

TAB 52

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: January 20-21, 2016

Reference No: 2.4e.
Action Item

From: NORMA ORTEGA
Chief Financial Officer

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

Subject: **REQUEST FOR APPROVAL OF PURCHASE AND SALE AGREEMENT**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) approve the Purchase and Sale Agreement (PSA) between the City of Hayward (City) and Department and that each deed conveyance subject to the agreement be approved by the Commission at subsequent meetings.

BACKGROUND

The Department's State Route 238 bypass corridor properties are no longer needed for highway purposes and the Department has certified them as excess. Pursuant to governing statutes, the Department must sell the State Route 238 excess properties at fair market value, with the proceeds from those sales, less authorized federal reimbursements and costs of sale, to be used to fund certain local alternative transportation improvement projects approved by the Commission.

The Department proposes to sell directly to the City certain excess properties which are located in the State Route 238 bypass corridor for the City's public purpose as forth in the Resolution of Public Purpose adopted by the City on January 12, 2016 attached as Exhibit B.

SUMMARY

It is in the Department's best interest to approve the PSA with the City for the sale of excess properties. This will relieve the Department of maintenance and liability obligations for the excess properties sold to the City, provide for the Department's receipt of fair market value for the properties from the City's purchase, and provide the City with an opportunity to shape its future economy, community and livability.

Attachments

Exhibit A: Purchase and Sale Agreement

Exhibit B: City of Hayward Resolution Declaring Public Purpose

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") dated ___, 2016 and effective as of the date fully executed by the parties ("Effective Date"), is entered into between the State of California, acting by and through its Department of Transportation ("Department") and the City of Hayward, a municipal corporation of the State of California ("City").

RECITALS

WHEREAS, the Department is the owner of certain real property located in what is commonly referred to as the Rte. 238 Bypass corridor (collectively, the "Rte. 238 Excess Properties") acquired and to be used for the purpose of constructing a new alignment for a freeway or expressway bypass to State Route 238 in the City of Hayward and in an unincorporated area of the County of Alameda ("Bypass Project"); and

WHEREAS, the Bypass Project was and is no longer planned to be constructed and the route adoption for the Bypass Project was rescinded by the California Transportation Commission ("CTC") in November 2010; and

WHEREAS, the Director of the Department has previously determined, in accordance with Section 118 of the Streets and Highways Code, and Government Code sections 14528, and following, that the Rte. 238 Excess Properties are no longer needed for highway purposes and have been certified as excess; and

WHEREAS, the sale of the excess properties acquired for the Route 238 Bypass Project is the subject of Government Code sections 14528.5, *et seq.*, ("238 LATIP Statutes"); and

WHEREAS, the sale of certain residential Rte. 238 Excess Properties are also the subject of an Order and Final Judgment Approving Settlement and Certifying Class in a class action lawsuit in which the City and Department were parties, known as *Robert Swanson et al., v. The California Department of Transportation et al.*, Alameda County Superior Court Number RG 09 476468 ("*Swanson*"); and

WHEREAS, pursuant to the LATIP statutes, the sale of the Rte. 238 Excess Properties are exempt from the priorities and procedures regarding the disposal of residential property under Government Code § 54235 *et seq.*, (Gov. Code § 14528.65(a)(2)) and relocation assistance requirements (Gov. Code § 14528.6(d-f)); and

WHEREAS, the 238 LATIP Statutes and *Swanson* require in part that the Department sell the Rte. 238 Excess Properties at fair market value and that all proceeds from those sales, less authorized federal reimbursements and costs of sale, be deposited into a Special Deposit Fund established for use as provided for in the LATIP Statutes to fund certain local alternative transportation improvement projects approved by the CTC; and

WHEREAS, pursuant to California Streets and Highways Code section 118, Department is authorized to sell excess property in accordance with the terms, standards, and conditions established by the CTC; and

WHEREAS, CTC Resolution G-98-22 authorizes the direct sale of Department excess property to public agencies, subject to the approval of the CTC as provided in Streets and Highways Code section 118, if the intended use of the property is for a public purpose; and

WHEREAS, the City desires to purchase certain Rte. 238 Excess Properties as specified herein (the "Property") from Department by direct sale in order to realize a public purpose and benefit as set forth in a Resolution of Public Purpose to be adopted by City on January 12, 2016; and

WHEREAS, it is the mutual intent and objective of the City and Department that the final sale and transfer of the entire Property from Department to City proceed expeditiously; and

WHEREAS, City and Department desire to set forth herein the terms and conditions of the sale of the Property by Department to City;

NOW THEREFORE, in consideration of the respective agreements contained below, Department and City agree as follows:

1. AGREEMENT OF SALE

- 1.1. Purchase and Sale.** For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Department agrees to sell and the City agrees to purchase the Property described in section 1.2 below, under the terms and conditions of this Agreement.
- 1.2. Description of the Property.** The Property to be sold and purchased under this Agreement consists of all right, title and interest in that certain real property situated in the City of Hayward and the County of Alameda depicted in Exhibit A, attached hereto and incorporated by reference herein which may be amended by mutual agreement as set forth in Section 12.2 (the "Property"). The Property is expressly sold "AS IS", with no warranties, express or implied, and the conveyance is subject to any and all special assessments, restrictions, easements and any and all other encumbrances as set forth in sections 7.1 and 7.2.
- 1.3. Assemblage of Property for Sale to City.** The Property shall be assembled by Department into separate parcels ("Parcels"), each of which is comprised of individual properties, as depicted in Exhibit A-1 to A-9 attached hereto and incorporated by reference herein. As to each Parcel, it is understood and agreed that:

- a. Each Parcel shall be conveyed to City by Director's Deed, and a purchase price for each shall be determined as set forth in Section 2 below ("Parcel Purchase Price").
- b. Unless Department consents to subdivision of a Parcel into Authorized Subparcel(s) as defined and set forth in Section 1.3(c) below, each Parcel shall only be conveyed to City in its entirety for the full Parcel Purchase Price regardless of how City packages any or all of the Property for use or resale to third parties. Accordingly, the parties understand and agree that as between Department and City, except as allowed under Section 1.3.c: i) a portion of a Parcel will not be separately conveyed to the City; and ii) the fact that a sale of Property by City to a third party does not conform to a Parcel as assembled by Department shall not affect the Parcel to be conveyed by Department to City or relieve City of its obligation to pay the full Parcel Purchase Price prior to relinquishment of the Department's Power of Termination set forth in Section 3.2 below.
- c. A Parcel may in limited circumstances be subdivided at City's request into subparcel(s) for sale with the express written consent of Department ("Authorized Subparcels"). In such circumstances, a new legal description and Power of Termination for the Authorized Subparcels created by subdividing the Parcel shall be prepared by City and provided to Department. It is the express understanding and agreement of the parties that such subdivision shall not result in the creation or return of remnants and/or unmarketable portions of a Parcel to Department or relieve City of any payment obligation set forth in this Agreement.
- d. It is understood and agreed that if the City subdivides and sells any Parcel or group of Parcels, or any portion(s) thereof, without the express written consent of Department ("Unauthorized Subparcel(s)"), City does so at its own expense and risk and the parties further expressly agree and understand that as between Department and City, any sale of such Unauthorized Subparcel(s) by City obligates the City to purchase the entire Parcel(s) so subdivided from Department and Department will not release the Power of Termination as to any Parcel or Parcels, or portion thereof, so subdivided until the entire Parcel Purchase Price of said Parcel(s), as defined in Section 2.2. below, is paid to Department. It is the express understanding and agreement of the parties that subdivision under this provision shall not result in the creation or return of remnants and/or unmarketable portions of a Parcel to Department or relieve City of any payment obligation set forth in this Agreement.

1.4. Term of Sale. The purchase of the Property shall be an all cash transaction for the Property Purchase Price defined in Section 2.1 below. Subject to the provisions of Section 4, the Property Purchase Price shall be paid over the course of six (6) years or sooner, as the Property is sold by City to third parties or as otherwise paid for by City, with the full Property

Purchase Price, due and payable by City to Department by a date no later than six (6) years following the approval of this Purchase and Sale Agreement by the CTC.

2. PURCHASE PRICE

- 2.1. Amount. The Purchase Price for the Property (“Property Purchase Price”) shall be the Parcel Purchase Price of all of the Parcels identified by City in a timely delivered Notice of Intent to Proceed pursuant to Section 10.3 added together, less any reduction pursuant to Section 4.2 below.
- 2.2. Parcel Purchase Price. The Parcel Purchase Price shall be determined as follows:
- a. The Parcel Purchase Price shall be the Fair Market Value (as defined in California Code of Civil Procedure section 1263.320) of each Parcel in its “As Is” condition without vesting or entitlements but taking into account all relevant indicators of value as considered in a standard appraisal process.
 - b. Each Parcel Purchase Price shall be determined on the basis of two (2) appraisals performed by independent MAI appraisers, one selected by City and one selected by Department. The appraisers shall be informed that they are jointly retained by City and Department, and the appraisal costs shall be divided equally between City and Department. City shall invoice Department for its share of the appraisal costs and shall provide Department with supporting documentation for all charges billed and monies actually paid to the appraiser(s). Department will fully reimburse City for invoiced amounts supported by the submitted documentation within 45 days of receipt of the invoice and supporting documentation.
 - c. The appraisers shall each make an independent determination of Fair Market Value of each Parcel based upon instructions prepared jointly by Department and City and following Department’s applicable valuation procedures and policies to the extent that they do not conflict with the joint instructions. Representatives of Department and City shall jointly meet with the appraisers prior to commencement of the work to clarify the instructions concerning the assignment, answer any questions and/or provide any necessary information.
 - d. Any questions either of the appraisers have regarding the instructions for the appraisal shall be submitted in writing to both City and Department, who shall consult and prepare a mutually agreeable response/instruction. Any communications with the appraisers relating to such response or instruction or to the appraisal work to be performed pursuant to this Agreement shall only be held at joint meetings where both Department and City staff are present.
 - e. Each appraiser shall complete, sign, and submit his/her written appraisal setting forth the Fair Market Value of each Parcel within 60 days of accepting the appraisal assignment. The written appraisal shall fully and clearly set forth the assumptions, factual information, market data and reasoning upon which the appraiser’s professional conclusions are

based. Any additional instructions provided by Department and City at the meetings provided for in section (d) above shall be set forth in the appraisal reports.

- f. Neither appraiser shall have the power to modify any of the provisions herein regarding the appraisal assignment and each must base his/her valuation on the definitions, standards, assumptions, instructions, and other provisions agreed upon by the parties. In the event one or both of the appraisers fails or refuses to follow the provided assumptions and instructions, whether initial or subsequent, or the submitted appraisal fails to comply with accepted appraisal practices, either party may strike said appraiser/appraisal based solely on those reasons within 10 business days of the submission of said appraisal, in which case Department and City shall jointly select another MAI appraiser to replace the one stricken. It is not the intent of this provision that an appraiser/appraisal be stricken based on a party's disagreement with the appraiser's opinion of value of the property.
 - g. In the event the difference between the opinions of value in the two (2) appraisals is within fifteen percent (15%) of each other, the Purchase Price for that Parcel shall be the midpoint between the two appraisals.
 - h. In the event the opinions of value of the two appraisers differs by more than fifteen percent (15%) and the parties are unable to reach agreement on the value of the Parcel within 10 business days, Department and City shall select a mutually agreeable third MAI appraiser ("Review Appraiser") who will evaluate both prior appraisals and make a determination of value of the Parcel, which the parties shall accept as the Parcel Purchase Price. The review appraisal must result in a value determination between the range of the prior two appraisals. The cost of the Review Appraiser shall not exceed \$15,000 per Parcel, to be split by the Department and City equally.
- 2.3. City's Resale.** It is understood that after Department's transfer of title to City as provided for herein, City contemplates selling all or a portion of the Property to third parties with the proceeds of such sales to be used to pay the Property Purchase Price and to assist in the entitlement and sale of the remaining Property to the extent provided for herein. In the event the City's resale is of an Authorized Subparcel or Unauthorized Subparcel, the proceeds of such sale shall be applied first to pay the Parcel Purchase Price of the Parcel(s) in which the Subparcel is situated before any deduction by City for its costs and expenses in selling or entitling any portion of the Property or any other expense. It is further agreed and understood that the price at which City resells any Parcel or portion(s) thereof shall not affect the Parcel Purchase Price or Property Purchase Price.
- 2.4. Payment.** Payment of the Property Purchase Price shall be made as follows:
- a. Proceeds from Sale of Entire Parcels. If a Parcel is sold by City in its entirety to a third party for an amount equal to or greater than the Parcel Purchase Price, all proceeds from such a sale that are in excess of the Parcel Purchase Price shall be allocated as set forth in Section 2.4.d. In such instances, Department shall execute and deposit a

Relinquishment of Power of Termination for the subject Parcel into escrow with instructions that said Relinquishment be released and recorded upon payment of all monies due Department for the sale of that Parcel.

- b. Proceeds from Sales of Authorized Subparcels. If a Parcel is subdivided for sale into Authorized Subparcel(s) with the Department's consent as provided in Section 1.3.c, proceeds from the sales of such Authorized Subparcels shall be applied as follows:
- If the sales proceeds from the Authorized Subparcel are sufficient to pay the total Parcel Purchase Price of the subdivided Parcel(s), they shall be applied to that Parcel Purchase price. In such instances, Department shall execute and deposit a Relinquishment of Power of Termination for the pertinent Authorized Subparcel and Parcel(s) into escrow with instructions that said Relinquishment be released and recorded upon payment of all monies due Department for the sale of the Authorized Subparcel and Parcel(s).
 - If the sales proceeds of an Authorized Subparcel are insufficient to pay the entire Parcel Purchase Price of the subdivided Parcel(s), all proceeds from the sale of the Authorized Subparcel shall be paid to Department and applied toward the Parcel Purchase Price of the subdivided Parcel(s). In such instances, in order to provide marketable title to Authorized Subparcels, Department shall timely execute and deposit a Relinquishment of Power of Termination as to the Authorized Subparcel only, with instructions that said Relinquishment be released and recorded upon payment of all monies due Department for the sale of the Subparcel. Thereafter, City shall pay the remaining Parcel Purchase Price from City's excess sales proceeds as provided for in section 2.4.d. below.
 - If City's sales of Authorized Subparcels, individually or in aggregate, generate sales proceeds that exceed the subdivided Parcel(s) Purchase Price, the excess proceeds shall be allocated as set forth in Section 2.4.d below.
- c. Proceeds from Sales of Unauthorized Subparcels. If a Parcel is subdivided for sale into Unauthorized Subparcel(s) without the Department's consent as provided in Section 1.3.d, all proceeds from the sales of such Unauthorized Subparcels shall be applied to the Parcel Purchase Price of the subdivided Parcel(s) and Department will not release the Power of Termination as to any Parcel or Parcels, or portion(s) thereof, so subdivided until the entire Parcel Purchase Price of said Parcel(s) is paid to Department.
- If the sales proceeds from the Authorized Subparcel are sufficient to pay the total Parcel Purchase Price of the subdivided Parcel(s), Department shall execute and deposit a Relinquishment of Power of Termination for the pertinent Parcel(s) into escrow with instructions that said Relinquishment be released and recorded upon payment of all monies due Department for the entire Parcel(s).
 - If the sales proceeds of an Unauthorized Subparcel are insufficient to pay the entire Parcel Purchase Price of the subdivided Parcel(s), City shall pay the full

Parcel(s) Purchase Price from City's excess sales proceeds as provided for in section 2.4.d. below, or by independent payment by the City. Upon receipt of such payment, Department shall release and record the Relinquishment of Power of Termination as to the pertinent Parcel(s).

- If City's sales of Unauthorized Subparcels, individually or in aggregate, generate sales proceeds that exceed the subdivided Parcel(s) Purchase Price, the excess proceeds shall be allocated as set forth in Section 2.4.d below.
- d. Proceeds from a sale by City to a third party of a Parcel in its entirety or of Authorized or Unauthorized Subparcel(s) (either individually or in aggregate) that are in excess of the subject Parcel(s) Purchase Price shall at the close of escrow be: i) first applied to pay the remaining balance(s) of any Parcels which have been subdivided and partially sold under section 1.3.c and 1.3.d, then, ii) to the City for its purposes, including to fund the entitlement, marketing, and sale of remaining Parcels. Upon receipt of payment of the balance of each respective Parcel Purchase Price owing, Department shall timely release and record the Relinquishment of Power of Termination as to that Parcel.
- e. The Parcel Purchase Price for Parcels containing Property that the City does not intend to sell to a third party shall be due within 60 days of City's written notification to Department of its intention not to sell the specified Property to a third party. To the extent not paid for by the proceeds of a sale as set forth above, the Parcel Purchase Price for such Parcels shall be paid to Department by cash, certified cashier's check or electronic transfer.

2.5. Allocation. All proceeds received by Department from the sale of the Property to City, less the Department's costs of such sale as allowed by the LATIP statutes, shall be deposited into the separate account in the Department's Special Deposit Fund established pursuant to the 238 LATIP Statutes for use as provided for in those statutes, if applicable. Department shall, consistent with its practices and policies, timely and regularly make such deposits over the course of this Agreement upon receipt from City of all monies owing on each Parcel or Authorized Subparcel as set forth above.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title. Upon the CTC's approval of this Agreement for sale of the Property to City and of the subsequent Parcel deeds prepared therefor, and the City's release of its due diligence contingency pursuant to Section 10.3, Department will promptly convey marketable title to the applicable Parcel(s) to City by duly executed and acknowledged separate Director's Deed for each Parcel in a form substantially similar to the form attached as Exhibit B, incorporated herein by this reference, which deeds shall be collectively or individually recorded by the City in the Official Records of the County of Alameda after approval by the CTC. The date of recordation of each Parcel deed shall be the "Transfer Date" for that Parcel.

- 3.2.** Department's Power of Termination. Attached to and as a part of each Parcel deed, Department shall execute, retain, and record a Power of Termination, in substantially the form set forth in Exhibit C, attached hereto and incorporated herein by this reference, with a certificate of acceptance in a form attached to the form deed in Exhibit B, over every transferred Parcel to assure that City fulfills its obligations herein. To the extent applicable pursuant to the provisions of section 2.4 above, upon the sale of a Parcel, Authorized Subparcel, Unauthorized Subparcel or payment of the applicable Parcel Price, Department shall execute and deposit a Relinquishment of Power of Termination for the pertinent Authorized Subparcel and/or Parcel in substantially the forms attached as Exhibit D, incorporated herein by this reference, into escrow with instructions that said Relinquishment(s) be released and recorded upon payment of all monies due Department, as set forth in section 2.4 above. If required, such deposit of the Relinquishment of Power of Termination shall be made by Department within 10 business days after the Department receives written notice from the City of the opening of an escrow relating to any Parcel or portion thereof. It is the intention and to the mutual benefit of Department and City that the conditions for Relinquishment of the Power of Termination as to all Parcels and Authorized Subparcels be satisfied as promptly as possible during the term of this Agreement.
- 3.3.** Scope. It is expressly understood that the right, title, and interest in the Property conveyed shall not exceed that vested in the Department, that the sale is subject to all title exceptions and reservations of record, and that no policy of title insurance will be furnished by Department in connection with this Agreement.
- 3.4.** Reporting. City will report quarterly to Department as to the status and progress of its sale of the Property to third parties, which shall include all such sales to date and those anticipated in the next quarter. Nothing in this section will require disclosure of confidential information regarding ongoing property negotiations.

4. CITY'S FAILURE TO TIMELY PAY PURCHASE PRICE

- 4.1.** In the event City fails to pay the full Property Purchase Price by the end of the 6-year term, specified in Section 1.4 of this Agreement, Department may, at its option, either:
- a. Subject to 4.1(c), exercise its Power of Termination as to the remaining unpaid-for Parcels or Authorized Subparcels; or
 - b. With the written agreement of City, extend the time for City to pay the Property Purchase Price for a mutually agreeable time period contingent upon City paying Department, subject to the exceptions below, a fee equal to one percent (1%) of the Parcel Purchase Price of the remaining unpaid-for Parcels for each month payment of the full Parcel Purchase Price is delayed beyond the 6-year payment due date set forth in Section 1.4. It

is understood and agreed that this entire fee, which will be deposited into the LATIP account as applicable, shall not be credited toward any Parcel Purchase Price and must be paid in full prior to Department's Relinquishment of the Power of Termination. This fee shall not apply to Parcels that on the 6-year payment due date are either: i) in escrow; or ii) the subject of a letter of intent to purchase or subject to an option reflecting an anticipated date of sale within 90 days of the 6-year payment due date. If any properties within (i) or (ii) have not closed escrow within 180 days of the 6-year payment due date, the fee shall begin to apply on the 181st day after said due date unless the City surrenders the property to the department before the 181st day described above.

- c. Prior to exercising its Power of Termination, the Department shall provide the City with a written notice of its intention to exercise its Power of Termination on the identified Parcels or Authorized Subparcels. The City shall have ninety (90) days from the notice to pay Department the remainder or total Parcel Purchase price owed on any identified Parcels or Authorized Subparcels. If the City does not pay the Parcel Purchase Price due by the 90th day from Department's notice, Department may exercise its Power of Termination as to the identified Parcels or Authorized Subparcels without any further concern to this Section.

4.2. Return of Unsold Parcels or Authorized Subparcels.

Subject to the City's purchase option set forth in 4.1(c), in the event that the Department exercises its Power of Termination over any unsold Parcel or Authorized Subparcel, the following conditions shall apply:

- a. A Parcel or Authorized Subparcel to which the Power of Termination is exercised will be returned to the Department and the City shall have no further obligation to pay the Parcel Purchase Price(s) and the Property Purchase Price shall be reduced accordingly;
- b. An Authorized Subparcel to which the Power of Termination is exercised, will be returned to the Department and the City shall have no further obligation to pay the outstanding balance due on the Parcel Purchase Price(s) of the Parcel due to that Authorized Subparcel and the Property Purchase Price shall be reduced accordingly.

5. POSSESSION AND MAINTENANCE OF THE PROPERTY

- 5.1. Possession. Commencing on the Transfer Date(s) of each Parcel, City shall have full possession, use, and control of said Parcel, and all obligations and liabilities pertaining thereto, subject to Department's Power of Termination and the interest of tenants under existing leases.
- 5.2. Maintenance. Department shall continue and not defer routine maintenance on Parcels up to their respective Transfer Date(s). Prior to the Transfer Date(s), the Department shall not commit, suffer, or permit any waste on the Parcel(s) or any acts to be done thereon in

violation of any laws or ordinances, and shall not use or permit the use of the Parcel(s) for any illegal purpose. Commencing on the Transfer Date(s), City shall be responsible for the maintenance of the Parcel(s), which shall include but not be limited to:

- a. City at its own expense shall be solely responsible for keeping the Parcel(s) in a state of good repair.
- b. City shall be solely responsible for the management of all rental units on the Parcel(s) and shall employ good property management practices regarding those rental units. The City shall have no obligation to Department to continue the existing use of any Parcel, Subparcel, lease, or Sublease as of the Transfer Date.
- c. City shall not commit, suffer, or permit any waste on the Parcel(s) or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Parcel(s) for any illegal purpose.

5.3. Damage to improvements. Upon the respective Transfer Date(s), the City agrees to assume all risk of damage to or loss of any improvements on the Parcel(s) and agrees that no such damage or loss shall constitute a failure of consideration.

5.4. Surrender of Possession. In the event this Agreement is terminated by City's breach or default in any material respect, or the Department exercises its Power of Termination, City agrees, upon demand of Department, to quietly and peaceably surrender to the Department possession of all Property to which Department has not relinquished its Power of Termination. Surrendering possession shall relieve the City of any obligation(s) under or relating to this agreement including, but not limited to, the payment of the applicable Parcel(s) Purchase Price, except as to Parcel(s) from which Unauthorized Subparcels have been sold as set forth in section 1.3.d. Department, at any time following termination of this Agreement or exercise of its Power of Termination, may sell any Parcels to which it has not relinquished its Power of Termination free and clear of any rights of City in and to those Parcels.

6. ASSIGNMENT OF TENANCIES

6.1. Assignment. On the Transfer Date, the Department shall transfer to City all of its right, title and interest in and to all existing leases and rental agreements on the Property (collectively, "Leases") by an "Assignment of Leases" in the form attached as Exhibit E, incorporated herein by this reference. A list of all Leases to be assigned is attached as Exhibit F, incorporated herein by this reference. State will provide all existing lessees with a Notice of Assignment in the form attached as Exhibit G, incorporated herein by this reference.

Department's current review of its property management records to date indicates that some or all of the existing leases on the Property are month-to-month and/or can be terminated with 30-days notice and that some or all of the existing leases have tenant waivers of

entitlement to certain payments under the State and Federal Uniform Relocation Assistance Act. (Government Code, Section 7260, et seq.; 42 United States Code, Section 4601, et seq.)

- 6.2.** New Leases. Until such time as the Department's Power of Termination is relinquished as to the Parcel or Authorized Subparcel in which the leased property is situated, any new Leases or Lease extensions entered into by City on the Property shall utilize the Department's standard form lease agreement and include legally enforceable tenant waivers of relocation assistance in a form substantially similar to Exhibit H attached hereto and incorporated by reference herein, and shall be month-to-month.
- 6.3.** Rents.
- a. Collected Rents. All rents collected by City after the Transfer Date, except those referred to in subsection (b) below, shall be the property of City. Department shall promptly deliver any rents accrued after the Transfer Date and received by Department to City. If the Transfer Date occurs during the rental period, the rent will be prorated accordingly.
 - b. Delinquent Rents. All unpaid rents that are due and owed to Department prior to the Transfer Date will remain the property of the Department. Department waives no rights as to the recovery of such delinquent rent or other monies owing by tenants to Department and retains its full rights as to any and all remedies allowed by law to collect such monies.
 - c. Security Deposits. Within 10 business days following the Transfer Date of any Parcel, Department shall submit a request with necessary supporting documentation to Caltrans Accounting to process a warrant in accordance with its policies, practices and procedures, in order to transfer to City all security deposits as to any Leases on said Parcel by cash, certified cashier's check or electronic transfer of immediately available funds.
 - d. Lease Status. If it has not already done so, within fifteen (15) business days of the Effective Date, Department shall provide City with copies of all Leases listed in Exhibit F, along with the following information: any delinquent rent amounts along with the corresponding time period of delinquency, most recent contact information for Lessees, amount of security deposit, tenant relocation benefit waivers or acknowledgements, and to the extent that the records exist and are reasonably accessible, repairs over the past five years, maintenance schedule for the property, and any other information relevant to the administration of the Leases. The Department agrees to cooperate with the City to furnish any other information relevant to the administration of the Leases and to retain and make all lease files available for City review and copying upon request, at no cost to City for the duration of this Agreement.

7. CONDITION OF THE PREMISES

- 7.1. AS IS SALE.** CITY ACCEPTS THE PROPERTY IN ITS “AS IS, WHERE IS, WITH ALL FAULTS” CONDITION, WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE FOR ANY CONDITION OF THE PROPERTY, AND ACKNOWLEDGES AND AGREES THAT NEITHER STATE NOR ANY OF ITS AGENTS HAVE MADE, AND STATE HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES AS TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO, WARRANTY OF USE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND CITY HEREBY EXPRESSLY DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATIONS OR WARRANTY.

Department is unaware of the presence of any protected cultural items or human remains on the Subject Property. Pursuant to the “AS IS” sale, Department shall in no event be responsible for any such items or remains subsequently discovered on the Property unless directly caused by the Department after the Transfer Date(s), or if otherwise allowed by law.

Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Property, if any, whether foreseen or unforeseen, and whether such matters are of record or not. It is City’s sole obligation to conduct an independent investigation of the Property and all matters relating to its condition and use as intended.

- 7.2. Hazardous Materials.** Department will provide City with any studies it has regarding hazardous materials on the Property. Department makes no warranties regarding the presence or absence of hazardous materials on the Property or regarding any responsibility for remediation of any Parcel that does not otherwise exist at law. Nothing in this Agreement is intended to alter the parties’ respective responsibilities, if any, for any hazardous materials on the Property under State or Federal law, or their respective rights, if any, to seek indemnification and/or contribution under State and Federal law, except as would be precluded or limited by an “As Is” sale of property by and between the parties.

8. EXPENSES AND TAXES

- 8.1 Department Sale to City.** City shall be fully and solely responsible for all its costs and expenses, including staff time, associated with its purchase of the Property from Department pursuant to this Agreement, including costs of preparing legal descriptions and Powers of Termination for any Authorized Subparcels requested by City. Department may recover its costs associated with its sale of the Property to City pursuant to this Agreement as provided for under the LATIP statutes.

- 8.2** Department Sale to City. City shall be fully and solely responsible for all recording fees, documentary stamp taxes, or other real estate transaction taxes or fees by whatever name known, including escrow fees or brokers commission, if any, and personal property sales taxes where applicable. In no event shall Department be responsible for such costs and expenses, nor shall they be charged against or recovered from LATIP funds.
- 8.3** Resale by City. City shall be fully and solely responsible for all expenses and costs associated with City's sale of the Property to third parties, including but not limited to all recording fees, documentary stamp taxes, or other real estate transaction taxes or fees by whatever name known, including escrow fees or brokers commission, if any, and personal property sales taxes where applicable. In no event shall Department be responsible for such costs and expenses, nor shall they be charged against or recovered from LATIP funds.
- 8.3.** Entitlements. City shall bear all costs and expenses associated with any land use approval requirements such as lot line adjustments or other entitlement for sale of the Property by City to third parties if said costs are not recovered from said third parties in the entitlement and development processes. In no event shall Department be responsible for such costs and expenses, nor shall they be charged against or recovered from LATIP funds.
- 8.4.** Taxes and Assessments. Commencing on the Transfer Date, City shall have sole responsibility for all taxes and assessments which are and which may be levied or assessed against the Property.

9. INDEMNIFICATION

- 9.1.** Indemnification (City). In addition to the indemnification provided by City under the April 28, 2015 Permit to Enter Granted by Department to City, as Amended on June 8, 2015 the City agrees to defend, indemnify, and save harmless the Department, its officers, agents, and employees against any and all claims, demands, and causes of action of any type or nature that may be made or brought against the Department, its officers, agents, and employees, by any person or entity, including tenants, caused by, arising out of, or in any way related to the condition, control, use, or occupancy of the Property by the City, its assigns, licensees, permittees, invitees, and/or successor purchasers occurring after the Transfer Date.
- 9.2.** Indemnification (Department). Subject to the limitations of Section 7.2 and City's indemnification obligations under the April 28, 2015 Permit to Enter granted by Department to City, as Amended on June 8, 2015, the Department agrees to defend, indemnify, and hold the City harmless, to the fullest extent allowed by law, from any and all claims, demands, and causes of action of any type or nature that may be made or brought against City by virtue of the Department's ownership of the Property and which results from any event occurring before the Transfer Date.

10. CONTINGENCIES

- 10.1** City Resolution. This Agreement is contingent on City obtaining a resolution from its governing body approving and authorizing the sale set forth in this Agreement and the City's intended use of the Property for a public purpose.
- 10.2.** California Transportation Commission (CTC) Approval. Department's direct sale of the Property to City by this Agreement is expressly contingent upon the CTC approving and authorizing the manner, terms and conditions of the sale set forth in this Agreement and the subsequent deeds prepared for the Parcels to be conveyed, in accordance with its Guideline(s) governing such sales, including as to the intended use of the Property for a public purpose.
- 10.3** Due Diligence. The Department's sale of the Parcels to the City and the City's acceptance of such Parcels is contingent upon the City conducting its due diligence and delivering legally binding, written Notice(s) of Intent to Proceed, the last of which shall be delivered to the Department no later than six (6) months after the Effective Date of this Agreement, identifying those Parcels that the City will purchase pursuant to the terms of this Agreement. The form of Notice(s) of Intent to Proceed shall be substantially similar to Exhibit I attached hereto and incorporated by reference herein. Upon the City's delivery of a written Notice of Intent to Proceed, and completion of all other prerequisites, the Department will prepare the applicable Parcel deeds and proceed with the steps to seek CTC approval of the deed(s) at the next CTC meeting where the deed can be submitted as a timely book item in accordance with applicable Department and CTC procedural deadlines and time constraints. In no circumstance shall Department be obligated to prepare or proceed with seeking approval of a deed where the contingency on the Parcel(s) has not been released by City by delivery of a Notice of Intent to Proceed as set forth herein. Any Parcel not identified in a Notice of Intent to Proceed at the end of the 6-month contingency period shall not be part of the Property conveyed to City by Department pursuant to this Agreement and shall be immediately available for auction or other disposition by Department. After the 6-month contingency period, Department shall have no obligation to make any Parcel(s) not identified in the Notice(s) of Intent to Proceed available to City for future purchase except as Department deems appropriate to do so in its sole discretion, and shall have no obligation to provide City with notice, either formal or informal, of Department's present or future intentions or actions as to such Parcel(s).

11. NOTICES

- 11.1.** Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery with receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) three (3) days after being deposited in the United States mail, registered or certified mail, postage

prepaid, return receipt required, and addressed as follows:

City: City of Hayward
777 B Street
Hayward, CA 94541-5007

Attn: City Manager

With copy to: Office of the City Attorney

Attn: Michael Lawson

Department: Mark L. Weaver
Deputy District Director
Right of Way and Land Surveys
State of California Director of Transportation
P. O. Box 23440
Oakland, CA 94623-0440
Facsimile No.

With copy to: State of California Department of Transportation Legal Division
111 Grand Ave., Suite 11-100
Oakland, CA
Facsimile No.

Attn: Lucille Baca

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

12. GENERAL PROVISIONS

12.1. Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitutes the complete, exclusive, and final statement of the terms of the agreement with respect to the sale of the Property between City and Department and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the parties. The language in all parts of this Agreement will be construed as a whole in accordance with its fair meaning and

without regard to California Civil Code §1654 or similar statutes . Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

- 12.2. Amendments and Waivers.** No addition to or modification of this Agreement will be effective unless it is made in writing and signed by all parties. A party benefited by any condition or obligation may waive the same, but such waiver will not be enforceable by another party unless it is made in writing and signed by the waiving party.
- 12.3. Severability.** If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
- 12.4 No Merger.** This Agreement, each provision of it, and all warranties and representations in this Agreement will survive transfer of title to the City and will not merge in any instrument conveying title to City. All representations, warranties, agreements, and obligations of the parties will survive transfer of title to the City, or to the extent the context requires beyond any termination of this Agreement, and the same will inure to the benefit of and be binding on the parties' respective successors and assigns.
- 12.5. Interpretation.** Unless otherwise indicated section references are to the sections of this Agreement, and, except where otherwise stated, all references to days are to calendar days. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday, or California state holiday, such time for performance will be extended to the next business day. "Business Days" means days other than Saturday, Sunday, and California state holidays. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. The terms "shall ," "will," "must," "agrees ," and "covenants" are each mandatory; "may" is permissive; "or" is not exclusive; and "includes" and "including" are not limiting.
- 12.6. Governing Law.** This Agreement will be governed by the laws of the State of California applicable to contracts made by residents of the State of California and to be performed in California.
- 12.7. Time.** Time is of the essence in the performance of the parties' respective obligations under this Agreement.
- 12.8. Assignment.** This Agreement will inure to the benefit of and be binding on the parties to this

Agreement and their respective successors. The City may not assign all or any portion of its interest in this Agreement, by operation of law or otherwise, without the prior written consent of the Department.

- 12.9. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party to this Agreement or give any third person any right of subrogation or action over against any party to this Agreement.
- 12.10. Remedies Cumulative.** The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party.
- 12.11. Construction.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement. The titles and captions used in this Agreement are for convenience only and do not necessarily define, limit, describe or construe the contents of such sections.
- 12.12. Counterparts and Copies.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A true and correct copy of this Agreement shall have the same force and effect of an original for all purposes allowed by law.
- 12.13. Termination.** This Agreement may be terminated and the provisions herein may be modified, altered, changed or amended by the mutual written consent of the Parties.
- 12.14. Authority to sign.** City and Department represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and to legally bind their respective entities to the terms, conditions and obligations set forth herein.
- 12.15. Effective Date.** This agreement shall be effective upon full execution by the parties ("Effective Date").

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement for the Rte.238 Excess Properties as of the Effective Date.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: _____

By _____

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

Approved as to Form:



Lucille Y. Baca,
Assistant Chief Counsel
Dept. of Transportation, Legal Division

CITY OF HAYWARD

Dated: _____

City Manager

Attest: _____
City Clerk

Approved as to Form:

City Attorney

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement for the Rte.238 Excess Properties as of the Effective Date.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: January 20, 2016

By 

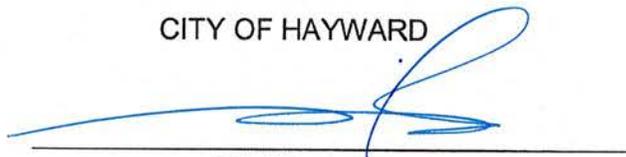
Mark L. Weaver
Deputy District Director
Right of Way and Land Surveys

Approved as to Form:

Lucille Y. Baca,
Assistant Chief Counsel
Dept. of Transportation, Legal Division

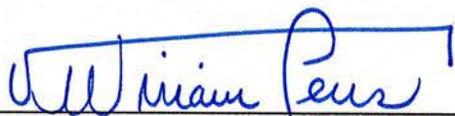
CITY OF HAYWARD

Dated: 1/20/2016



City Manager

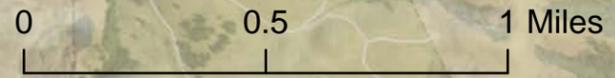
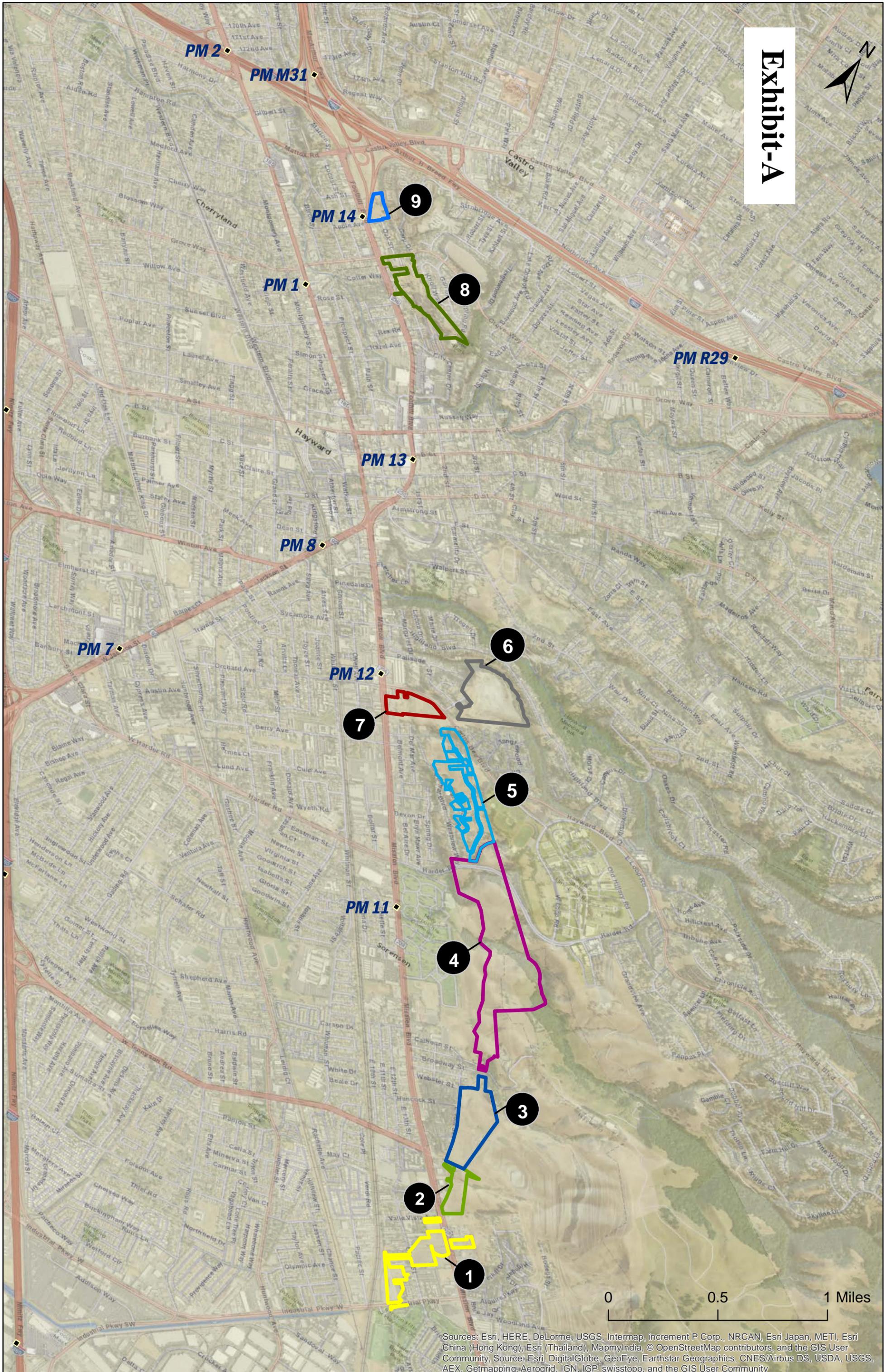
FRANCES DAVID

Attest: 
City Clerk *Miriam Lens*

Approved as to Form:


City Attorney

Exhibit-A



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-2



2

0 0.05 0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community; Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-3



3

0 0.05 0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-4

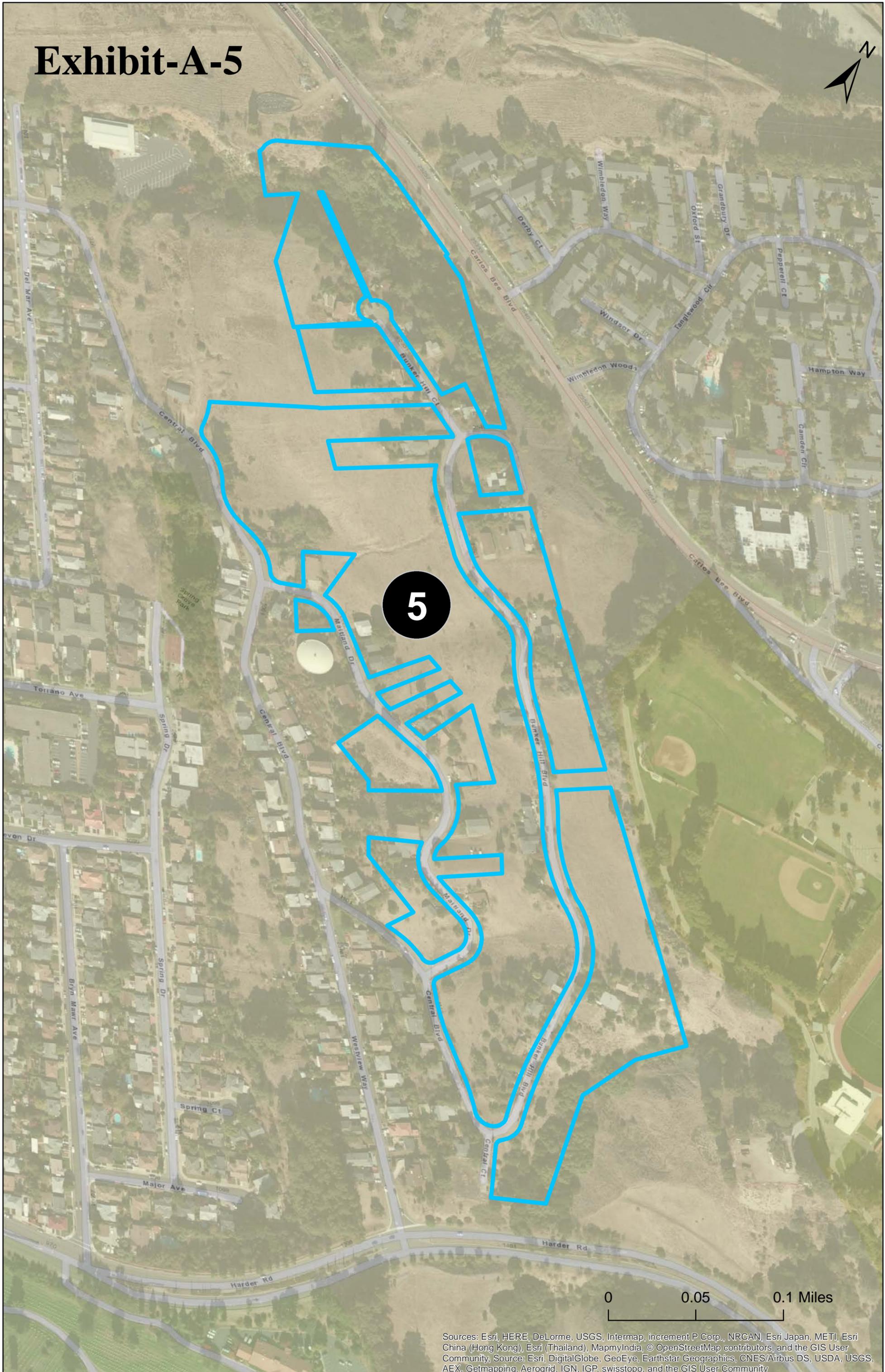


4

0 0.05 0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-5

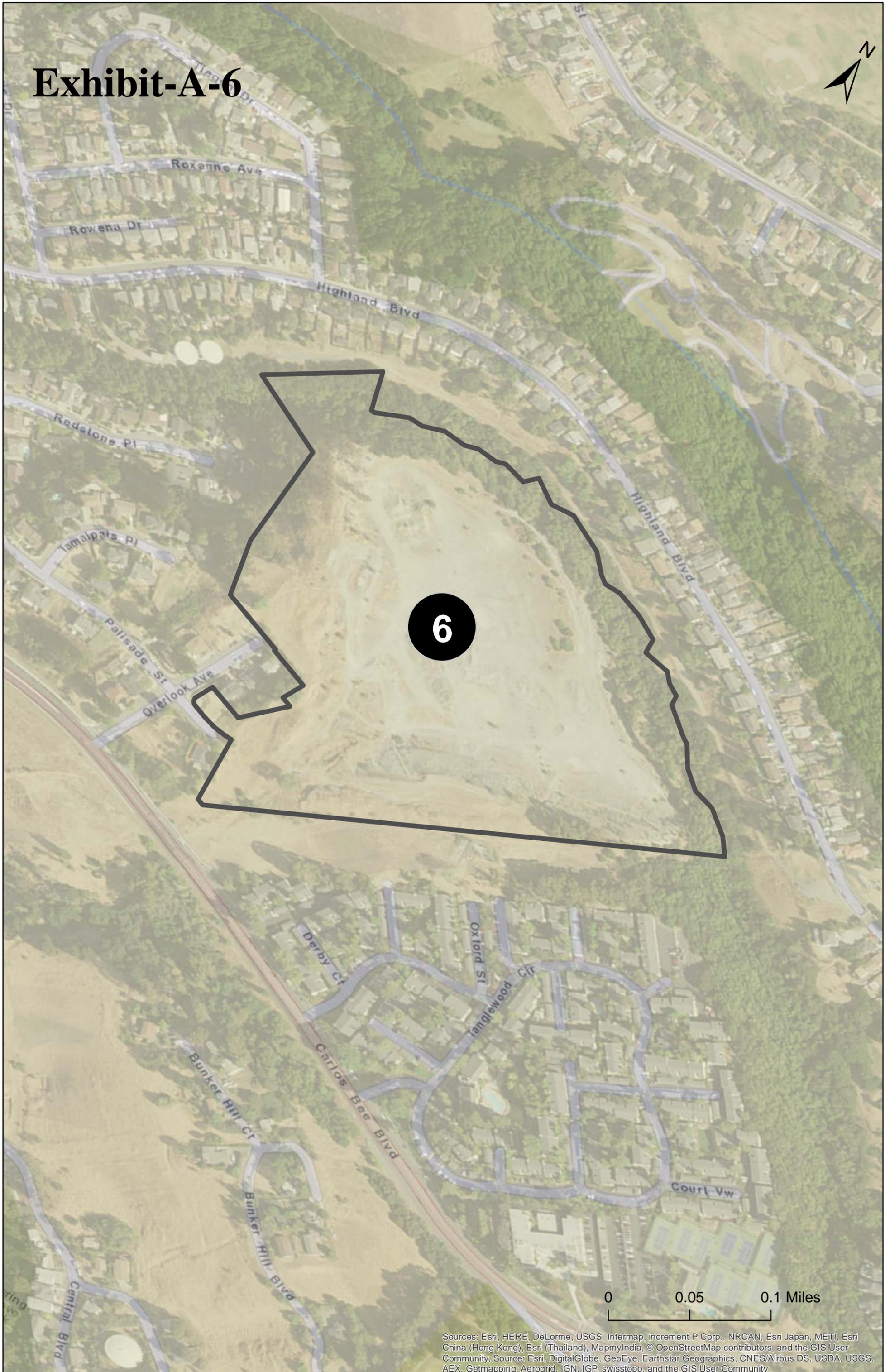


5

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Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-6



6

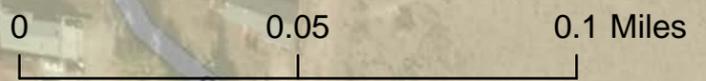
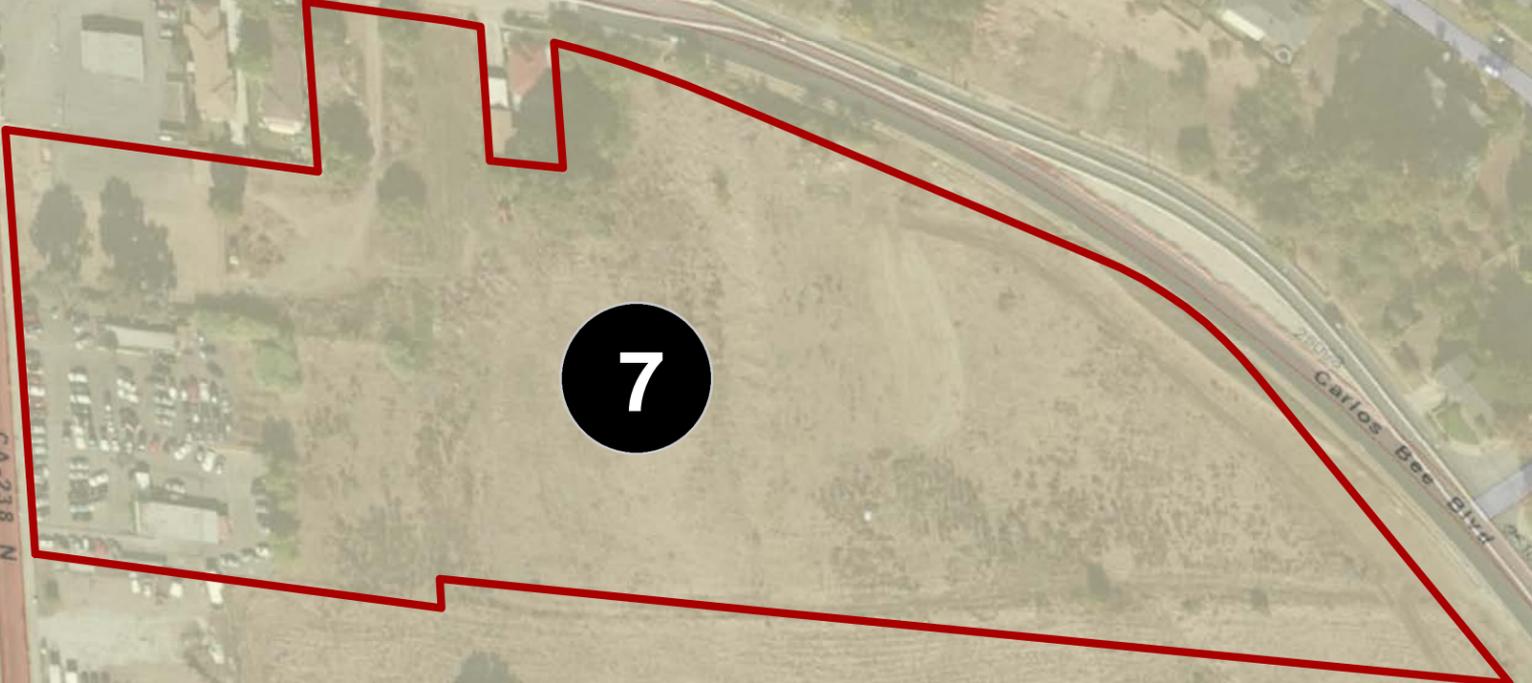
0 0.05 0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-7



PM 12



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-8



8

0 0.05 0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community; Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit-A-9



9

208801

OAK ST

Apple Ave

Hayward

Foothill Blvd

Oak St

0

0.05

0.1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

RECORDING REQUESTED BY
STATE OF CALIFORNIA

WHEN RECORDED RETURN TO
DEPARTMENT OF TRANSPORTATION
PO BOX 23440, MS-11A
OAKLAND, CA 94623-0440
Attn: R/W Excess Lands

Space above this line for Recorder's Use

EXHIBIT B

Form Deed

**DIRECTOR'S DEED
GRANT**

District	County	Route	Postmile	Number
04	ALA	238	[PM]	DD-XXXXXX-XX-XX

The State of California, acting by and through its Director of Transportation, hereinafter called STATE, hereby grants to

City of Hayward , a municipal corporation,

hereinafter called GRANTEE, that real property in the City of Hayward, County of Alameda, State of California, described as follows:

See Exhibit "A", attached hereto and made a part hereof.

State shall have the power to terminate the fee simple estate in the Property conveyed by this deed, as defined in California Civil Code Section 885.010 and more particularly described in EXHIBIT "B" attached hereto and made a part hereof.

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

Number
DD-XXXXXX-XX-XX

MAIL TAX
STATEMENTS TO:

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

Signature of declarant or agent determining tax-firm name

CITY OF HAYWARD Unincorporated

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

Dated _____
APPROVED AS TO FORM AND
PROCEDURE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

ATTORNEY
DEPARTMENT OF TRANSPORTATION

MALCOLM DAUGHTERY
Director of Transportation

By _____
MARK L. WEAVER, Attorney in Fact
Deputy District Director
Right of Way and Land Surveys

*This Space Reserved for
California Transportation Commission
Certification*

Number
DD-XXXXXX-XX-XX

ACKNOWLEDGMENT

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

State of California }
County of _____ } SS

On _____ before me, _____ ,
Here insert Name and Title of the Officer

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Number
DD-XXXXXX-XX-XX

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Director’s Deed dated _____, From the State of California, acting by and through its Director of Transportation, to the City of Hayward, a municipal corporation (“Grantee”), is hereby accepted by order of its Board of Supervisor’s Resolution No. _____, adopted on _____, and approved by the Mayor on _____, and Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY OF HAYWARD,
A municipal corporation

By: _____
NAME
Title

Number
DD-XXXXXX-XX-XX

EXHIBIT "A"

(Legal Description)

Number
DD-XXXXXX-XX-XX

EXHIBIT B

(CT 11-19-2015)

POWER OF TERMINATION

[POWER OF TERMINATION LANGUAGE TO BE INSERTED
HERE]

EXHIBIT C

(CT 11-19-2015)

POWER OF TERMINATION

The subject Parcel is being conveyed by Grantor, State of California, Department of Transportation (State or Grantor) to Grantee City of Hayward, a municipal corporation of the State of California (City or Grantee) as one of several conveyances of Parcels, which together comprise the Property being conveyed by Grantor to the City pursuant to that certain Purchase and Sale Agreement dated ____, 2016 and entered into by State and City. All definitions set forth in the above referenced Purchase and Sale Agreement are applicable to and incorporated into this deed. To assure the purposes and intentions of the Purchase and Sale Agreement, the satisfaction of each of the provisions of subsections (a)(1), (a)(2) and (a)(3), below, is expressly declared to be a condition subsequent for the benefit of Grantor. Should said conditions not be satisfied, Grantor shall have the power to terminate the fee simple estate in the Parcel conveyed by this deed, and to reenter and take possession and title to the Parcel, including without limitation, all improvements thereon, in the manner provided in subsection (b) hereof and subject to expiration and relinquishment of the Power of Termination pursuant to subsection (c) hereof. The interest created in Grantor by this paragraph is a "Power of Termination" as defined in California Civil Code Section 885.010.

- (a) With respect to the Parcel conveyed by this deed, the following are conditions subsequent:
- (1) The full Parcel Purchase Price as determined by the procedures set forth in the Purchase and Sale Agreement and any other fees owing as specified in the Purchase and Sale Agreement relating to the particular Parcel shall be paid by City to State.
 - (2) If the Parcel is sold to a third party by the City, the gross sales proceeds of such sale shall be deposited into the escrow account established for that sale pursuant to the terms of the Purchase and Sale Agreement, which sales proceeds shall be applied to pay the Parcel Purchase Price and further allocated, as applicable, as set forth in the Purchase and Sale Agreement; and
 - (3) If the Parcel is retained by the City, City shall notify State in writing of the same and shall transfer the full Parcel Purchase Price owing to State within 60 days of such notification as provided for in the Purchase and Sale Agreement.
- (b) Grantor shall have the right to exercise its Power of Termination in each of the following circumstances:
- (1) If at the end of the 6-year term specified in the Purchase and Sale Agreement, and following not less than 90 days prior written notice to

Grantee, City has not paid the full Parcel Purchase Price to State, and City and State have not agreed to extend the time to pay the Property/ Parcel Purchase Price as set forth in the Purchase and Sale Agreement;
or

- (2) Upon 30 days prior written notice to Grantee, if City fails to pay the fee for retaining the Parcel beyond the 6-year term as specified in the Purchase and Sale Agreement City.

(c) Grantor's Power of Termination under this paragraph shall expire and be relinquished as to the Parcel, and Grantor agrees to the delivery and recordation of a Relinquishment of Power of Termination pursuant to the terms of the Purchase and Sale Agreement upon State's receipt from City of the full Parcel Purchase Price and any and all other funds owing as to said Parcel under the Purchase and Sale Agreement.

(d) Unless specifically agreed to in writing by Grantor, this Power of Termination shall be senior to and shall not be limited, defeated, rendered invalid by the terms of, or rights or interests of parties and others provided in: (i) any bond indenture, note, certificate of participation, mortgage, deed of trust, assignment or other security instrument entered into to finance the development of the Parcel or Property; and/or (ii) any agreement or contract entered into in furtherance of the financing or development of the Parcel or Property.

EXHIBIT D

FORM OF RELINQUISHMENT OF POWER OF TERMINATION

RECORDING REQUESTED BY
State of California

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

Attention: R/W Excess Lands

Documentary Transfer Tax: \$

Space above this line for Recorder's Use

District	County	Route	Post	Number
04	ALA	238		

RELINQUISHMENT OF POWER OF TERMINATION

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), does hereby REMISE, RELEASE, and QUITCLAIM to CITY OF HAYWARD all of the State's remaining right, title and interest in the real property located in the City of Hayward, County of Alameda, State of California, identified as Parcel __ and described in Exhibit A attached hereto and made a part hereof, and does further hereby relinquish, release and forever terminate the Power of Termination reserved by the State in its Director's Deed recorded on _____ in the Official Records of the County of Alameda as Instrument No. _____.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mark L. Weaver
Deputy District Director

Dated: _____

EXHIBIT E

FORM OF ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE is made and entered into on _____ (Assignment Effective Date) by and between the STATE OF CALIFORNIA, acting by and through the Department of Transportation (State or Assignor) and the CITY OF HAYWARD, a municipal corporation of the State of California (City or Assignee) pursuant to the conveyance of Property under that certain Purchase and Sale Agreement dated ____, 2015 between State and City. All definitions set forth in the above referenced Purchase and Sale Agreement are applicable to and incorporated into this Assignment.

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor assigns and transfers to Assignee all of Assignor's right, title, claim, and interest in and to all leases on the Property conveyed by State to City pursuant to the Purchase and Sale Agreement. Said leases are more specifically identified as those certain lease numbers _____ made and entered into by and between the State of California, Department of Transportation, as lessor, and the identified tenants, as lessees.

ASSIGNOR AND ASSIGNEE FURTHER AGREE AND COVENANT AS FOLLOWS:

1. As of the date of this Assignment, Assignor has provided Assignee with the current above-referenced lease agreements.
2. Assignee has reviewed the full text of the lease agreements referenced herein and understand all terms and conditions of said lease agreements.
3. Assignor represents and warrants that as of the date of this Assignment, it has provided lessees with notice of this Assignment, that the lease terms will remain as is in full force and effect, and that lessee is to hereafter remit rental payments to City at:

OFFICE OF CITY MANAGER

Attention: Omar Cortez

777 B Street

Hayward, CA 94541-5007

4. As of the Assignment Effective Date, Assignee hereby assumes all of landlord's obligations under the lease and agrees to indemnify, defend and keep Assignor harmless from any and all costs, liabilities, losses, damages or expenses originating subsequent to the Assignment Effective Date and arising out of Landlord's obligations under the lease. All obligations, if any, under State and Federal law pertaining to relocation assistance originating subsequent to the Assignment Effective Date shall rest with Assignee.
5. This Assignment shall be binding on and inure to the benefit of the parties hereto, and their successors in interest.

Dated: _____,

[SIGNATURE BLOCKS]

DD#	ADDRESS	Map	Tenant Name
38963	1054 Central Blvd	Group 1	Kepinski, Elizabeth
38933	25311 Bunker Hill Ct	Group 1	Padavana, Sean Paul
32707	25314 Bunker Hill Ct	Group 1	Young, Dennis
38926	25338 Bunker Hill Blvd	Group 1	Foyne, Mark
32722	25346 Bunker Hill Ct	Group 1	Francisco, Valencia
38932	25346 Bunker Hill Ct	Group 1	Meyears, Jonathon
38936	25361 Bunker Hill Ct	Group 1	Anderson, Lee
38939	25373 Bunker Hill Ct	Group 1	Lemke, Palladin
39023	25410 Bunker Hill Blvd	Group 1	Harpine, Rusty
39020	25426 Bunker Hill Blvd	Group 1	Moite, LoriBunker Hill Ct
39022	25464 Bunker Hill Blvd	Group 1	Edwards, Melaine
39028	25550 Bunker Hill Blvd	Group 1	Asturias, Tracy
32710	25584 Maitland Dr	Group 1	Tuck, Tim
32716	25600 Maitland Dr	Group 1	Ventura, David
39011	25655 Bunker Hill Blvd	Group 1	Tanaka, Kalen
32712	25672 Maitland Dr	Group 1	Pacca, Robert
38991	25720 Maitland Dr	Group 1	Quilice, Edward
32719	25721 Maitland Dr	Group 1	Franco, Ronald
32721	25825 Bunker Hill Blvd	Group 1	Forte, Daniel
39046	25832 Bunker Hill Blvd	Group 1	Sevieri, Paul
39047	25840 Bunker Hill Blvd	Group 1	Idengren, George
39063	25853 Bunker Hill Blvd	Group 1	Reynaga, Richard
39064	25879 Bunker Hill Blvd	Group 1	Deyoung, Kirk
39060	25931 Central Ct	Group 1	Pries, Vernon
42372	North of Calhoun St	Group 11	Christiansen, Marc
39111	29115 Mission Blvd	Group 2	Abid' Ali and Settle,Mark (separate Tenants)
39112	29131 Mission Blvd	Group 2	Ghafoorzada, Asif
39107	29362 Mission Blvd	Group 2	Meskienyar, Mohamad
32594	29613 Dixon St	Group 2	Mehdavi, Tamana
31031	North east corner of industrial Blvd at alameda county flood control right of way	Group 2	Mehdavi, Omid
33839	25004 Mission Blvd	Group 4	Asgari, Abbas

33839-0002	25030 Mission Blvd	Group 4	Kangaroo. Abbas
33839	25000 Mission Blvd	Group 4	Kavianinejad, Mojan
23977	21275 Oak St	Group 6	Columbia Electric Inc
32604-7	21502 Bridge Ct	Group 6	Loman, Richard
32604-8	21503 Bridge Ct	Group 6	Mendoza, Gabriela
32604-9	21505 Bridge Ct	Group 6	Alvarez, Ida
32604-11	21509 Bridge Ct	Group 6	Kelly, Michele
32604-12	21510 Bridge Ct	Group 6	Alix, Laurie
32604-13	21518 Bridge Ct	Group 6	Figuroa, Juan
32604-0801	21534 Bridge Ct	Group 6	Figuroa, Ramona
32604-16	21542 Bridge Ct	Group 6	Matthew, Joseph
32604-17	21550 Bridge Ct	Group 6	Feeny, Jennifer
32604-18	21557 Bridge Ct	Group 6	Soubra, Mouhamad
32608	21670 Foothill Blvd	Group 6	Dorain, Ronald

DEPARTMENT OF TRANSPORTATION

DISTRICT 4

P.O. BOX 23660

OAKLAND, CA 94623-0660

PHONE (510) 286-5900

FAX (510) 286-6301

TTY 711

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EXHIBIT G

NOTICE TO TENANT OF ASSIGNMENT OF LEASE

Re [State Lease Agreement number]

Dear [Tenant],

This is to notify you that the above-referenced Lease Agreement has been assigned to the City of Hayward, effective on [DATE]. All of the terms of your lease remain in full effect. As of that date, the California Department of Transportation (Caltrans) is no longer your landlord/property manager and you are hereby directed to make all future rental payments to the City of Hayward at the following address:

OFFICE OF CITY MANAGER
Attention: Omar Cortez
777 B Street
Hayward, CA 94541-5007

Security deposits and rent overpayments, if any, will be forwarded to the City as your new landlord. Any issues regarding your tenancy from the effective date forward should be directed to the City.

Sincerely,

[CALTRANS PROPERTY MANAGEMENT]

RESIDENTIAL RENTAL AGREEMENT

(Form #)

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT H-1

RESIDENTIAL RENTAL AGREEMENT

THIS RENTAL AGREEMENT is made this _____ day of _____, _____, between the State of California, Department of Transportation, hereinafter known as Department, and _____, hereinafter known as Tenant(s).

WITNESSETH

In consideration for the payment of the rent specified herein, Department hereby rents the property to Tenant(s) on the following covenants, terms, and conditions:

- 1) **DESCRIPTION:** The Department, in consideration of the payment of the rent hereinafter specified to be paid by the Tenant(s), and the covenants and agreements herein contained, does hereby rent, demise, and let unto Tenant(s) that certain property in the County of _____, State of California, the address of which is _____, and legally described as:

Including the following improvements:

- 2) **RENT:** Rental of the property is on a month-to-month basis, and Tenant(s) agrees to pay rent to the Department, in the amount of _____, in advance, *on the first day of each month* so long as tenancy continues.

Rent payable or refundable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified based on a thirty-day (30-day) month.

Tenant(s) will pay the prorated rental of \$ _____, which represents _____ days, and thereafter at the rate and terms specified above.

- 3) **RECEIPT OF MONIES PAID:** Department acknowledges receipt of monies paid by Tenant(s) in the amount of \$ _____, for the following purposes:

Rent	\$	_____
Security	\$	_____

- 4) **SECURITY DEPOSIT:** Tenant(s) shall deposit with the Department \$ _____ as a guarantee for faithful performance of the conditions of this Agreement. The Department may use such amounts as are reasonably necessary to remedy Tenant's default in the payment of rent; to repair damages caused by Tenant(s), or by a guest or a licensee of the Tenant(s); to clean the premises, if necessary, upon termination of tenancy; and to replace or return personal property or appurtenances exclusive of ordinary wear and tear. If used toward rent or damages during the term of tenancy, Tenant(s) agrees to reinstate said total security deposit upon five (5) days' written notice delivered to Tenant(s) in person or by mail. The Department shall furnish the Tenant(s) with an itemized written statement of the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the Tenant(s) in accordance with California Civil Code Section 1950.5.

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 2 of 11

5) PAYMENTS: Tenant(s) shall make payment to the Department’s mailing address or street location as indicated below:

Department of Transportation
Attention: Cashier
P.O. Box 168019
Sacramento, CA 95816-8019
Telephone Number _____

Department of Transportation
Attention: Cashier
1820 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95816

Tenant(s) shall include the complete Tenancy Number, __ - ____ - ____ - __, on the check or other form of payment.

6) LATE PAYMENT CHARGE: Tenant(s) hereby acknowledges that Tenant’s late payment to Department of rent and other sums due hereunder will cause Department to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant(s) shall not be received by Department within ten (10) days after such amount shall be due, Tenant(s) shall pay to Department a late charge of \$ _____. In no event shall the late charge exceed the maximum allowable by law. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Department will incur by reason of late payment by Tenant(s). The Department’s acceptance of such late charge shall in no event constitute a waiver of Tenant’s default with respect to such overdue amount, nor prevent Department from exercising any of the other rights and remedies granted hereunder.

7) DISHONORED CHECK CHARGE: Tenant(s) hereby agrees:

- a) That Tenant(s) shall pay to Department a fee of \$25.00 for the first dishonored check and \$35.00 for a second dishonored check.
- b) That if Tenant(s) has two (2) dishonored checks within any twelve (12) month period, the Department will no longer accept personal checks for payments due under this Agreement.

8) UTILITIES: Tenant(s) shall pay for all utilities, including utility deposits, except _____. Tenant(s) shall contact utility providers to request that utility service be established in Tenant’s name by _____, _____. In the event tenant(s) fail to establish service in tenant(s) name by above-mentioned date, this tenancy will be terminated.

In the event the Department pays any utility charge, the Department will review the utility charges at least annually or more often as needed, and with sixty-days (60-days) notice adjust the amount being charged Tenant for utilities accordingly.

9) RENTAL RATE REVIEW: The Department will review the rental rate annually and with proper notice adjust the rental rate accordingly.

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 3 of 11

10) NOTICES: All Notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally, or when made in writing and mailed addressed as follows:

Department of Transportation <hr/> Name <hr/> <hr/> <hr/> Address <hr/> Telephone Number	Lessee: <hr/> Name <hr/> <hr/> <hr/> Address
---	--

11) USE: Tenant(s) shall use the property for residential purposes only and not permit occupancy by more than _____ adults and _____ children. Tenant(s) and Tenant’s heirs or successors in interest shall not let or sublet the whole or any portion of the property nor assign this tenancy to a third party. Tenant(s) shall not commit or permit waste on the property and shall comply with all laws and ordinances concerning the property and the use.

12) CHANGE OF TENANTS: If at any time during this tenancy one or more of the undersigned Tenant(s) vacate the premises, the remaining Tenant(s) and the Department shall enter into a new rental agreement upon such terms and conditions as agreed between the parties. In the event such agreement cannot be reached within thirty days (30 days), either party may give notice of termination of the tenancy. The members of the tenancy created by this Agreement are jointly and severally responsible for rents and all other terms and conditions herein.

13) ASSIGNMENT AND SUBLETTING: Tenant(s) shall not assign or sublet this Agreement without Department’s written consent.

Any request by Tenant(s) to assign this Agreement shall be subject to the following:

- a) An assignment will only be allowed to a person or entity of equal or greater financial responsibility than Tenant(s).
- b) The proposed use must be the same or similar to that employed by Tenant(s).
- c) A written application from the proposed assignee is required. Tenant(s) will pay all charges incurred for verifying information in the application process.
- d) Department has the right to raise the rent to current market value upon Tenant’s exercise of a right to assign.
- e) Assignment does not relieve the Tenant(s) of any duties or obligations under the Agreement.
- f) Any assignment is not deemed consent to any subsequent assignment.

(NOTE: See *optional* Clauses 4 and 5 if subletting is permitted.)

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 5 of 11

- 18) TERMINATION:** This Agreement shall be subject to cancellation and termination by either party at any time by giving the other party written notice. The Department shall give the Tenant(s) a thirty-day (30-day) or sixty-day (60-day) notice prior to the effective date of termination. The Tenant(s) shall give the Department notice in compliance with California Civil Code, Section 1946.1(b). In the event of such termination, any unearned rental paid by Tenant(s) shall be returned to Tenant(s) in accordance with the proration described in Clause 2 above.
- 19) VACATING THE PROPERTY:** Upon vacating the property, Tenant(s) agrees to leave same in as good condition as existed on the day possession was taken, allowing for ordinary and normal usage during occupancy; and to reimburse the Department for any damage done to the property caused by Tenant's occupation or tenancy other than that due to normal use. Tenant(s) shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant(s) will pay any removal costs incurred by the Department. On the date the property is vacated, Tenant agrees to deliver the property keys to the Department in person or at: _____.
- 20) RELOCATION PAYMENT:** Tenant(s) acknowledges the following: Tenant(s) commenced occupancy of the premises after Department acquired title to it, Department acquired the premises for a public project, Tenant(s) may be required to vacate the premises to allow construction of the public project, and Tenant(s) is not entitled to receive any payments under either the State or the Federal Uniform Relocation Assistance Act. (Government Code, Section 7260, et seq.; 42 United States Code, Section 4601, et seq.)
- 21) POSSESSORY INTEREST:** Tax bills inadvertently received by the Tenant(s) should be forwarded to the Department for processing.
- 22) RIGHT OF ENTRY:** Tenant(s) shall permit Department or its authorized agent to enter into and upon the property during normal business hours, subject to a twenty-four hour (24-hour) notice, for the following purposes: routine inspection, maintaining the property, installing protective or conservation devices and for showing the property to prospective purchasers and/or tenants. Department reserves its right, without notice, to enter Property in case of emergency or to prevent imminent harm to persons or property.
- 23) INSURANCE:** Department is self insured and will not keep the property insured against fire or any other insurable risk, and Lessee(s) will make no claim of any nature against Department by reason of any damage to Lessee's property in the event it is damaged or destroyed by fire or by any other cause.
- 24) INDEMNIFICATION:** Tenant(s) shall indemnify, defend, and hold the Department, its officers, agents and employees harmless from and against any loss, cost, or expense, including, but not limited to, attorney fees and court costs, resulting from any claim by any third party arising out of or connected to the actions of Tenant(s), notwithstanding the Department, its officers', agents' and employees' active or passive negligence, and/or regarding all acts and omission, including but not limited, to the willful misconduct or negligence of the Tenant(s).

Further, it is the parties intent that the indemnity provisions stated herein, apply to losses resulting from the Tenant's negligence or any cause other than the willful misconduct or sole negligence of the Department, its officers, agents or employees.

- 25) HAZARDOUS MATERIALS:** Hazardous materials are those substances listed in California Code of Regulations, Title 22, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Title 22 of the above Code, as well as any other substance which poses a hazard to health or environment.

Except as otherwise permitted in this Agreement, Tenant(s) shall not use, create, store or allow any such substances on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant(s) cause or allow the deposit or disposal of any such substance on the property described in the Preamble. However, household products necessary for routine cleaning and maintenance of the property may be kept in quantities reasonable for current needs.

Department, or its agents or contractors shall at all times have the right to go upon and inspect the property and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the premises.

- 26) WATER POLLUTION CONTROL:** Tenant shall not allow the discharge of contaminated storm water runoff or unauthorized non-storm water discharges to any private or public storm water drainage systems, which may include but are not limited to: discharges of runoff containing chemicals, fuels, grease, oil, or other hazardous materials; discharges of pool or fountain water containing chlorine, biocides, or other chemicals and discharges of pool or fountain filter backwash water; discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; discharge of runoff from washing toxic materials from paved or unpaved areas; and discharge of materials such as litter, landscape debris, construction debris, or any federally banned pesticides.

In addition, 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 jurisdiction of the above agencies.

Tenant shall implement best management practices (BMPs) shown in the attached Residential Stormwater Pollution Prevention Fact Sheet applicable to Tenant's activities.

[RW instructions - Attach Residential Storm Water Fact Sheet to Agreement. Fact Sheet is in the RW Property Management and Airspace Storm Water Guidance Manual.]

In the event of conflict between the attached Fact Sheet and this Agreement, this Agreement shall control.

Department, or its agents or contractors, shall at all times have the right to go upon and inspect the premises and the operations conducted 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 sewer systems, storm drains, or watercourses on the premises.

- 27) PENAL CODE SECTION 290.4 NOTIFICATION:** The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a database of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The database is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.
-

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 7 of 11

- 28) **WAIVER:** If any part of this Agreement is invalid by reason of law or governmental regulation, or if any provisions hereof are waived by the Department, the remaining portions of this Agreement shall remain in full force and effect. The receipt by the Department of rent with the knowledge of any breach of a provision of this Agreement shall not constitute a waiver of such breach.

- 29) **AMENDMENTS:** The terms of this Agreement may be amended or revised by written and signed memorandum from Department to Tenant(s), upon thirty (30) days notice in writing, and said memorandum shall become a part of the original agreement and shall operate with the same force and effect as the original agreement.

- 30) **PREVIOUS AGREEMENTS:** Any existing lease or rental agreement(s) between Tenant(s) and the Department (or its predecessor in interest) covering this property are terminated as of the effective date of this Agreement.

- 31) **LITIGATION COSTS:** In the event that a suit is necessary to enforce any of the provisions herein contained, or to recover possession of the premises, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

- 32) **ENCUMBRANCES:** Tenant(s) shall not encumber the rented premises in any manner whatsoever.

- 33) **POSTING OF PROPERTY:** Department or its agents shall at all times have the right to serve or to post thereon any notice required or permitted by law for protection of any right or interest of the Department.

- 34) **HEADINGS:** The marginal or clause headings of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

BREACH OF ANY OF THE ABOVE COVENANTS, TERMS, AND CONDITIONS SHALL GIVE DEPARTMENT AUTHORITY TO IMMEDIATELY TERMINATE THIS AGREEMENT.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

(Type Tenant's Name)

APPROVAL RECOMMENDED

(Type Tenant's Name)

By _____
(Type Right of Way Agent's Name)
Property Management

(Type Tenant's Name)

(Type Supervisor's Name)
(Type Supervisor's Title)

ADA Notice

For individuals with disabilities, this document is available in alternate formats. For information call (916) 654-5413 Voice, CRS: 1-800-735-2929, or write Right of Way, 1120 N Street, MS-37, Sacramento, CA 95814.

OPTIONAL CLAUSES

(TO BE INCLUDED IN ALL AGREEMENTS FOR RESIDENCES CONSTRUCTED PRIOR TO 1978)

1) LEAD-BASED PAINT:

This property was constructed prior to 1978 and may contain lead-based paint that may pose a serious health hazard, especially to children and pregnant women. A government pamphlet, "Protect Your Family from Lead in Your Home," explaining the potential health hazards resulting from exposure to such lead-based paint and the precautions you should take to avoid such health hazards, is attached and incorporated for your use.

(TO BE USED AS NECESSARY)

2) TENANT LIABILITY INSURANCE: Tenant(s) shall, at Tenant's expense, take out and keep in force during tenancy:

- a) General liability insurance, in a company or companies to be approved by the Department, to protect the Department, its officers, agents, and employees against any liability to the public incident to the use of, or resulting from injury to or death of, any person occurring in, or about, the property, in the combined amount of not less than five hundred thousand dollars (\$500,000) against all claims resulting from any one accident; or,
- b) Single limit coverage of not less than five hundred thousand dollars (\$500,000) for the required public liability insurance.

Said policies shall insure to the contingent liabilities, if any, of the Department, and the officers, agents, and employees of the Department and shall obligate the insurance carriers to notify the Department, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. Tenant(s) shall furnish to the Department, either a certified copy of each and every such policy or a fully executed "Certificate of Insurance with Endorsement for Lease of State-Owned Property" (Form RW 11-18) within not more than ten (10) days after the effective date of the policy. Tenant(s) agrees that, if Tenant does not keep such insurance in full force and effect, the Department may take out insurance and pay the premiums thereon, and the repayment thereof shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder.

3) RENTAL OFFSET:

It is understood and agreed that in consideration of a rental offset of an amount not to exceed \$_____, Tenant(s) agrees to: *(Describe work to be done)*.

[RW instructions - If rental offset work involves an *outdoor* activity that has the potential to pollute storm water, insert following sentence and attach appropriate Stormwater Pollution Prevention Fact Sheet (e.g., Trash Removal, General Maintenance, etc.) from the RW Property Management and Airspace Storm Water Guidance Manual - otherwise delete.]

In performing the work described above, Tenant shall implement best management practices shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: _____.

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 9 of 11

Tenant(s) shall secure paid itemized bills covering materials used for the authorized work and forward them to the Department at the address specified in Clause 10, Notices, of this Agreement. Credit will only be allowed for the actual amount of the paid bills not to exceed the amount above. Tenant(s) will be paid for materials only and will not be paid for his/her labor or for the purchase of tools. Tenant(s) may not hire a third party contractor to perform the authorized work unless prior written permission from the Department is obtained.

It is further agreed that said work will be completed and paid bills received by the Department prior to _____, and that the rental credit will only be granted after inspection, by the Department, of the completed work.

(Give a detailed description of the work to be performed.)

4) (To be added to Agreement Clause 13—Assignment and Subletting—only where human habitation is permitted)

In the event the terms of this Agreement permit the subletting of portions of the property herein for human habitation, then Tenant(s) covenants and agrees to assume all the obligations and conditions to any subtenants, within the meaning of Sections 1941 and 1942 of the Civil Code.

Tenant(s) specifically waives as an obligation of Department the provisions of Sections 1941 and 1942 of the Civil Code, which read as follows:

“**1941.** Obligations of Lessor. The Lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidation’s thereof, which render it untenable, except as are mentioned in Section 1929.”

“**1942.** If within a reasonable time after notice to the Lessor, of dilapidation’s which he ought to repair, he neglects to do so, the Lessee may repair the same himself, where the cost of such repair does not require an expenditure greater than one month’s rent of the premises, and deduct the expenses of such repairs from the rent, or the Lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.”

5) (To be added where subleasing is permitted)

SUBTENANT REQUIREMENT: In the event the terms of this Agreement specifically permit subletting of all or a portion of the property herein, the following shall apply:

- a) Tenant(s) is required to furnish each new subtenant with two copies of Department’s form notice advising subtenant that no relocation payments will be made. Subtenant(s) will sign one copy and return it to Department.
- b) Tenant(s) to provide Department with a listing of all subtenants as required by Department.

6) INVENTORY: Tenant(s) acknowledges the premises are furnished in accordance with the attached inventory, Attachment _____, by initialing here: _____ *(Initials)*.

RESIDENTIAL RENTAL AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-A (REV 6/2013)

Page 10 of 11

- 7) LIABILITY AND PROPERTY DAMAGE INSURANCE:** Lessee(s) shall, at Lessee's expense, take out and keep in force during the full term of the tenancy:

General liability insurance providing coverage in the amount of one million dollars (\$1,000,000) per occurrence for Bodily Injury and Property Liability combined, in a company or companies to be approved by the Department, to protect Department, its officers, agents and employees against all claims, suits or actions of every name, kind, and description brought forth, or on account of, injuries to or death of any person occurring in or about the property or on account of damage to property incident to the use of, or resulting from, any and every cause occurring in or about the property which is the subject of this lease, including any and all claims, suits or actions for damage to vehicles on the property.

With respect to third-party claims against Lessee(s), Lessee(s) waives any and all rights to any type of express or implied indemnity against Department, its officers or employees.

It is the intent of the parties that Lessee(s) will indemnify, defend and hold harmless the Department, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of Department, Lessee(s), the officers or employees of either of these, other than the sole negligence of Department, its officers and employees.

Nothing in this lease is intended to create the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of the lease intended to establish a standard of care owed to the public or any member thereof.

Said policies shall name Department as an additional insured and shall inure to the contingent liabilities, if any, of Department and the officers, agents and employees of Department and shall obligate the insurance carriers to notify Department, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. Lessee(s) shall furnish to Department either a certified copy of each and every such policy or a fully executed "CERTIFICATE OF INSURANCE WITH ENDORSEMENT FOR LEASE OF STATE-OWNED PROPERTY" within not more than ten (10) days after the effective date of the policy. Lessee(s) agrees that if Lessee(s) does not keep such insurance in full force and effect, Department shall have the right to immediately terminate this lease.

- 8) SECTION 8 HOUSING:** Department is renting the above-referenced property to Tenant for occupancy by Tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).

Department has entered into a Housing Assistance Payments Contract (HAP contract) with the local Public Housing Authority (PHA), _____, under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to Department to assist Tenant in renting the property from Department.

Department has given the PHA a copy of the rental agreement, including any revisions agreed by Department and Tenant. Department certifies that the terms of the rental agreement are in accordance with all provisions of the HAP contract and that the rental agreement includes the voucher program tenancy addendum current at the time of execution of this Agreement.

LEASE AGREEMENT

(Form #)

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT

11-EX-B (REV 6/2013)

Page 1 of 13

EXHIBIT _____

LEASE AGREEMENT

Tenancy Number _____

THIS LEASE is made and entered into this _____ day of _____, _____, at _____, California, by and between the State of California, Department of Transportation, hereinafter known as Department, and _____, hereinafter known as Lessee, whose address is _____, California.

WITNESSETH

1) **DESCRIPTION:** The Department, in consideration of the payment of the rent hereinafter specified to be paid by the Lessee(s), and the covenants and agreements herein contained, does hereby lease, demise, and let unto Lessee(s) that certain property in the County of _____, State of California, the address of which is _____, and legally described as:

Including the following improvements: (use attachment)

* Excepting (e.g., outdoor advertising signs, etc.)

2) **TERM:** This lease shall be for a term of _____ (____) years, commencing on the _____ day of _____, _____, and ending on the _____ day of _____, _____, with the right of cancellation and termination in both Department and Lessee(s) as hereinafter set forth.

3) **RENT:** The rent shall be paid by the Lessee(s) monthly, in advance, on the first (1st) day of each month during said term, in lawful money of the United States, as follows:

or

The rent shall be paid by the Lessee(s) annually, in advance, on the first (1st) day of the month identified in Clause 2 during said term, in lawful money of the United States, as follows:

Rent payable or refundable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified based on a thirty-day (30-day) month.

4) **RECEIPT OF MONIES PAID:** Department acknowledges receipt of monies paid by Lessee(s) in the amount of \$ _____, for the following purposes:

Rent	\$	_____
Security	\$	_____

LEASE AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-B (REV 6/2013)

Page 2 of 13

5) **SECURITY DEPOSIT:** Lessee(s) shall deposit with Department \$_____ as a guarantee for faithful performance of the conditions of this Lease. Department may use such amounts as are reasonably necessary to remedy Lessee(s) default in the payment of rent; to repair damages caused by Lessee(s), or by a guest or a licensee of the Lessee(s); to clean the premises, if necessary, upon termination of tenancy; and to replace or return personal property or appurtenances exclusive of ordinary wear and tear. If used toward rent or damages during the term of tenancy, Lessee(s) agrees to reinstate said total security deposit upon five (5) days' written notice delivered to Lessee(s) in person or by mail. Department shall furnish the Lessee(s) with an itemized written statement of the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to Lessee(s) in accordance with California Civil Code Section 1950.5.

6) **PAYMENTS:** All rental payments shall be made payable to the Department of Transportation. Lessee(s) shall make payment to Department's mailing address or street location as indicated below:

Department of Transportation
Attention: Cashier
P.O. Box 168019
Sacramento, CA 95816-8019
Telephone Number _____

Department of Transportation
Attention: Cashier
1820 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95816

Lessee(s) shall include the complete Tenancy Number, __-____-____-__, on the check or other form of payment.

7) **LATE PAYMENT CHARGE:** Lessee(s) hereby acknowledges that late payment by Lessee(s) to Department of rent and other sums due hereunder will cause Department to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Lessee(s) shall not be received by Department within ten (10) days after such amount shall be due, Lessee(s) shall pay to Department a late charge of \$_____. In no event shall the late charge exceed the maximum allowable by law. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Department will incur by reason of Lessee's late payment. Acceptance of such late charge by Department shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Department from exercising any of the other rights and remedies granted hereunder.

8) **DISHONORED CHECK CHARGE:** Lessee(s) hereby agrees:

- a) That Lessee(s) shall pay to Department a fee of \$25.00 for the first dishonored check and \$35.00 for a second dishonored check.
- b) That if Lessee(s) has two (2) dishonored checks within any twelve (12) month period, the Department will no longer accept personal checks for payments due under this Lease.

9) **UTILITIES:** Lessee(s) shall pay when due all utility and other charges accruing or payable, including utility deposits, in connection with Lessee(s) use of the property during the term of this lease. Lessee(s) shall contact utility providers to request that utility service be established in Lessee's name by _____, _____. In the event Lessee(s) fails to establish service in Lessee(s) name by above-mentioned date, this Lease will be terminated.

If the Department is paying any or all utility charges, and passing those costs on the Lessee(s), the Department will review the utility charges at least annually, or more often if needed, and with a sixty-day (60-day) notice adjust the amount being charged to Lessee for utilities accordingly.

10) NOTICES: All Notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally, or when made in writing and mailed addressed as follows: To Lessee(s) at the above-stated and to Department at:

Department of Transportation

(Address)

(Telephone Number)

The address to which the notices shall be mailed to either party shall be changed by written notice by either party to the other, but nothing herein shall preclude the giving of notice by personal service. Department shall also be able to serve notices by posting and subsequent mailing to Lessee(s).

11) USE: Lessee(s) shall use the property for the following purposes only:

- a) _____
- b) Lessee(s) shall not commit, suffer, or permit any waste on said property.
- c) Lessee(s) shall comply with all Federal, State, and local laws and ordinances concerning said property and the use thereof.
- d) Lessee shall not allow vehicle or equipment washing, fueling, maintenance or repair on the property, unless separately authorized by this lease agreement for industrial activity.

12) ASSIGNMENT AND SUBLETTING: Lessee(s) shall not assign or sublet this lease without Department's written consent.

Any request by Lessee(s) to assign this lease shall be subject to the following:

- a) An assignment will only be allowed to a person or entity of equal or greater financial responsibility than Lessee(s).
- b) The proposed use must be the same or similar to that employed by Lessee(s).
- c) A written application from the proposed assignee is required. Lessee(s) will pay all charges incurred for verifying information in the application process.
- d) Department has the right to raise the rent to current market value upon Lessee's exercise of a right to assign.
- e) Assignment does not relieve the Lessee(s) of any duties or obligations under the lease.
- f) Any assignment is not deemed a consent to any subsequent assignment.

(NOTE: See *optional* Clauses 3 and 4 if subletting is permitted.)

- 19) RELOCATION PAYMENT:** Lessee(s) acknowledges the following: Lessee(s) commenced occupancy of the premises after Department acquired title to it, Department acquired the premises for a public project, Lessee(s) may be required to vacate the premises to allow construction of the public project, and Lessee(s) is not entitled to receive any payments under either the State or the Federal Uniform Relocation Assistance Act. (Government Code, Section 7260, et seq.; 42 United States Code, Section 4601, et seq.)
- 20) POSSESSORY INTEREST:** Tax bills inadvertently received by Lessee(s) should be forwarded to Department for processing.
- 21) RIGHT OF ENTRY:** Lessee(s) shall permit Department or its authorized agent to enter into and upon the property during normal business hours, subject to a twenty-four hour (24-hour) notice, for the following purposes: routine inspection, maintaining the property, installing protective or conservation devices and for showing the property to prospective purchasers and/or tenants. Department reserves its right, without notice, to enter property in case of emergency or to prevent imminent harm to persons or property.
- 22) INSURANCE:** Department is self insured and will not keep the property insured against fire or any other insurable risk, and Lessee(s) will make no claim of any nature against Department by reason of any damage to Lessee's property in the event it is damaged or destroyed by fire or by any other cause.
- 23) LIABILITY AND PROPERTY DAMAGE INSURANCE:** Lessee(s) shall, at Lessee's expense, take out and keep in force during the full term of the tenancy:

General liability insurance providing coverage in the amount of one million dollars (\$1,000,000) per occurrence for Bodily Injury and Property Liability combined, in a company or companies to be approved by the Department, to protect Department, its officers, agents and employees against all claims, suits or actions of every name, kind, and description brought forth, or on account of, injuries to or death of any person occurring in or about the property or on account of damage to property incident to the use of, or resulting from, any and every cause occurring in or about the property which is the subject of this lease, including any and all claims, suits or actions for damage to vehicles on the property.

With respect to third-party claims against Lessee(s), Lessee(s) waives any and all rights to any type of express or implied indemnity against Department, its officers or employees.

It is the intent of the parties that Lessee(s) will indemnify, defend and hold harmless the Department, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of Department, Lessee(s), the officers or employees of either of these, other than the sole negligence of Department, its officers and employees.

Nothing in this lease is intended to create the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of the lease intended to establish a standard of care owed to the public or any member thereof.

Said policies shall name Department as an additional insured and shall inure to the contingent liabilities, if any, of Department and the officers, agents and employees of Department and shall obligate the insurance carriers to notify Department, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. Lessee(s) shall furnish to Department either a certified copy of each and every such policy or a fully executed "CERTIFICATE OF INSURANCE WITH ENDORSEMENT FOR LEASE OF STATE-OWNED PROPERTY" within not more than ten (10) days after the effective date of the policy. Lessee(s) agrees that if Lessee(s) does not keep such insurance in full force and effect, Department shall have the right to immediately terminate this lease.

24) INDEMNIFICATION: Lessee(s) shall indemnify, defend, and hold the Department, its officers, agents and employees harmless from and against any loss, cost, or expense, including, but not limited to, attorney fees and court costs, resulting from any claim by any third party arising out of or connected to the actions of Lessee(s), notwithstanding Department's, its officers', agents' and employees' active or passive negligence, and/or regarding all acts and omission, including but not limited, to the willful misconduct or negligence of the Lessee(s).

Further, it is the parties' intent that the indemnity provisions stated herein, apply to losses resulting from Lessee's negligence or any cause other than the willful misconduct or sole negligence of Department, its officers, agents or employees.

25) HAZARDOUS MATERIALS: Hazardous materials are those substances listed in California Code of Regulations, Title 22, Section 66261.126, Appendix X, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Title 22 of the above Code, as well as any other substance which poses a hazard to health or environment.

Except as otherwise permitted in this lease, Lessee(s) shall not use, create, store or allow any such substances on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Lessee(s) cause or allow the deposit or disposal of any such substance on the leased property. However, household products necessary for routine cleaning and maintenance of the property may be kept on the leased premises in quantities reasonable for current needs.

Department, or its agents or contractors shall at all times have the right to go upon and inspect the leased premises and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the premises.

(Insert if appropriate): The following substances may be present on the leased premises, provided that they are contained and used in accordance with all applicable local, State and Federal laws and regulations: (If needed, add "as well as the requirements set forth below".)

(List) (special quantity, storage, container, etc., requirements)

(If appropriate): Where hazardous waste is generated on site, the facility must be fully permitted by the California Department of Health Services, and all conditions of the permit must be complied with.

Breach of any of these covenants, terms, and conditions shall give Department authority to immediately terminate this lease. It is the intent of the parties hereto that Lessee(s) shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste introduced to the premises during Lessee's period of use and possession as owner, operator or Lessee(s) of the property. Lessee(s) shall also be responsible for any cleanup and decontamination on or off the leased premises necessitated by such materials or waste.

Lessee(s) shall further hold the State, and any officer or employee, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the premises during Lessee's period of use and possession.

(To be added where one or more underground tanks are located on property:) Lessee(s) acknowledges receiving from Department a copy of Permit No. (s) _____ issued by (local agency), authorizing operation of the underground storage facility(ies) located on the leased premises, together with a copy of Sections 25286, 25294, 25295, 25298 and 25299 of the California Health and Safety Code. Lessee(s) hereby agrees to monitor the underground storage tank(s) as set forth in said permit(s) and agrees to abide by all local, State and Federal regulations governing underground storage tanks for hazardous materials/hazardous wastes.

- 26) WATER POLLUTION CONTROL:** Lessee shall not allow discharge of contaminated storm water runoff or unauthorized non-storm water discharges to private or public storm water drainage systems. Lessee 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 jurisdiction of the above agencies.

Lessee shall implement and maintain the best management practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: _____ [RW instructions - Insert title of applicable Fact Sheet(s) from the RW Property Management and Airspace Storm Water Guidance Manual - e.g., parking lot, retail, nursery, storage, etc. Attach Fact Sheet(s) to lease.] _____.

Lessee shall identify any other potential sources of storm water and non-storm water pollution resulting from Lessee'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 Department's District Right of Way office or online at: <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.

Lessee shall provide Department 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)'s Web site: http://www.waterboards.ca.gov/water_issues/programs/stormwater/sic.shtml. Other SIC codes may be found at: <http://www.osha.gov/pls/imis/sicsearch.html>.

Department, or its agents or contractors, shall at all times have the right to go upon and inspect the premises and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing of sewer systems, storm drains, or watercourses on the premises.

- 27) GENERAL INDUSTRIAL PERMIT:** For any activities conducted on the lease premises listed in Attachment 1 to General Permit Order 97-03-DWQ (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB), Lessee 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.waterboards.ca.gov/water_issues/programs/stormwater/gen_indus.shtml#indus. Lessee 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 Department and also maintained on the lease premises.

Lessee 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. Lessee is solely responsible for compliance with the General Industrial Permit.

- 28) WAIVER:** If any part of this Lease is invalid by reason of law or governmental regulation, or if any provisions hereof are waived by Department, the remaining portions of this Lease shall remain in full force and effect. Department's receipt of rent with the knowledge of any breach of a provision of this Lease shall not constitute a waiver of such breach.
- 29) AMENDMENTS:** The terms of the lease may be, in writing, amended, revised, altered, or changed, by mutual consent of the parties hereto upon thirty (30) days' written notice. Any amendment, revision, alteration, or change shall operate with the same force and effect as the original agreement.
-

- 30) PREVIOUS AGREEMENTS:** Any existing Lease or Rental Agreement between Lessee(s) and Department (or its predecessor in interest) covering this property are terminated as of the effective date of this Lease.
- 31) LITIGATION COSTS:** In the event that a suit is necessary to enforce any of the provisions herein contained, or to recover possession of the premises, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.
- 32) HOLD OVER:** Should Lessee(s) hold over after the expiration of the term of this lease with Department's consent, express or implied, the tenancy shall be deemed to be a tenancy only from month to month, subject otherwise to all the terms and conditions of this lease so far as applicable.
- 33) NONDISCRIMINATION:** The Lessee(s), for themselves, their heirs, 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 Lessee(s) shall maintain and operate any facilities on the land or services offered thereon in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- Lessee(s) also agrees that in the event of breach of any of the above nondiscrimination covenants, the State of California shall have the right to terminate the lease and to reenter and repossess said land and the facilities thereon and hold the same as if said lease had never been made or issued.
- 34) ENCUMBRANCES:** Lessee(s) shall not encumber the rented premises in any manner whatsoever.
- 35) ASSIGNMENT FOR BENEFIT OF CREDITORS, INSOLVENCY, OR BANKRUPTCY:** Appointment of a receiver to take possession of Lessee's assets, Lessee's general assignment for benefit of creditors, or Lessee's insolvency or taking or suffering action under the Bankruptcy Act is a breach of this lease and this lease shall terminate.
- 36) POSTING OF PROPERTY:** Department or its agents shall at all times have the right to serve or to post thereon any notice required or permitted by law for protection of any right or interest of the Department.
-

LEASE AGREEMENT (Cont.)

(Form #)

EXHIBIT

11-EX-B (REV 6/2013)

Page 9 of 13

37) HEADINGS: The marginal or clause headings of this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part hereof.

BREACH OF ANY OF THE ABOVE COVENANTS, TERMS, AND CONDITIONS SHALL GIVE EITHER PARTY AUTHORITY TO IMMEDIATELY TERMINATE THIS LEASE.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

(Type Lessee's Name)

(Type Lessee's Name)

APPROVAL RECOMMENDED

By _____
(Type Right of Way Agent's Name)
Property Management

(Type Supervisor's Name)
(Type Supervisor's Title)

ADA Notice

For individuals with disabilities, this document is available in alternate formats. For information call (916) 654-5413 Voice, CRS: 1-800-735-2929, or write Right of Way, 1120 N Street, MS-37, Sacramento, CA 95814.

(OPTIONAL CLAUSES TO BE USED AS NEEDED)

1) (To be used per Section 11.04.03.00 - Lease Term)

CPI ESCALATION CLAUSE: The monthly rent provided for in lease clause _____ shall be subject to adjustment at the commencement of the _____ year of the term and every _____ year(s) thereafter, as follows:

The base for computing the adjustment is the Consumer Price Index for All Urban Consumers for _____, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the period two months prior to the date of the commencement of the term ("Beginning Index"). If the Index published for the period two months prior to the adjustment date ("Adjustment Index") has increased over the Beginning Index, the monthly rent for the following _____ year period shall be set by multiplying the monthly rent set forth in lease clause _____ by a fraction, the numerator of which is the Adjustment Index and denominator of which is the Beginning Index. In no case shall the adjusted monthly rent be less than the monthly rent set forth in lease clause _____.

If the Index is changed so that the base year differs from that used as of the period two months prior to the date on which the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. In the event Department and Lessee(s) fail to agree on the selection of a replacement price index, the selection of the same shall be determined by the Presiding Judge of the Superior Court of the State of California in _____ County, and his decision shall be final and conclusive upon the parties.

*U.S. City Average, San Francisco/Oakland, San Diego or Los Angeles/Long Beach-whichever is most appropriate.

2) LEVEL OR GRADUATED RENT ESCALATION CLAUSE (Insert as Clause 3) (RENT)

Lessee(s) shall pay the rent monthly, in advance, on the _____ day of each month during said term, in lawful money of the United States, as follows:

- (when flat rate for full term of lease):
\$ _____ per month (year) from _____ through _____
- (when provisions for annual step increases):
\$ _____ per month (year) from _____ through _____
(use additional lines as necessary).

[NOTE: In case subletting is permitted, the agent will rewrite Clause 16 accordingly and add optional Clause 2 (below) to Clause 16 if human habitation is permitted. Also add optional Clause 3 (below) as a separate clause.]

3) (To be added to Lease Clause 12, Assignment and Subletting, only where human habitation is permitted)

In the event the terms of this lease permit the subletting of portions of the property herein for human habitation, then Lessee(s) covenants and agrees to assume all the obligations and conditions to any subtenants, within the meaning of Sections 1941 and 1942 of the Civil Code.

Lessee(s) specifically waives as an obligation of Department the provisions of Sections 1941 and 1942 of the Civil Code, which read as follows:

“**1941.** Obligations of Lessor. The Lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidation’s thereof, which render it untenable, except as are mentioned in Section 1929.”

“**1942.** If within a reasonable time after notice to the Lessor, of dilapidation’s which he ought to repair, he neglects to do so, the Lessee may repair the same himself, where the cost of such repair does not require an expenditure greater than one month’s rent of the premises, and deduct the expenses of such repairs from the rent, or the Lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.”

4) (To be added where subleasing is permitted) Clause 12

SUBTENANT REQUIREMENT: In the event the terms of this Lease specifically permit subletting of all or a portion of the property herein, the following shall apply:

- a) Lessee(s) is required to furnish each new Tenant with two copies of Department’s form notice advising that no relocation payments will be made. Lessee(s) will sign one copy and return it to Department.
- b) Lessee(s) to provide Department with a listing of all subtenants as required by Department.
- c) Lessee shall provide Department with the Standard Industrial Classification (SIC) code applicable to subtenant’s facilities and activities on the premises.
- d) If subtenant’s activities conducted on the premises are listed in Attachment 1 of General Permit Order 97-03-DWQ (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB), Lessee shall provide Department with a copy of the following documents pertaining to subtenant’s activities: Notice of Intent (NOI) or No Exposure Certification (NEC) filed with the SWRCB; Receipt Letter from SWRCB showing Waste Discharge Identification (WDID) Number; Storm Water Pollution Prevention Plan (SWPPP), including any updates; and Notice of Termination (NOT), if applicable. A copy of subtenant’s SWPPP shall be maintained on the subleased premises.
- e) Lessee shall ensure that storm water best management practices (BMP) applicable to subtenant’s activities are implemented and maintained on the premises.

(Add the following subsection where there are inherited Tenants. See Exhibit 11-EX-23, page 6, for example of Exhibit A.)

- f) It is specifically agreed and understood that Lessee(s) shall not terminate the tenancy of the named Tenants in Exhibit A, which is hereby made a part of this Lease, without Department’s written approval, and will notify Department when said Tenants named in Exhibit A vacate the premises.
-

5) (To be included in all agreements for residences constructed prior to 1978)

LEAD-BASED PAINT: This property was constructed prior to 1978 and may contain lead-based paints that may pose a serious health hazard, especially to children and pregnant women. A government pamphlet, "Protect Your Family from Lead in Your Home," explaining the potential health hazards resulting from exposure to such lead-based paint and the precautions you should take to avoid such health hazards, is attached and incorporated for your use.

6) OFFSETS: It is understood and agreed that in consideration of a rental offset of an amount not to exceed \$ _____, Lessee(s) agrees to: *(Describe work to be done in detail).*

Lessee(s) shall secure paid itemized bills covering materials used for the authorized work and forward them to the Department at the address specified in Clause 10, Notices, of this Lease. Credit will only be allowed for the actual amount of the paid bills not to exceed the amount specified above. Lessee(s) will be paid for materials only and will not be paid for his/her labor or for the purchase of tools. Lessee(s) may not hire a third party contractor to perform the authorized work unless prior written permission from the Department is obtained.

[RW instructions - If rental offset work involves an *outdoor* activity that has the potential to pollute storm water, insert following sentence and attach appropriate Stormwater Pollution Prevention Fact Sheet (e.g., Trash Removal, General Maintenance, etc.) from the RW Property Management and Airspace Storm Water Guidance Manual - otherwise delete.]

In performing the work described above, Tenant shall implement best management practices shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: _____.

It is further agreed that said work would be completed and paid bills received by the Department prior to _____, and that the rental credit will only be granted after inspection by the Department, of the completed work.

7) INVENTORY: Lessee(s) acknowledges the premises are furnished in accordance with the attached inventory, Attachment _____, by initialing here: _____ *(Initials)*.

EXHIBIT I

NOTICE OF INTENT TO PROCEED

Pursuant to Section 10.3 of the Purchase and Sale Agreement ("Agreement") dated ____, 2016 between the State of California, acting by and through its Department of Transportation ("Department") and the City of Hayward, a municipal corporation of the State of California ("City"), the City hereby presents Notice of Intent to Proceed with the acceptance of the following Parcels only:

Parcel(s): _____ ;

_____ ;
_____ ;

The Department may proceed with the transfer of title to the City as to the Parcels listed herein only, as set forth in the Agreement.

[SIGNATURE BLOCKS]



EXHIBIT B

CITY OF
HAYWARD
HEART OF THE BAY

DATE: January 8, 2016

TO: Mayor and City Council

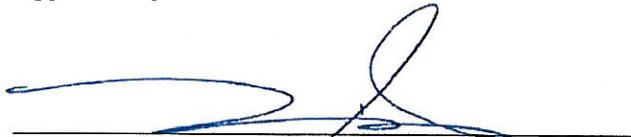
FROM: City Manager

SUBJECT: Correction to Resolution Declaring Public Purpose and Authorizing the City Manager to Negotiate and Execute an Agreement with the State of California Acting through the Department of Transportation for the Purchase of Certain Excess Route 238 Properties

The attached document replaces Attachment I of item 6 (LB 16-007) on the January 12, 2016 City Council Agenda. After the publication of the agenda packet for the January 12, 2016 meeting, the California Department of Transportation requested a last minute change to the Resolution. The attached Resolution reflects the requested change.

Prepared and Recommended by: Fran David, City Manager

Approved by:



Fran David, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-004

Introduced by Council Member Lamnin

RESOLUTION DECLARING PUBLIC PURPOSE AND
AUTHORIZING THE CITY MANAGER TO
NEGOTIATE AND EXECUTE AN AGREEMENT WITH
THE STATE OF CALIFORNIA ACTING THROUGH
THE DEPARTMENT OF TRANSPORTATION FOR THE
PURCHASE OF CERTAIN EXCESS ROUTE 238
PROPERTIES

WHEREAS, the California Department of Transportation (“Caltrans”) is the owner of certain real property located in what is commonly referred to as the Rte. 238 Bypass corridor (collectively, the “Rte. 238 Excess Properties”) acquired for the purpose of constructing a new alignment for a freeway or expressway bypass to State Route 238 in the City of Hayward and in an unincorporated area of the County of Alameda (“Bypass Project”); and

WHEREAS, the Bypass Project is no longer planned to be constructed and the route adoption for the Bypass Project was rescinded by the California Transportation Commission (“CTC”); and

WHEREAS, the Director of Caltrans previously determined, in accordance with Section 118 of the Streets and Highways Code, and Government Code sections 14528 et seq., that the Rte. 238 Excess Properties are no longer needed for highway purposes and have been certified as excess by Caltrans; and

WHEREAS, the California Department of Transportation has been charged with the sale or other disposition of the excess Route 238 corridor properties pursuant to Cal. Gov't Code § 14528.65;

WHEREAS, the City desires to purchase certain Rte. 238 Excess Properties in order to allow the public to weigh in on their vision for these areas on a more meaningful level and allow the City, at an accelerated pace, to preserve and create open space, parkland, and community amenities; to remediate blight caused by the lack of investment and underdevelopment; ensure the needed infrastructure is built to support a thriving community; allow the City to select development that will put the land to the highest and best use including in some cases transit-orientated development, infill development, and mixed use development to

reduce transit congestion and promote economic viability within the City; and ensure first class amenities are included in the development of this area for the present and future enjoyment of the citizens of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council that in order to address the public issues described herein, the City Manager is hereby authorized to negotiate and execute a Purchase and Sale Agreement and all necessary supporting documents between the City and the State of California, acting through the Department of Transportation, to facilitate the purchase of Rte. 238 Excess Properties identified herein in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA January 12, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermefio, Mendall, Jones, Peixoto, Lamnin, Márquez
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

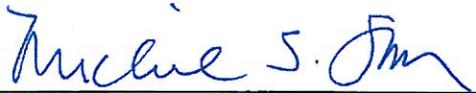
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: _____


City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward