

REAL ESTATE LEASE AGREEMENT
by and between
THE CITY OF SANTA CLARA
and
PENINSULA CORRIDOR JOINT POWERS BOARD

PREAMBLE

This real estate lease agreement ("Agreement" or "Lease") is made and entered into this 8th day of July, 2009, ("Agreement Date") by and between the City of Santa Clara, California, a chartered California municipal corporation, with its primary business address at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City" or "Lessor") and Peninsula Corridor Joint Powers Board, a Joint Powers Authority, with its primary business address at 1250 San Carlos Avenue, San Carlos, CA 94070 ("Lessee") for the lease of a parcel of land (the "Property") to be used as the site for a parking lot for Caltrain patrons. City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

These recitals are a substantive portion of this Agreement:

- A. City owns an improved parcel of real estate located at the corner of El Camino Real and Railroad Avenue, commonly known as "Santa Clara Train Station Parking Lot" in the City of Santa Clara ("the Property");
- B. Lessee provides passenger train service in the San Francisco Bay Area region including Santa Clara; and
- C. Lessee desires to lease the property at El Camino Real and Railroad Avenue for the purpose of providing additional parking for Caltrain patrons ("the Project") at that location.

In consideration of the above referenced recitals and the following mutual covenants, commitments, and obligations of the Parties, Lessee and City agree as follows:

AGREEMENT PROVISIONS

1. DESCRIPTION OF LEASED PROPERTY

In order to provide needed parking for Caltrain patrons within the City on the Property and in consideration of the faithful performance by Lessee of the terms and conditions of this Agreement and of the Lease payments to be made by Lessee, City hereby leases to Lessee, and Lessee hires from City, certain improved real property located at El Camino Real and Railroad Avenue in the City of Santa Clara, County of Santa Clara, State of California. The Property consists of 1.49 acres (65,000 square feet) of developed land and is more particularly described in Exhibit A, attached and incorporated herein by reference.

2. **INTENT**

- A. This Agreement supersedes all prior Agreements, if any, between the Parties and their predecessors in interest regarding the Lease of the Property.
- B. The City Manager and/or her designee serves as Contract Administrator for this Agreement on behalf of the City Council.
- C. This Agreement is for the exclusive use of the Property for the parking of Caltrain patrons as more fully defined in Section 4 "Use of Property". Lessee represents that it is qualified to operate the Project on the Property. The fulfillment of this Agreement is in the best interest of the City and the health, safety and welfare of its residents and is in accordance with the public purpose provisions of applicable federal, state and local laws and requirements.

3. **AGREEMENT DATE AND TERM OF THE AGREEMENT**

For purposes of all Leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For purpose of the calculations of rent and fees and their respective due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of this Agreement for the payment of rent shall commence on the Effective Date and shall terminate five (5) years thereafter or June 30, 2014 ("Lease Term") or on the date resulting from an earlier termination as hereinafter set forth.

4. **USE OF PROPERTY**

- A. The Property shall be used by Lessee to provide parking for Caltrain patrons. Lessee shall not use or permit the Property, or any part thereof, to be used in whole or in part for any purpose other than as set forth above except with the prior written consent of the City evidenced by resolution of the City, nor for any use in violation of any present or future laws, ordinances, rules or regulations at any time applicable thereto of any public or governmental entity, including the City of Santa Clara.
- B. Lessee hereby expressly agrees at all times during the term of this Agreement, at its own cost, to maintain and operate the Project in a clean and sanitary condition and in compliance with any present or future laws, ordinances and rules or regulations of any public or governmental authority now or at any time during the term of this Agreement in force relating to sanitation, public health or safety. Lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable to the Project adopted by federal, state, local or other governmental bodies or departments or officers thereof.

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- C. The Lessor reserves the right to holdback fifty (50) to ninety (90) parking spaces on the property for twenty (20) to forty (40) events each year during the evening (after 5:00PM) hours or on weekends for events at Santa Clara University. Notwithstanding the foregoing, all of Lessee's patrons which entered Property prior to 5:00 PM or the specified event start time will be allowed to leave their parked cars on the Property without any additional fee or penalty, including having their cars towed from the Property. Appropriate temporary signage informing parkers of lot regulations pertaining to events at Santa Clara University will be installed, maintained and removed by Lessor. A schedule of such events will be developed annually and provided to the Lessee in February of each year as described in Exhibit D, attached and incorporated by reference. Lessee agrees that such after hour parking arrangements, if arranged by February of each year, will be acceptable. City may enter into an arrangement with a third party to allow parking for the events described above, subject to the approval of Lessee, which approval shall not be unreasonably withheld, conditioned or delayed. As part of such approval, Lessee may require that such third party name it as an additional insured on any insurance policies required by the City to the same extent as City is named and honor the conditions stated in this paragraph 4C regarding parking by Lessee's patrons.
- D. The Lessor retains the right to permanently reserve 25 parking spaces on the Property for use by the Santa Clara Police Department. These spaces shall be marked "Reserved for Police Department" on the pavement and/or parking stops.
- E. The Lessor currently maintains and operates a Pump Station/storage facility on the northeast corner and the center of the Property. Access to these sites by Lessor shall be maintained at all times and not be impeded by Caltrain parking.

5. RENT AND FEES

- A. The Rent for the Property consists of an annual rental fee to be paid by Lessee to the City during the unexpired term of this Agreement in advance and without set off or previous demand, commencing on July 1, 2009 and due on July 1 of each year of the term of this Lease. The Rent schedule is more particularly described in Exhibit B, attached and incorporated by reference.
 - 1. Rent to be paid during the year of approval of the Agreement.
 - a. If the Effective Date is a date other than July 1, the Rent for the first year shall be prorated according to the number of days remaining in that first year of approval of the Agreement.
 - 2. Rent to be paid during the year of termination of the Agreement.
 - a. If this Lease Agreement terminates on a date other than June 30, any prepaid Rent prorated for the remainder of that year shall be immediately refunded to Lessee.

6. **DELINQUENCY CHARGE**

If any installment of Rent or other sum due from Lessee is not received by Lessor within fifteen days (15) of the date it is due, then Lessee shall be subject to a delinquency charge for violation of this Agreement and for damages, of a sum equal to one-tenth of one percent (0.1%) of such required payment amount per day for each day from the date such required payment amount became due and payable until payment of said required payment amount has been received by the City. Unpaid delinquency charges shall accrue retroactively from the first day of the month in which such required payment amounts were first due and payable and shall be compounded monthly. The City shall apply any monies received from Lessee first to any accrued delinquency charges and then to any other rental or other sums then due hereunder. The delinquency charges provided by this Paragraph 6 are in addition to all other remedies the City may have that are provided by this Agreement or otherwise by law to enforce payment of any rental or other sum that has become due and has not been paid.

7. **NO CONSTRUCTION OF IMPROVEMENTS**

No improvements shall be constructed on the Property, unless the City specifically and in writing consents to such construction, which consent shall not be unreasonably withheld. All federal, state, and local laws and regulations, including but not limited to land use and permitting laws, must be adhered to in the event of such construction.

8. **MAINTENANCE, REPAIRS AND ALTERATIONS**

- A. The City shall, at its expense, during the term of this Agreement, perform required maintenance and repair of the public streets adjacent to the Property. Lessee, at its expense, shall perform all other maintenance and repairs, including maintenance and operation of lighting facilities within the parking area, signage, and parking stripes therein in reasonable order, repair and condition throughout the term of this Agreement. The Lessee shall maintain all landscaping in the planting area in the parking lot on the northerly portion of the El Camino Real frontage and the westerly portion of the Benton Street frontage. In addition, Lessee shall maintain, at its own expense, all equipment, utility lines and sewer lines serving the Project to their point of connection with the main lines. Lessee waives the right to make repairs at the expense of the City and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of California relating thereto; and, further agrees that if and when any repairs, alterations, additions or betterments shall be made by it as this paragraph provides, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep Property and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever.
- B. Lessee may make alterations, additions or betterments to the Property only after complete plans and specifications have been submitted to and approved by the City and after securing the necessary building, electrical or plumbing permits from the City of Santa Clara.

9. TERMINATING THE LEASE AGREEMENT

A. City's Right to Terminate.

The City may declare this Agreement terminated in its entirety in the manner provided in Paragraph 9C and may exercise all rights of entry and re-entry with or without process of law, into the Property upon the occurrence of any one or more of the following events:

1. If the Rent or other money payments which the Lessee agrees to pay, or any part thereof, are unpaid after the date specified for such payments as set forth in Paragraph 5A, entitled "Rent and Fees";
2. If the Lessee has failed in the performance of any covenant or condition required to be performed by the Lessee;
3. Upon the occurrence of any act or omission which results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of the Project by the Lessee, or suspends it for any time in excess of ninety (90) days;
4. If the interest or estate of the Lessee under this Agreement is transferred without the prior written consent of City;
5. If the levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which does, or as a direct consequence of such process, will interfere with Lessee's occupancy of the Property and will interfere with its operations under the Agreement, and which attachment, execution, receivership or other process of court is not enjoined, vacated, dismissed or set aside within a period of ninety (90) days;
6. If a petition under any part of the federal bankruptcy laws or an action under present or future insolvency law or statute is filed against Lessee's operations of the Project or Lessee is adjudicated as bankrupt unless Lessee confirms this Agreement in any bankruptcy proceeding;
7. If the Lessee shall voluntarily abandon, desert, vacate or discontinue all or part of its operation of the Project or any other action that results in a failure by the Lessee to provide the public and others with the service contemplated; and/or,
8. If the time period from the Agreement Date of the Agreement to the initial date of operation of the Project exceeds twenty-four (24) calendar months.

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B. Lessee's Right to Terminate.

1. Notwithstanding the foregoing or any provisions to the contrary herein, this Agreement is expressly conditioned upon approval by the appropriate agencies for the appropriate licenses required for the Project.
2. Lessee, at its option, may declare this Agreement terminated in its entirety, in the manner provided in subparagraph 9C herein if City fails in the performance of any material condition of this Agreement.

C. Procedure for Termination or Repossession.

1. No termination declared by either Party shall be effective and, except as provided in this Agreement, the City shall not take possession of the Property unless and until not less than ninety (90) days have elapsed after issuance of a written Notice of Termination by either Party to the other specifying the date upon which such termination shall take effect and the cause for which the Agreement is being terminated or for which the Property is being repossessed to provide for the cure of any such default, and, no such termination shall be effective nor shall the City retake possession of the Property:
 - a. if such default is cured within the ninety (90) day period; or,
 - b. in the event that such default by its nature cannot be cured within such ninety (90) day period if the Party in default promptly commences to correct such default within said ninety (90) days and corrects same as promptly as is reasonably practical.
2. Failure by the City to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by the Lessee shall not be construed to be or act as a waiver of default or of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by the Lessee.
3. The acceptance of payments by the City from the Lessee for any period or periods after a default of conditions required to be performed, kept and observed by the Lessee, unless such payment was to cure a default, shall not be deemed a waiver or stopping of any right on the part of the City to terminate the Agreement for failure by the Lessee to so perform, keep or observe any of said terms, covenants or conditions.

D. Miscellaneous Rights.

1. On the date set forth in a Notice of Termination issued to Lessee by the City, all right, title and interest of the Lessee shall terminate at the discretion of the City except as otherwise provided in paragraph 9C above.

2. It is to be understood that the rights and remedies of the City and Lessee specified in this Agreement are not intended to be, and shall not be, exclusive of one another or exclusive of any common law or statutory right of either of the parties hereto.
3. Upon termination of the Lease, City will immediately refund to Lessee any Rent prepaid for a period after the date of termination.

10. STATE AND LOCAL LICENSES AND LAWS

- A. Lessee shall, at all times, comply with all applicable laws, rules and regulations and orders of the Federal government, State of California, County of Santa Clara and City of Santa Clara.
- B. Lessee, at its sole expense and cost, shall be responsible for procuring the necessary City of Santa Clara licenses and other appropriate licenses from the County or State. Lessee shall observe and comply with the requirements of all applicable federal, state and local statutes, ordinances and regulations regarding the Project. Lessee shall, at its sole expense and cost, procure and keep in force, during the entire term of this Agreement and any extension thereof, all permits and licenses required by such statutes, ordinances or regulations.

11. SIGNS

Lessee shall not install, paint, inscribe or place any new signs or placards without the prior written consent of the City and concurrence by the Planning Director of the City of Santa Clara that the signs are in conformance with all City of Santa Clara ordinances. Lessor agrees that future modifications to all previously installed existing signs or placards will be not subject to review and concurrence by Planning Director of City of Santa Clara provided that said modifications do not alter the location, size, shape or visual characteristics of said sign. Lessee agrees, at its own expense, to remove or paint over to the satisfaction of City promptly upon termination of this Agreement any and all signs or placards installed, painted, inscribed or placed by it in or upon the interior or exterior of the Property and to restore the surface thereof; and should Lessee fail to so remove or paint over such signs or placards, and restore the surface, the City may do so at the expense of Lessee and Lessee shall reimburse the City for the cost thereof upon demand.

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12. UTILITIES

Lessee agrees to pay the cost of all utilities furnished to it in connection with its use and occupation of the Property. The City is not obligated to provide or pay for any utility services, but in the event the City by arrangement with Lessee provides or pays for any utility services, Lessee shall pay the City for such services or reimburse to the City any payment the City has made for such services not later than the first business day of the calendar month following Lessee's receipt from the City of a billing statement for said services or reimbursement. Any and all other utility services required by Lessee shall be provided by Lessee at its expense. Notwithstanding the above, Lessee shall not be responsible for any utilities or storm lines related to City's pump station.

13. TAXES AND ASSESSMENTS

The property interest created by this Agreement may be subject to property taxation and the Lessee hereunder in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Agreement or any possessory right which Lessee may have in or to the Property covered hereby by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Project and shall hold City harmless therefrom.

14. DAMAGE OR DESTRUCTION OF THE PROPERTY

- A. Non-termination. In the event of partial destruction, rent should abate for the portion of the Property that is rendered unusable by the Lessee by reason of the destruction, until it is restored by the City. In the event of complete destruction, the City would have the option to restore or terminate the lease.
- B. General Provisions. City shall not be required to repair any injury or damage to the Project or the Property, except to the extent of City's obligations under this Agreement. City and Lessee hereby waive the provisions of:
 - 1. Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of law from time to time in effect during the term of this Lease Agreement and relating to the effect on leases of partial or total destruction of the Property; and,
 - 2. Sections 1941 and 1942 of the Civil Code, providing for repairs to and of Property. City and Lessee agree that their respective rights upon any damage or destruction of the Property and the Property shall be those specifically set forth in this Paragraph 14.

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- C. City and Lessee waive the provisions of any statutes that relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease Agreement.

15. HOLD HARMLESS/INDEMNIFICATION

It is an express condition of this Lease Agreement that the City of Santa Clara shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Lessee, its agents or employees, or third persons, from any cause or causes whatsoever while on the Property or any part thereof during the term of this Agreement or occasioned by any occupancy or use of the Property or any activity carried on by Lessee in connection with this Lease Agreement.

To the extent permitted by law, Lessee hereby covenants and agrees to protect, defend, indemnify and to save harmless the City from all liabilities, charges, expenses, including counsel fees and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses, however occurring, or damages for which Lessee shall become legally liable arising from Lessee's negligent acts, errors or omissions with respect to or in any way connected with this Agreement.

Lessee shall not be liable for damage caused solely by City or its employees, agents or contractors.

16. INSURANCE REQUIREMENTS

- A. Lessee agrees to maintain in full force and effect, at Lessee's own cost and expense, at all times for the term of this Lease Agreement or any authorized extension thereof, insurance coverage in amounts and with the endorsements herein indicated and set forth in Exhibit C, attached and incorporated herein by reference. Lessee and City shall be listed as co-insured under all insurance policies required under this Lease Agreement. Upon execution of this Lease Agreement, and before commencing any work hereunder, Lessee shall file with the City Clerk of the City of Santa Clara, and subject to the approval of the Attorney for the City for adequacy of protection, proper certificates and endorsements for the insurance requirement as set forth in Exhibit C. City understands that a substantial portion of the coverage required in Exhibit C is within Lessee's self-insured retention and agrees to accept such coverage.

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B. A certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk of the City of Santa Clara prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the City Clerk. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk. If such coverage is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City Clerk a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may without further notice and at its option either:

1. Notwithstanding any other provisions of this Lease Agreement, but subject to Section 9C, cause this Agreement to be forfeited and exercise such other rights as it may have in the event of Lessee's default, or,
2. Procure such insurance coverage at Lessee's expense and Lessee shall promptly reimburse the City for such expense. If Lessee fails or refuses to procure or maintain insurance as required by this Lease Agreement to be procured and maintained by Lessee, City shall have the right, at City's election, to procure and maintain such insurance for the benefit of Lessee and City. The premiums paid by City shall be treated as additional rent due from Lessee to be paid on the first business day of the month following the date on which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s) that shall include Lessee.

17. LIENS

Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Property by Lessee and shall keep the Property and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission.

18. ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily, involuntarily or by operation of law, assign, mortgage or otherwise encumber, all or any part of Lessee's interest in this Agreement or in the Property or sublet the whole or any part of the Property [or enter into any management agreement or other arrangement under which the Project is operated other than by Lessee] (any and all of which transactions are herein referred to as a "Transfer"), except as specifically permitted by this Lease Agreement or consented to by Lessor in writing, which consent shall not be unreasonably withheld.

19. **HAZARDOUS MATERIALS**

- A. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Property by Lessee, its agents, employees, contractors or invitees.
- B. Termination of Lease Agreement. Lessor shall have the right to terminate the Lease Agreement in Lessor's sole and absolute discretion in the event that (i) any anticipated use of the Property by Lessee involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Property, if the contamination resulted from Lessee's action or use of the Property; or, (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Property.
- C. Assignment and Subletting. If (i) any anticipated use of the Property by any proposed assignee or sublessees involves the generation or storage, use, treatment or disposal or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessees has been required by any prior Lessor, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material, then it shall not be unreasonable for Lessor to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.
- D. Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq.; (b) RCRA, 42 U.S.C. Sec. 6901 et seq.; (c) CWA., 33 U.S.C. Sec. 1251 et seq.; (d) CAA, 42 U.S.C. 78401 et seq.; (e) TSCA, 15 U.S.C. Sec. 2601 et seq.; (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407; (g) OSHA, 29 U.S.C. 651 et seq.; (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq.; (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section

25100 et seq.; (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq.; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq.; (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq.; (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq.; (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq.; (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq.; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541; (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq.; and, (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.

- E. Lessor's Right to Perform Tests. At any time prior to the expiration of the Lease Term, Lessor shall have the right to enter upon the Property in order to conduct tests of water and soil and to deliver to Lessee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Lessee's use of the Property, provided that Lessor's activities on the Property shall not unreasonably interfere with Lessee's use of the Property. Lessee shall be solely responsible for and shall indemnify, protect, defend and hold Lessor harmless from and against all claims, costs and liabilities including actual attorney's fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the Property to its condition existing prior to the appearance of the Hazardous Materials for which Lessee is responsible. The testing shall be at Lessee's expense only if Lessor has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under or about the Property or the Project, which has been caused by or resulted from the activities of Lessee, its agents, employees, contractors or invitees.
- F. Environmental Audits. Upon request by Lessor during the Lease Term, prior to the exercise of any renewal term and/or prior to vacating the Property, Lessee shall undertake and submit to Lessor an environmental audit from an environmental company reasonably acceptable to Lessor. The audit shall evidence Lessee's compliance with the terms of this Lease Agreement.

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- G. Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Property, damages arising from any adverse impact or marketing of the Property) and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorney's fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, during the Lease Term, by the presence or discharge in, on, under or about the Property by Lessee, Lessee's agents, employees, licensees or invitees or at Lessee's direction of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

20 INTENTIONALLY DELETED

21. SURRENDER AND HOLDING OVER

- A. Lessee covenants that at the expiration of the term of this Lease Agreement or upon its earlier termination, it will quit and surrender the Property in good state and condition, reasonable wear and tear and damage by the elements excepted. The City shall have the right upon termination to enter into and upon and take possession of the Property. Should Lessee hold over the use of the Property after this Agreement has been terminated in any manner, such holding over shall be deemed merely a tenancy from month to month and at a rental rate of \$500.00 per month for a maximum period of one year, payable monthly in advance, but otherwise on the same terms and conditions as herein set forth.

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- B. It is understood and agreed that nothing contained in this Lease Agreement shall give Lessee any right to occupy the Property at any time after expiration of the term of this Lease Agreement or its earlier termination, and that this Lease Agreement shall not create any right in Lessee for relocation assistance or payment from the City upon expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph. Lessee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260, et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Lease Agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph.

22. WAIVERS

- A. No waiver by either Party at any time of any of the terms, conditions or covenants or agreements of this Lease Agreement or of any forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or of any other term, condition or covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the City to re-enter the Property or to exercise any right, power or privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or be construed a waiver of any such default or relinquishment thereof, or acquiescence therein, and, after waiver by the City of default in one or more instance, no notice by the City shall be required to restore or revive time as being of the essence in this Lease. No option, right, power, remedy or privilege of the City shall be construed as being exhausted by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the City by this Lease Agreement are cumulative and not one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the City shall not impair its rights to any other right, power, option or remedy.
- B. In no event shall this Lease Agreement be construed to limit in any way (i) the City's rights, powers or authority under the police power and other powers of the City to regulate or take any action in the interest of the health, safety and welfare of its citizens or (ii) Lessee's rights and privileges as an individual or corporate resident and/or citizen or governmental entity of the City of Santa Clara, State of California and/or the United States of America as provided under applicable laws, except as expressly waived or limited by this Lease Agreement.

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23. RIGHT TO INSPECT PREMISES

The City or its duly authorized representatives or agents and other persons for it, may enter into or upon the Property at any and all reasonable times during the term of this Lease Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to rights of the City, provided that City's activities on the Property shall not unreasonably interfere with Lessee's use of the Property.

24. DISPOSAL OF TRASH AND GARBAGE

Lessee agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and in accordance with the requirements set forth in the Santa Clara City Code. Lessee agrees not to place any boxes, cartons, barrels, trash, debris or refuse in or about the Property. Lessee shall provide an area or areas within the trash area of the Property for the cleaning of garbage cans and for the placement of trash and storage bins. Lessee shall not wash or clean waste containers except within the designated area. Trash and garbage can storage and the garbage can cleaning area shall be screened from public view.

25. EXTENSIONS OF TIME

The City shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

26. SUCCESSORS

Each and every one of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Lease Agreement and in favor of either Party shall be available in favor of the successors and assigns thereof, irrespectively provided no assignment by or through Lessee in violation of the provisions of this Lease Agreement shall vest any rights in such assignee or successor.

27. TIME OF ESSENCE

Time is hereby expressly declared to be of the essence of this Lease Agreement.

28. NOTICES

All notices to the Parties to this Lease Agreement shall, unless otherwise requested in writing, be sent by mail, facsimile or personally delivered to the addresses listed in this paragraph. The notices shall be deemed served and delivered three (3) days after deposited in the United States mail by first class mail or personal delivery or upon receipt of a facsimile transmission. Any notice permitted or required to be served upon the City may be served upon:

City of Santa Clara
Attention: Director of Public Works
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-3000
or by facsimile at (408) 985-7936

Any notice permitted or required to be served on the Lessee may be served upon:

Peninsula Corridor Joint Powers Board
Attention: Manager of Real Estate and Development
1250 San Carlos Avenue
San Carlos, CA 94070-1306
(650) 508-6269
or by facsimile at (650) 508-6365

29. EQUAL OPPORTUNITY; NONDISCRIMINATION

In furtherance of the City's policy to ensure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all City-related activities, it is expressly understood and agreed with respect to Lessee's activities in conducting the Project:

- A. That Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, physical handicap or veteran's status. Lessee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. That Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, physical handicap, or veteran's status.

30. DISPUTE RESOLUTION

- A. No arbitration or civil action with respect to any dispute, claim or controversy arising out of or relating to this Lease Agreement, except for the nonpayment of rent, may be commenced until the matter has been submitted to mediation. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings, said mediation to take place in Santa Clara, California.
- B. Either Party may commence mediation by providing to the other Party a written notice of mediation, setting forth the subject of the dispute and the relief requested. Each Party agrees to participate in up to eight (8) hours of mediation before resorting to litigation in the Santa Clara Superior Court in San Jose, California.

- C. The Parties may agree on one mediator. In the event the Parties are unable to agree upon a mediator within ten (10) days following the date of the written Notice of Mediation, the Parties shall submit the matter to the American Arbitration Association, which shall appoint a mediator. The Parties shall share equally in the costs of mediation. Either Party may seek injunctive relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain such injunctive relief, neither Party may commence arbitration or a civil action with respect to the matters submitted to mediation until after the completion of the first mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.
- D. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease Agreement. Mediation may continue after the commencement of arbitration or a civil action, if the Parties so agree.
- E. The costs of the mediator shall be borne by the Parties equally. However, all costs, fees, expenses and any attorney's fees related to such mediation activities are to be paid by the Party having incurred such fees, costs and expenses.
- F. The provisions of this paragraph may be enforced by any court of competent jurisdiction.

31. QUIET POSSESSION

Lessee, upon performing its obligations hereunder and while not in default, shall have the quiet and undisturbed possession of the Property throughout the term of this Lease Agreement.

32. CONSENT AND APPROVAL

Whenever the City's consent or approval is required, under the terms and conditions of the Agreement, said consent or approval shall not be unreasonably withheld.

33. EASEMENTS

City reserves to itself, the right, from time to time, to grant such easements, rights and dedications that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not materially interfere with the use of the Property by Lessee. Lessee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this Lease Agreement.

34. SEVERABILITY

The invalidity of any provision of this Lease Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

35. ENTIRE AGREEMENT, MODIFICATION

This Lease Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

36. CUMULATIVE REMEDIES

No remedy or election under this Lease Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

37. BINDING EFFECT; CHOICE OF LAW

Subject to any provision hereof restricting assignment or subletting by Lessee and subject to the provisions of Article 9, this Lease Agreement shall bind the parties, their personal representatives, successors and assigns. The laws of the State of California shall govern this Lease Agreement. The language of all parts of this Lease Agreement shall be construed with its fair meaning and not strictly for or against the City or Lessee.

38. STATUS OF TITLE

Title to the leasehold estate created by this Lease Agreement is subject to all exceptions, easements, rights, rights-of-way, and other matters of record on the date of approval by the City Council.

39. NO PARTNERSHIP OR JOINT VENTURE

Nothing in this Lease Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture or associate in any relationship with Lessee other than that of Landlord and Tenant, nor shall this Lease Agreement be construed to authorize either to act as agent for the other.

40. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY

No official or employee of City shall be personally liable for any default or liability under this Lease Agreement.

41. INDEPENDENT CONTRACTOR

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

42. MEMORANDUM OF LEASE

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

43. ESTOPPEL CERTIFICATE

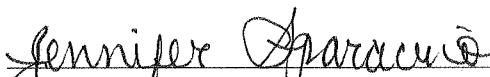
Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing (i) certifying this Lease Agreement is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease Agreement, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

The Parties acknowledge and accept the terms and conditions of this Lease Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Lease Agreement shall become operative on the Agreement Date first set forth and defined above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:


HELENE L. LEICHTER
City Attorney


JENNIFER SPARACINO
City Manager

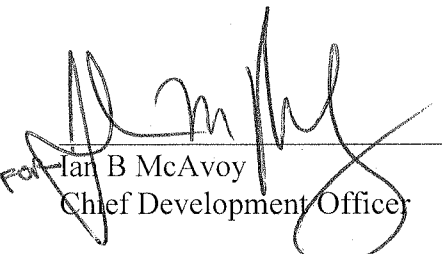
ATTEST:


ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

"CITY"

**PENINSULA CORRIDOR JOINT POWERS BOARD,
a Joint Powers Authority**


for Ian B. McAvoy
Chief Development Officer

1250 San Carlos Avenue
San Carlos, CA 94070-1306
Telephone Number: (650) 508-6269
Fax Number: (650) 508-6365

Approved as to Form:

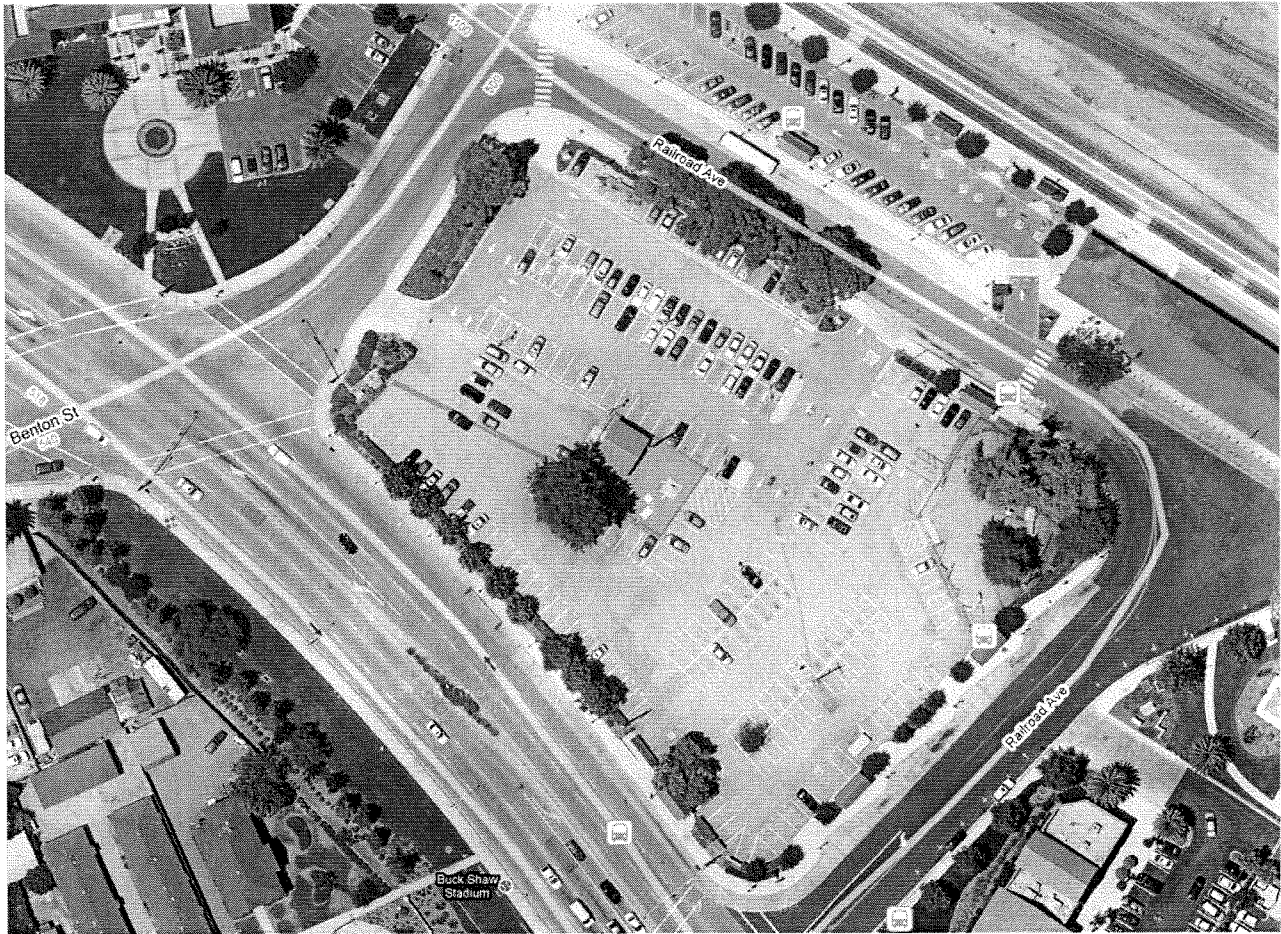

Attorney

"LESSEE"

REAL ESTATE LEASE AGREEMENT
by and between
THE CITY OF SANTA CLARA
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT A

SITE DESCRIPTION



REAL ESTATE LEASE AGREEMENT
by and between
THE CITY OF SANTA CLARA
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT B

RENT SCHEDULE

Rent to be paid each month shall be as follows:

Years	Annual Amount
1 thru 3	\$3,600.00
4 thru 5	\$4,200.00

REAL ESTATE LEASE AGREEMENT
by and between
THE CITY OF SANTA CLARA
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT C

INSURANCE REQUIREMENTS

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Santa Clara, California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);
\$1,000,000 for personal injury liability;
\$1,000,000 aggregate for products-completed operations; and,
\$1,000,000 general aggregate applying separately to this project.

b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

c. WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY ("WC/EL"). (A Workers Compensation Policy is required only if Lessee has employees or volunteers.)

These policies shall include at least the following coverages and policy limits:

1. Workers Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.

Any deductibles and/or self insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Lessee and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Lessee shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. ENDORSEMENTS.

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Project, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. General Aggregate The general aggregate limits shall apply separately to Lessee's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503 1985 Edition, or insurer's equivalent (CGL);
- c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, BAL, WC/EL).

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4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Lessee to immediately cease all activities with respect to this Agreement if the City determines that Lessee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Lessee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Lessee.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Lessee's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Lessee shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Engineering Department
1500 Warburton Avenue
Santa Clara, CA 95050

REAL ESTATE LEASE AGREEMENT
by and between
THE CITY OF SANTA CLARA
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT D

EVENTS AT SANTA CLARA UNIVERSITY

Date	Time
Saturday, March 21, 2009	7:30 p.m.
Saturday, March 28, 2009	7:30 p.m.
Sunday, April 05, 2009	3:00 p.m.
Saturday, April 11, 2009	1:00 p.m.
Sunday, April 26, 2009	3:00 p.m.
Wednesday, April 29, 2009	7:30 p.m.
Saturday, May 02, 2009	7:30 p.m.
Sunday, May 03, 2009	5:00 p.m.
Sunday, May 24, 2009	4:00 p.m.
Saturday, May 30, 2009	7:30 p.m.
Sunday, June 07, 2009	5:00 p.m.
Sunday, July 05, 2009	5:00 p.m.
Saturday, July 11, 2009	7:30 p.m.
Sunday, July 19, 2009	5:00 p.m.
Thursday, July 23, 2009	7:00 p.m.
Saturday, July 25, 2009	7:30 p.m.
Saturday, August 01, 2009	3:00 p.m.
Sunday, August 02, 2009	12:00 p.m.
Saturday, August 08, 2009	7:30 p.m.
Sunday, August 09, 2009	3:00 p.m.
Saturday, August 22, 2009	7:30 p.m.
Friday, September 18, 2009	8:00 p.m.
Saturday, October 03, 2009	8:00 p.m.
Wednesday, October 07, 2009	7:30 p.m.

**AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
PENINSULA CORRIDOR JOINT POWERS BOARD**

PREAMBLE

This agreement ("Amendment No. 1") is made and entered into on this 24th day of June, 2014, ("Effective Date") by and between Peninsula Corridor Joint Powers Board, Joint Powers Authority, with its principal place of business located at 1250 San Carlos Avenue, San Carlos, CA 94070 ("Lessee"), and the City of Santa Clara, California; a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

- A. The Parties previously entered into an agreement entitled "Real Estate Lease Agreement", dated July 8, 2009 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Lessee provide additional parking for Caltrain patrons at the Santa Clara Train Station, and the Parties now wish to amend the Original Agreement to add term to the agreement and modify the rents.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

- a. That Section 3 of the Agreement, entitled "Agreement Date and Term of the Agreement" is hereby amended to read as follows:

"For purposes of all Leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For the purpose of the calculation of rent and fees and their respected due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of the Agreement for the payment of rent shall commence on the Effective Date and shall terminate eight years thereafter on June 30, 2017 ("Lease Term") or on the date resulting from an earlier termination as herein after set forth.

If Parties mutually agree, the Parties may elect to extend the Agreement for up to an additional two year period (i.e., June 30, 2019), subject to the execution by the

Parties of a written amendment to this Agreement evidencing the extension of the Lease.

Notwithstanding the forgoing, the City may terminate this Lease with a ninety day (90) written notice if the Property is necessary for development purposes.

- b. That Section 44 of the Agreement entitled "Authority" is hereby added to read as follows:

"The City Manager shall have the authority to execute any necessary amendments to this agreement to extend the term as provided under the terms of this Amendment No. 1"

- c. That Exhibit B of the Agreement entitled "Rent Schedule" is hereby amended to read as follows:

"Rent to be paid each month shall be as follows:

<u>Years</u>	<u>Annual Rent Amount</u>
1 thru 3	\$3,600
4 thru 5	\$4,200
6 thru 8	\$4,800
8 thru 10	\$5,400

2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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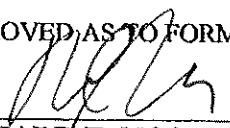
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The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:



RICHARD E. NOSKY, JR.
City Attorney



JULIO J. RUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

ATTEST:

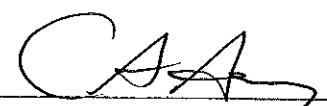


ROD DIRIDON, JR.
City Clerk

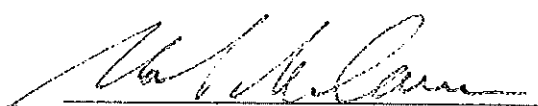
"CITY"

PENINSULA CORRIDOR JOINT POWERS BOARD
a Joint Powers Authority

APPROVED AS TO FORM:



Name: C. H. (Chuck) Harvey
Title: Deputy CEO



Michael N. Conneran
Attorney

1250 San Carlos Avenue
San Carlos, CA 94070-1306
Telephone: (650) 508-6269
FAX: (650) 508-6365

"LESSEE"

**AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
PENINSULA CORRIDOR JOINT POWERS BOARD**

PREAMBLE

This agreement ("Amendment No. 2") is by and between Peninsula Corridor Joint Powers Board, a Joint Powers Authority, with its principal place of business located at 1250 San Carlos Avenue, San Carlos, CA 94070 ("Lessee"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 2."

RECITALS

- A. The Parties previously entered into an agreement entitled "Real Estate Lease Agreement", dated July 8, 2009 (the "Original Agreement"); and
- B. The Original Agreement was previously amended by Amendment No. 1, dated June 24, 2014, and is again amended by this Amendment No. 2. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of having Lessee provide additional parking for Caltrain patrons at the Santa Clara Train Station, and the Parties now wish to amend the Original Agreement as Amended to extend the term of the agreement.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That Section 3 of the Original Agreement as Amended, entitled Agreement Date and Term of the Agreement is hereby amended to read as follows:

"For purposes of all Leasehold rights and interests created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For the purposes of the calculation of rent and fees and their respective due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of the Agreement for the payment of rent shall commence on the Effective Date and shall terminate ten years thereafter on June 30, 2019 ("Lease Term") or on the date resulting from an earlier termination as hereinafter set forth.

Notwithstanding the forgoing, the City may terminate this Lease with a ninety (90) day written notice if the Property is necessary for development purposes.”

2. TERMS

All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 2 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

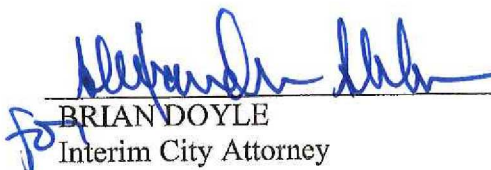
3. COUNTERPART/FACSIMILE SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

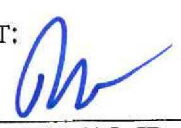
The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Amendment No. 2 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

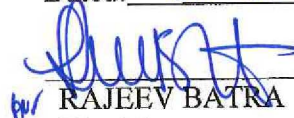
APPROVED AS TO FORM:


BRIAN DOYLE
Interim City Attorney

ATTEST:


ROD DIRIDON, JR.
City Clerk

Dated: 6/14/2017


RAJEEV BATRA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

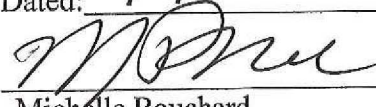
"CITY"

PENINSULA CORRIDOR JOINT POWERS BOARD
a Joint Powers Authority

APPROVED AS TO FORM:


Michael N. Conneran
Attorney

Dated: 5/5/17


Michelle Bouchard
Chief Operating Officer/Rail
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Telephone: (650) 508-6269
Fax: (650) 508-6365

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**AMENDMENT NO. 3
TO THE AGREEMENT
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
PENINSULA CORRIDOR JOINT POWERS BOARD**

PREAMBLE

This agreement ("Amendment No. 3") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Peninsula Corridor Joint Powers Board, a Joint Powers Authority (Lessee). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Real Estate Lease Agreement by and between the City of Santa Clara and Peninsula Corridor Joint Powers Board", dated July 8, 2009 (the "Original Agreement"); and
- B. The Original Agreement was previously amended by Amendment No. 1, dated June 24, 2014, Amendment No. 2 dated June 14, 2017, and is again to be amended by this Amendment No. 3. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of having Lessee provide additional parking for Caltrain patrons at the Santa Clara Train Station, and the Parties now wish to amend the Original Agreement as Amended to extend the term of the agreement.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AMENDMENT TERMS AND CONDITIONS

- a. That Section 3 of the Original Agreement as Amended, entitled "Agreement Date and Term of the Agreement" is hereby amended to read as follows:

For purposes of all Leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For the purposes of the calculations of rent and fees and

their respective due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of the Agreement for the payment of rent shall commence on the Effective Date and shall terminate thirteen years thereafter on June 30, 2022 ("Lease Term") or on the date resulting from an earlier termination as herein after set forth.

Notwithstanding the forgoing, the City may terminate this Lease with a six month written notice if the Property is necessary for development purposes.

- b. That Section 28 of the Original Agreement as Amended, entitled "Notices" is hereby amended to read as follows:

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at rshikada@santaclaraca.gov, and
manager@santaclaraca.gov

And to Lessee addressed as follows:

Peninsula Corridor Joint Powers Board
Attention: Gary Cardona
1250 San Carlos Avenue
San Carlos, CA 94070
and by e-mail at cardonag@samtrans.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

- c. That Exhibit B of the Original Agreement as Amended, entitled "Rent Schedule" is hereby amended to read as follows:

Rent to be paid each month shall be as follows:

<u>Years</u>	<u>Annual Rent Amount</u>
1 through 3	\$3,600
4 through 5	\$4,200
6 through 8	\$4,800
9 through 10	\$5,400
11 through 12	\$6,000
13	\$6,600

d. That Section 16, part B, as follows, is hereby stricken and removed:

B. A certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk of the City of Santa Clara prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the City Clerk. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk. If such coverage is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City Clerk a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may without further notice and at its option either:

1. Notwithstanding any other provisions of this Lease Agreement, but subject to Section 9C, cause this Agreement to be forfeited and exercise such other rights as it may have in the event of Lessee's default, or,
2. Procure such insurance coverage at Lessee's expense and Lessee shall promptly reimburse the City for such expense. If Lessee fails or refuses to procure or maintain insurance as required by this Lease Agreement to be procured and maintained by Lessee, City shall have the right, at City's election, to procure and maintain such insurance for the benefit of Lessee and City. The premiums paid by City shall be treated as additional rent due from Lessee to be paid on the first business day of the month following the date on which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s) that shall include Lessee.

d. That Exhibit C of the Original Agreement as Amended, entitled "Insurance Requirements" is hereby amended to read as follows:

Without limiting the Lessee's indemnification of the City as set forth in this Lease, and prior to entry onto the Property which is the subject of this Lease and for the entire term of this Lease, Lessee shall provide and maintain in full force and effect, at its sole cost and expense, the following

insurance policies with at least the identified coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. A Commercial General Liability Insurance policy, which provides coverage at least as broad as Insurance Services Office ("ISO") "occurrence" form CG 00 01. (ed. 10/93) covering commercial general liability or its equivalent. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 combined single limit per occurrence for bodily injury, personal and property damage;

\$1,000,000 minimum general aggregate which shall apply separately to the Property which is the subject of this Lease; and

2. Exact structure and layering of this coverage shall be left to the discretion of Lessee; however, any excess or umbrella policies used to meet the required limits shall provide coverage at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella or excess liability policy maintained by the Lessee to comply with the insurance requirements of this Lease:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits.
 - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another.
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.
 - d. The policy must include a Waiver of Subrogation in favor of the City, as well as the City, its City Council, Commissions, officers, employees, volunteers and agents.
 - e. The policy shall include broad form contractual liability and indemnity coverage, which shall insure performance by Lessee of the indemnity and defense provisions set forth in this Lease. The limits of said insurance shall not, however, be construed to limit the liability of Lessee under this Lease.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. A Workers' Compensation Insurance Policy, as required by statute, and Employer's Liability, which provides the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Lessee included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Lessee or any subtenant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. The policy must include a Waiver of Subrogation in favor of the City, as well as the City, its City Council, commissions, officers, employees, volunteers and agents.
4. The workers' compensation insurance and the employer's liability coverage shall cover any person or entity employed directly or indirectly by Lessee, anyone whose acts Lessee may be liable for and/or any agent acting on behalf of Lessee.

D. COMMERCIAL ALL RISK FIRE AND EXTENDED PROPERTY INSURANCE

A Commercial all risk fire and extended property policy, which is applicable to all perils and all risk of physical loss, including loss due to flood or water damage and excluding damage due to earthquake, covering the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of the Property (i.e., replacement cost new, using materials of a like quality and kind as existed immediately prior to the damage or destruction and applying all currently applicable building codes and regulations). The insurance policy shall be primary and include endorsements for inflation, debris removal and demolition, building code and ordinance modification protection, and plate glass coverage with respect to the Property. City shall be shown as the "loss payee" on the insurance policy.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, are required to be part of the required commercial general liability policy, and any umbrella or excess policy(ies) which are intended to cover those risks:

1. Additional Insureds. The City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents as well as the Redevelopment Agency of the City of Santa Clara, where appropriate, are hereby added as additional insureds in respect to liability arising out of Lessee's maintenance and/or use of the Property using Insurance Services Office (ISO) Endorsement CG 20 26 11 85, CG 20 11 01 96 or an equivalent endorsement acceptable to the City.
2. Primary and non-contributing. Each insurance policy provided by Lessee in compliance with the requirements included in this Exhibit, shall either contain specific primary and non contributing language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Lessee's insurance.

F. CANCELLATION.

Each insurance policy required under this Lease shall contain language or be endorsed to reflect that no cancellation, non renewal or modification of the coverage provided shall be effective until written notice has been given to the City's insurance compliance representative by Lessee or its insurer at least thirty (30) days prior to the effective date of such non-renewal, modification or cancellation. Lessee shall, within thirty (30) days prior to the expiration of any policy, furnish City's insurance compliance representative with renewals or binders for such policy. Lessee's failure to do so will give the City the right to secure such insurance policy and charge the cost to Lessee, which amount shall be payable by Lessee upon demand.

G. POLICY APPLICATION.

As applicable, the insurance required pursuant to this Lease shall provide that the interests and protections of the additional insureds shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. All insurance proceeds payable from any policy of insurance (other than commercial general liability insurance) required by this Lease shall be paid to the City.

H. CITY'S RIGHT IN THE EVENT LESSEE FAILS TO COMPLY WITH THESE INSURANCE REQUIREMENTS.

The provision and maintenance of the required insurance policies and endorsements described in this Lease are of critical importance to the City as security for the protection of its assets. Therefore, if at any time during the term of this Lease, Lessee fails to provide or maintain in good standing, all of the required insurance policies, provides a policy from an insurance company which fails to maintain the required A.M. Best rating, or if Lessee fails to provide any of the required policy endorsements set forth in this Lease, Lessee shall be deemed to be in breach of this Lease and City shall have the right to immediately pursue all of its available rights and remedies under the law, including but not limited to, the right to either: 1) terminate this Lease for cause; or 2) secure the required insurance policies itself at Lessee's expense.

In the event Lessee fails to comply with the insurance requirements of this Lease, City shall provide notice to Lessee describing the material noncompliance with the insurance requirements set forth in this Lease. Lessee shall then have five (5) business days after the date of such notice to cure the identified non-compliance by providing City with adequate assurance that the insurance requirements have been fully met. If Lessee fails to provide City with such assurance within the specified cure period, City will have the immediate right to pursue any of the above referenced remedies.

I. ADDITIONAL INSURANCE RELATED PROVISIONS

1. Lessee warrants that any sub-Lessees, contractors, or any other party involved with the Lease who is brought onto the Property, or who is otherwise involved in the Lease by Lessee, shall provide the same minimum commercial general liability insurance coverage and the related endorsements which are required of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Lease. Lessee agrees that it shall provide City with written copies of all agreements with, and insurance compliance documents provided by, such sub-Lessees, contractors and others involved in this Lease before such sub-Lessees, contractor or other person is allowed to enter onto the Property.
2. Lessee agrees to be responsible for ensuring that no contract used by any sub-lessee, contractor or party involved in any way with this Lease reserves the right to charge City for the cost of additional insurance coverage required by this Lease. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these insurance requirements. There

shall be no recourse against City for payment of premiums or other amounts with respect thereto.

J. EVIDENCE OF COVERAGE

Prior to commencement of this Lease, Lessee, and each and every subtenant and/or contractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum commercial general liability insurance coverage with the endorsements and deductibles indicated in this Lease and shall provide proof of such coverage as set forth in Section I, below. The amount of any deductibles shall be a business decision by Lessee. However, under no circumstances shall City be required to reimburse Lessee for the amount of any deductible incurred by Lessee in connection with any insured event, even if the event resulting in the claim was caused or contributed to by City or its agents, contractors, or employees.

Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and its insurance compliance representatives. Lessee shall file all insurance certificates and policy endorsements for the required insurance policies with the City's insurance compliance representatives for approval as to adequacy of the insurance protection. Lessee shall be fully responsible for similar compliance by each and every subtenant and contractor of every tier.

K. EVIDENCE OF COMPLIANCE

Prior to the Commencement Date of this Lease, Lessee, or its insurance broker, shall provide to the City's insurance compliance representatives with the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and an ACORD form certificate of insurance (or its equivalent), evidencing all required coverage. Prior to entry on the Property, Lessee shall deliver certificates of insurance evidencing the existence and amount of such insurance, and the required endorsements to City's insurance compliance representative showing City (and any other parties designated above) as an additional Insured on all policies. In the event Lessee fails to procure and maintain such insurance policies or the required endorsements, City may exercise any of its rights and remedies for breach of this Lease as set forth above. Upon receipt of a request from City or its insurance compliance representative for more specific evidence, Lessee shall submit copies of the actual insurance policies or renewals or replacements.

L. NOTICE REQUIREMENTS

All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Lease shall be mailed directly to the City's insurance compliance representative as follows:

EBIX Inc.

City of Santa Clara City Manager's Office

P.O. Box 100085 – S2

Duluth, GA 30096

or 1 Ebix Way

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

M. QUALIFYING INSURERS

In addition to the compliance documentation required under this Lease, Lessee shall provide written evidence that all of the insurance companies providing insurance for Lessee, its sub-lessees or contractor(s), have an A. M. Best rating of at least B+ or shall be an insurance company of equal financial stability. Failure of any insurance carrier to maintain this minimum rating shall provide the City the rights set forth in Section F above.

2. TERMS

All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 3 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement as Amended and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

3. COUNTERPARTS

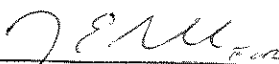
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

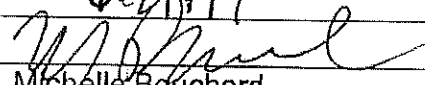
Dated: 8-27-19


BRIAN DOYLE
City Attorney


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

PENINSULA CORRIDOR JOINT POWERS BOARD
a Joint Powers Authority

Dated: 6-27-19
By (Signature): 
Name: Michelle Bouchard
Title: Chief Operating Officer, Rail
Principal Place of Business Address: 1250 San Carlos Avenue
San Carlos, CA 94070
Email Address: bouchardm@samtrans.com
Telephone: (650) 508-6420
Fax: ()
"LESSEE"