

COMMERCIAL LEASE

THIS COMMERCIAL LEASE ("Lease") is entered into the _____ day of _____, 2019 ("Effective Date"), by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a California joint powers authority ("Agency"), and the City of Burlingame, a California Municipal Corporation, ("Lessee").

1. Premises.

Subject to the terms and conditions set forth herein, Agency hereby leases to Lessee, and Lessee leases from Agency, the real property and any improvements thereon located in the City of Burlingame, County of San Mateo, State of California ("Premises") consisting of JPB numbered parking stalls 131 to 168 located at the north end of the Burlingame Caltrain Parking lot (The "Parking Area"), as depicted on Exhibit A, which is attached hereto and incorporated herein by this reference.

2. Effective Date.

This Lease will take effect on October 1, 2019 ("Effective Date"), and supersedes any prior lease existing between the parties or their predecessors.

3. Term.

This Lease is for a term of 12 months, ("Lease Term") from the Effective Date, with an option to extend the agreement on a month to month basis for a total of 18 months, unless sooner terminated as provided herein.

4. Termination for Transit Activities.

Lessee acknowledges that it takes this Lease with the express knowledge that Agency may conduct Transit Activities on, around, under or over the Premises. Transit Activities include, but are not limited to, any activities relating to the study, design, development, construction, maintenance, operation, mapping, testing, or surveying of transportation systems (collectively "Transit Activities"). In the event Agency determines that it needs to obtain possession of all or a portion of the Premises, or needs to place restrictions on Lessee's use of the Premises, Agency will give Lessee thirty (30) days notice prior to the date Lessee must vacate the Premises, a portion of the Premises or restrict the Permitted Use ("Surrender Date"). If Agency only uses a portion of the Premises, this Lease will continue in full force except that Rent will be reduced in proportion by such part of the Premises rendered unusable by Lessee for the conduct of its business; provided, however, that the entire Premises will be deemed unusable if the extent and nature of the transit activities substantially impairs Lessee's use of the balance of the Premises and this Lease will terminate. If Agency requires the entire Premises or its Transit Activities substantially impairs Lessee's Permitted Use, on or before the Surrender Date, Lessee must peaceably surrender possession of the Premises and this Lease will be deemed terminated except for those terms intended to survive termination. LESSEE HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE BENEFITS UNDER FEDERAL AND STATE UNIFORM RELOCATION ACTS (UNITED STATES CODE TITLE

42, SECTION 4601 ET SEQ.; CALIFORNIA GOVERNMENT CODE SECTION 7260 ET SEQ.) AS A RESULT OF AGENCY'S USE OR POSSESSION OF ANY PORTION OF THE PREMISES.

Lessee

5. Use.

The Premises may be used by Lessee solely and exclusively for City public parking ("Permitted Use"). Lessee may not use the Premises for any other use other than the Permitted Use without Agency's prior written consent, which consent may be withheld by Agency in its sole discretion.

(a) Restrictions on Use.

Lessee may not permit any damage, nuisance or waste on the Premises; nor permit to be placed upon the Premises any gasoline, diesel fuel, oil, other petroleum products, or any hazardous or explosive material, waste or substance.

(b) Regulatory Approvals.

Lessee, at Lessee's sole expense, will arrange for the filing of any map required under any subdivision map act and of any environmental study required, or other requirements imposed by any governmental body having jurisdiction over the Premises or Permitted Use. Agency may terminate this Lease if any governmental body seeks to impose any condition on approval of Lessee's use of the Premises that will affect the Premises after termination of this Lease or that will affect any other property of Agency. Lessee must pay all costs and expenses associated with any conditions imposed on approval by any such governmental body.

(c) Compliance with Laws.

Lessee, at Lessee's expense, will at all times during the Lease Term comply with all applicable laws, regulations, rules and orders with respect to Lessee's use and/or improvement of the Premises, regardless of their effective date, including, without limitation, those relating to construction, grading, signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air quality. Lessee will furnish satisfactory evidence of such compliance upon request of Agency.

(d) Prior Rights.

This Lease is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect Premises in effect as of the Effective Date of the Lease. The word "Lease" may not be construed as a covenant against the existence of any of these.

6. Condition of Premises.

(a) "AS IS" Rental.

Agency leases the Premises to Lessee on an "AS IS" with all faults basis, and Lessee acknowledges that Agency has made no representations of any kind in connection with soils, improvements, or physical conditions on the Premises, or bearing on Lessee's use of the Premises, whether express or implied.

(b) Inspections.

Lessee is solely responsible for conducting any inspections it may deem necessary or appropriate in determining whether to enter this Lease. Prior to the Effective Date, Lessee may examine and inspect all matters with respect to taxes, operating expenses, insurance costs, bonds, permissible uses, historical uses, zoning, covenants, conditions and restrictions and all other matters which in Lessee's judgment might bear upon the value and suitability of the Premises for Lessee's purposes or Lessee's willingness to enter into this Lease. Lessee acknowledges that Agency has made no representations and warranties regarding these matters, whether express or implied, and that Lessee has relied on its own inspections and examinations in entering into this Lease. As of the Effective Date, Lessee will be deemed fully satisfied with the results of all of the inspections and examinations contemplated in this Section 6 and Lessee be deemed to have accept the Premises "AS IS" with all faults.

7. Rent.

Commencing as of the Effective Date, Lessee will pay to Agency as rent for the Premises the sum of \$4,750 per month ("Rent") subject to adjustment as provided in Section 8 below. Rent is payable monthly in advance to Agency on the first day of each month, in lawful money of the United States, at the address set forth in Section 11 below, without deduction, setoff, prior notice or demand of any kind. If the Effective Date of this Lease is other than the first day of the calendar month, Rent will be prorated for the fractional month and the Rent for said fractional month, together with the Rent for the first full month will be payable in advance upon execution of this Lease.

8. Rental Adjustments.

Beginning one year following Effective Date, and continuing thereafter on each anniversary of the Effective Date during the Lease Term, as it may be extended ("Anniversary Date"), Rent will be increased by the increase in the Consumer Price Index, provided that in no event shall the Rent be decreased. The increase in the Consumer Price Index means the percentage increase from the last preceding Anniversary Date to the current Anniversary Date of the Consumer Price Index - all urban consumers (San Francisco, Oakland, San Jose Area: Base 1984 = 100) ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics. Agency shall calculate and give Lessee written notice of any such increase in the Rent as soon as practicable after each Anniversary Date. When such calculation is made, Lessee shall pay to Agency any deficiency on demand. Should the Bureau discontinue the publication of index, or publish the index less frequently, or alter the index in some other manner, the Agency in its discretion, shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

9. Security Deposit.

On or before the Effective Date Lessee shall pay to Agency a security deposit in the amount of \$4,750 ("Security Deposit"). The Security Deposit shall secure Lessee's obligations under this Lease to pay Rent, additional Rent, and all other monetary amounts payable hereunder, to maintain the Premises and repair damages thereto, to surrender the Premises to Agency in clean condition and good repair upon termination of this Lease and to discharge Lessee's other obligations hereunder. Agency may use and commingle the Security Deposit with other funds of Agency. If Lessee fails to perform its obligations hereunder, Agency may, but without any obligation to do so, apply all or any portion of the Security Deposit toward fulfillment of Lessee's unperformed obligations. If Agency does so apply any portion of the Security Deposit, Lessee's failure to remit to Agency a sufficient amount in cash to restore the Security Deposit to its original amount within 5 days after receipt of Agency's written demand shall constitute a default hereunder. Upon termination of this Lease, if Lessee has then performed all of Lessee's obligations hereunder, Agency shall return the Security Deposit, or any remaining portion thereof, to Lessee without payment of interest thereon.

10. Late Charges; Interest.

(a) Late Charges.

If any installment of Rent or other sum due from Lessee is not received by Agency within 10 days of the date it is due, then Lessee shall pay to Agency a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Agency will incur by reason of late payment by Lessee which are impracticable to estimate. Acceptance by Agency shall in no event constitute a waiver of Lessee's default or breach with respect to such overdue amount or prevent Agency from exercising any other rights and remedies granted herein.

(b) Interest.

Any monetary obligation due Agency hereunder, other than late charges, not received by Agency within 10 days of the date it is due shall bear interest from the date due at the then current prime rate as published in the *Wall Street Journal* on the due date, plus 4% or at the then prevailing maximum rate permitted by applicable law, whichever is less ("Interest Rate").

(c) Taxes.

Lessee shall pay, before they become delinquent, all taxes, charges, and assessments that are levied upon or assessed against any improvement or personal property placed upon the Premises by Lessee. Lessee shall pay, before they become delinquent, any and all property taxes and/or possessory interest taxes, assessments and/or supplemental taxes which are levied or assessed by any government entity on the Premises or Lessee's possession and/or use thereof. In addition to the taxes and assessments specified above, Lessee shall pay to Agency any privilege, sales, gross income or other tax (but not including federal or state income tax) imposed upon the Rent by any government entity.

11. Notices.

All notices, payments, or other communications by either party to the other under this Lease shall be in writing and shall be deemed to have been given or made on the date of service if served personally or on the second business day after mailing if mailed to the party to which notice is to be given by first class mail, postage prepaid and properly addressed as follows:

To Agency: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070
Attention: Property Manager

To Lessee: Andrew Wong, Senior Civil Engineer
Public Works, Engineering Division
501 Primrose Road
Burlingame, CA 94101

Either party may change its address by providing written notice to the other as provided herein.

12. Alterations.

Lessee shall not make or suffer to be made any alterations, additions or improvements (collectively "Alterations") in, on, or to the Premises without the prior written consent of Agency, which consent shall not be unreasonably withheld or delayed. Any Alterations Lessee is permitted to make shall be made by Lessee at Lessee's sole cost and expense except as the parties may otherwise expressly agree in writing. Prior to commencement of construction of the Alterations, Lessee shall deliver to Agency, and obtain Agency's approval of, a detailed construction plan for the Alterations, which approval shall not be unreasonably withheld or delayed. Prior to commencement of construction, Lessee shall also obtain and deliver to Agency copies of all city, county, and/or other regulatory permits required for construction of the Alterations. Lessee shall keep the Premises free and clear of all liens of any kind. Lessee shall give Agency at least 10 days' prior written notice of commencement of any work on Alterations, so that Agency may post appropriate notices of non-responsibility, and Lessee hereby grants permission to Agency to enter onto the Premises for that purpose. Lessee, at its cost, shall provide to Agency a performance bond equal to 125% of the total estimated cost of any proposed Alterations prior to commencement of work thereon. All work on Alterations shall be performed in a workerlike manner and shall comply with all applicable governmental permits, laws, ordinances and regulations, including, but not limited to, any procedures promulgated by Agency. All work on Alterations shall be completed by contractors licensed in the State of California who shall have in place prior to commencement of work the policies of insurance required of Lessee by Section 19 below, as evidenced by a certificate of insurance delivered to and approved by Agency. Agency shall have the right to enter onto the Premises and to inspect construction of the Alterations during construction. All Alterations and fixtures, whether temporary or permanent in character, made in or upon or added to the Premises by Lessee shall be Agency's property at the end of the Lease Term without compensation to Lessee, subject to the provisions of Section 25 below.

13. Option to Renew. This Section is intentionally left blank

14. Utilities.

Lessee shall arrange and pay for all utilities, if any, including without limitation, water, electric, gas, garbage, communications and sewer services to be used in connection with this Lease. If Agency is required to contract with a utility to provide access for service to Lessee at the Premises for Lessee's sole use, Lessee shall pay to Agency the sum of \$200.00 upon receipt of a bill therefor from Agency in order to partially defray administrative costs.

15. Maintenance and Repair.

Lessee shall keep the Premises, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the Lease Term at Lessee's sole cost and expense. Lessee shall, at Lessee's sole expense, repair any area damaged by Lessee, Lessee's agents, employees and visitors. Lessee acknowledges that Agency is under no duty to repair or make improvements to the Premises. If Lessee fails to perform Lessee's obligations under this Section 15, Agency may enter upon the Premises after 10 days prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Lessee's behalf and expense as provided in Section 24(a) of this Lease. At the end of the Lease Term, Lessee shall surrender the Premises to Agency in the same condition as when received, ordinary wear and tear excepted.

16. Liens.

Lessee shall not permit any mechanics' or materialmen's liens, stop orders or other liens (collectively, "Liens") to be filed against the Premises nor against Lessee's leasehold interest therein by reason of labor or materials furnished to the Premises at Lessee's instance or request. If any such liens are filed against the Premises, Lessee shall cause the same to be discharged of record either by payment of the claim or by posting and recording the bond contemplated by California Civil Code Section 3143, within 20 days after demand by Agency. Lessee shall indemnify, hold harmless, and defend Agency from and against any such liens.

17. Indemnification.

Lessee shall indemnify, defend and hold harmless Agency and its [**For JPB Insert:** member agencies (the San Mateo County Transit District, the City and County of San Francisco and the Santa Clara Valley Transportation Authority) and their respective] directors, officers, employees, agents, contractors, any other person acting on Agency's behalf, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly or severally (collectively, "Indemnitees") from and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims or judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Premises by Lessee, (b) any act, omission or neglect of Lessee, Lessee's officers, employees, agents, servants, sublessees, concessionaires, contractors or visitors, and/or (c) any breach or default by Lessee of any of the terms, covenants or conditions of this Lease; provided, however that with respect to any Liability under sub-sections (a) and/or (b) above, Lessee shall not be obligated to indemnify any Indemnatee for any Liability caused by

the gross negligence or willful misconduct of that Indemnitee. The duty to defend established herein shall include payment of all legal costs and charges, including reasonable attorney's fees, and shall remain in effect notwithstanding any claim of gross negligence or willful misconduct by Lessee against any Indemnitee. Lessee waives any and all rights to any type of express or implied indemnity against Agency, its directors, officers or employees. The provisions of this Section shall survive the expiration or termination of this Lease.

18. Environmental Impairment.

The term "Hazardous Materials" shall mean any substance or material that is designated defined or described as a "hazardous materials," "hazardous substances," "hazardous wastes," "toxic substances," or "toxic waste" in or under any federal, state or local law, rule or regulation, whether in effect now or enacted in the future (collectively "Hazardous Materials"). The term "Hazardous Materials Release" shall mean the use, disposal, presence or release of Hazardous Materials from, in, on or under the Property, unless such use, disposal, presence or release was conducted in compliance with all applicable laws, rules and regulations and it will not create any liability for Agency now or in the future, or it has been explicitly approved in writing by Agency.

If Lessee knows of any Hazardous Materials Release in, on, under or about the Premises during the Term, Lessee shall immediately give Agency written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received by Lessee from, any governmental authority or private party concerning said Hazardous Materials Release.

Should any Hazardous Materials Release occur upon or from the Premises during the Term, Lessee, at Lessee's expense, shall investigate, remove, remediate and otherwise clean all property affected thereby to the satisfaction of Agency (insofar as the property owned or controlled by Agency is concerned) and of any governmental body having jurisdiction thereof.

Lessee shall indemnify, hold harmless, and defend each and all of the Indemnitees from and against all liability, claims, damages, loss, costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) (collectively "Claim") suffered or incurred by such Indemnitees or any of them as a result of Lessee's breach of this Section, or as a result of any Hazardous Materials Release occurring at any time during the term of this Lease, regardless of whether such Claim arises during or after the Lease Term.

The provisions of this Section shall survive the expiration or termination of this Lease.

19. Insurance.

The Lessee is required to procure and maintain at its sole cost and expense the following insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of the Lease. In the event Lessee procures excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Lessee's insurance be primary without any right of contribution from the JPB. Prior to commencement of the Lease and during the entire term of the Lease, including any extensions or holdover periods,

Lessee shall provide the JPB's authorized insurance consultant, Insurance Tracking Services, Inc., with satisfactory evidence of compliance with the insurance requirements of this section, by submitting such evidence of compliance to the address indicated below.

(a) MINIMUM TYPES AND SCOPE OF INSURANCE

(1) Workers Compensation and Employers' Liability Insurance.

a) Workers Compensation with Statutory Limits and/or Federal Employers Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

b) If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.

c) If the California Labor Code requiring Workers' Compensation applies, the Lessee shall also maintain Employer's Liability coverage with minimum limits of \$ 2 million.

d) Such insurance shall include the following endorsements as detailed in the Endorsements Section (b) below:

Waiver of Subrogation

(2) Commercial General Liability Insurance.

Commercial General Liability insurance for bodily injury and property damage coverage of at least \$2 million per occurrence or claim and a general aggregate limit of at least \$2 million. For any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

a) This insurance shall include coverage for, but not be limited to:

Premises and operations.
Products and completed operations.
Personal injury.
Advertising injury.

b) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

Additional Insured.
Separation of Insureds Clause.

Primary and Non-Contributory wording.
Waiver of Subrogation.

(3) Business Automobile Liability Insurance.

Business Automobile Liability insurance providing bodily injury and property damage coverage of at least \$2 million per accident or loss. This insurance shall include coverage for, but not be limited to:

All Owned vehicles.
Non-owned vehicles.
Hired or rental vehicles.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section (b) below:

Additional Insured.
Primary and Non-Contributory wording.
Waiver of Subrogation

(4) Property Insurance.

Property insurance with Special Form coverage including theft, but excluding earthquake with limits at least equal to the replacement cost of the property described below.

a) This insurance shall include coverage for, but not be limited to:

- Lessee's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the JPB, if any.
- Builders risk for property in the course of construction.

b) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

Waiver of Subrogation.

(5) Railroad Protective Liability Coverage

Prior to commencing demolition, construction or remodeling within 50 feet of railroad tracks, Lessee shall contact the JPB. The JPB shall obtain Railroad Protective Liability Insurance with limits of liability of \$2 million per occurrence and \$6 million in the aggregate. The named insureds shall be the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San

Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company.

- a) Coverage shall be on the RIMA policy form and include, but not be limited to:

Claims arising out of injury to or death of any person.

Physical loss or damage to or destruction of property including the JPB's rolling stock and any resulting loss of use thereof.

Coverage for supervisory acts of railroad employees.

FELA coverage for railroad employees.

All other railroads operating on the right-of-way.

Pollution extension for fuels and lubricants brought onto the job location.

(b) ENDORSEMENTS

(1) Additional Insured.

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

(2) Waiver of Subrogation.

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara County Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

(3) Primary Insurance.

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB.

(4) Separation of Insureds.

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the JPB's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Lessee. The purpose of this coverage is to protect Lessee and the JPB in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(c) EVIDENCE OF INSURANCE

Prior to the effective date of the lease, Lessee shall provide to Insurance Tracking Services, Inc. (ITS), the JPB's authorized insurance consultant, a Certificate of Insurance with respect to each required policy to be provided by the Lessee under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB Lease number and name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:
 Peninsula Corridor Joint Powers Board
 C/O Insurance Tracking Services, Inc. (ITS)
 P.O. Box 198
 Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the Lessee shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after to the expiration date of any policy.

(d) GENERAL PROVISIONS

(1) Notice of Cancellation.

Each insurance policy supplied by the Lessee shall provide at least 30 days' written

notice to Lessee of cancellation or non-renewal. Lessee must then provide at least 30 days' prior written notice to the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled. Submit written notice to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

(2) Acceptable Insurers.

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 10 or better).

(3) Self-insurance.

Upon evidence of financial capacity satisfactory to the JPB and Lessee's agreement to waive subrogation against the JPB respecting any and all claims that may arise, Lessee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

(4) Failure to Maintain Insurance.

All insurance specified above shall remain in full force and effect during the term of the Lease and until all of Lessee's personnel and equipment have been removed from the Property and the Lease terminated. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the Lease.

(5) Claims Made Coverage.

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a) Policy retroactive date coincides with or precedes the Effective Date of the Lease (including subsequent policies purchased as renewals or replacements).

- b) Lessee shall make every effort to maintain similar insurance for at least three (3) years following termination of the Lease, including the requirement of adding all additional insureds.
- c) If insurance is terminated for any reason, Lessee agrees to purchase an extended reporting provision of at least three (3) years to report claims arising during the term of this Lease.
- d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

(6) Deductibles and Retentions

Lessee shall be responsible for payment of any deductible or retention on Lessee's policies without right of contribution from the JPB. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the Lessee or any subcontractor contains a deductible or self-insured retention, and in the event that the JPB seeks coverage under such policy as an additional insured, Lessee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Lessee, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Lessee or subcontractor is not a named defendant in the lawsuit.

20. Noise Levels Near Railroad Tracks.

Lessee hereby recognizes and acknowledges that railroad tracks may be located on or adjacent to the Premises, and that the operation of trains over the tracks does and shall produce noise levels which may be considered objectionable by Lessee or employees, agents, sublessees, or invitees of Lessee. Therefore, Lessee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Agency on Lessee's behalf as a result of such noise levels including any claims of nuisance or trespass. Lessee shall indemnify and save harmless Agency against any loss, damage, liability or expense either might incur as a result of such action being taken by Lessee's employees, agents, sublessees or invitees.

21. Reservations.

Agency hereby excepts and reserves the right, to be exercised by Agency or by any other person who has obtained or may obtain permission or authority from Agency, to (a) operate, maintain, review and relocate any and all existing pipe, track (if any), power, signal and/or communication (including without limitation fiber optic) lines and appurtenances and other

facilities of like character upon, over or under the surface of the Premises, and (b) construct, operate, maintain, review and relocate such additional facilities of the same character in a manner that does not unreasonably interfere with Lessee's use of the Premises.

22. Mineral Rights.

Agency also reserves for itself and those to whom it grants such right the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying the Premises, or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon the Premises within 500 feet of the surface thereof to extricate or remove the same.

23. Default.

(a) Defaults.

The occurrence of any of the following shall constitute a material breach and default ("Default") of this Lease by Lessee:

(1) Any failure by Lessee to pay when due any of the Rent or other charges payable by Lessee;

(2) A failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee when such failure is not corrected within 10 days after written notice thereof from Agency; or if such failure cannot be cured within this 10 day period, as determined by Agency in its reasonable discretion, if such cure is not commenced within 30 days of Agency's written notice and thereafter diligently pursued to completion;

(3) The abandonment or the vacation of the Premises by Lessee for a period of more than 15 consecutive days;

(4) The happening of any of the following events: (a) the filing or institution by Lessee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Lessee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Lessee, (d) an assignment for the benefit of creditors by Lessee, (e) the levy of a writ of execution of the business of Lessee or the assets of Lessee located on the Premises which is not discharged within 10 days after the date of said levy, or (f) the appointment of a receiver to take possession of any property of Lessee.

24. Remedies.

In the event of a Default by Lessee, Agency may, at any time thereafter:

(a) Cure said Default by Lessee at Lessee's expense. Lessee shall, upon demand, immediately reimburse Agency for the cost of such cure together with interest at the Interest Rate from the date of the expenditure therefor by Agency until such reimbursement is received by Agency.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have vacated or abandoned the Premises, in which event Agency shall be entitled to enforce all of Agency's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder as provided in California Civil Code Section 1951.4. Acts of maintenance or preservation, efforts to re-let the Premises, or the appointment of a receiver upon the initiative of Agency to protect Agency's interest under this Lease shall not constitute a termination of Lessee's right to possession. No act by Agency other than giving written notice to Lessee will terminate this Lease.

(c) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Agency. In such event Agency shall be entitled to recover from Lessee the sum of all amounts set forth in California Civil Code Section 1951.2(a), including without limitation, the worth at the time of award of the amount by which all unpaid rent for the balance of the Term of this Lease after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided, and all other damages incurred by Agency by reason of Lessee's default including, without limitation, the cost of recovering possession of the Premises, and expenses of re-letting such as renovation of the Premises and real estate commissions and finder's fees actually paid for such re-letting. The "worth at the time of award" shall be computed in the manner provided in California Civil Code Section 1951.2(b) or its successor statute. For the purpose of determining unpaid rent under this paragraph, the rent reserved in this Lease shall be deemed to be the sum of all then unpaid monetary obligations owed under this Lease.

(d) Pursue any other remedy now or hereafter available to Agency under the laws of California.

Termination of this Lease under this section or for any reason whatsoever shall not release either party from any liability or obligation arising from an event which may have occurred before termination (including, but not limited to payment of all Rent due but unpaid as of the date of termination), or from actions that, under the express terms of this Lease, must be performed.

25. Surrender of the Premises; Holding Over.

(a) Upon expiration or earlier termination of this Lease, Lessee shall leave the Premises in a neat and clean condition satisfactory to Agency and free of all personal property of Lessee. All repairs, Alterations and/or other improvements made by Lessee shall become the property of Agency, provided that Agency may, by written notice given to Lessee on not less than 10 days prior to the expiration or termination of the Lease, require Lessee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition prior to termination of this Lease. If Lessee fails to do so, Agency may perform such removal and restoration work in which case Lessee shall pay Agency within 30

days after demand therefor (1) an amount equal to the Rent (as in effect immediately before termination) for the period during which such removal is accomplished to compensate Agency for the loss of rent to Agency resulting from the unavailability of the Premises for leasing to another tenant during such time and (2) the cost of removal of such improvements. Agency shall use reasonable diligence on the removal of such improvements.

(b) If Lessee, without Agency's written consent, remains in possession of all or part of the Premises after expiration or earlier termination of this Lease, such occupancy shall be construed to be a tenancy from month-to-month, subject to the terms and conditions of this Lease, except that the Rent shall automatically increase to 200% of the Rent in effect immediately prior to such termination or expiration.

26. Condemnation.

If all or part of the Premises is acquired by eminent domain or by purchase in lieu thereof, Lessee shall have no claim to any compensation awarded for the taking of the Premises or any portion thereof, including Lessee's leasehold interest therein or any bonus value of this Lease, or to any compensation paid as severance damages, or for loss of or damage to Lessee's Alterations or improvements, except as may be expressly provided in this Lease.

27. Assignment and Subletting.

Lessee shall not assign, encumber or otherwise Transfer, as defined below, its interest in this Lease without the prior written consent of Agency. Agency shall not unreasonably withhold consent to any Transfer in the event the proposed sublessee or assignee ("Transferee") meets Agency's credit, business/qualification and reputation requirements and the proposed occupancy is consistent with the general character of the use permitted by this Lease. With respect to any such approved transfer, Agency shall be entitled as additional rent for the duration of the Transferee's occupancy to an amount equal to 50% of the difference between the rent charged by Lessee to the proposed Transferee the then current Base Rent hereunder. For purposes of this Lease, the term "Transfer" means any assignment, encumbrance, transfer or subletting, change in more than 50% ownership interest or control of Lessee, or a reorganization or merger of Lessee by operation of law. As a condition to Agency's consideration of any Transfer, Lessee will pay to Agency, whether or not consent is ultimately given, Agency's reasonable attorneys' fees incurred in connection with each request for such consent. No Transfer, even with Agency's written consent thereto, shall release Lessee from its obligations hereunder. Agency's consent to one Transfer shall not constitute its consent to any another Transfer, or a waiver of Agency's rights hereunder. Lessee's Transferee shall agree in writing to be bound by all of the terms and conditions of this Lease that are to be performed by Lessee. Any purported Transfer in violation of this section shall be void and constitute a default hereunder, and at the option of Agency, terminate this Lease.

28. Damage.

(a) Scope of Damage.

Lessee shall notify Agency in writing immediately upon the occurrence of any damage to the Premises which makes the Premises untenable (a "Casualty"). Such damage shall be

deemed partial if it can be repaired and the Premises made tenantable within 180 days and does not occur during the last year of the Term ("Partial Damage"). All damage other than Partial Damage shall be deemed to be total destruction ("Total Destruction").

(b) Total Destruction.

In the event of Total Destruction, the Lease shall terminate as of the date of the Casualty ("Casualty Date").

(c) Partial Damage.

In the event of Partial Damage, Agency shall elect in a written notice to Lessee within 60 days of the Casualty Date whether to restore the Premises, at Agency's expense, to their condition prior to the Casualty Date. If Agency elects to restore the Premises, Agency shall diligently pursue such restoration to completion at Agency's sole cost and expense, provided that Lessee shall be responsible for the restoration, at Lessee's expense, of Lessee's fixtures, equipment and other improvements installed by Lessee. Upon such an election, this Lease will remain in effect. If Agency elects not to restore the Premises, Lessee shall elect within 30 days of receipt of Agency's election whether to restore the Premises at Lessee's sole cost and expense. If Lessee elects to restore the Premises, Lessee shall diligently pursue such restoration to completion in compliance with the provisions of Section 12 above. Upon such an election, this Lease will remain in effect. If Lessee elects not to restore the Premises, this Lease shall terminate as of the date of Lessee's election.

(d) Lessee's Costs.

If Agency restores the Premises, Lessee shall reimburse Agency for the deductible or self-insured retention under any of Agency's insurance policies and, if the Casualty was caused or contributed to by Lessee or Lessee's invitees, the excess of the cost to restore the Premises over the amount of the insurance proceeds from the Agency's insurance. Lessee shall have no right to any insurance proceeds other than proceeds that Lessee obtains with respect to Lessee's personal property and fixtures. If this Lease is not terminated, the base Rent shall abate in proportion to the Premises damaged until the Premises are restored.

29. Barricades.

If requested by Agency, Lessee shall install and maintain barricades, fences, and fence gates of a size and form satisfactory to Agency at such locations as may be designated by Agency at any time while this Lease is in effect, all at Lessee's expense and to Agency's satisfaction.

30. Attorney' Fees.

If either party brings any action against the other to enforce any provision of this Lease or collect any sum due hereunder, or if Agency brings an action for unlawful detainer of the Premises, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, in addition to any other remedies to which it may be entitled.

31. Miscellaneous Provisions.(a) Non-Waiver.

Agency's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of Rent or any other sum shall not be a waiver of any preceding breach by Lessee of any provision hereof, regardless of Agency's knowledge of such preceding breach at the time of acceptance of such Rent; nor shall such acceptance be a waiver in any way of Agency's right to terminate this Lease for any reason.

(b) Time of Essence.

Time is of the essence of each provision of this Lease. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this Lease.

(c) Entire Agreement and Amendment.

This Lease sets forth the entire agreement between the parties with respect to the leasing of the premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This Lease shall not be modified except by written agreement of the parties.

(d) Successors and Assigns.

Subject to the provisions of this Lease relating to assignment, mortgaging and subletting, this Lease shall bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto.

(e) Authority.

Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of Lessee, and that this Lease is binding upon Lessee in accordance with its terms. Agency, as a condition precedent to this Lease, may require corporate or partnership resolutions as are reasonably necessary to establish the authority of Lessee to execute this Lease.

(f) Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

(g) Captions.

All captions and headings in this Lease are for the purposes of reference and convenience and shall not limit or expand the provisions of this Lease.

(h) Brokers.

Agency and Lessee are separately responsible for payment of any broker's commission or finder's fee incurred by that party's engagement or acceptance of the services of a broker or agent by said party. Agency and Lessee agree to indemnify, defend and hold the other party harmless from and against any claims and suits made by any broker, agent or other person claiming a commission or other form of compensation against the other party by virtue of having dealt with Agency or Lessee, as the case may be, with regard to this Lease.

(i) Counterparts.

This Lease may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease on the day and year first above written.

<p>Agency: PENINSULA CORRIDOR JOINT POWERS BOARD</p> <p>By: _____ Its: Director of Real Estate and Property Development</p> <p>APPROVED AS TO FORM:</p> <p>_____ Attorney for Agency</p>	<p>Lessee: _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>*By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Incorporated under the laws of State of _____</p>
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* If Lessee is a corporation, two corporate officers must sign on behalf of the corporation as follows: 1) the chairman of the board, president or vice-president; and 2) the secretary, assistant secretary, chief financial officer, or assistant treasurer.

EXHIBIT A

PREMISES



BURBUNGAME
CALTRAIN STATION
20190521 - MO'D