the Premises. Tenant's self-insurance shall include such coverage as would have been covered by Commercial General Liability Insurance with respect to the Premises, with limits of liability of not less than Five Million Dollars (\$5,000,000) per occurrence with no aggregate limit. Landlord acknowledges it has received Tenant's certificate of self-insurance specifying the extent of self-insurance coverage hereunder and containing a waiver of subrogation provision reasonably satisfactory to Landlord.

Tenant is also required to notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage. If such notice is given, Tenant is required to obtain a Commercial General Liability policy providing the coverage required by this Article and an effective date the same as the termination date of the self-insurance to avoid any disruption in coverage. If Tenant purchases a Commercial General Liability policy to meet the requirements of this Article, Tenant shall have Landlord named as an additional insured under the policy and provide a copy of the complete policy to Landlord. Execution of this Lease shall be Tenant's acknowledgment that Tenant's self-insurance program meets the requirements of this provision and that Tenant will be bound by all laws as if the Tenant were an insurer as defined under Section 23 of the California Insurance Code.

#### 10.9 Completed Operations Coverage

To cover all liability related to any defective design or construction of any improvements at the Premises, Tenant shall require all third party design professionals or contractors used by City to design or construct the improvements to carry, during such design or construction period, professional liability coverage insuring against negligent acts, errors or omissions in connection with such contractor's design or construction work. Tenant shall also require any third party contractor for the construction of the improvements to provide commercial completed operations insurance coverage for such construction for the period required under applicable law.

### ARTICLE 11. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon the Premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to the Premises, buildings, improvements or structures. Specifically, and without placing any

limitation on Tenant's obligations under the immediately preceding sentence, Tenant shall pay when due, before delinquency, any and all possessory interest taxes, parking taxes, workers' compensation, taxes payable to the California Franchise Tax Board, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the Premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant defaults in the payment of any of the obligations set forth in this Article, this Lease may be terminated immediately by Landlord and be of no further force or effect.

## ARTICLE 12. RIGHT OF ENTRY

### 12.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

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

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

### 12.2 Future Transportation Projects

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

Tenant understands and acknowledges that Landlord may, during the term of this Lease, construct an "Approved and Funded Transportation Project", which may require the temporary or permanent use of all or a portion of the Premises. An "Approved and Funded Transportation Project" is defined as a proposed transportation facility to be constructed by Landlord where the funds necessary to construct the facility are available to Landlord (regardless of the source of the funds) and

where the transportation facility can reasonably be expected to be constructed within a reasonable period of time following termination of this Lease as provided in this Article.

In the event Landlord determines that the Premises or any portion thereof will be affected by an "Approved and Funded Transportation Project", Landlord shall immediately notify Tenant of its intent to take possession of all or a portion of the Premises and shall provide Tenant with at least ninety (90) 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 and shall restore the surface of such part of the Premises at the time it is returned to Tenant. Upon the date Landlord is entitled to possession of the Premises, or portion thereof, Tenant shall peaceably surrender possession of the Premises, or portion thereof, and comply with the restriction as stated in the notice. The failure of Tenant to vacate the required area of the Premises shall constitute a material default and breach of this Lease entitling Landlord to exercise its rights and remedies.

(b) Reduction of Monthly Rent if Lease Remains Effective

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

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

Landlord's taking of possession of the Premises under this Section 12.2 does not constitute a taking or damaging entitling Tenant to compensation under any Condemnation provisions. The reduction in monthly Rent as provided herein shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use part or all of the area of the Premises as a result of an "Approved and Funded Transportation Project," and 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 thereon, any claim for loss of business goodwill or otherwise resulting from Tenant's inability to use or possess all or any portion of the Premises as a result of an "Approved and Funded Transportation Project". In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (United States Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the Premises an "Approved and Funded Transportation Project". Landlord agrees to instruct its authorized representatives to minimize the effect of any required construction on Tenant's use of the Premises, both in the construction phase and in the permanent effect on the Premises in connection with an "Approved and Funded Transportation Project".

### 12.3 Maintenance Work and Retrofitting of Freeway Structures

Tenant understands and agrees that Landlord may be required to perform maintenance or retrofit work on all or a part of the freeway structures that are situated on and above the Premises. Landlord shall have the right to impose such restrictions on Tenant's right to enter, occupy, and use the



Premises and to maintain the existing improvements or construct improvements thereon as Landlord deems are necessary to enable it to complete construction of all freeway 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, pursuant to this Section, 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 Section 4.2 or 4.3 and 4.4, shall be reduced by an amount equal to the proportion which the area of the portion of the Premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased Premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the Premises, and Tenant agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the Premises, and waives its right to use or possess any portion of the Premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the Premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the Premises.

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

#### 12.4 Reinstitution of Lease.

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

the commencement date of the new lease or any earlier date selected by the Tenant), which together with Landlord's obligation to restore the surface of the Premises to substantially the condition in which it was in immediately prior to Landlord taking possession pursuant to this Article 12, shall be Landlord's only obligation to Tenant in the case it repossesses all of the Premises.

## ARTICLE 13. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

### 13.1 Definitions

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

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

(c) "Substantial taking" means a taking of a portion of the 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 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 as to the remainder. However, if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent shall be reduced to an amount equal to the fair rental value of the remainder 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 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 as to the remainder. 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 shall be reduced to the fair rental value of the remainder 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.

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

#### 13.4 Adjustment of Rent

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

#### 13.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the Premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the 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.

If all or a portion of the Premises is condemned at a time when Tenant possesses an interest in real property located outside the 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 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) business 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 sixty (60) 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 sixty (60) days.

(d) The failure by Tenant to comply with any applicable provision of any law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 5.3 of this Lease where such failure continues for ninety (90) days after written notice thereof by Landlord to Tenant.

(e) The failure by Tenant to comply with the requirements regarding hazardous materials as set forth in Article 5 of this Lease where such failure continues for sixty (60) days after written notice thereof by Landlord to Tenant.

(g) The construction by Tenant of any improvements on the Premises contrary to the provisions of Article 6 of this Lease if Tenant fails to remove such unauthorized improvements within sixty (60) days after written notice thereof by Landlord to Tenant.

(h) The failure by Tenant to pay any tax, assessment, imposition, levy or charge of any kind as set forth in Article 11 of this Lease where such failure continues for sixty (60) days after written notice thereof by Landlord to Tenant.

(i) The failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for sixty (60) 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 sixty (60) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

## 15.2 Landlord's Remedies

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

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

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

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

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

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

### 15.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect

to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

## ARTICLE 16. ASSIGNMENTS, TRANSFERS, SUBLEASES AND ENCUMBRANCES

### 16.1 Voluntary Assignments and Subleases

Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in the Premises, or sublet all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration, unless otherwise expressly permitted by the provisions of this Article. Landlord may withhold its consent to any such assignment, transfer, encumbrance or sublease unless all of the following express conditions are satisfied:

(a) Landlord receives compensation from Tenant upon the assignment, transfer, sale, sublease or encumbrance of any of Tenant's rights in the Premises in an amount calculated in accordance with the provisions of Section 4.7.

(b) Landlord receives and has the right to receive fifty percent (50%) of any and all consideration, whether in present payments or in future payments, which Tenant receives from an assignee, transferee or subtenant in excess of the amount of rent Tenant is obligated to pay to Landlord under this Lease.

(c) At Landlord's option, a new minimum monthly rental rate may be established in accordance with the provisions of Section 4.4, 4.5, or 4.6.

Tenant's failure to obtain Landlord's required written approval of any assignment, transfer, sublease or encumbrance shall render such assignment, transfer, sublease or encumbrance void. Occupancy of the Premises by a prospective transferee, sublessee 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, sublease or encumbrance 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 encumbrance of this Lease and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

### 16.2 Change in Partnership or Limited Liability Partnership

If Tenant is a partnership or limited liability partnership, a withdrawal or change, voluntary, involuntary or by operation of law, or the dissolution of the partnership, shall be deemed a voluntary assignment subject to the provisions of Section 16.1. However, Tenant shall have the right, without any requirement to obtain Landlord's consent or make any payment to Landlord, to assign all of Tenant's rights and obligations under this Lease to any person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

### 16.3 Change in Tenants

If Tenant consists of more than one person, a purported assignment, voluntary, involuntary or by operation of law, from one tenant to another shall be deemed a voluntary assignment subject to the provisions of Section 16.1. However, Tenant shall have the right, without any requirement to obtain Landlord's consent or make any payment to Landlord, to assign all of Tenant's rights and obligations under this Lease to any person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

#### 16.4 Change in Corporation or Limited Liability Company

If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 51% of the value of the assets of Tenant, shall be deemed a voluntary assignment subject to the provisions of Section 16.1. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 51% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors or a controlling interest in the LLC. However, Tenant shall have the right, without any requirement to obtain Landlord's consent or make any payment to Landlord, to assign all of Tenant's rights and obligations under this Lease to any person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

#### 16.5 Assignment of Rent from Subtenants

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

#### 16.6 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,
- (c) a copy of the financial statement of the prospective subtenant, transferee or assignee, and
- (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.

#### 16.7 Processing Fees for Assignments, Transfers and Subleases

(a) In addition to the sum specified in Section 4.7, a fee of one thousand five hundred dollars (\$1,500) shall be paid to Landlord for processing each consent to assignment, transfer, or sublease to Landlord as required by this Lease. This processing fee shall be deemed earned by Landlord when paid and shall not be refundable.

(b) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged.

(c) The amounts specified above for processing fees shall be automatically adjusted at the end of the first year of this Lease and every year thereafter in accordance with an annual fee schedule adopted by Landlord. Landlord shall make said fee schedule available to Tenant upon receiving a request therefor.

## 16.8 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever.

## ARTICLE 17. NONDISCRIMINATION

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

## ARTICLE 18. SECURITY DEPOSIT

None

## ARTICLE 19. ADDITIONAL PROVISIONS

### 19.1 Quiet Enjoyment

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



## 19.2 Captions, Attachments, Defined Terms

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

## 19.3 Entire Agreement

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

## 19.4 Severability

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

## 19.5 Costs of Suit

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

## 19.6 Time, Joint and Several Liability

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

#### 19.7 Binding Effect; Choice of Law

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

#### 19.8 Waiver

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

#### 19.9 Surrender of Premises

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

#### 19.10 Holding Over

If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant, condition and agreement contained herein, except that the monthly rental rate set forth in Section 4.1 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.

#### 19.11 Interest on Past Due Obligations

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

#### 19.12 Recording

Neither Landlord nor Tenant shall record this Lease.

#### 19.13 Notices

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

#### 19.14 No Reservation

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

#### 19.15 Corporate Authority

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

#### 19.16 Force Majeure

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

#### 19.17 Non-Liability of Tenant and Landlord Officials, Employees and Agents

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of Tenant or Landlord shall be personally liable to the other, its successors and assigns, in the event of any default or breach or for any amount which may become due to the other party, its successors and assigns, or for any obligation under this Lease.

#### 19.18. Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Tenant's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Tenant under this Lease unless the Tenant's Controller first certifies, pursuant to Section 3.105 of the Tenant's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of Tenant after the fiscal year in which the term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then Tenant or Landlord may terminate this Lease, without penalty, liability or expense of any kind to Tenant, as of the last date on which sufficient funds are appropriated. Tenant shall use its reasonable efforts to give Landlord reasonable advance notice of such termination

#### 19.20 MacBride Principles - Northern Ireland

Tenant urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. Tenant also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Without acknowledging the applicability of the above to this Lease, Landlord acknowledges that it has read the above statement of Tenant concerning doing business in Northern Ireland. This provision is included pursuant to the request of Tenant, with the parties' agreement and understanding that it shall not affect or impact their respective rights and obligations under this Lease.

#### 19.21 Tropical Hardwood and Virgin Redwood Ban

Tenant urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products. This provision is included pursuant to the request of Tenant, with the parties' agreement and understanding that it shall not affect or impact their respective rights and obligations under this Lease.

///

[SIGNATURES ON NEXT PAGE]

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: \_\_\_\_\_

By: \_\_\_\_\_  
LINDA EMADZADEH, District Office Chief  
R/W Local Programs, Utilities, and Airspace

APPROVED AS TO FORM AND PROCEDURE:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

TENANT:

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

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
EDWARD D. REISKIN  
Director of Transportation

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

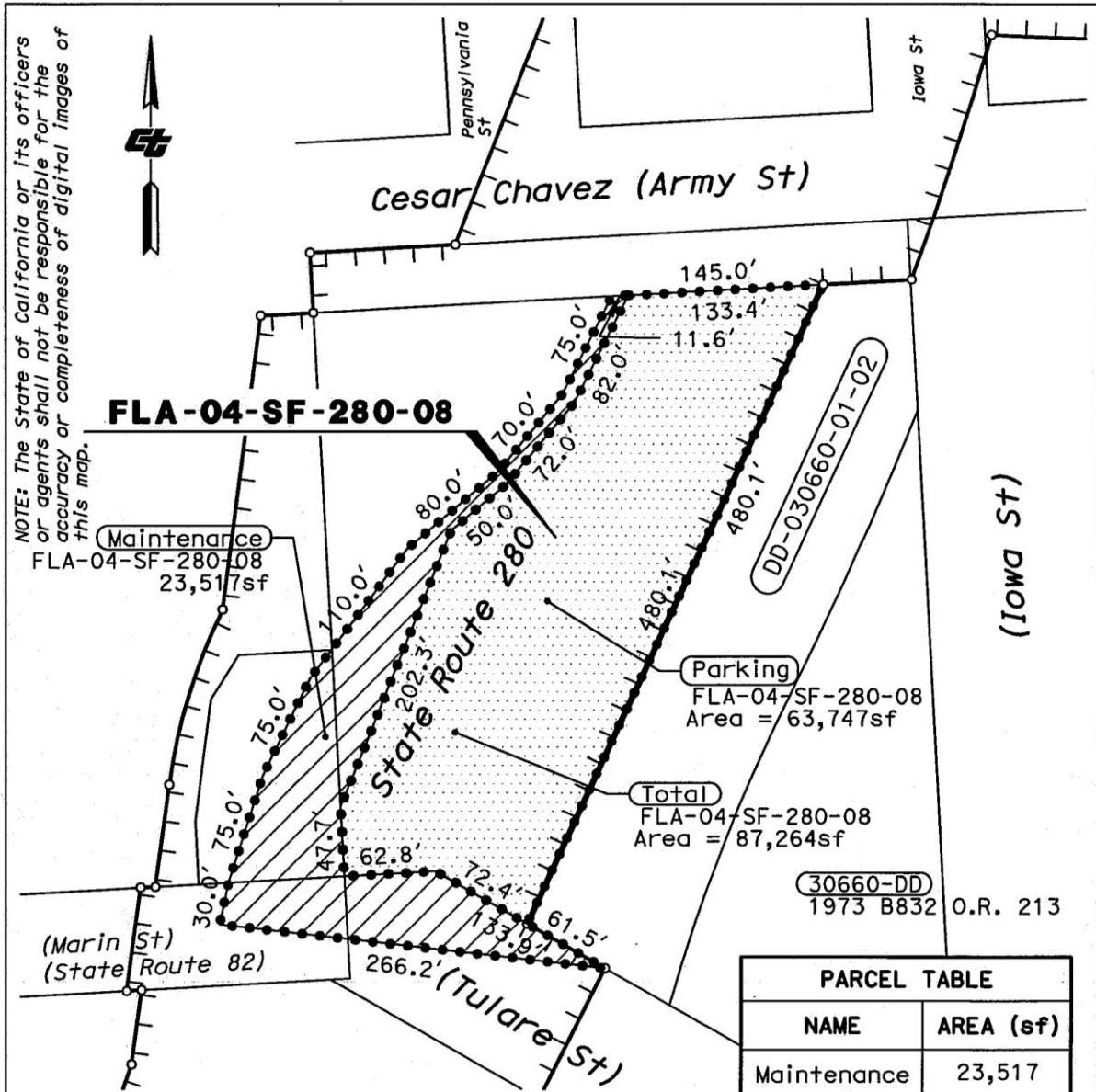
Attest:  
Secretary, SFMTA Board of Director

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**EXHIBIT A**  
**Premises**



**COUNTY OF SAN FRANCISCO**  
**CITY OF SAN FRANCISCO**

PARCEL TABLE	
NAME	AREA (sf)
Maintenance	23,517
Parking	63,747
Total	87,264

**NOTES**

Coordinates and bearings are on CCS 1927 Zone 3. Distances and stationing are grid distances. Multiply by 1.0000717 to obtain ground distances. All distances are in feet unless otherwise noted.

**LEGEND**

--- = ACCESS CONTROLLED

FLA-04-SF-280-08 = FREEWAY LEASE AREA

o = DIMENSION POINT

P.U.E. = PUBLIC UTILITY EASEMENT

P.O.C. = POINT OF COMMENCEMENT

P.O.B. = POINT OF BEGINNING

(R) = RADIAL BEARING

sf = SQUARE FEET

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY**  
**FREEWAY LEASE AGREEMENT**  
FLA-04-SF-280-08  
**EXHIBIT "A"**

SCALE: 1" = 100'

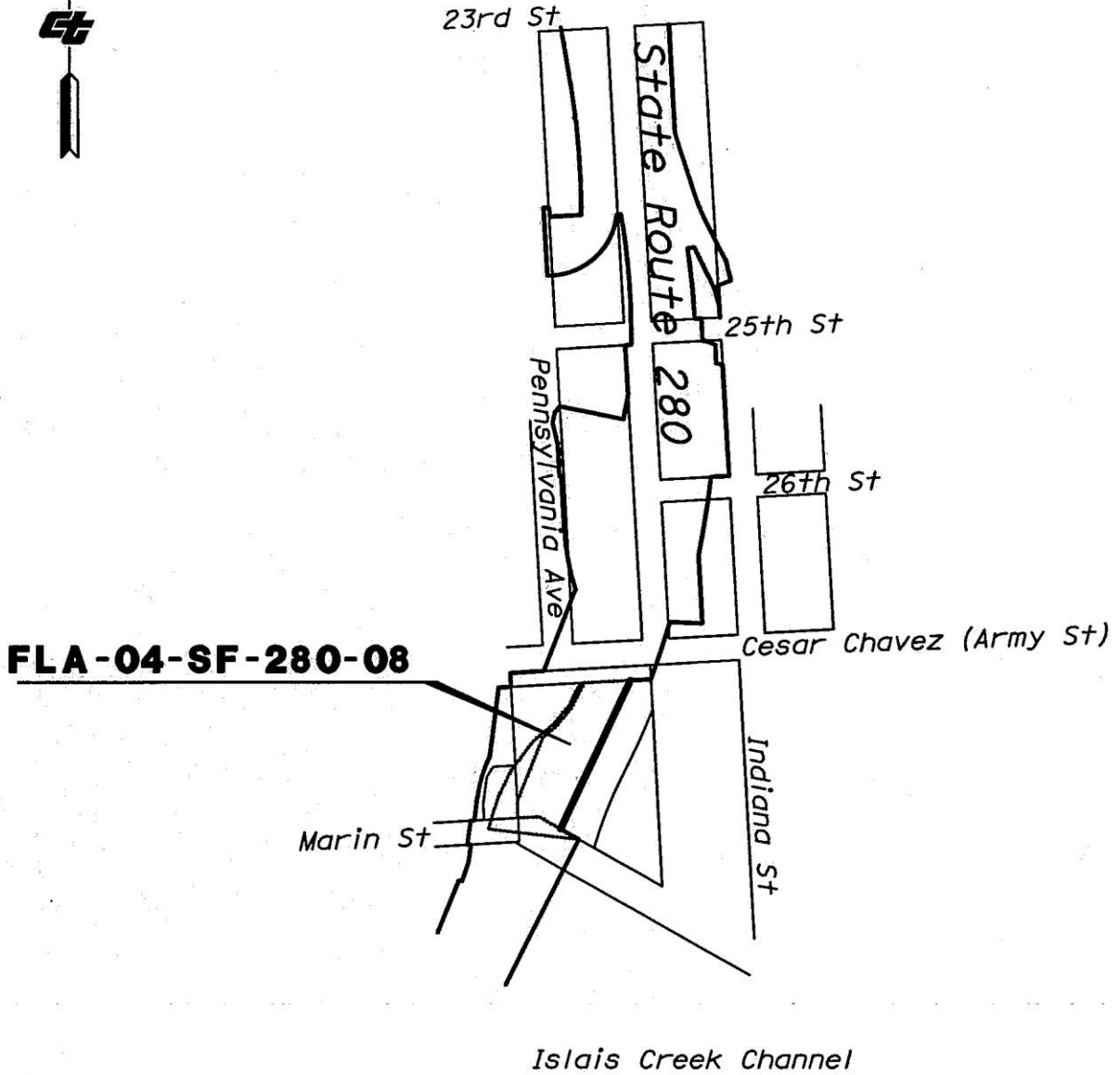
FEET 0 50 100 200

DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
AL	7-31-2017	4	SF	280	5.1	2	2

R-174.7

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

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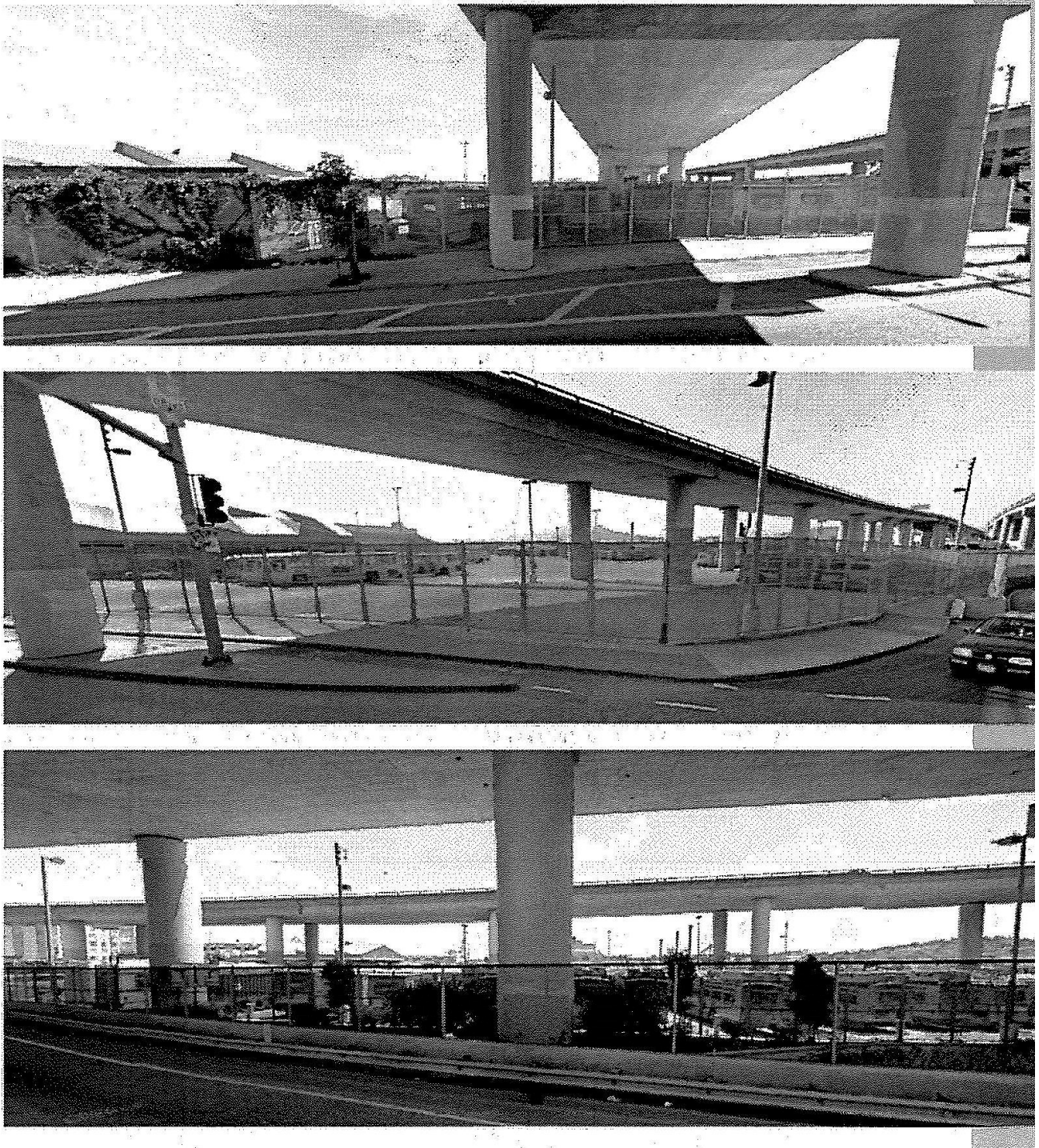
**COUNTY OF SAN FRANCISCO  
CITY OF SAN FRANCISCO**

NOTES		LEGEND			STATE OF CALIFORNIA CALIFORNIA STATE TRANSPORTATION AGENCY DEPARTMENT OF TRANSPORTATION RIGHT OF WAY FREEWAY LEASE AGREEMENT FLA-04-SF-280-08 EXHIBIT "A" SCALE: 1" = 500'		
Coordinates and bearings are on CCS 1927 Zone 3. Distances and stationing are grid distances. Multiply by 1.0000717 to obtain ground distances. All distances are in feet unless otherwise noted.		- - - = ACCESS CONTROLLED (FLA-04-SF-280-08) = FREEWAY LEASE AREA o = DIMENSION POINT P.U.E. = PUBLIC UTILITY EASEMENT P.O.C. = POINT OF COMMENCEMENT P.O.B. = POINT OF BEGINNING (R) = RADIAL BEARING sf = SQUARE FEET			FEET 0 250 500 1000		
DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
AL	7-31-2017	4	SF	280	5.1	1	2



**EXHIBIT B**

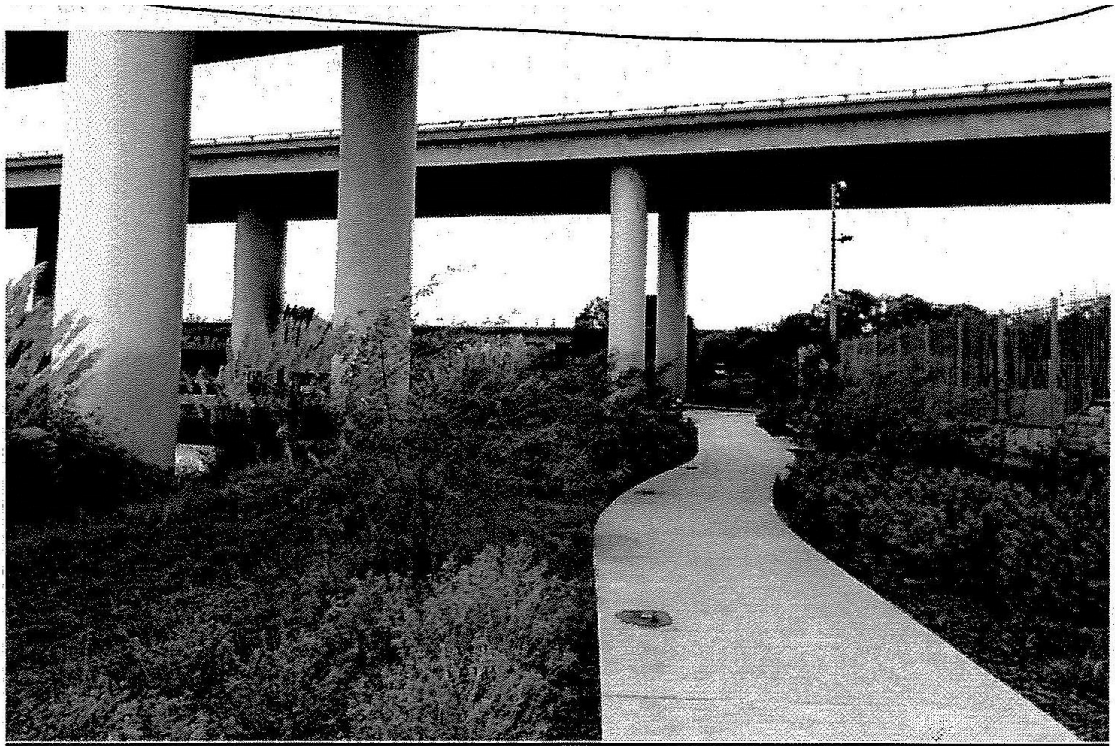
**Depiction of Initial Improvements**



**EXHIBIT C**

**Depiction of Bike Path Improvements**





## **EXHIBIT D**

Tenant does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Premises except as set forth in the following documents provided by Tenant to Landlord prior to the Commencement Date: (i) Final Site Investigation Report prepared by AGS, Inc. (AGS Project No. 980813) and dated October 2002, (ii) letter from Baseline Environmental Consulting to the Department of Public Works and dated January 8, 2004, and (iii) the Site Mitigation Plan prepared by AEW Engineering, Inc. and dated May 2011.

**EXHIBIT E**

**Stormwater Pollution Prevention Fact Sheet(s) for: Parking and Vehicle Storage**



# Stormwater Pollution Prevention

## Parking Lots

### Leaking Vehicles

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

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

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

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



### Trash

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

# Stormwater Pollution Prevention

## Vehicle or Equipment Storage

### Oil Leaks

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

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

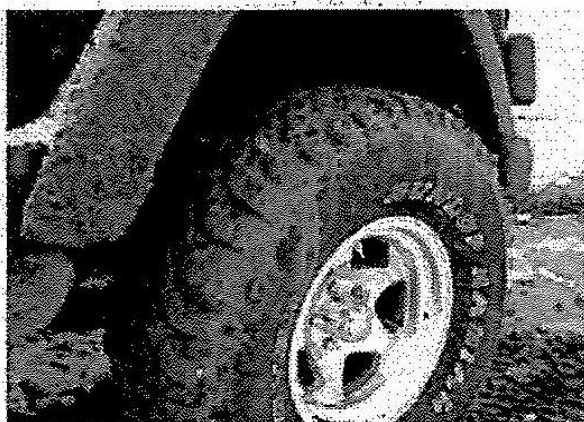
Train employees on proper spill containment and cleanup. Have spill cleanup materials readily available and in a known location. Cleanup spills immediately using dry methods if possible. Properly dispose of spill cleanup material. Designate personnel to conduct inspections of the facility and stormwater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

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



### Caked Dirt on Tires

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



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

Enclosure 6  
Indiana Street Access License Agreement



The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

Recording requested by and when recorded mail to:

City and County of San Francisco  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

with a copy to:

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

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

INDIANA STREET ACCESS LICENSE AGREEMENT  
(Islais Creek Operations and Maintenance Facility)  
(Portions of APN Block 4382, Lots 003, 004 and 005;  
APN 4352, Lots 001 and 007; APN 4381, Lot 001)

This Indiana Street Access License Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Municipal Transportation Agency, and the State of California, acting by and through its Department of Transportation ("**State**"), is executed as of \_\_\_\_\_ (the "**Effective Date**").

RECITALS

A. Pursuant to Director's Deed 030660-01-02 recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2017 (the "**Recording Date**"), City acquired that certain real property described on the attached Exhibit A (the "**Acquired Fee Property**") from State, the eastern boundary of which abuts the City property described on the attached Exhibit B (the "**Bus Yard Property**"). The Acquired Fee Property and the Bus Yard Property shall be collectively referred to as the "**City Property**" and is generally depicted on the attached Exhibit C.

B. The western boundary of the City Property abuts certain real property commonly known as Lease Area No. 04-SF-280-08, which is owned by the State, generally depicted on the attached Exhibit C (the "**State Property**"), and leased by City pursuant to an Airspace Lease between City and State, dated as of \_\_\_\_\_, for an initial term of fifty (50) years, as such initial term may be extended by City's two 15-year options to extend such term (the "**Lease**").

C. City granted State an easement to provide access between the State Property and Cesar Chavez Street pursuant to an Access Easement Agreement recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2017

(the "**Cesar Chavez Access Easement Agreement**"), but State's right to use such easement does not commence until the termination of this Agreement.

D. City and State wish to provide for State's commercial and regular vehicular and pedestrian access to the State Property by crossing the City Property from Indiana Street during the term of the Lease pursuant to its reserved entry rights under the Lease, and for any period of time (the "**Extended Period**") between the expiration or termination of the Lease and City's performance, or State's written waiver, of the Curb Cut Work (as defined in Section 3(a) of the Cesar Chavez Access Easement Agreement) on the terms and conditions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and State hereby agree as follows:

1. License. Pursuant to the terms and conditions specified in this Agreement, City grants to State a license ("**License**") for commercial and regular vehicular and pedestrian ingress and egress over and across the City Property to access State Property pursuant to its reserved entry rights under the Lease during the term of the Lease, and for the exercise of State's rights and obligations as to the State Property and highway facilities during any Extended Period, on the terms and conditions of this Agreement.

2. Term. The License is irrevocable for the duration of its term, which shall commence on the date this Agreement is fully executed and shall terminate upon the date (the "**Termination Date**") the Lease has expired or terminated and City has completed, or State has provided a written waiver of City obligation to perform, the Curb Cut Work. Following the Termination Date, State shall execute any document reasonably requested by City to evidence the termination of this Agreement, which document shall be in a form sufficient for recordation in the Official Records of San Francisco County.

3. Access Conditions.

(a) During the term of the Lease, State, its employees, agents, representatives, contractors, subcontractors, licensees or other authorized persons (each, an "**Agent**") may cross the City Property to access the State Property pursuant to the terms of this Agreement at the times State is permitted to enter the State Property pursuant to Article 12 of the Lease. During any Extended Period, State and its Agents may cross the City Property to access the State Property pursuant to the terms of this Agreement. State and City shall use reasonable efforts to cooperate and coordinate access by State and its Agents across the City Property pursuant to this Agreement. Except in the event of an emergency where State must access the State Property due to an immediate threat to public health or safety, or unless otherwise agreed to by City, State shall provide no less than seventy-two (72) hours prior written notice of its intent to enter the City Property pursuant to this Agreement.

Access over the City Property by State and its Agents shall be performed at all times in a lawful, safe, and prudent manner that allows for the State's access as specified herein and minimizes interference with City's use of the City Property and avoids damage to the City Property and any improvements, fixtures, equipment or personal property located thereon (collectively, the "**Improvements**"). Any entry on the City Property by State or its Agents pursuant to this Agreement shall be from the City Property's Indiana Street entrance and over a route that is designated by the City Property Superintendent of Facilities, or his or her designee, which route shall be lawful, suitable, and safe for pedestrian and commercial and regular vehicular access.

(b) City shall have the right to use the City Property for any purpose and to install, maintain, modify, replace, and remove any Improvements, including the gated fence restricting entry to the City Property from Indiana Street, provided that City does not interfere with State's entry on, across and over the City Property for access purposes pursuant to this Agreement.

4. Maintenance and Repair. The unimproved portions of the City Property are currently paved with concrete and City currently intends to maintain such paving as needed for its use of the City Property as a bus maintenance and storage yard; provided, however, that City shall have no obligation to maintain such pavement if City determines it is not necessary for City's use of the City Property. However, City shall continue to provide a route that is lawful, suitable and safe for commercial and regular vehicular and pedestrian ingress and egress over and across the City Property to access the State Property. If the City Property or any of the Improvements is damaged by any entry on the City Property by State or its Agents pursuant to this Agreement, State shall repair such damaged portion of the City Property or Improvements to the condition it was in immediately prior to such damage. If State fails to timely perform such repair obligation within a reasonable time, City may, at its sole discretion, remedy such failure at the State's expense at any time thereafter with at least thirty (30) days' prior written notice of City's intention to cure such failure (unless City determines such failure will cause immediate danger to health or property, in which case no such notice shall be required). City's election to cure any State failure to perform its repair obligations under this Section shall not be construed as a waiver of any of City's legal rights or remedies, nor imply any duty of City to do any act that the State is obligated to perform hereunder. State shall pay to City, promptly upon demand, all reasonable costs incurred by City in remedying or attempting to remedy such default. Such costs, however, shall not include City administrative staff or personnel time.

If any party performs labor at the City Property for State or its Agents pursuant to State's obligations under this Section, and such labor is in connection with any improvements that are a "public work" as defined under California Labor Code Section 1720 *et seq.*, the performing party shall be paid not less than the general prevailing rate of per diem wages determined pursuant to California Labor Code Section 1770 *et seq.* State shall include, in any contract for any improvements to the City Property pursuant to this Section that are a public work, a requirement that all persons performing labor under such contract shall be paid not less than such general prevailing rate of per diem wages for the labor so performed. State shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the City Property.

5. Hazardous Materials. State shall not use, store, locate, handle or cause or permit the dumping or other disposal or release of any Hazardous Material (defined as follows) on or about the City Property. If there is a leakage or spill of Hazardous Materials on the City Property as a result of the activities of State or its Agents (a "**State Release**"), State shall bear the cost and expense to remediate such leakage or spill in compliance with applicable laws; provided, however, that State shall have no obligation under this Agreement to remediate any pre-existing Hazardous Materials discovered on the City Property through the investigation or remediation of a State Release except to the extent such pre-existing Hazardous Materials were caused by the activities of State or its Agents

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a

"hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the City Property or are naturally occurring substances in the City Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the City Property. Notwithstanding anything to the contrary in this Section, motor vehicles and equipment driven by State or its Agents across the City Property pursuant to this Agreement may contain gasoline or petroleum products to the extent they are for the exclusive use of such vehicle or equipment.

If State defaults in its obligations under this Section, then State shall indemnify, defend and hold harmless City against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent such Claims arise from the negligence or misconduct by City or its Agents. "**Claims**" shall mean all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind. State's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement.

6. Insurance.

(a) City acknowledges that State is self-insured and shall not be required to carry any insurance policies with respect to this Agreement. If fee ownership of the State Property is vested in any party other than the State of California (each, a "**Successor Owner**"), City shall have the right to require such Successor Owner to procure, carry, and cause its Agents (each, a "**Successor Third Party**") to procure and carry, insurance coverage, at its sole expense and in form and amounts and from an insurer reasonably required by City, at all times of entry on the City Property by such Successor Owner or Successor Third Party, or their respective Agents or invitees, pursuant to this Agreement. City shall also have the right to require that upon City's request a Successor Owner or Successor Third Party shall deliver to City certificates and endorsements of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If such party fails to procure such insurance, or to deliver such policies, endorsements, or certificates, City shall have the right to procure, at its option, such insurance on such defaulting party's behalf, and to require that such party pay the City for the cost thereof within five (5) days of City's delivery of bills therefor.

(b) If any Agent of State (each, a "**State Third Party**") enters the City Property pursuant to this Agreement, such State Third Party shall procure at its expense and keep in effect at all times of such entry, the insurance policy or policies that State requires of such State Third Party, and to name City as an additional insured on such policy(ies), during such State Third Party's entry and use of the City Property pursuant to this Agreement. Such State Third Party shall deliver a certificate of insurance in form satisfactory to City evidencing such coverage.

(c) Compliance by a State Third Party, Successor Owner, or Successor Third Party with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each State Third Party, Successor Owner, and Successor Third Party shall be responsible, at its expense, for separately insuring its personal property.

(d) Notwithstanding anything to the contrary contained herein, by entry on the City Property by any State Third Party, Successor Owner, or Successor Third Party pursuant to this Agreement, such party shall be deemed to have waived any right of recovery against City for any

loss or damage such party sustains with respect to the City Property, whether or not such loss is caused by the fault or negligence of such party, to the extent such loss or damage is covered by any insurance policy that the damaged party is required to hold under this Agreement or is otherwise actually recovered from any valid and collectible insurance policy covering such damaged party. If fee ownership of the State Property is vested in any party other than the State of California, City shall have the right to require each Successor Owner, or Successor Third Party to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to its entry on the City Property pursuant to this Agreement; provided, however, that failure to do so shall not affect the above waiver.

(e) City shall have the right to periodically review the limits and types of insurance to be carried by any Successor Owner or Successor Third Party pursuant to this Section. If, at the time of such review, the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or with coverage materially greater than the amount or coverage then required under this Agreement for risks comparable to those associated with the entry on the City Property pursuant to this Agreement, then City in its sole discretion shall have the right to increase the amounts or coverage such Successor Owner or Successor Third Party is required to carry under this Agreement to conform to such general commercial practice.

(f) Nothing herein is intended nor shall be construed to impose any obligation on State of California as to a Successor Owner's or Successor Third Party's compliance with requirements imposed by City.

7. Indemnity. State shall indemnify, defend, and hold harmless City and City's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than State against City or any of City's Agents and arising out of or relating to the use of the City Property by State or any of State's Agents pursuant to this Agreement, except to the extent caused by the intentional acts or negligence of City or any of City's Agents; provided, however, that State shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the License.

City shall indemnify, defend, and hold harmless State and State's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than City against State or any of State's Agents arising out of or relating to the use of the City Property by City or any of City's Agents pursuant to this Agreement, except to the extent caused by the intentional acts or negligence of State or any of State's Agents; provided, however, that City shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the License.

8. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City:	San Francisco Municipal Transportation Agency 1301 Cesar Chavez Street San Francisco, CA 94124 Attn: Superintendent, Islais Creek Operations and
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Maintenance Facility

with a copy to: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

If to State: Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys  
State of California Department of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440

with copy to: State of California Department of Transportation  
Legal Division  
111 Grand Ave, Suite 11-100  
Oakland CA, 94612

9. Waiver of Claims. State covenants and agrees that City shall not be responsible for or liable to State for, and hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims incurred by State for any injury, accident or death of any person or loss or damage to any property in or about the City Property pursuant to this Agreement, except to the extent such Claims are within the indemnification obligations in Section 7 above, or are caused by City's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of City or its Agents.

City covenants and agrees that State shall not be responsible for or liable to City for, and hereby waives all rights against State and its Agents and releases State and its Agents from, any and all Claims incurred by City for to any injury, accident or death of any person or loss or damage to any property in or about the City Property pursuant to this Agreement, except to the extent such Claims are within the indemnification obligations in Section 7 above, or are caused by State's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of State or its Agents.

Neither party shall be liable under any circumstances to the other party for any consequential, incidental or punitive damages (all as defined under law), arising from such party's breach of its obligations under this Agreement or the acts or negligence of such party or its Agents or invitees.

10. Run with the Land; Exclusive Benefit of Parties; No Public Dedication. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns to the City Property or the State Property. This Agreement is not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the City Property to or for the benefit of the general public.

11. As Is Condition. SUBJECT TO CITY'S CONTINUING OBLIGATION TO PROVIDE ACCESS ONTO, ACROSS, AND OVER CITY PROPERTY THAT IS LAWFUL, SUITABLE, AND SAFE FOR PEDESTRIAN AND COMMERCIAL AND REGULAR VEHICULAR ACCESS, STATE ACCEPTS THE USE OF CITY PROPERTY UNDER THIS AGREEMENT IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY

REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE CITY PROPERTY. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the City Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the City Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

12. Possessory Interest Taxes. State recognizes and understands that this Agreement may create a possessory interest subject to property taxation for any State Third Party, Successor Owner, or Successor Third Party, and that such party may be subject to the payment of property taxes levied on such interest under applicable law. State shall include language in any future lease or similar use agreement with a State Third Party that requires such State Third Party to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the City Property under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the City Property that may be imposed on such State Third Party by applicable law. Each Successor Owner or Successor Third Party shall pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the City Property under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the City Property that may be imposed on such party by applicable law. Such party shall pay all of such charges when they become due and payable and before delinquency. Nothing herein is intended or shall be construed to constitute consent by the State of California to imposition of any tax or assessment of any kind on it.

13. Prohibited Activities.

(a) State shall not use or apply, nor allow its Agents to use or apply, any pesticides on the City Property without the prior written consent of City, which consent shall be conditioned upon the incorporation of the proposed pesticide use into the City integrated pest management policy applicable to the City Property pursuant to Chapter 3 of the San Francisco Environment Code, as may be modified or replaced.

(b) State acknowledges and agrees that no advertising of alcoholic beverages is allowed on the City Property. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004.

(c) State acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the City Property.

14. General Provisions.

(a) This Agreement may be amended or modified only by a writing signed by City and State and recorded in the Official Records of the City and County of San Francisco.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.

(c) This Agreement contains the entire agreement between the parties with respect to the matters set forth herein and all prior negotiations, discussions, understandings and agreements are merged herein.

(d) City's obligations under this Agreement are subject to the requirements of City's Charter.

- (e) This Agreement shall be governed by California law.
- (f) This Agreement does not create a partnership or joint venture between City and State as to any activity conducted by State on, in or relating to the City Property.
- (g) City's obligations hereunder are contingent upon approval of this instrument by the San Francisco Municipal Transit Agency's Board of Directors and the City's Board of Supervisors and Mayor, each in their respective sole discretion.
- (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder.
- (i) All representations, warranties, waivers, releases, and indemnities given or made in this Agreement shall survive the termination of this Agreement.
- (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement.
- (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.
- (l) State represents and warrants to City that the execution and delivery of this Agreement by State and the person signing on behalf of State below has been duly authorized to legally bind the State to the obligations herein, and City represents and warrants to State that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized to legally bind City to the obligations herein.
- (m) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.
- (n) This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.
- (o) State understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the City Property and not as a regulatory agency with police powers.
- (p) This Agreement is personal to State and shall not be assigned, conveyed or otherwise transferred by State under any circumstances. Any attempt to assign, convey or otherwise transfer this Agreement shall be null and void and cause the immediate termination and revocation of this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**STATE:** STATE OF CALIFORNIA  
Department of Transportation

By: \_\_\_\_\_  
Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Suzann Goodhue  
Senior Right of Way Agent  
Acquisition Services

APPROVED AS TO FORM AND PROCEDURE:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

[CITY SIGNATURE ON FOLLOWING PAGE]

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Authority

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:  
Secretary, SFMTA Board of Director

By: \_\_\_\_\_  
John Updike  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  ) ss  
County of San Francisco    )

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

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

WITNESS my hand and official seal.

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

## Exhibit A

### **Description of Acquired Fee Property**

#### PARCEL 1 (030660-01-02):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly comer of that parcel of land as described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet to the POINT OF BEGINNING; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660-DD); thence along last said line, the following two courses: 1) from a radial line that bears North 71°47'13" West, northerly along a curve to the right with a radius of 1150.00 feet, through an angle of 8°32'59", an arc length of 171.62 feet to a point of reverse curvature, 2) from a tangent curve to the left with a radius of 2565.00 feet, through an angle of 4°48'41", an arc length of 215.41 feet to the easterly line of said State Parcel 30660; thence along last said line, North 03°10'37" West, 89.26 feet to the northerly line of said State Parcel 30660, thence along last said line, South 86°49'23" West, 60.00 feet; thence South 24°57'05" West, 441.54 feet to the POINT OF BEGINNING.

CONTAINING an area of 0.981 acres, more or less.

RESERVING unto the State of California, it's successors or assigns, a non-exclusive EASEMENT for ingress and egress and incidents thereto by the most reasonable and practicable means, upon, over, and across all of that parcel of land as described herein above.

#### PARCEL 2 (030660-01-03):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly comer of that certain parcel of land described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660 DD) thence along last said line, from a radial line that bears North 71°47'13" West, southerly along a curve to the left with a radius of 150.00 feet, through an angle of 2°37'37", an arc length of 52.73 feet to the POINT OF COMMENCEMENT.

CONTAINING an area of 0.125 acres, more or less.

PARCEL 3 (030667-01-01):

The State of California, acting by and through its Director of Transportation, does hereby remise, release, and quitclaim unto the hereinabove named grantee, all right, title and interest in and to the portion of that parcel of land as described in the instrument (State Parcel 30667) to the State of California, recorded December 24, 1962 in Book A520 at Page 480, Official Records of the County of San Francisco, more particularly described as follows:

BEGINNING at the southerly terminus of that course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence northeasterly along the easterly line of said parcel, from a radial line that bears S. 69°50'53" E., along the curve to the left with a radius of 2529.00 feet, through an angle of 0°02'18", an arc length of 1.69 feet to the easterly prolongation of that course described as "South 86°49'23" West, 410 feet" in said parcel; thence along said easterly prolongation, S. 86°49'23" W., 0.67 feet to the northerly terminus of said course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence along last said course, S. 03°10'37" E., 1.55 feet to the POINT OF BEGINNING.

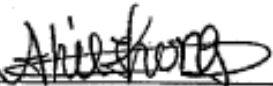
CONTAINING 1 square feet, more or less.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State freeway.

The bearings and distances used in the above descriptions are on the California Coordinate System of 1927, Zone 3. Multiply the above distances by 1.0000717 to obtain ground level distances.

It is expressly made a condition herein that the conveyed property be used exclusively for a public purpose for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for a public purpose, during this fifteen (15)-year period, the State may exercise its power of termination. In the event the State exercises its power of termination, all title and interest to said property shall revert to the State of California, Department of Transportation, and that the interest held by the grantee(s), named herein, or its/their assigns, shall cease and terminate.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature   
*Licensed Land Surveyor*  
Date 08/15/2014



**Exhibit B**

**Description of Bus Yard Property**

All that certain real property situate in the City and County of San Francisco, State of California,

Being Parcels 19, 20, and 21 as described in Grant Deed from Union Pacific Railroad Company (a corporation of the State of Utah) to the City and County of San Francisco (a municipal corporation) recorded June 30, 1988 in Reel E627 at Image 1874 Official Records of the County of San Francisco; The lands described in Grant Deed from GRANEX CORPORATION USA, (a California Corporation) to the City and County of San Francisco (a municipal corporation), recorded May 23, 1990 in Reel F131 at Image 962 Official Records of County of San Francisco; State Parcel 30660-DD, described in Grant Deed from the State of California to the City and County of San Francisco (a municipal corporation) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco, being more particularly described as follows:

**BEGINNING** at the point of intersection of the southerly line of Cesar Chavez Street, 75.00 feet wide (Formerly Army Street as widened shown on 'Map of widening of Army Street from Third Street to De Haro Street' as per order of the Board of Supervisors under Resolution Number 15938. New series, approved July 31, 1918, A-S-84) with the easterly line of Pennsylvania Street, 90.00 feet wide as said street line existed prior to the closing of said street, said point also being the northwesterly corner of said Parcel 19;

thence easterly along said southerly line of said Cesar Chavez Street North  $86^{\circ}49'23''$  East, 480.00 feet to the intersection of said Cesar Chavez Street with the westerly line of Indiana Street (80.00 feet wide);

thence leaving said southerly line of said Cesar Chavez Street at right angles along the westerly line of said Indiana Street, South  $03^{\circ}10'37''$  East, 816.54 feet, more or less, to a point perpendicular distant 34.00 feet northeasterly from a line drawn northwesterly from the point of intersection of the northeasterly line of Tulare Street (as said street existed prior to the closing of said street) with the west line of said Indiana Street, to a point which is perpendicularly distant 425.00 feet south from said southerly line of said Cesar Chavez Street and also perpendicularly

distant 100.00 feet west from the west line of Pennsylvania Avenue, 90.00 feet wide (as the line of said avenue existed prior to the closing of said avenue),

thence leaving said westerly line of said Indiana Street, northwesterly parallel with said line so drawn, North  $60^{\circ}2'50''$  West, 309.36 feet to the southwesterly corner of the said lands of the City and County of San Francisco described in Reel F131 at Image 962, said point also being the southeasterly corner of said State Parcel 030660-DD, said point also on a line perpendicularly distant westerly 20 feet from the centerline of said Iowa Street;

thence along the northwesterly prolongation of last said line, North  $60^{\circ}21'50''$  West, 228.35 feet to the southwesterly corner of said State Parcel 30660-DD;

thence northerly along the westerly line of said State Parcel 30660-DD the following two courses:

- 1) From a radial line that bears North  $74^{\circ}24'50''$  West, along a curve to the right with a radius of 1150.08 feet through a central angle of  $11^{\circ}10'36''$ , an arc length of 224.35 feet to a point of reverse curvature;
- 2) To the left with a radius of 2565.18 feet, through a central angle of  $04^{\circ}48'41''$ , for an arc length of 215.42 feet to the northerly corner of said State Parcel 30660-DD, said point also on a line perpendicularly distant westerly 20 feet from the centerline of said Iowa Street, said point also being on said westerly line of said lands of the City and County of San Francisco described in said Reel F131 at Image 962;

thence northerly along said westerly line of said lands of the City and County of San Francisco, also being on a line perpendicularly distant westerly 20 feet from said centerline of said Iowa Street, North  $03^{\circ}10'37''$  West 89.27 feet to a point on said southerly line of said Parcel 19;

thence westerly along said southerly line of said Parcel 19, South  $86^{\circ}49'23''$  West, 220.00 feet to a point on the easterly line of said former Pennsylvania Street, said point also being the southwesterly corner of said Parcel 19;

thence northerly along the easterly line of last said street and westerly line of said Parcel 19, North  $03^{\circ}10'37''$  West, 41.00 feet to said **POINT OF BEGINNING**.

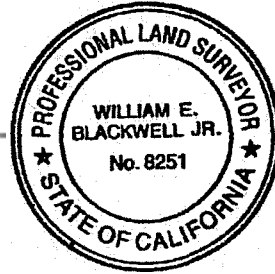
Being Assessor's Block 4352, Lots 001, 006 and 007, Assessor's Block 4382, Lots 004 and 005, and Assessor's Block 4381, Lot 001.

Containing an area of 251,139 Square Feet (5.77 Acres), more or less.

Bearings used in above description are based on California Coordinate System on 1927 Zone 3. Distances used in this description are ground level distances.

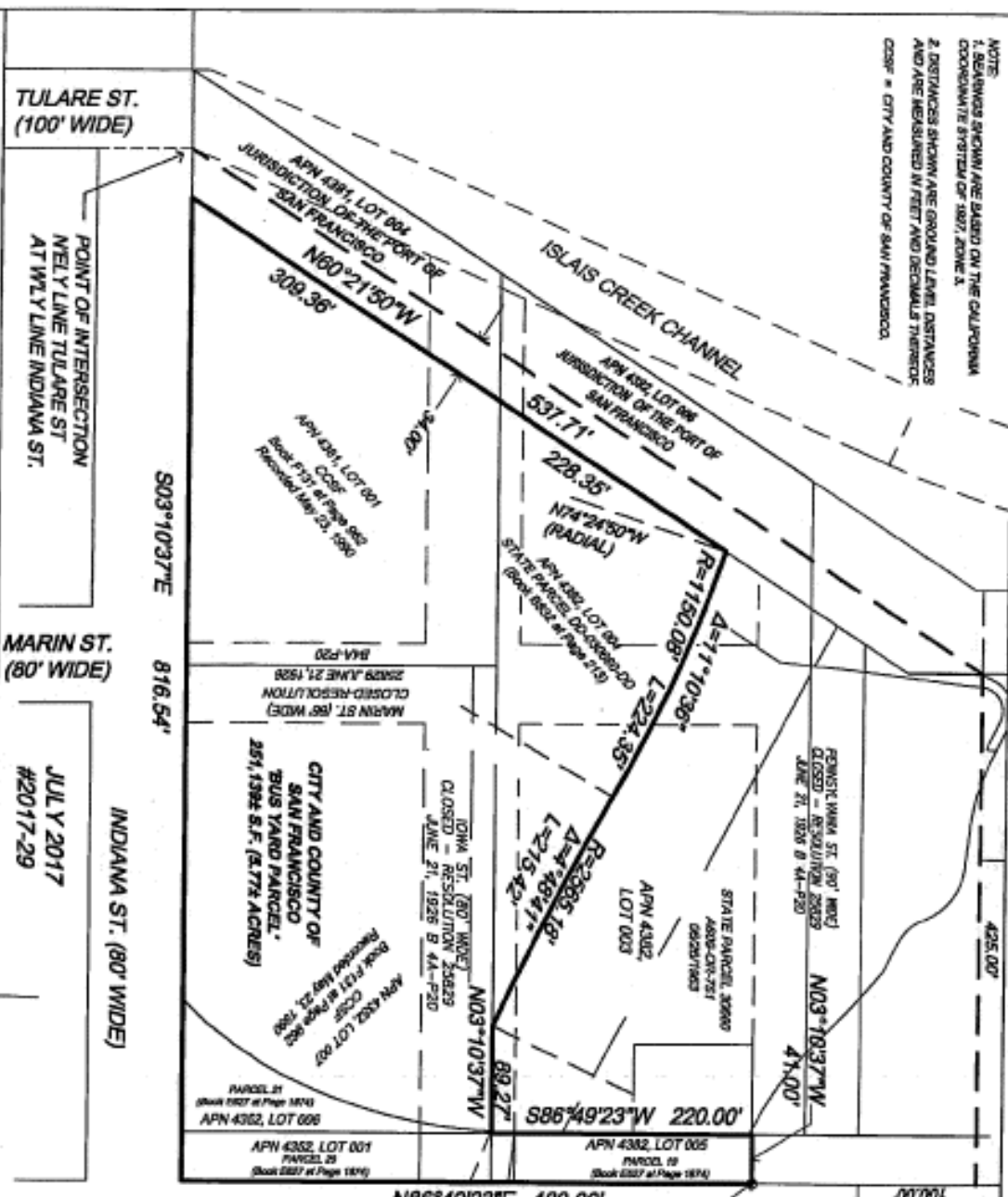
These real property descriptions have been prepared by me, or under my direction in conformance with the Land Surveyors Act.

Signature William E. Blackwell Jr.  
William E. Blackwell Jr., PLS 8251  
Date: August 1, 2017





NOTE:  
 1. BEARINGS SHOWN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 1.  
 2. DISTANCES SHOWN ARE GROUND LEVEL DISTANCES AND ARE MEASURED IN FEET AND DECIMAL THEREOF.  
 CDS# = CITY AND COUNTY OF SAN FRANCISCO.



**EXHIBIT B**  
 PLAN TO ACCOMPANY LEGAL DESCRIPTION 'A'  
 PREPARED BY:  
 BUREAU OF STREET USE AND MAPPING  
 DEPARTMENT OF PUBLIC WORKS  
 CITY AND COUNTY OF SAN FRANCISCO  
 PHONE: 415.554.5827 FAX: 415.554.4324

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION IN COMPLIANCE WITH THE LAND SURVEYORS ACT.  
 Signature: *William S. Feltus*  
 Date: 8-01-12



BY	DATE	REVISIONS



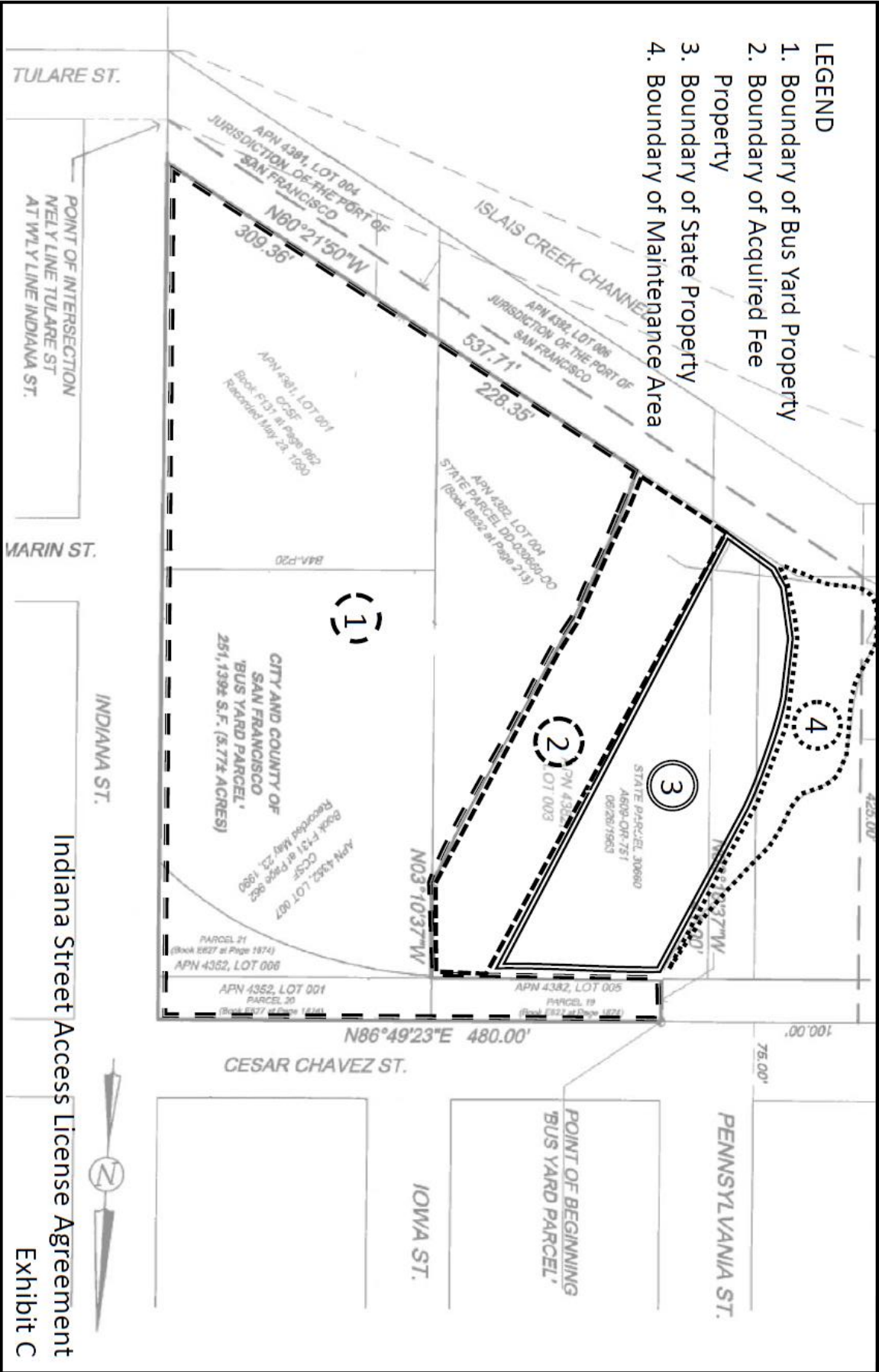


**Exhibit C**

**Depiction of Acquired Fee Property and the Bus Yard  
Property (together, the City Property) and State Property**

**LEGEND**

- 1. Boundary of Bus Yard Property
- 2. Boundary of Acquired Fee Property
- 3. Boundary of State Property
- 4. Boundary of Maintenance Area



Indiana Street Access License Agreement  
Exhibit C

Enclosure 7  
Cesar Chavez Access Easement Agreement

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

Recording requested by and when recorded mail to:

City and County of San Francisco  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section

with a copy to:

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

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

CESAR CHAVEZ ACCESS EASEMENT AGREEMENT  
(Portion of APN Block 4382, Lots 003 and 005)

This Cesar Chavez Access Easement Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Municipal Transportation Agency, and the State of California, acting by and through its Director of Transportation ("**Caltrans**"), is executed as of \_\_\_\_\_, 2017 (the "**Effective Date**").

RECITALS

A. City owns that certain real property in San Francisco, California, which is commonly known as a portion of APN Block 4382, Lot 005, which abuts a portion of Cesar Chavez Street, and is further described on the attached Exhibit A-1 and depicted on the attached Exhibit B (the "**City Lot 5**").

B. City owns that certain real property in San Francisco, California, which is commonly known as a portion of APN Block 4382, Lot 003, which abuts a portion of City Lot 5, and is further described on the attached Exhibit A-2 and depicted on the attached Exhibit B (the "**Former Caltrans Property**"). City acquired the Former Caltrans Property from Caltrans pursuant to that certain Director's Deed (DD-030660-01-02) ("**Director's Deed**") recorded in the Official Records of San Francisco County concurrently with this Agreement.

C. State owns that certain real property depicted on the attached Exhibit B (the "**State Property**"), which partially abuts a portion of the southern boundary of the City Lot 5 and the western boundary of the Former Caltrans Property, and which State leases to City pursuant to an Airspace Lease between City and State, dated as of \_\_\_\_\_, 2017, for an initial term of fifty (50) years, as such initial term may be extended by City's two 15-year options to extend such term (the "**Lease**").

D. City owns that certain real property located between the eastern boundary of the Former Caltrans Property and Indiana Street, as further depicted on the attached Exhibit B (the "**City Bus Yard**"), and City and State have entered into an access agreement dated as of the Effective Date (the "**Indiana Street Access License**") to provide for State's ingress and egress between the State Property and Indiana Street by crossing the City Bus Yard and the Former Caltrans Property until City completes the Curb Cut Work (as defined in Section 3(a) below), unless City's obligation as to the Curb Cut Work is waived by State in writing, and the Lease expires or is terminated.

E. City and State wish to enter into this Agreement to (i) provide State with an easement for ingress and egress between the State Property and Cesar Chavez Street over the surface of the twenty-four foot (24') wide area on City Lot 5 and the Former Caltrans Property described on the attached Exhibit C (the "**Easement Area**") and depicted on the attached Exhibit B on the terms specified in this Agreement, and (ii) terminate the easement granted to State over portions of City Lot 5 by Western Pacific Railroad Company and recorded in the Official Records of San Francisco County at Book A520, Page 480 on December 24, 1962 (the "**1962 Easement**") and the easement reserved by State on "Parcel 1" of the Former Caltrans Property under the Directors Deed, as further described in Exhibit A to the Directors Deed.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and State hereby agree as follows:

1. Grant of Easement; Termination of 1962 Easement and Reserved Director's Deed Easement. Pursuant to the terms and conditions specified in this Agreement, City grants to State an easement for ingress and egress over the surface of the Easement Area for the exercise of its rights and obligations hereunder. On the full execution of this Agreement, City shall record it in the Official Records of San Francisco, and on such recordation, the 1962 Easement and the non-exclusive easement reserved in the Director's Deed shall automatically terminate. State shall concurrently execute and record a Quitclaim Deed terminating any and all interest in the 1962 Easement and the non-exclusive easement reserved on "Parcel 1" of the Former Caltrans Property in the Director's Deed.

2. Use of the Easement Area.

(a) Subject to City's rights under Section 3(c) below, State may use the Easement Area only for (i) commercial and regular vehicular and pedestrian ingress to the State Property from Cesar Chavez Street, and egress from the State Property to Cesar Chavez Street, by State and any of its employees, agents, representatives, contractors, subcontractors, tenants, and licensees (each, an "**Agent**") or invitees (but not the general public) and (ii) the performance of State's obligations under this Agreement (collectively, the "**Permitted Uses**"), all in compliance with all applicable laws. Notwithstanding anything to the contrary in the foregoing sentence, during the period the Indiana Street Access License is in effect, State and its Agents and invitees shall not use the Easement Area pursuant to this Agreement and shall only access the State Property from Indiana Street on the terms and conditions set forth in the Indiana Street Access License.

(b) In entering the Easement Area pursuant to this Agreement, the State shall use, and shall cause its Agents and invitees to use, reasonable efforts to minimize any interference in the use of the Easement Area by City or its Agents. The State shall conduct, and shall cause its Agents and invitees to conduct, entry on the Easement Area in a safe and reasonable manner that avoids damage to the Easement Area and any improvements, fixtures, equipment or personal

property located on, under or about the Easement Area (collectively, the "**Improvements**"), and shall not operate or place vehicles or equipment in the Easement Area that exceed the loading standards established by AASHTO-H20 or its equivalent. State acknowledges that the Permitted Uses do not include the installation of utilities or the parking or storage of vehicles, equipment or other property within the Easement Area, except temporarily as reasonably necessary for the performance of State's obligations under Section 3(b).

(c) During the term of the Indiana Street License, City shall have the right to use the Easement Area for any purpose and to install, maintain, modify, and remove any improvements; provided, however, as of the date the State commences use of the Easement Area pursuant to this Agreement, and during State's use of the same pursuant to this Agreement, City (i) shall remove any improvements installed by City on or over the Easement Area to the extent they interfere with the Permitted Uses, and (ii) shall not do anything in, on, or about the Easement Area that would unreasonably interfere with State's Permitted Uses of the Easement Area, subject to City's rights under Section 3(c) below.

(d) City shall have the right to install one or more gates on the Easement Area, provided that as of the date the State commences use of the Easement Area pursuant to this Agreement, and during State's use of the same pursuant to this Agreement, City shall provide State with the means to open such gates at will. In opening any such gates, State shall close, and cause its Agents and invitees to close, the gates after passing through them.

### 3. Maintenance, Repair, and Relocation.

(a) Prior to the termination of the Indiana Street Access License and the commencement of the State's Permitted Uses of the Easement Area, City shall install, at its sole cost, a curb cut that has a minimum width of twenty-four (24) feet (or the applicable commercial driveway standard in place at the time the cut is made) and is suitable for regular and commercial vehicular ingress and egress from Cesar Chavez Street onto the Easement Area at the boundary of the Easement Area and Cesar Chavez Street (the "**Curb Cut Work**"). Completion of the Curb Cut Work shall be a condition of terminating the Indiana Street Access License unless State waives City's obligation to perform the Curb Cut Work in writing. Immediately prior to the date the State commences use of the Easement Area pursuant to this Agreement, City shall cause the Easement Area to be in a paved and level condition.

(b) Except for City's obligations under Section 3(a) above and Section 3(d) below, City shall have no obligation to maintain the Easement Area; provided, however, that City shall not take any action that makes the surface of the Easement Area unsuitable for pedestrian and regular and commercial vehicular access purposes, subject to City's rights under Section 3(d) below. If City takes any such action, City shall promptly repair the Easement Area to restore it to a condition suitable for pedestrian and regular and commercial vehicular access purposes, and shall provide State with reasonable alternative access for the same purposes as provided for in this Agreement until such time as the Easement Area is restored.

(c) If the Easement Area or any of the Improvements is damaged by the use of the Easement Area by State or its Agents or invitees, State shall promptly notify City of such damage. State shall repair and restore such damaged portion of the Easement Area or Improvements at its sole cost to the condition they were in immediately prior to such damage, subject to City's prior written consent to State's plans and specifications for such repairs and restoration. If State fails to timely perform such repair and restoration obligation within a reasonable time, City may, at its sole discretion, remedy such failure at the State's expense at any time thereafter with at least thirty (30) days' prior written notice of City's intention to cure such failure (unless City determines such failure will cause immediate danger to health or property, in which case no such notice shall be required).



Notwithstanding anything to the contrary in the foregoing paragraph, if City's subsurface sewage transport storage structures and sewer line in the Easement Area (the "**Sewer Facilities**") are damaged by use of the Easement Area by State or its Agents or invitees, City may elect, in its sole discretion, to repair and restore such damaged Sewer Facilities at State's cost. City's election to cure any of the State's failure to perform its repair obligations or to repair and restore any damaged Sewer Facilities under this Section shall not be construed as a waiver of any of City's legal rights or remedies, nor imply any duty of City to do any act that the State is obligated to perform hereunder. State shall pay to City, promptly upon demand, all actual costs incurred by City in remedying or attempting to remedy such default or in repairing and restoring any damaged Sewer Facilities pursuant to this Section.

(d) City shall have the right to restrict the State's vehicular and pedestrian access on the Easement Area to the extent reasonably necessary to accommodate City's inspection, repair, maintenance and replacement of the Sewer Facilities and any pavement in the Easement Area (the "**City Work**") by delivering no less than fifteen (15) days' prior written notice of such restriction to State; provided that no such prior written notice shall be required in the event of an emergency. Notwithstanding anything to the contrary in the foregoing sentence, City shall reasonably accommodate any State vehicular and pedestrian access on the Easement Area required for freeway maintenance and repair activities during the period of any such City Work and shall provide alternative ingress and egress to the State Property during such period(s). If the Easement Area is damaged by any City Work, City shall restore the Easement Area to the condition it was in immediately prior to the commencement of such City Work.

4. Hazardous Materials. State shall not use, store, locate, handle or cause or permit the dumping or other disposal or release of any Hazardous Material (defined as follows) on or about the Easement Area. If there is a leakage or spill of Hazardous Materials on the Easement Area as a result of the activities of State or its Agents (a "**State Release**"), State shall bear the cost and expense to remediate such leakage or spill in compliance with applicable laws; provided, however, that State shall have no obligation under this Agreement to remediate any pre-existing Hazardous Materials discovered on the Easement Area through the investigation or remediation of a State Release except to the extent such pre-existing Hazardous Materials were caused by the activities of State or its Agents.

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area. Notwithstanding anything to the contrary in this Section, motor vehicles and equipment driven by State or its Agents across the Easement Area pursuant to this Agreement may contain gasoline or petroleum products to the extent they are for the exclusive use of such vehicle or equipment.

If State defaults in its obligations under this Section, then State shall indemnify, defend

and hold harmless City against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent such Claims arise from the negligence or misconduct by City or its Agents. "**Claims**" shall mean all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind. State's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement or the easement granted hereunder.

5. Insurance.

(a) City acknowledges that State is self-insured and shall not be required to carry any insurance policies with respect to this Agreement. If fee ownership of the State Property is vested in any party other than the State of California (each, a "**Successor Owner**"), City shall have the right to require such Successor Owner to procure, carry, and cause its Agents (each, a "**Successor Third Party**") to procure and carry, insurance coverage, at its sole expense and in form and amounts and from an insurer reasonably required by City, at all times of entry on the Easement Area by such Successor Owner or Successor Third Party, or their respective Agents or invitees, pursuant to this Agreement. City shall also have the right to require that upon City's request a Successor Owner or Successor Third Party shall deliver to City certificates and endorsements of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If such party fails to procure such insurance, or to deliver such policies, endorsements, or certificates, City shall have the right to procure, at its option, such insurance on such defaulting party's behalf, and to require that such party pay the City for the cost thereof within five (5) days of City's delivery of bills therefor.

(b) If any Agent of State (each, a "**State Third Party**") enters the Easement Area pursuant to this Agreement, such State Third Party shall procure at its expense and keep in effect at all times of such entry, the insurance policy or policies that State requires of such State Third Party, and to name City as an additional insured on such policy(ies), during such State Third Party's entry and use of the Easement Area. Such State Third Party shall deliver a certificate of insurance in form satisfactory to City evidencing such coverage.

(c) Compliance by a State Third Party, Successor Owner, or Successor Third Party with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each State Third Party, Successor Owner, and Successor Third Party shall be responsible, at its expense, for separately insuring its personal property.

(d) Notwithstanding anything to the contrary contained herein, by entry on the Easement Area by any State Third Party, Successor Owner, or Successor Third Party, such party shall be deemed to have waived any right of recovery against City for any loss or damage such party sustains with respect to the Easement Area, whether or not such loss is caused by the fault or negligence of such party, to the extent such loss or damage is covered by any insurance policy that the damaged party is required to hold under this Agreement or is otherwise actually recovered from any valid and collectible insurance policy covering such damaged party. If fee ownership of the State Property is vested in any party other than the State of California City shall have the right to require each Successor Owner, or Successor Third Party to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to its entry on the Easement Area; provided, however, that failure to do so shall not affect the above waiver.

(e) City shall have the right to periodically review the limits and types of insurance to be carried by any Successor Owner or Successor Third Party pursuant to this Section. If, at the time of such review, the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or with coverage materially greater than the amount or

coverage then required under this Agreement for risks comparable to those associated with the entry on the Easement Area pursuant to this Agreement, then City in its sole discretion shall have the right to increase the amounts or coverage such Successor Owner or Successor Third Party is required to carry under this Agreement to conform to such general commercial practice.

(f) Nothing herein is intended nor shall be construed to impose any obligation on the State of California as to a Successor Owner's or Successor Third Party's compliance with requirements imposed by City.

6. Indemnity. State shall indemnify, defend, and hold harmless City and City's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than State against City or any of City's Agents and arising out of or relating to the use of the Easement Area by State or any of State's Agents, except to the extent caused by the intentional acts or negligence of City or any of City's Agents; provided, however, that State shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the easement granted hereunder.

City shall indemnify, defend, and hold harmless State and State's Agents and each of them, from and against any and all Claims arising from claims raised by any party other than City against State or any of State's Agents arising out of or relating to the use of the Easement Area by City or any of City's Agents, except to the extent caused by the intentional acts or negligence of State or any of State's Agents; provided, however, that City shall not be liable under any circumstances for any consequential, incidental or punitive damages (all as defined under law). The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of this Agreement or the easement granted hereunder.

7. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Senior Manager, Real Estate Section

with a copy to: City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

If to State: Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys  
State of California Director of Transportation  
P. O. Box 23440  
Oakland, CA 94623-0440

with copy to:

State of California Department of Transportation  
Legal Division  
111 Grand Ave, Suite 11-100  
Oakland CA, 94612

8. Waiver of Claims. State covenants and agrees that City shall not be responsible for or liable to State for, and hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims incurred by State for any injury, accident or death of any person or loss or damage to any property in or about the Easement Area, except to the extent such Claims are within the indemnification obligations in Section 6 above, or are caused by City's breach of its obligations under this Agreement or the negligent, unlawful, or wrongful acts or omissions of City or its Agents. City covenants and agrees that State shall not be responsible for or liable to City for, and hereby waives all rights against State and its Agents and releases State and its Agents from, any and all Claims incurred by City for any injury, accident or death of any person or loss or damage to any property in or about the Easement Area, except to the extent such Claims are within the indemnification obligations in Section 6 above, or are caused by State's breach of its obligations under this Agreement or negligent, unlawful, or wrongful acts or omissions of State or its Agents.

Neither party shall be liable under any circumstances to the other party for any consequential, incidental or punitive damages (all as defined under law), arising from such party's breach of its obligations under this Agreement or the acts or negligence of such party or its Agents or invitees.

9. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the parties' respective successors and assigns with respect to City Lot 5, the Former Caltrans Property, and the State Property. This Agreement is for the exclusive benefit of State and its successors and assigns to the State Property and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

10. Condition of the Property. Subject to City's performance of its obligations under Section 3(a) above, STATE ACCEPTS THE EASEMENT AREA IN ITS "AS IS" CONDITION FOR STATE'S USES PURSUANT TO THIS AGREEMENT, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE EASEMENT AREA. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Easement Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is State's sole obligation to conduct an independent investigation of the Easement Area and all matters relating to its use hereunder, including, without limitation, the suitability of the Easement Area for such uses. State, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights to the Easement Area if necessary for State's use of the Easement Area in the manner contemplated hereby.

11. Possessory Interest Taxes. State recognizes and understands that this Agreement may create a possessory interest subject to property taxation for any State Third Party, Successor Owner, or Successor Third Party, and that such party may be subject to the payment of property taxes levied on such interest under applicable law. State shall include language in any future lease or similar use agreement with a State Third Party that requires such State Third Party to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed

on its interest in or use of the Easement Area under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the Easement Area that may be imposed on such State Third Party by applicable law. Each Successor Owner or Successor Third Party shall pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on its interest in or use of the Easement Area under this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on such interest or usage of the Easement Area that may be imposed on such party by applicable law. Such party shall pay all of such charges when they become due and payable and before delinquency. Nothing herein is intended or shall be construed to constitute consent by the State of California to imposition of any tax or assessment of any kind on it.

12. Prohibited Activities.

(a) State shall not use or apply, or allow its Agents to use or apply, any pesticides on the Easement Area without the prior written consent of City, which consent shall be conditioned upon the incorporation of the proposed pesticide use into the City integrated pest management policy applicable to the Easement Area pursuant to Chapter 3 of the San Francisco Environment Code, as may be modified or replaced.

(b) State acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Easement Area. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004.

(c) State acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Easement Area.

13. General Provisions.

(a) This Agreement may be amended or modified only by a writing signed by City and State and recorded in the Official Records of the City and County of San Francisco.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.

(c) This Agreement contains the entire agreement between the parties with respect to the matters set forth herein and all prior negotiations, discussions, understandings and agreements are merged herein.

(d) City's obligations under this Agreement shall be governed by City's Charter and California law.

(e) This Agreement shall be governed by California law.

(f) This Agreement does not create a partnership or joint venture between City and State as to any activity conducted by State on, in or relating to the Easement Area.

(g) City's obligations hereunder are contingent upon approval of this instrument by the San Francisco Municipal Transit Agency's Board of Directors and the City's Board of Supervisors and Mayor, each in their respective sole discretion, and the easement granted hereunder and this Agreement shall be null and void if such approval is not obtained.

(h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder.

(i) All representations, warranties, waivers, releases, and indemnities given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the easement granted hereunder.

(j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement.

(k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.

(l) State represents and warrants to City that the execution and delivery of this Agreement by State and the person signing on behalf of State below has been duly authorized to legally bind the State to the obligations herein, and City represents and warrants to State that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized to legally bind City to the obligations herein.

(m) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.

(n) This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

(o) State understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Easement Area and not as a regulatory agency with police powers.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**STATE:**

STATE OF CALIFORNIA  
Department of Transportation

By: \_\_\_\_\_  
Mark L. Weaver  
Deputy District Director  
Right of Way and Land Surveys

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Suzann Goodhue  
Senior Right of Way Agent  
Acquisition Services

APPROVED AS TO FORM AND PROCEDURE:

By: \_\_\_\_\_  
Lucille Baca  
Attorney  
State of California  
Department of Transportation

[CITY SIGNATURE ON FOLLOWING PAGE]

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Authority

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:  
Secretary, SFMTA Board of Director

By: \_\_\_\_\_  
John Updike  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney



**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of San Francisco            )

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

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

WITNESS my hand and official seal.

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

**Exhibit A-1**

**Legal Description of City Lot 5**

**For APN/Parcel ID(s): Lot 005, Block 4382**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF ARMY STREET (AS WIDENED) WITH THE WESTERLY LINE OF IOWA STREET; AND RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF ARMY STREET 390 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 41 FEET; THENCE AT A RIGHT ANGLE EASTERLY 190 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 180 FEET TO THE EASTERLY LINE OF IOWA STREET; THENCE NORTHERLY ALONG THE LAST MENTIONED LINE 41 FEET TO THE SOUTHERLY LINE OF ARMY STREET; THENCE WESTERLY ALONG THE LAST MENTIONED LINE 80 FEET TO THE POINT OF BEGINNING.

BEING PART OF POTRERO NUEVO BLOCKS NOS. 327 AND 294, AND A PORTION OF PENNSYLVANIA AVENUE (NOW CLOSED), AND A PORTION OF IOWA STREET (NOW CLOSED).

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE LINES OF PARCEL 3 AS DESCRIBED IN THE DEED TO E.W. NEWELL, ET AL., RECORDED OCTOBER 22, 1926, BOOK 1333, PAGE 494, OFFICIAL RECORDS.

## Exhibit A-2

### **Legal Description of Former Caltrans Property**

#### PARCEL 1 (030660-01-02):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly corner of that parcel of land as described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet to the POINT OF BEGINNING; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660-DD); thence along last said line, the following two courses: 1) from a radial line that bears North 71°47'13" West, northerly along a curve to the right with a radius of 1150.00 feet, through an angle of 8°32'59", an arc length of 171.62 feet to a point of reverse curvature, 2) from a tangent curve to the left with a radius of 2565.00 feet, through an angle of 4°48'41", an arc length of 215.41 feet to the easterly line of said State Parcel 30660; thence along last said line, North 03°10'37" West, 89.26 feet to the northerly line of said State Parcel 30660, thence along last said line, South 86°49'23" West, 60.00 feet; thence South 24°57'05" West, 441.54 feet to the POINT OF BEGINNING.

CONTAINING an area of 0.981 acres, more or less.

RESERVING unto the State of California, its successors or assigns, a non-exclusive EASEMENT for ingress and egress and incidents thereto by the most reasonable and practicable means, upon, over, and across all of that parcel of land as described herein above.

#### PARCEL 2 (030660-01-03):

A portion of that parcel of land as described in the Grant Deed (State Parcel 30660) to the State of California recorded June 26, 1963 in Book A609 at Page 751, Official Records of the County of San Francisco, more particularly described as follows:

COMMENCING at a point on the general southerly line of said State Parcel 30660, said point being the southwesterly corner of that certain parcel of land described in the Director's Deed (State Parcel 30660-DD) recorded December 5, 1973 in Book B832 at Page 213, Official Records of the County of San Francisco; thence along the said general southerly line of said State Parcel 30660, North 60°21'50" West, 112.36 feet; thence North 24°57'05" East, 38.55 feet; thence South 87°28'50" East, 29.67 feet; thence South 59°58'49" East, 77.47 feet to the general westerly line of said Director's Deed (State Parcel 30660 DD) thence along last said line, from a radial line that bears North 71°47'13" West, southerly along a curve to the left with a radius of 150.00 feet, through an angle of 2°37'37", an arc length of 52.73 feet to the POINT OF COMMENCEMENT.

CONTAINING an area of 0.125 acres, more or less.

PARCEL 3 (030667-01-01):

The State of California, acting by and through its Director of Transportation, does hereby remise, release, and quitclaim unto the hereinabove named grantee, all right, title and interest in and to the portion of that parcel of land as described in the instrument (State Parcel 30667) to the State of California, recorded December 24, 1962 in Book A520 at Page 480, Official Records of the County of San Francisco, more particularly described as follows:

BEGINNING at the southerly terminus of that course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence northeasterly along the easterly line of said parcel, from a radial line that bears S. 69°50'53" E., along the curve to the left with a radius of 2529.00 feet, through an angle of 0°02'18", an arc length of 1.69 feet to the easterly prolongation of that course described as "South 86°49'23" West, 410 feet" in said parcel; thence along said easterly prolongation, S. 86°49'23" W., 0.67 feet to the northerly terminus of said course described as "North 3°10'37" West, 1.55 feet" in said parcel, thence along last said course, S. 03°10'37" E., 1.55 feet to the POINT OF BEGINNING.

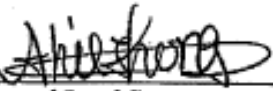
CONTAINING 1 square feet, more or less.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State freeway.

The bearings and distances used in the above descriptions are on the California Coordinate System of 1927, Zone 3. Multiply the above distances by 1.0000717 to obtain ground level distances.

It is expressly made a condition herein that the conveyed property be used exclusively for a public purpose for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for a public purpose, during this fifteen (15)-year period, the State may exercise its power of termination. In the event the State exercises its power of termination, all title and interest to said property shall revert to the State of California, Department of Transportation, and that the interest held by the grantee(s), named herein, or its/their assigns, shall cease and terminate.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

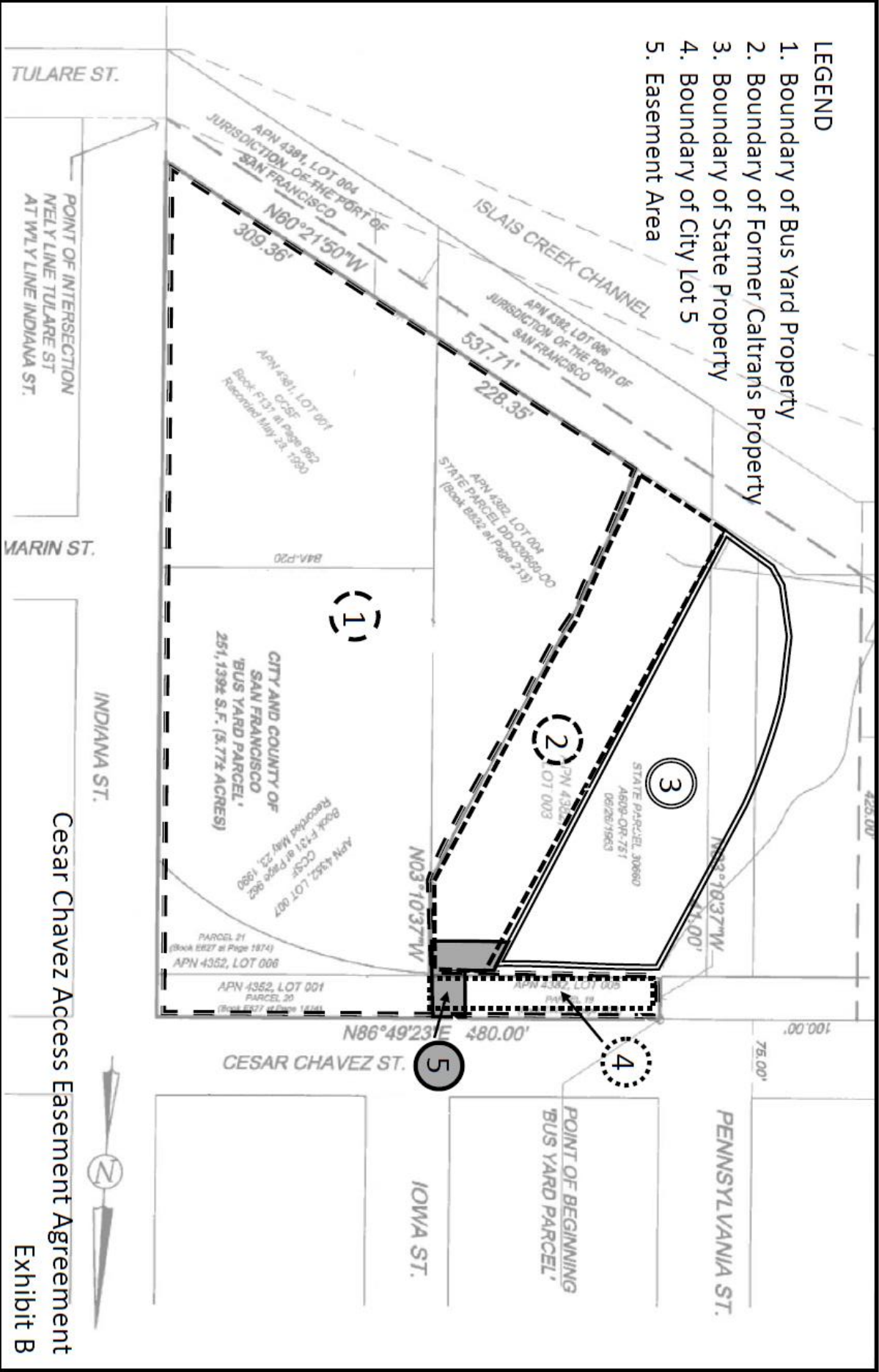
Signature \_\_\_\_\_   
Licensed Land Surveyor  
Date \_\_\_\_\_ 08/15/2014



**Exhibit B**

**Depiction of City Lot 5, Former Caltrans Property,  
State Property, City Bus Yard, and Easement Area**

- LEGEND**
1. Boundary of Bus Yard Property
  2. Boundary of Former Caltrans Property
  3. Boundary of State Property
  4. Boundary of City Lot 5
  5. Easement Area



Cesar Chavez Access Easement Agreement  
Exhibit B

## Exhibit C

### Legal Description of Easement Area

An **EASEMENT** for access purposes as described in the Cesar Chavez Access Easement Agreement by and between the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, and the State of California, acting by and through its Director of Transportation, to which this exhibit is attached, described as follows:

Being a portion of Parcel 19 as described in Grant Deed from Union Pacific Railroad Company (A corporation of the State of Utah) to the City and County of San Francisco (a municipal corporation), recorded June 30, 1988 in Reel E627 at Image 1874 Official Records of the City and County of San Francisco and State Parcel 30660 as described in Grant Deed from Bernice Harris, et al to the State of California, recorded June 26, 1963 in Book A609 at Page 751, Official Records of the City and County of San Francisco, situate in the City and County of San Francisco, State of California, being more particularly described as follows:

#### **PARCEL 63502:**

BEGINNING at the point of intersection of the southerly line of Cesar Chavez Street, 75.00 feet wide, (Formerly Army Street as widened shown on 'Map of widening of Army Street from Third Street to De Haro Street' as per order of the Board of Supervisors under Resolution Number 15938. New series, approved July 31, 1918, A-S-84) with the westerly line of Iowa Street, 80.00 feet wide (as said street line existed prior to the closing of said street), said point also being on the northerly line of said Parcel 19;

thence leaving the line of said Cesar Chavez Street along the westerly line of said Iowa Street, South 03°10'37" East, 41.00 feet to a point on the southerly line of said Parcel 19, also being a point on the northerly line of said State Parcel 30660 from which from the northeasterly corner of said Parcel 30660 bears South 86°49'23" West, 20.00 feet distant;

thence leaving last said lines and across said State Parcel 30660 on the southerly prolongation of said westerly line of Iowa Street, South 03°10'37" East, 24.00 feet;

thence leaving the westerly line of said Iowa Street, South 86°49'23" West, 52.83 feet;

thence North 24°57'05" East, 27.21 feet to point on the southerly line of said Parcel 19, said point also being a point on the northerly line of said Parcel 30660 from which the northeasterly corner of said Parcel 30660 bears South 86°49'23" West, 60.00 feet distant;

thence along said southerly line of said Parcel 19 and said northerly line of said Parcel 30660, North 86°49'23" East, 16.00 feet;

thence leaving the line of last said Parcels and across the lands of said Parcel 19, North 03°10'37" West 41.00 feet to a point on the northerly line of said Parcel 19, also being a point on the southerly line of said Cesar Chavez Street;

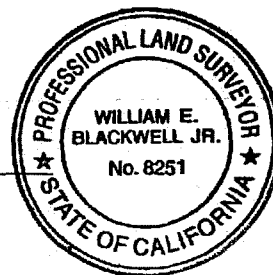
thence along said northerly line of Parcel 19 and said southerly line of said Cesar Chavez Street, North 86°49'23" East 24.00 feet to the **POINT OF BEGINNING**.

Containing an area of 2,098 Square Feet (0.05 Acres), more or less.

The bearings and distances used in above description are based on California Coordinate System of 1927, Zone 3. Multiply 1.0000717 to obtain ground level distances.

These real property descriptions have been prepared by me, or under my direction in conformance with the Land Surveyors Act.

Signature William E. Blackwell Jr.  
W Jr., PLS 8251

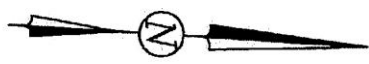
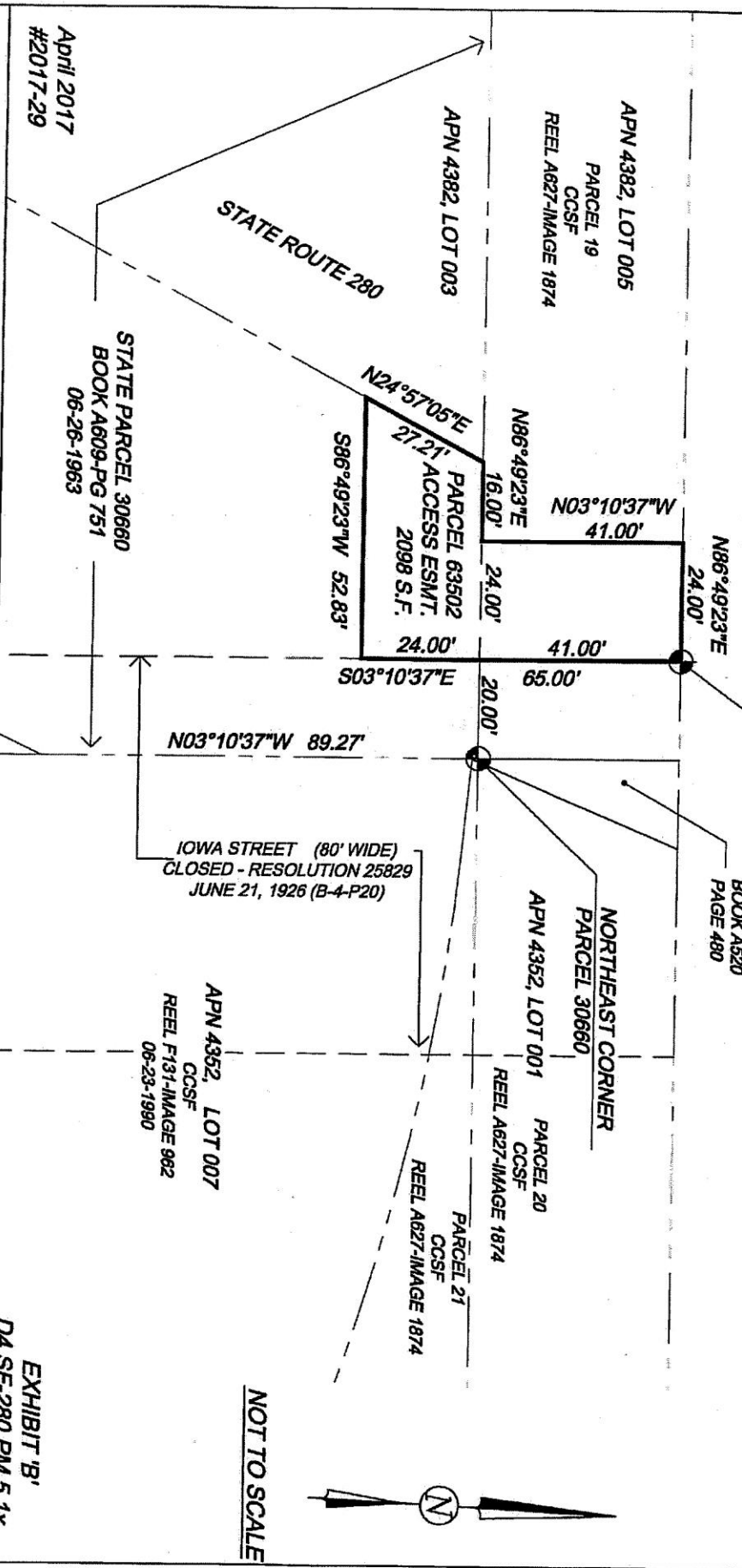




**CESAR CHAVEZ ST.**  
(FORMERLY ARMY STREET) (75' WIDE)

POINT OF BEGINNING  
ACCESS EASEMENT

NOTE:  
1. THE BEARINGS AND DISTANCES SHOWN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1987 ZONE 3. MULTIPLY 1.0000717 TO OBTAIN GROUND LEVEL DISTANCES.  
CCSF = CITY AND COUNTY OF SAN FRANCISCO.



NOT TO SCALE

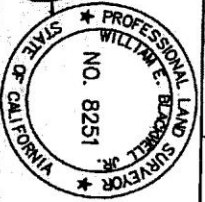
EXHIBIT 'B'  
D4 SF-280 PM 5.1x

EXHIBIT B  
PLAN TO ACCOMPANY LEGAL DESCRIPTION 'A'

PREPARED BY:  
BUREAU OF STREET USE AND MAPPING  
DEPARTMENT OF PUBLIC WORKS  
CITY AND COUNTY OF SAN FRANCISCO  
PHONE: 415.654.6827 FAX: 415.654.6324

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS ACT.

Signature: *William S. Beckwith*  
Date: *July 9, 2017*



Δ	BY	DATE	REVISIONS