

**Meeting Date:** 7/29/2014

**Report Type:** Consent

**Report ID:** 2014-00519

**Title:** Amendment #1 to the Old Sacramento Garage Lease

**Location:** 200 I Street, District 4

**Recommendation:** Pass a Motion authorizing the City Manager to execute a 40-year amendment to the lease with the State of California for property located under Interstate 5 which is the location of the City's Old Sacramento Garage.

**Contact:** Matt Eierman, Parking Services Manager (916) 808-5849; Jerry Way, Director of Public Works, (916)808-7100; Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:**

**Dept ID:**

**Attachments:**

1-Description/Analysis

2-Lease Agreement

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**City Attorney Review**

Approved as to Form

Gerald Hicks

7/17/2014 9:48:39 AM

**Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 6/30/2014 7:08:10 AM

## Description/Analysis

**Issue Detail:** The City's Old Sacramento Garage ("OSG") is located at 2<sup>nd</sup> and I Streets on State-owned property directly under Interstate 5. Since it was built in 1980, OSG has been an important source of parking that supports the Old Sacramento Historic District and surrounding areas.

The City's current lease with the State, which was executed in 1980, is due to expire February 17, 2020. With the development of the Railyards District and construction of the downtown arena, OSG will serve an increasingly vital role as those projects reach completion. In response to the projected increase in parking demand, the City and State have reached agreement for an amendment to the lease which will extend the term an additional 34 years through 2054.

**Policy Considerations:** This recommendation supports the Central City Parking Master Plan goal to make parking safe, secure, attractive and convenient.

**Economic Impacts:** None

### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This lease is exempt from CEQA under Section 15301 "Operation of existing public structures or facilities involving no expansion of use."

**Sustainability Considerations:** This action supports the City of Sacramento's sustainability goals to improve and optimize the transportation infrastructure.

**Other:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** Old Sacramento Garage ("OSG") has nearly 900 parking spaces that serve the Old Sacramento Historic District and the Sacramento Valley Station. With the future development of the Railyards District, Entertainment and Sports Center, and Powerhouse Science Center, it will become increasingly important to provide adequate sources of parking to support that region. By amending the current lease with the State, the City will be able to ensure OSG will be available through 2054.

**Financial Considerations:** Rent will begin at 12% of gross revenue collected by the City from its operation of OSG. Payments will be made annually, in arrears, after July 1. Every 10 years from the lease effective date, a new fair market lease rate will be determined.

Current lease payments are the higher of 5.6% of gross revenue or 14% of net revenue. For fiscal year 2013, the City's rent payment was \$112,500 or 14% of net revenue. These rates have not been adjusted for inflation since 1980.

**Local Business Enterprise Program (LBE):** There are no LBE considerations associated with the requested action.

OLD SACRAMENTO PARKING GARAGE LEASE  
CALTRANS AND CITY OF SACRAMENTO

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

**AMENDMENT #1 TO LEASE SAC005-0001/80123**

THIS AMENDMENT, dated \_\_\_\_\_, 2014, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and the City of Sacramento, hereinafter called "Tenant."

The purpose of this amendment is to extend the term of the current lease and to update its terms and language, according to Landlord's current policies. Therefore, this lease, in its entirety, represents all rights and obligations of the parties, amends, restates, and supersedes the previous lease entered into on February 17<sup>th</sup>, 1980.

**WITNESSETH**

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

**ARTICLE 1. SUMMARY OF LEASE PROVISIONS**

Landlord:	California Department of Transportation (Caltrans)
Tenant:	City of Sacramento
Premises:	Old Sacramento Parking Garage Located in the City of Sacramento, State of California, commonly known as 03-SAC005-0001-02. No. (FLA 5-1, FLA 5-2), and more particularly described in Article 2.
Lease Term:	40 years, commencing July 1, 2014 and expiring on June 30, 2054. (Article 3)
Rent:	the greater of 14% of net annual income or 5.6% of gross annual income (Article 4)
Adjustment to Rent:	no
Method:	FMLR
Frequency:	By June 1, 2015
Security Deposit:	\$ 0 (Article 21)
Use:	Public Parking Garage (Article 5)
Fire Insurance:	The City of Sacramento is Self-Insured (Article 10)
Liability Insurance:	The City of Sacramento is Self-Insured (Article 10)
Address for Notices:	(Article 22)

Department of Transportation  
Right of Way, Airspace  
703 B Street  
Marysville, CA 95901  
(530) 741-4226

City of Sacramento  
Department of Public Works, Parking Division  
300 Richards Boulevard, Suite 213  
Sacramento, CA 95811  
(916) 808-5110

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

**ARTICLE 2. PREMISES**

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. 03-SAC005-0001, situated in the City of Sacramento, County of Sacramento, 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, and more particularly described as follows in the legal description, shown in Exhibit B, attached hereto and by this reference made a part hereof. The subject property, as described above, has not been inspected by a Certified Access Specialist (CASp).

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

ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane three (3) feet below the underside of the superstructure of the existing structure which plane extends to the vertical boundaries of the above described property.

This Lease is subject to (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 shown on attached Exhibits "A" and "B".

**ARTICLE 3. TERM**

The term of this Lease shall be for forty (40) years, commencing July 1, 2014, and expiring June 30, 2054.

**ARTICLE 4. RENT**

**4.1 Minimum Monthly Rent**

Tenant shall continue to pay to Landlord as a minimum monthly rent, without deduction, offset, prior notice, or demand, the sum of 12% of gross income, paid annually, in arrears after July 1<sup>st</sup> but before September 30th, of each year, commencing on the date the term of this amendment commences. The first year of payment will be from the date of commencement to June 30, 2014. The next payment, and all subsequent payments will be from July 1 to June 30<sup>th</sup>.

Checks shall include reference number **03-SAC005-0001-02** denoted clearly on the payment. All rent shall be paid to Landlord at the following address:

**By Mail:**  
Department of Transportation  
Attention: Cashier  
P.O. Box 168019  
Sacramento, CA 95816-8019

**In Person:**  
Department of Transportation  
1820 Alhambra Boulevard, 2<sup>nd</sup> Floor  
Sacramento, CA.  
(800) 404-7787

#### 4.2 Definitions and Provisions

- (a) As used in this section, the following terms shall have the following meanings:
- i. After July 1, 2014, "Accounting Year" shall mean the twelve-month period beginning on the first day of July and extends to June 30<sup>th</sup> of the following calendar year.
  - ii. "Gross Income" shall include all of the following:
    - (1) The sale price of all applicable income, including: parking income, goods, wares, merchandise, and products sold on or from the leased premises by Tenant, whether for cash or credit and whether payment is actually made or not;
    - (2) If applicable, the charges made by Tenant for the sale or rendition on or from the leased premises or services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;
    - (3) If applicable, all admission, entry, and other fees of any nature or kind charged by Tenant including but not limited to deposits accepted by Tenant;
    - (4) If applicable, all sums deposited in any coin-operated vending machine or other device maintained on the leased premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Tenant or others, and regardless of what percentage thereof Tenant is entitled to receive;
    - (5) All other income received by Tenant as a result of its leasehold interest in the premises.

Gross Income shall exclude all sales and excise taxes payable by Tenant to federal, state, county, or municipal governments as a direct result of operations under this lease. Refunds for goods returned and deposits shall be deducted from current Gross Income upon return. Bad debt losses shall not be deducted from Gross Income. As used in this section, the term "Tenant" shall include Tenant, its agents, subtenants, concessionaires, and licensees, and any person acting under contract with Tenant.

(b) On or before the twentieth (20th) day of each July, Tenant shall deliver to Landlord a correct statement of all applicable Gross Income for the previous Accounting Year. The statement shall be signed by Tenant or its responsible agent under penalty of perjury, and shall be in the form prescribed by Landlord.

(i) Each statement shall indicate the total Gross Income for said portion of the Accounting Year, including:

- (1) A breakdown of the Gross Income received of each business conducted on the leased premises;
- (2) The related itemized amounts of percentage rental computed as provided in subparagraph (a)(ii) and the total thereof;
- (3) The total percentage rental previously paid by Tenant for the Accounting Year; and
- (4) The percentage rental due.

(ii) Tenant's obligation to account to Landlord for percentage rent derived from the activity or occupancy of any subtenant of all or a portion of leased premises shall commence with the earliest of the following dates (whether or not Landlord has approved the sublease and whether a percentage rent has been established by Landlord). The earliest of the following dates shall also be deemed the "due date" for purposes of Section 18.3 of this lease:

- (1) The date the sublease commences,
- (2) The date the subtenant physically occupies the leased premises, or

(3) The date of the subtenant's earliest activity on the leased premises (i.e., sale of goods, solicitation of business, construction or alteration by subtenant, etc.).

(c) Tenant shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all its business activities, of whatever nature, conducted pursuant to the rights granted by this Lease. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

Landlord reserves the right to inspect and preapprove Tenant's method of keeping books, records and accounts of financial transactions in the operation of all business activities conducted in connection with this Lease. Tenant shall keep these books, records and accounts in the manner and in accordance with the standards prescribed by Landlord.

All retail sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day.

In any event of admission charges or personal property rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

Within ninety (90) days after the end of each Accounting Year, Tenant shall at its own expense submit to Landlord a balance sheet and income statement prepared or audited by a Certified Public Accountant, reflecting business transacted on or from the leased premises during the preceding Accounting Year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time Tenant shall submit to Landlord a statement certified as to accuracy by a Certified Public Accountant classifying the Gross Income for the Accounting Year according to the categories of business established for percentage rental and for any other business conducted on or from the leased premises.

All Tenant's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the leased premises shall be kept and made available at one location within the limits of the County of Sacramento. Landlord shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at any and all reasonable times for the purpose of determining the accuracy thereof, and of the annual statements of sales and monies received. The cost of said audit shall be borne by Landlord unless the audit reveals an underpayment of more than two percent (2%) between the rent due as reported by Tenant in accordance with this lease and the rent due as determined by said audit. In the event of a greater underpayment, the full cost of the audit, as determined by Landlord, shall be paid by Tenant.

Upon the request of Landlord, Tenant shall promptly provide, at Tenant's expense, necessary data to enable Landlord to comply fully with any and every requirement of the State of California or the United States of America for information or reports relating to this lease and to Tenant's use of the leased premises. Such data shall include, if required, a detailed breakdown of Tenant's receipts and expenses.

(d) Parking fees and rates for the parking facilities under this lease shall be set with the objective of generating the maximum revenues possible without causing adverse impact on the parking demand for said parking facility.

#### 4.3 Reevaluation of Minimum Monthly Rent

At the request of Landlord during the 2024 year and every 10 years thereafter from that date, a fair market lease rate shall be determined in the manner set forth below and shall be established as the minimum monthly rent commencing on the following dates:

July 1, 2024

July 1, 2034

July 1, 2044

The minimum monthly rent established by this section shall be subject to the adjustment provided in Section 4.2. Said revision shall include an analysis of rent based on a percentage of gross income.

The term "fair market lease rate" means the highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by Tenant thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the purpose and uses to which the leased premises is being put and the restrictions on use contained in Section 5.1 of this lease. Appraisers must evaluate both a percentage of gross income monthly rate income in all analysis.

The parties intend to establish the fair market lease rate through negotiation. However, if Landlord and Tenant have not agreed upon the fair market lease rate for the leased premises at least one hundred eighty (180) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above, then each party shall appoint an appraiser, who is a member of the American Institute of Real Estate Appraisers (M.A.I.) and who has appraised property put to commercial or industrial uses in Sacramento County, and notify the other party of such appointment. Each party shall use its best efforts to give the notice of appointment to the other party at least one hundred fifty (150) days before the said commencement date.

Landlord shall set the time and place for a conference between the parties hereto and said two appraisers, which conference shall be held within thirty (30) days of the receipt of notice of appointment by both parties. At such conference, the parties shall agree upon the general instructions to be given to said appraisers. The appraisers shall be instructed that in determining the fair market lease rate they shall consider the use to which the premises are being put and shall not consider the highest and best use for the premises without regard to the restrictions on use of the premises contained in the Lease. It is the intent of the Landlord and Tenant that the rent payable under this Lease not be less than the fair market rental value of the leased premises, and the purpose of this section is to assure the establishment of this rent and to prevent a bonus value from accruing to either party. The appraisers shall be instructed as to this intent. The general instructions shall not place any additional limitations upon the appraisal techniques to be employed by the appraisers in the evaluation of the rent.

Within forty-five (45) days after receiving said instructions, each of the appraisers shall deliver copies of a fully documented signed written report containing an opinion of the fair market lease rate for the leased premises to Landlord and Tenant. When in receipt of both appraisals, Landlord shall set a time and place for a conference. Those to be in attendance at the conference shall include: (a) representatives of Landlord, (b) representatives of Tenant, and (c) the two appraisers. The parties shall endeavor to reach agreement on the adjusted rent.

If the parties cannot agree on the amount of the adjusted rent, the Landlord's and Tenant's appraisers shall select a third appraiser. Said third appraiser shall be allowed access to the two reports, shall prepare a third appraisal, and shall submit one copy of same to Landlord and Tenant within thirty (30) days of his selection as appraiser.

Landlord and Tenant shall each pay for their respective appraisals and, if a third appraisal is necessary, each shall pay one-half (1/2) of the fees and expenses for said third appraisal. The determination of the fair market lease rate for the leased premises by the third appraiser, as documented in his signed written report submitted to the parties, shall be binding on Landlord and Tenant. The signed report shall be received at least thirty (30) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above or on such other date upon which the parties shall have agreed. It is the intent of Landlord and Tenant that the time limitations specified in this section are guidelines only and not mandatory. The failure to meet any of the time limitations set forth in this section shall not prevent a reevaluation from occurring so long as Landlord requests the reevaluation prior to the scheduled commencement date of the new minimum monthly rent.

If the fair market lease rate for the leased premises shall not have been determined prior to the date of the scheduled commencement of the new minimum monthly rent as set forth above, Tenant shall continue to pay the same rent as was being paid in the preceding period until a final determination has been made. Within thirty (30) days after such final determination is made, Tenant shall pay to Landlord the amount of difference between the rent actually paid during the period between the scheduled date of commencement of the new minimum monthly rent and the date the final determination is made and the amount of rent which should have been paid had the determination of the new minimum monthly rent been timely. For the purposes of this section, the applicable Federal Reserve Board discount rate shall be that which exists on the date of the scheduled commencement of the new minimum monthly rent. In no case shall the minimum monthly rent reevaluated pursuant to this section be less than the minimum monthly rent set forth in Section 4.1, as adjusted by Section 4.2, unless said minimum monthly rent has been reduced pursuant to Articles 13, 14 or 15.

#### 4.4 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Section 4.3 as a condition to Landlord's approval of any use of the leased 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. If such a reevaluation is made, the provisions of Section 4.3 shall be followed except that in determining the fair market lease rate the appraisers shall also be instructed to consider the new uses to which the premises may be put as a result of Landlord's approval of those additional uses. If such a reevaluation is made, the time for all subsequent scheduled reevaluations under Section 4.3 shall be extended by the period elapsed between the most recent previous reevaluation and the reevaluation made under this section.

### **ARTICLE 5. USE**

#### 5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of public parking 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 in the manner provided in Sections

4.3 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by Section 5.1.

Excepting vehicles for persons working at the parking facilities, maintenance vehicles operated by persons working on maintenance at the parking facilities, and City vehicles driven by City employees on City the leased property shall be used exclusive for the parking of motor vehicles, the owners or operators of which pay Tenant for the use of the parking facilities. Tenant will make all reasonable efforts to maximize revenue earned from its operation of the public parking garage. Tenant agrees to conform to the above-described use. Any change in the use must be mutually agreed to by the Landlord and the Tenant.

## 5.2 Condition of Premises

Tenant hereby accepts the Premises in their 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 tenable 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 substances) and is satisfied that the Premises will safely support the type of improvements constructed and maintained by Tenant upon the Premises, that the Premises are 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 hazardous substance has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous substances on or beneath the Premises; (3) Landlord has provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and analyze the soil and groundwater on the Premises for the presence of hazardous substances; Tenant does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on or beneath the Property and (5) with respect to any hazardous substance which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous substance at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and

authorizations. The phrase "hazardous substance," as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code.

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

### 5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

### 5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the land above or below a highway or freeway, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted under the structures, except those products stored within an operable vehicle for exclusive use by that vehicle.

### 5.5 Explosives and Flammable Materials

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

### 5.6 Hazardous Materials

Hazardous materials are those substances listed in Division 4, Chapter 30, Article 9 of Title 22 of the California Code of Regulations or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of that Code, as well as any other substance which poses a hazard to health or environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the leased premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the leased 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.

Breach of any of these covenants, terms and conditions shall give Landlord authority to immediately terminate this Lease. 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 leased premises necessitated by the introduction of such hazardous materials on the leased 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 leased premises as owner, operator or Tenant.

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

#### 5.7 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. The tenant may change operational signage without Landlord's prior consent. 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 23.11 from the date of completion of such removal.

#### 5.8 Landlord's Rules and Regulations

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

#### 5.9 Wrecked Vehicles

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

#### 5.10 Vending

No vending of any kind or character shall be conducted, permitted or allowed upon the Premises.

#### 5.11 Water Pollution Control

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

Tenant shall comply with State and Federal water pollution control requirements, and those of 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.

In order to minimize the discharge of pollutants, spilled, leaked fluids, and any other wastewater into the storm water drainage system, Tenant shall not allow vehicle or equipment washing, fueling, maintenance and repair on the Premises, unless separately authorized by this lease agreement for industrial activity.

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

Tenant shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: Parking Lots ("Exhibit C"). 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 the Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at the Landlord's District Right of Way office or online at [www.dot.ca.gov/hq/row/rwstormwater](http://www.dot.ca.gov/hq/row/rwstormwater). In the event of conflict between the attached Fact Sheet(s) and this Lease, this Lease shall control.

Tenant shall provide Landlord with the Standard Industrial Classification (SIC) code applicable to Lessee's facilities and activities on the lease premises. A list of regulated SIC codes may be found at the State Water Resources Control Board (SWRCB) website: <http://www.swrcb.ca.gov/stormwtr/>. 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 time have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. Inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises.

#### 5.12 General Industrial Permit

For any activities conducted on the lease premises listed in Attachment 1 to the General Permit for Storm Water Discharges Associated with Industrial Activities (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB), Tenant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) covering those activities. Information on the General Industrial Permit is electronically available at the SWRCB web site: <http://www.swrcb.ca.gov/stormwtr/industrial.html>. Tenant will address storm water and water quality protection by implementing appropriate Best Management Practices (BMPs) described in the SWPPP. A copy of the SWPPP, including any updates, will be provided to the Landlord and also maintained on the lease premises.

Tenant shall also provide a copy of the following: Notice of Intent (NOI) or No Exposure Certification (NEC) filed with the SWRCB; Receipt Letter from SWRCB showing Waste Discharge Identification (WDID) Number; and Notice of Termination (NOT), if applicable. Tenant is solely responsible for compliance with the General Industrial Permit.

## **ARTICLE 6. COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION**

### **6.1 Commencement of Construction**

Landlord acknowledges that property is developed to its highest and best use. No further construction is planned at the time of the commencement of this lease.

### **6.2 Completion of Construction and Occupancy of Improvements**

Landlord acknowledges that property is developed to its highest and best use. No further construction is planned at the time of the commencement of this lease.

## **ARTICLE 7. REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS**

### **7.1 Encroachment Permit**

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

Issuance by Landlord of an Encroachment Permit shall be contingent upon Tenant's providing the following:

- A. Final construction plans and detailed specifications. All such plans and specifications submitted by Tenant to Landlord shall be subject to the review and approval of Landlord, the State Fire Marshal and the Federal Highway Administration.
- B. Evidence of coverage that assures Landlord that sufficient monies will be available to complete the proposed construction or alteration. The amount of coverage shall be at least equal to the total estimated construction cost. Such coverage shall take one of the following forms:
  1. Completion bond issued to Landlord as obligee.
  2. Performance bond and labor and material bond or performance bond containing the provisions of the labor and material bond supplied by Tenant's contractor or contractors, provided said bonds are issued jointly to Tenant and Landlord as obligees.
  3. Any combination of the above.

All bonds shall be issued by a company qualified to do business in the State of California and acceptable to Landlord. All bonds shall be in a form acceptable to Landlord and shall ensure faithful and full observance and performance by Tenant of all terms, conditions, covenants and agreements relating to the construction of improvements within the leased premises.

- C. Liability insurance as provided in Section 10.2.
- D. Fire insurance as provided in Section 10.3.
- E. A copy of a building permit issued by the appropriate local jurisdiction.
- F. A copy of Tenant's contract with the general contractor actually performing construction.
- G. Note and Deed of Trust.
- H. Loan escrow instructions, if any.
- I. Final landscaping and irrigation plans and detailed specifications including a maintenance plan for litter removal, watering, fertilization and replacement of landscaping.
- J. Evidence of compliance with the applicable provisions of all federal, state and local environmental statutes, laws, regulations and ordinances.

Tenant agrees to diligently apply for and meet all requirements for issuance of Encroachment Permit and Landlord agrees to not unreasonably withhold issuance of said Encroachment Permit.

Tenant is obligated to deliver to Landlord the documents described in subdivisions (a) through (j) of Section 7.1 regardless of whether an Encroachment Permit may have been issued inadvertently before these documents have been provided to Landlord.

### 7.2 Soil Testing

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

### 7.3 Standard of Construction

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

### 7.4 "As-Built" Plans

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

## **ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY**

### 8.1 Ownership of Improvements During Term

As this current lease is an extension of terms of the original lease from 1980, vesting of improvements remain with the City of Sacramento.

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

exercise by Landlord of its rights under Section 8.1. In the event said improvements are not delivered to Landlord in good condition and repair, reasonable wear and tear excepted, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made, plus interest as provided in Section 23.11 from the date of completion of work. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

### 8.2 Removal of Personal Property and Ownership at Termination

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

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

### 8.3 Removal of Improvements at Termination

Upon the expiration or earlier termination of this Lease, Landlord may, upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than one hundred eighty (180) days after the expiration or earlier termination of this Lease, all structures, buildings and improvements of any kind whatsoever placed or maintained on the premises, whether below, on or above the ground by Tenant or others, including, but not limited to, foundations, structures, buildings, utility lines, switchboards, transformer vaults and all other service facilities constructed or installed upon the premises; and Tenant shall, upon the expiration or earlier termination of this Lease, immediately restore, and quit and peacefully surrender possession of the premises to Landlord in at least as good and usable condition, acceptable to Landlord, as the same was in at the time of first occupation thereof by Tenant or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should Tenant fail to so remove said structures, buildings and improvements and restore the premises, Landlord may sell, remove or demolish the same, and in the event of said sale, removal or demolition, Tenant shall reimburse Landlord for any cost or expense thereof in excess of any consideration received by Landlord as a result of such sale, removal or demolition.

## **ARTICLE 9. MAINTENANCE AND REPAIRS**

### 9.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the leased premises, improvements and landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in first class order, repair and condition and in compliance with all requirements of law. Tenant shall

also, at its own cost and expense, install or provide for the installation of all required lighting on the leased premises and shall maintain the lighting in first class order, repair and condition. Tenant shall, at its own cost and expense, install or provide for the installation of all required fire suppression sprinklers on the leased premises and shall maintain the sprinklers in first class order, repair and condition, per State Fire Marshal Standards.

The Tenant, at its own cost and expense, shall complete biennial inspections of the garage structure and report findings to the Landlord within thirty (30) of receiving report.

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

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

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

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

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

## 9.2 Retention of Existing Improvements

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

## 9.3 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 thirty (30) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 23.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any

damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

## **ARTICLE 10. INSURANCE**

### **10.1 Exemption of Landlord from Liability**

This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operation or use of the premises by Tenant, its agents, customers or business invitees. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses.

### **10.2 Liability Insurance**

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease 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 leased premises. Such insurance shall be in an amount of not less than **\$5,000,000 minimum** 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 leased 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.

Landlord acknowledges that Tenant may be self-insured. Tenant may elect to provide the insurance required by this Article in the form of self-insurance. If Tenant elects to exercise this option, Tenant shall so notify Landlord in writing and provide Landlord with a written statement explaining how it will provide Landlord with protection equivalent to that provided by the

insurance policies required by Section 10.2, together with written evidence of the adequacy of this protection. Tenant's exercise of this option is subject to Landlord's approval. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by Section 10.2 effective on that termination date.

### 10.3 Fire and Extended Coverage Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease fire and extended coverage insurance upon all buildings, structures and improvements constructed on the premises. Such policy or policies of insurance shall be for not less than one hundred percent (100%) of the full replacement value of the property covered and shall provide for payment of losses to Tenant. Landlord shall be named as an additional insured on all fire and extended coverage insurance policies placed on the buildings, structures and improvements on said premises. The full replacement value of the buildings, structures and improvements to be insured under Section 10.3 shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Not more frequently than once each year, either party shall have the right to notify the other party that it elects to have the replacement value redetermined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination

### 10.6 Workers' Compensation Insurance

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

### 10.7 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, Landlord may take out insurance and pay the premiums thereon. The repayment of those premiums, plus payment of interest as provided in Section 23.11 from the date such insurance is obtained, shall be the sole obligation of Tenant and shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder. 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.

### 10.8 Waiver of Subrogation

Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party 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. The party obtaining the policies of insurance required hereunder shall give

notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in the Lease.

## **ARTICLE 11. DAMAGE OR DESTRUCTION**

### **11.1 Duty to Repair or Restore**

If during the term of this Lease any building or improvement on, in or appurtenant to the land at the commencement of the term or thereafter erected thereon shall be destroyed or damaged in whole or in part by fire or other cause, or shall be declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within ten (10) days of the occurrence of such event, give to Landlord immediate notice thereof, and Tenant shall within sixty (60) days commence, and diligently pursue to completion, the repair, replacement or reconstruction of the same, at least to the extent of the value and as nearly as possible to the character of the buildings and improvements existing immediately prior to the occurrence of such event; and Landlord shall in no event be called upon to fund or repair, replace or rebuild any such buildings or improvements. All buildings and improvements shall be repaired, replaced or reconstructed in accordance with the standards and requirements contained in Article 7. Tenant shall continue to pay rent hereunder during the period said improvements shall be damaged or destroyed.

### **11.2 Relief for Substantial Loss of Area and Damage or Destruction During Final Years of Term**

Tenant is relieved of the obligation to, but may, repair, restore, or reconstruct improvements damaged or destroyed during the final five (5) years of the term if (a) more than thirty-five percent (35%) of the improvements constructed on the premises are damaged or destroyed; (b) the damage or destruction is uninsured and is not required to be insured under any provision of this Lease; and (c) Tenant complies with all the following conditions:

1. Gives Landlord notice of damage or destruction promptly but not later than ten (10) days after the event, detailing facts that qualify the casualty under this provision.
2. Is not in default under any provision or condition of this Lease.
3. Within ten (10) days after giving the above notice, effectively transfers to Landlord all right, title and interest in the security deposit.
4. Continues to make all payments when due as required by the provisions of this Lease, applying the security deposit to payments latest in time under the Lease, provided that Landlord may, by notice given at any time after Tenant's notice of the damage or destruction, elect to terminate the Lease at a date stated in Landlord's notice and to forgive all rent for the period following that date.
5. Pays in full, or has paid in full, any outstanding indebtedness incurred by Tenant and secured by an encumbrance or encumbrances on the leasehold.
6. Delivers possession of the premises to Landlord and quitclaims all right, title and interest in the land and improvements promptly upon ceasing to do business on the premises.
7. Causes to be discharged all liens and encumbrances resulting from any act or omission of Tenant.
8. Removes or deposits the cost of removing all fixtures and improvements if Landlord so elects under the provisions of Article 8.

Tenant shall also be relieved of the obligations to repair, restore or reconstruct improvements because of an insured loss if Tenant complies with all the above provisions and also assigns all net proceeds from the insurance settlement to Landlord. "Net proceeds" shall

mean the full amount of the insurance settlement less any amount paid to beneficiaries under deeds of trusts approved by Landlord pursuant to Section 20.9. Landlord and Tenant hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and waive the provisions of any other statutes which relate to the termination of a lease when the leased property is destroyed. Landlord and Tenant agree that such an event shall be governed by the terms of this Lease.

#### **ARTICLE 12. 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 said premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, 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 leased 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 shall fail to discharge any of the above obligations, Landlord may, at its option, discharge the same and the amount so paid by Landlord, plus interest as provided in Section 23.11 from the date of payment by Landlord, shall be added to the rentals next accruing under this Lease. Tenant may, at its own expense, and before delinquency occurs, contest, object to or oppose the legality, validity or amount of such taxes. Landlord shall not be required to join in any proceeding or contest brought by Tenant. Immediately upon the final determination of the proceeding or contest, Tenant shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incident to the decision or judgment. If Tenant contests or seeks a reduction in the taxes as provided in this Article, Tenant shall, before the commencement of the proceedings or contest, furnish to Landlord security or other evidence satisfactory to Landlord that Landlord and the Premises will be held harmless from any damage arising out of the proceedings or contest and assuring the payment of any judgment that may be rendered. Any default in the payment of any of the obligations set forth in this Article shall, at the option of Landlord, be considered a default under the terms of this Lease.

#### **ARTICLE 13. RIGHT OF ENTRY**

##### **13.1 Inspection, Maintenance, Construction and Operation of Freeway Structures**

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

Landlord further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that Landlord reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the property which Tenant has failed to perform. All agreements which Tenant enters into for the sublease or use of all or any part of the leased premises shall contain a provision, approved by Landlord, which describes Landlord's right of entry as set forth in this Article.

### 13.2 Retrofitting of Freeway Structures

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

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. The minimum monthly rent stated in Section 4.1, as adjusted and reevaluated in accordance with Section 4.2 and 4.3, 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 expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

Tenant shall conduct its operations on the premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the premises. Tenant acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except

that at the conclusion of the retrofit work, Landlord shall restore the premises to their preexisting condition at no cost to Tenant.

## **ARTICLE 14. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD**

### 14.1 Definitions

- a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by a public entity having that power, that is, a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.
- b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the leased premises.
- c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

### 14.2 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.

### 14.3 Partial Taking

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

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

- a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or
- b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by the public entity.

Tenant shall give notice in writing of its election to terminate this Lease hereunder within thirty (30) days of the date possession of the part is taken by the public entity. If Tenant fails to give Landlord its written notice of termination within the time specified, this Lease shall remain in full force and effect except that the minimum monthly rental shall be reduced as provided in Section 14.3.

If it continues to occupy the remainder, Tenant, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the leased premises as nearly as possible to its value, condition and character immediately prior to such taking; provided,

however, that in the case of a taking for temporary use, Tenant shall not be required to effect restoration until such taking is terminated. Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by the public entity.

#### 14.4 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.

#### 14.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by the public entity. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure. Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the premises as defined in Section 4.3 above.

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

### **ARTICLE 15. CONDEMNATION BY LANDLORD**

#### 15.1 Definitions

- a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by Landlord, and (2) a voluntary sale or transfer to Landlord, either under the threat of condemnation or while legal proceedings in condemnation are pending.
- b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the leased premises.
- c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

#### 15.2 Termination of Lease as to Part Condemned

Tenant acknowledges that Landlord has the power of eminent domain to acquire property for public purposes and that Landlord may exercise that power to take all or any part of the leased premises by condemnation. In the event the whole or any part of the premises is taken by condemnation by 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 Landlord. If Landlord exercises its power of condemnation to acquire the whole or any part of the premises for a transportation-related public use, Tenant hereby specifically waives all objections to Landlord's right to take, and the only issue to be resolved in any condemnation action shall be the amount of compensation to which Tenant is entitled under Section 15.5.

### 15.3 Partial Taking

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

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

- a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the Landlord; or
- b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by Landlord.

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 Landlord. 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 Section 15.3.

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

### 15.4 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.

### 15.5 Compensation

Upon Landlord's exercise of its power of condemnation to acquire all or any part of the leased premises, Tenant shall only be entitled to compensation which represents the present worth as of the date possession is taken by Landlord of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by

Landlord. Tenant hereby waives its right to receive, and it shall make no claim for, loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure.

Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the premises as defined in Section 4.3 above.

If all or a portion of the leased premises is condemned at a time when Tenant possesses an interest in real property located outside the leased premises (hereinafter called "outside property"), Tenant shall not be entitled to any compensation for damages otherwise accruing to the outside property by reason of the severance therefrom of the condemned portion of the leased premises.

## **ARTICLE 16. TERMINATION OF LEASE**

### **16.1 Termination by Mutual Consent**

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

### **16.2 Termination by One Party**

Notwithstanding any provision herein to the contrary, this Lease may be terminated at any time by Tenant upon providing Landlord with ninety (90) days prior notice in writing, or by Landlord upon providing Tenant with ninety (90) days prior notice in writing. Notices of termination under Section 16.2 shall be delivered in accordance with the provisions of Section 19.13 to the addresses set forth in Article 1. If Tenant exercises its right to terminate the Lease under Section 16.2, it immediately forfeits any right to bid at the next lease auction for the Premises.

## **ARTICLE 17. 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 18. LIENS**

### **18.1 Exemption of Landlord from Liability**

Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

### **18.2 Tenant's Obligations**

In the event a lien is imposed upon the premises as a result of such construction, repair, alteration or installation, Tenant shall either:

A. Record a valid Release of Lien, or

- B. 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
- C. 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.

## **ARTICLE 19. DEFAULT**

### **19.1 Default**

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

- A. Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof has been given by Landlord to Tenant.
- B. The abandonment or vacation of the premises by Tenant. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.
- C. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.
- D. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

### **19.2 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:

- A. Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the premises at such rent and

upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new tenant taking possession of the premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially under this subparagraph, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

- B. 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:
1. the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
  2. 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
  3. 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
  4. 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
  5. 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 (1) and (2), 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 (3), 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.

### 19.3 Late Charges

This section is intentionally deleted per Right of Way Manual 11.08.07.00.

### 19.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 23.11 from the date the sum is paid

by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

## **ARTICLE 20. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES**

### **20.1 Voluntary Assignments, Subleases and Encumbrances**

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.

## **ARTICLE 21. 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 22. SECURITY DEPOSIT**

This section intentionally deleted per Right of Way Manual 15.05.05.02.

## **ARTICLE 23. ADDITIONAL PROVISIONS**

### **23.1 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, subject however, to the terms of the Lease and of any of the mortgages or deeds of trust described above.

### **23.2 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 addendums 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.

### 23.3 Entire Agreement

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

### 23.4 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.

### 23.5 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.

### 23.6 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.

### 23.7 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.

### 23.8 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.

### 23.9 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.

### 23.10 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 in the amount and at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

### 23.11 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.

### 23.12 Recording

Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a noncurable default of Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

### 23.13 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.

23.14 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.

23.15 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.

23.16 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.

23.17 Estoppel Certificates

Each party, within twenty (20) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of minimum monthly rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent.

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

LANDLORD: STATE OF CALIFORNIA  
DEPT OF TRANSPORTATION

TENANT: CITY OF SACRAMENTO

By: \_\_\_\_\_  
JOHN BALLANTYNE  
Chief  
North Region Right of Way

By: \_\_\_\_\_  
JOHN F. SHIREY  
City Manager

  
APPROVED AS TO FORM:  
CITY ATTORNEY

EXHIBIT A: MAPS

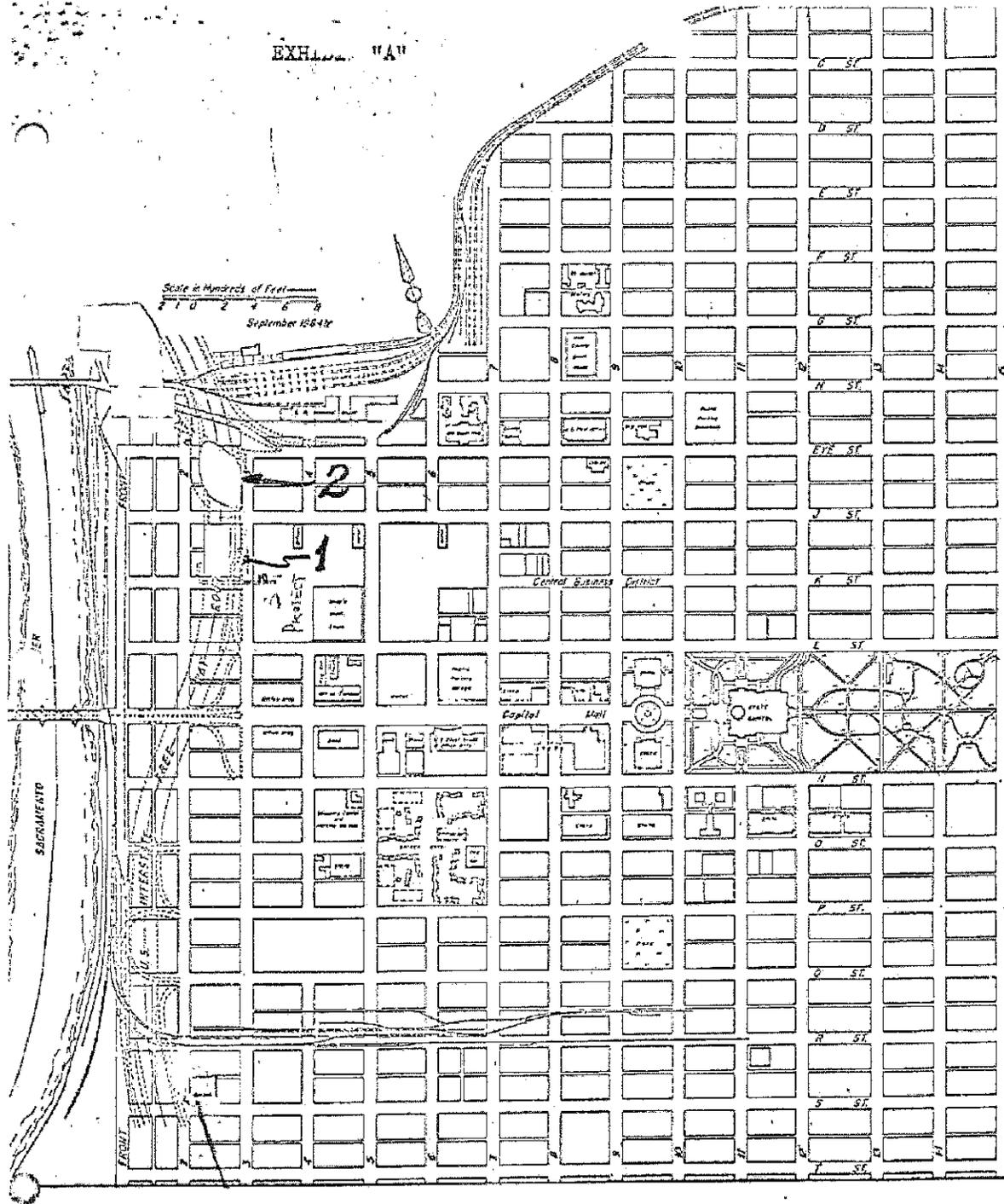




EXHIBIT B: LEGAL DESCRIPTION

03-FLA 5-1: BEGINNING at a point in the Northwesterly line of Existing State Route 5, distant N.  $83^{\circ}47'34''$  E, 122.35 feet from the intersection of 2nd and "K" Streets of said City of Sacramento; THENCE from said point of beginning along said Northwesterly line N.  $17^{\circ}48'07''$  E, 428.50 feet; thence from a tangent that bears N.  $26^{\circ}56'42''$  W, along a curve to the right with a radius of 268.00 feet, through an angle of  $40^{\circ}51'15''$ , an arc distance of 191.09 feet; thence N.  $18^{\circ}17'36''$  E, 254.70 feet; thence leaving said Northwesterly line along a tangent curve to the right with a radius of 20.00 feet, through an angle of  $102^{\circ}29'42''$ , an arc distance of 35.78 feet; thence along a compound curve to the right with a radius of 423.00 feet, through an angle of  $09^{\circ}54'42''$ , an arc distance of 73.17 feet; thence S.  $49^{\circ}18'00''$  E, 167.67 feet; thence along a tangent curve to the right with a radius of 145.00 feet, through an angle of  $67^{\circ}44'07''$ , an arc distance of 171.42 feet; thence S.  $18^{\circ}26'07''$  W, 227.75 feet; thence N.  $71^{\circ}30'00''$  W, 71.70 feet; thence along a tangent curve to the right with a radius of 194.00 feet, through an angle of  $87^{\circ}29'00''$ , an arc distance of 296.21 feet; thence N.  $15^{\circ}59'00''$  E, 47.50 feet; thence N.  $49^{\circ}18'00''$  W, 66.05 feet; thence S.  $15^{\circ}59'00''$  W, 75.12 feet; thence along a tangent curve to the left with a radius of 254.00 feet, through an angle of  $86^{\circ}14'16''$ , an arc distance of 382.30 feet; thence S.  $24^{\circ}21'28''$  W, 119.86 feet; thence S.  $20^{\circ}33'21''$  W, 264.88 feet; thence N.  $69^{\circ}51'48''$  W, 155.49 feet to a point in said Northwesterly line; thence along said Northwesterly line from a tangent that bears N.  $18^{\circ}12'37''$  E, along a curve to the left with a radius of 1964.00 feet, through an angle of  $00^{\circ}24'30''$ , an arc distance of 14.00 feet to the point of beginning.

03-FLA 5-2: BEGINNING at a point distant N.  $82^{\circ}08'18''$  E, 137.03 feet from the intersection of 2nd and "J" Streets of said City of Sacramento; THENCE from said point of beginning N.  $62^{\circ}57'38''$  E, 60.05 feet; thence from a tangent that bears N.  $29^{\circ}45'08''$

EXHIBIT B: LEGAL DESCRIPTION CONTINUED

W. along a curve to the right with a radius of 194.00 feet, through an angle of  $10^{\circ} 21' 38''$ , an arc distance of 35.08 feet; thence S.  $62^{\circ} 57' 38''$  W. 60.41 feet; thence from a tangent that bears S.  $21^{\circ} 12' 20''$  E. along a curve to the left with a radius of 254.00 feet, through an angle of  $07^{\circ} 54' 20''$ , an arc distance of 35.05 feet to the point of beginning.

EXCEPTING THEREFROM all those portions of the above-described property needed for highway purposes, more particularly that property occupied or to be occupied by the supports and foundations of the viaduct, if any. ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane three (3) feet below the underside or soffit, whichever is lower, of the viaduct, which plane extends to the vertical boundaries of the above-described property. Said AIRSPACE LEASE AREA NO. 03-FLA 5-1 is hereinafter called "P-1." Said AIRSPACE LEASE AREA NO. 03-FLA 5-2 is hereinafter called "P-2." P-1 and P-2 are hereinafter called "the leased property."

## EXHIBIT C: STORMWATER POLLUTION PREVENTION

# Stormwater Pollution Prevention

## Parking Lots

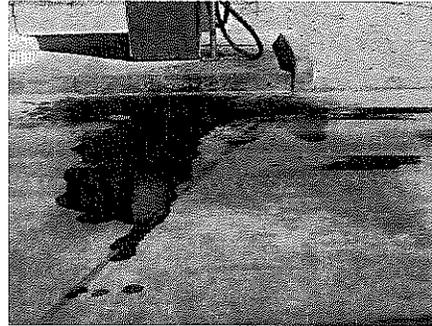
### Leaking Vehicles

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

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

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

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



### Trash

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

