

97-0230

Resolution No. _____

STOCKTON CITY COUNCIL

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:


1. That the Mayor is hereby authorized and directed to execute that certain "State of California Department of Transportation Airspace Ground Lease, Parking/Open Storage (Lease Area No. SJX004-0500)" between the City of Stockton ("Tenant") and the State of California, acting by and through its Department of Transportation ("Landlord").

2. That a copy of said Lease is attached as Exhibit "A" and incorporated by this reference.

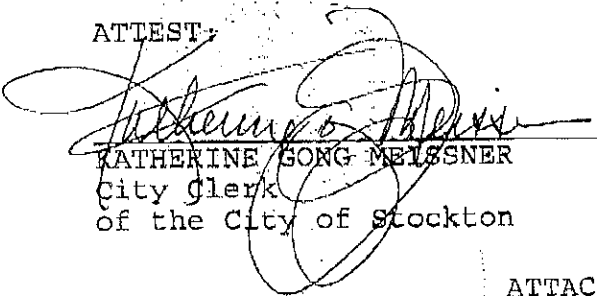
3. That the Mayor is hereby authorized and directed to execute that certain "State of California Department of Transportation Airspace Ground Lease, Parking (Lease Area No. SJX004-0600/0700)" between the City of Stockton ("Tenant") and the State of California, acting by and through its Department of Transportation ("Landlord").

4. That a copy of said Lease is attached as Exhibit "B" and incorporated by this reference.

PASSED, APPROVED and ADOPTED JUN 23 1997.


 GARY A. PODESTO, Mayor
 of the City of Stockton

ATTEST:


 KATHERINE GONG-MEISSNER
 City Clerk
 of the City of Stockton

ATTACHMENT(S) ON FILE IN THE CITY CLERK'S OFFICE

97-0230

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CITY ATTY
REVIEW 258DATE JUN 23 1997

Post-it* Fax Note 7671

Date	9-23-97	# of pages	1
To	Mike Wallace	From	Cindy Hong
Co./Dept.		Co.	

(Lease Area No. SJX004-0500)
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE GROUND LEASE
PARKING/OPEN STORAGE

THIS LEASE, dated April 1, 1997, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and CITY OF STOCKTON, hereinafter called "Tenant."

W I T N E S S E T H

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

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: DEPARTMENT OF TRANSPORTATION, DISTRICT 10

Tenant: CITY OF STOCKTON

Premises: Under Highway 4 between Center and El Dorado Streets, Located in the City of Stockton, County of San Joaquin, State of California, commonly known as 10-SJX004-0500, and more particularly described in Article 2.

Lease Term: Twenty (20) Years, commencing August 1, 1996 and expiring on July 31, 2016.
(Article 3)

Rent, Monthly: \$1,455.00

Adjustment to Rent: Method: CPI Frequency: Yearly

Use: Parking and Storage of Vehicles (Article 5)

Liability Insurance: \$2 Million (Article 9)

Address for Notices: (Article 19)

To Landlord: Department of Transportation, Right of Way
P. O. Box 2048
Stockton, CA 95201

To Tenant: City of Stockton, City Manager
305 N. El Dorado Street
Stockton, CA 95202-2306

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appear. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided

under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. SJX004-0500, situated in the City of Stockton, County of San Joaquin, said land or interest therein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof, and more particularly described as follows:

Block 28, east of Center Street in the City of Stockton according to the Official Map thereof filed in the office of the San Joaquin County Recorder.

EXCEPTING THEREFROM all that portion of said Block 28 situated within the boundaries of Parcel 7 and of Parcel 26 as said parcels are shown on those certain maps entitled "Proposed Relinquishment to the City of Stockton" recorded November 9, 1972 in the State Highway Map Book 15 at page 50, San Joaquin County Records.

EXCEPTING THEREFROM all those portions of the above described property needed for highway purposes, more particularly that property occupied or to be occupied by the supports and foundations of the viaduct, if any. ALSO EXCEPTING THEREFROM all that portion of said property about a horizontal plane 3 feet below the underside or soffit, whichever is lowest, of the viaduct which plane extends to the vertical boundaries of the above described property.

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to Tenant or of which Tenant has notice, constructive or otherwise including, without limitations, those shown on attached Exhibits "A".

ARTICLE 3. TERM

The term of this Lease shall be for Twenty (20) years, commencing August 1, 1996, and expiring July 31, 2016.

ARTICLE 4. RENT

4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$1,455.00, per month in advance on the first day of each month, commencing on the date the term commences and continuing during the term. Minimum monthly rent for the first month or portion of it shall be paid on the day the term commences. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day.

All rent shall be made payable to the Department of Transportation and delivered to the Department of Transportation, Cashier, PO Box 168019, Sacramento, CA 95816-3819.

4.2 Adjustment to Rent

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment at the commencement of the 2nd year of the term and every year thereafter.

The base for computing the adjustment is the Consumer Price Index (Pacific Cities - All Items) in the San Francisco area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for April 1996 and is currently 153.9 ("Beginning Index"). The period between each adjustment date, or between a reevaluation date and the next adjustment date, is referred to herein as the "Calculation Period". If the index published for the April immediately preceding the adjustment date ("Extension Index") has increased over the Beginning Index, the adjusted minimum monthly rent for the following year shall be set by multiplying the minimum monthly rent, as previously adjusted, by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. If the Extension Index is equal to or less than the Beginning Index, no adjustment shall be made to the minimum monthly rent as previously adjusted. This automatic adjustment shall be calculated using the following formula:

$$A = M \times B/C$$

A = Adjusted minimum monthly rent.

M = Minimum monthly rent stated in Section 4.1, or in effect at the beginning of the current Calculation Period, unless different minimum monthly rent has been established by reevaluation under this Article 4 or by operation of the provisions of Articles 11 or 12, in which case the most recently created rate shall apply.

B = "Extension Index", the Index published for the April prior to the month in which each rental rate adjustment is to become effective.

C = "Beginning Index", the Index published for the April prior to the month in which the term commences or in which the current Calculation Period commences.

In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this section.

If the Index is changed so that the base year differs from that used in calculating the Beginning Index, 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 of this lease, any similar index published by any branch of the United States Government shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative shall be substituted by Landlord.

4.3 Reevaluation of Minimum Monthly Rent

At the request of Landlord during the 9th year from the date of the commencement of the term, a fair market lease rate shall be determined in the manner set forth below and shall be established as the minimum monthly rent commencing on the following dates:

The minimum monthly rent established by this section shall be subject to the adjustment provided in Section 4.2. For the purpose of computing said adjustment, after the new minimum monthly rent has been established pursuant to this section, the Beginning Index shall be the Index published for April prior to the month in which new minimum monthly rent commences.

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

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

Landlord shall set the time and place for a conference between the parties hereto and said two appraisers, which conference shall be held within thirty (30) days of the receipt of notice of appointment by both parties. At such conference, the parties shall agree upon the general instructions to be given to said appraisers. The appraisers shall be instructed that in determining the fair market lease rate they shall consider the use to which the premises are being put and shall not consider the highest and best use for the premises without regard to the restrictions on use of the premises contained in the Lease. It is the intent of the Landlord and Tenant that the rent payable under this Lease not be less than the fair market rental value of the leased premises, and the purpose of this Section 4.3 is to assure the establishment of this rent and to prevent a bonus value from accruing to either party. The appraisers shall be instructed as to this intent. The general instructions shall not place any additional limitations upon the appraisal techniques to be employed by the appraisers in the evaluation of the rent.

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

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

Landlord and Tenant shall each pay for their respective appraisals and, if a third appraisal is necessary, each shall pay one-half (1/2) of the fees and expenses for said third appraisal. The determination of the fair market lease rate for the leased premises by the third appraiser, as documented in his signed written report submitted to the parties, shall be binding on Landlord and Tenant. The signed report shall be received at least thirty (30) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above or on such other date upon which the parties shall have agreed. It is the intent of Landlord and Tenant that the time limitations specified in this Section 4.3 are guidelines only and not mandatory. The failure to meet any of the time limitations set forth in this Section 4.3 shall not prevent a reevaluation from occurring so long as Landlord requests the reevaluation prior to the scheduled commencement date of the new minimum monthly rent.

If the fair market lease rate for the leased premises shall not have been determined prior to the date of the scheduled commencement of the new minimum monthly rent as set forth above, Tenant shall continue to pay the same rent as was being paid in the preceding period until a final determination has been made. Within thirty (30) days after such final determination is made, Tenant shall pay to Landlord the amount of difference between the rent actually paid during the period between the scheduled date of commencement of the new minimum monthly rent and the date the final determination is made and the amount of rent which should have been paid had the determination of the new minimum monthly rent been timely. Such payment shall include interest thereon at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of the scheduled commencement of the new minimum monthly rent until payment is made. For the purposes of this section, the applicable Federal Reserve Board discount rate shall be that which exists on the date of the scheduled commencement of the new minimum monthly rent. In no case shall the minimum monthly rent reevaluated pursuant to this Section 4.3 be less than the minimum monthly rent set forth in Section 4.1, as adjusted by Section 4.2, unless said minimum monthly rent has been reduced pursuant to Articles 11 or 12.

ARTICLE 5. USE**5.1 Specified Use**

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of Parking and Storage of Vehicles and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Article 4 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by this section.

5.2 Condition of Premises

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

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

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

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

5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of

competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

5.4 Petroleum Products

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

5.5 Explosives and Flammable Materials

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

5.6 Hazardous Materials

Hazardous materials are those substances listed in Division 4.5, Chapter 11, Article 1 through 5 of Title 22 of the California Code of Regulations or described for toxicity, reactivity, corrosivity or flammability criteria, as well as any other substance which poses a hazard to health or environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the leased premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the leased premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the premises.

Breach of any of these covenants, terms and conditions shall give Landlord authority to immediately terminate this Lease. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises during Tenant's period of use and possession as owner, operator or Tenant of the premises. Tenant shall also be responsible for any clean-up and decontamination on or off the leased premises necessitated by the

introduction of such hazardous materials on the leased premises. Tenant shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the premises by any party other than Tenant during any period prior to commencement of Tenant's period of use and possession of the leased premises as owner, operator or Tenant. Landlord shall be responsible for removal of hazardous material introduced to the leased premises from a highway accident or other occurrence on the overhead freeway structure.

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

5.7 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. Tenant shall not place, construct or maintain upon the premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

5.8 Landlord's Rules and Regulations

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

5.9 Wrecked Vehicles

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

5.10 Vending

Tenant shall not conduct or permit the vending or sale of any goods or services upon the premises except as specifically permitted under Section 5.1.

ARTICLE 6. IMPROVEMENTS

Tenant shall not place any improvements in, on, or upon the premises, nor shall Tenant make any alterations to said premises without the prior written consent and approval of the Federal Highway Administration.

6.1 Standard of Construction

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

ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

7.1 Ownership of Improvements

All improvements constructed on the premises are the property of the Landlord. Tenant shall maintain said improvements in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. In the event said improvements are not delivered to Landlord in good condition and repair, reasonable wear and tear excepted, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made, plus interest as provided in Section 19.11 from the date of completion of work. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

7.2 Removal of Personal Property and Ownership at Termination

At the expiration or earlier termination of this Lease, Landlord may, at Landlord's sole election, require the removal from the premises, at Tenant's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of the term of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination. Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section 7.2.

Tenant may remove any personal property from time to time within forty-five (45) days of the expiration of the term. Tenant shall repair all damage (structural or otherwise) caused by any such removal.

Any personal property not removed by Tenant within forty-five (45) days following expiration of the term shall be deemed to be abandoned by Tenant and shall, without

compensation to Tenant, become the Landlord's property, free and clear of all claims to or against them by Tenant or any other person.

ARTICLE 8. MAINTENANCE AND REPAIRS

8.1 Tenant's Obligations

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

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

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

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

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

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

8.2 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the premises. If within thirty (30) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

ARTICLE 9. INSURANCE

9.1 Exemption of Landlord from Liability

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

9.2 Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the premises, including any and all liability of Landlord for damage to vehicles parked on the leased premises. Such insurance shall be in an amount of not less than \$2,000,000 combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name the State as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable to Landlord within

not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the leased premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

Landlord acknowledges that Tenant may be self-insured. Tenant may elect to provide the insurance required by this Article in the form of self-insurance. If Tenant elects to exercise this option, Tenant shall so notify Landlord in writing and provide Landlord with a written statement explaining how it will provide Landlord with protection equivalent to that provided by the insurance policies required by this section, together with written evidence of the adequacy of this protection. Tenant's exercise of this option is subject to Landlord's approval. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this section effective on that termination date.

9.3 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, Landlord may take out insurance and pay the premiums thereon. The repayment of those premiums, plus payment of interest as provided in Section 19.11 from the date such insurance is obtained, shall be the sole obligation of Tenant and shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the premises and the improvements erected thereon and shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

9.4 Waiver of Subrogation

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

ARTICLE 10. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon said premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the leased premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant shall fail to discharge any of the above obligations, Landlord may, at its option, discharge the same and the amount so paid by Landlord, plus interest as provided in Section 19.11 from the date of payment by Landlord, shall be added to the rentals next accruing under this Lease. Tenant may, at its own expense, and before delinquency occurs, contest, object to or oppose the legality, validity or amount of such taxes. Landlord shall not be required to join in any proceeding or contest brought by Tenant. Immediately upon the final determination of the proceeding or contest, Tenant shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incident to the decision or judgment. If Tenant contests or seeks a reduction in the taxes as provided in this Article, Tenant shall, before the commencement of the proceedings or contest, furnish to Landlord security or other evidence satisfactory to Landlord that Landlord and the Premises will be held harmless from any damage arising out of the proceedings or contest and assuring the payment of any judgment that may be rendered. Any default in the payment of any of the obligations set forth in this Article shall, at the option of Landlord, be considered a default under the terms of this Lease.

ARTICLE 11. RIGHT OF ENTRY**11.1 Inspection, Maintenance, Construction and Operation of Freeway Structures**

Landlord, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the premises and any building or improvements situated thereon at any and all reasonable times during the term of this Lease for the purpose of

inspecting the same without interference or hindrance by Tenant, its agents or representatives.

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

11.2 Future Transportation Project

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

Tenant understands and acknowledges that Landlord may, during the Term of this Lease, construct an "Approved and Funded Transportation Project", which may require the temporary or permanent use of all or a portion of the premises. An "Approved and Funded Transportation Project" is defined as a proposed transportation facility to be constructed by Landlord where the funds necessary to construct the facility are available to Landlord (regardless of the source of the funds) and where the transportation facility can reasonably be expected to be constructed within a reasonable period of time following termination of this Lease as provided in this Section 11.2.

In the event Landlord determines that the premises or any portion thereof will be affected by an "Approved and Funded Transportation Project", Landlord shall immediately notify Tenant of its intent to take possession of all or a portion of the premises and shall provide Tenant with at least one hundred eighty (180) days written notice within which to vacate the required area. Landlord's notice to Tenant shall indicate the area of the premises to be taken. If possession is to be a temporary use of all or part of the premises, Landlord shall additionally state in such notice to Tenant Landlord's reasonable estimate of the period of time of such temporary use by Landlord. Upon the date Landlord is entitled to possession of the premises, or portion thereof, Tenant shall peaceably surrender possession of the premises, or portion thereof, and comply with the restriction as stated in the notice. The failure of Tenant to vacate the required area of the premises shall constitute a material default and breach of this Lease entitling Landlord to exercise its rights and remedies including those afforded Landlord in Article 15.

(b) Reduction of Monthly Rent if Lease Remains Effective

For the period during which Landlord has taken possession of the premises under this section, and if this Lease remains effective, Tenant shall be entitled to receive a reduction in Monthly Rent for the term of Landlord's use of the area of the premises used by Landlord, calculated as follows:

Percent of Useable Area	Reduction of Monthly Rent
1% - 25%	25%
26% - 50%	50%
51% - 75%	75%
76% - 100%	100%

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

Landlord's taking of possession of the premises under this Section 11.2 does not constitute a taking or damaging entitling Tenant to compensation under Article 12. The reduction in Monthly Rent as provided herein shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use part or all of the area of the premises as a result of an "Approved and Funded Transportation Project", and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the premises or improvements thereon, and damages to any other property, project or operations including any claim for loss of business goodwill or resulting from Tenant's inability to use or possess all or any portion of the premises as a result of an "Approved and Funded Transportation Project". In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (United States Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises for an "Approved and Funded Transportation Project". Landlord agrees to instruct its authorized representatives to minimize the effect of any required construction on Tenant's use of the premises, both in the construction phase and in the permanent effect on the premises in connection with an "Approved and Funded Transportation Project".

In furtherance of the objectives of Section 11.2, Tenant acknowledges Landlord's power of eminent domain and Tenant hereby waives all objections that Tenant may have to Landlord's right to take all or part of the premises as provided in Section 11.2.

11.3 Retrofitting of Freeway Structures

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

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. The minimum monthly rent as stated, adjusted and reevaluated in accordance with Article 4 shall be reduced by an amount equal to the proportion which the area of the portion of the premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

Tenant shall conduct its operation on the premises in such manner so as not to interfere with Landlord's or its contractor's performance of any required construction in connection with an "Approved and Funded Transportation Project", on or above the premises. Tenant acknowledges the performance of any required construction may cause damage to paving and other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except that at the conclusion of construction, Landlord shall restore the premises to their pre-existing condition at no cost to Tenant. Tenant shall conduct its operations on the premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the premises. Tenant acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except that at the conclusion of the retrofit work, Landlord shall restore the premises to their preexisting condition at no cost to Tenant.

ARTICLE 12. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

12.1 Definitions

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by a public entity having that power, that is, a

condemnor, and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

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

(c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

12.2 Termination of Lease as to Part Condemned

In the event the whole or any part of the premises is taken by condemnation by a public entity, other than Landlord, in the lawful exercise of its power of eminent domain, this Lease shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by the public entity.

12.3 Partial Taking

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

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

(a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or

(b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by the public entity.

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

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

Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by the public entity.

12.4 Adjustment of Rent

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

12.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by the public entity. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure.

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

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

ARTICLE 13. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping services and all other materials and utilities supplied to the premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

ARTICLE 14. LIENS

14.1 Exemption of Landlord from Liability

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

14.2 Tenant's Obligations

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

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

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination.

ARTICLE 15. DEFAULT

15.1 Default

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

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

15.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach:

(a) Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new tenant taking possession of the premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially under this subparagraph, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

(b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

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

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

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

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

(v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry Landlord shall have the right to make any

reasonable repairs, alterations or modifications to the premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (i) and (ii), above, the "worth at the time of award" is computed by including interest on the principal sum at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of default. As used in subparagraph (iii), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

15.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one-half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one-half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any moneys received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

15.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 19.11 from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

ARTICLE 16. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES

16.1 Voluntary Assignments, Subleases and Encumbrances

Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in the premises, or sublet all or any part of the premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of

the premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration, unless otherwise expressly permitted by the provisions of this Article.

Landlord may withhold its consent to any such assignment, transfer, or sublease unless all of the following express conditions are satisfied:

- (a) Landlord receives compensation from Tenant upon the assignment, transfer, sale, or sublease of any of Tenant's rights in the premises in an amount calculated in accordance with the provisions of Section 4.4.
- (b) Landlord receives and has the right to receive fifty percent (50%) of any and all consideration, whether in present payments or in future payments, which Tenant receives from an assignee, transferee or subtenant in excess of the amount of rent Tenant is obligated to pay to Landlord under this Lease.
- (c) A new minimum monthly rental rate is established in accordance with the provisions of Section 4.6.

Tenant's failure to obtain Landlord's required written approval of any assignment, transfer, or sublease shall render such assignment, transfer, or sublease void. Occupancy of the leased premises by a prospective transferee, sublessee or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's consent to any assignment, or sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, and sublease of this Lease and shall be severally binding upon each and every party thereto. Any document to transfer, sublet, or assign the leased premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

16.2 Assignment of Rent from Subtenants

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

16.3 Information to be Supplied to Landlord

Tenant shall supply Landlord with the necessary information on all persons or firms to which Tenant proposes to sublet or assign any of its interest in the premises, or which might establish rights to enter, control, or otherwise encumber the premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease or assignment, Tenant shall provide Landlord with:

- (a) a copy of all documents relating thereto,
- (b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
- (c) a copy of the financial statement of the prospective

subtenant or assignee.

16.4 Encumbrances

Tenant shall not encumber the premises in any matter whatsoever.

ARTICLE 17. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

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

ARTICLE 18. SECURITY DEPOSIT

No Security Deposit is required

ARTICLE 19. ADDITIONAL PROVISIONS

19.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the premises for the term, subject however, to the terms of the Lease and of any of the mortgages or deeds of trust described above.

19.2 Captions, Attachments, Defined Terms

The captions of the Articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addendum and schedules initiated by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant," as used herein, shall include the

plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

19.3 Entire Agreement

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

19.4 Severability

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

19.5 Costs of Suit

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

19.6 Time, Joint and Several Liability

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

19.7 Binding Effect; Choice of Law

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

19.8 Waiver

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

19.9 Surrender of Premises

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

19.10 Holding Over

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

19.11 Interest on Past Due Obligations

This section is not applicable.

19.12 Recording

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

19.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered,

postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

19.14 No Reservation

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

19.15 Corporate Authority

This section is not applicable.

19.16 Force Majeure

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

19.17 Estoppel Certificates

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

19.18 Termination of Lease

This lease may be terminated at any time by Tenant upon providing Landlord with ninety (90) days prior notice, in writing, and by the Landlord upon providing Tenant with ninety (90) days prior notice, in writing. In the event of cancellation by Landlord, said notice shall be served upon Tenant at his place of business in Stockton, California. In the event of cancellation by Tenant, said notice shall be served upon Landlord, care of the Department of Transportation 1976 E. Charter Way.

If Tenant terminates this lease pursuant to the provisions of this section, and the entire cost of improvements has not been amortized by Tenant as hereinafter provided, Landlord shall not refund or share in the cost of such improvements after the termination of this lease by Tenant.

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

LANDLORD: STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION

By: Scott Atkins
Airspace Functional Manager
Right of Way Program

TENANT:

By: Gary A. Podesto
GARY A. PODESTO
Mayor
By: City of Stockton

By: _____

APPROVED AS TO FORM:

R. THOMAS HARRIS

By: R. Thomas Harris
Deputy City Attorney

ATTEST:

By: Katherine Gong-Melssner
KATHERINE GONG-MELSSNER
City Clerk

19-0025 2-27 2000 01/01/00 10:00 AM
11-0025 2-27 2000 01/01/00 10:00 AM



MAINLINE
TYPICAL VIADUCT SECTION

(Lease Area No. SJX004-0600/0700)

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE GROUND LEASE
PARKING

THIS LEASE, dated May 8, 1997, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and CITY OF STOCKTON, hereinafter called "Tenant."

W I T N E S S E T H

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

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: DEPARTMENT OF TRANSPORTATION, DISTRICT 10

Tenant: CITY OF STOCKTON

Premises: Under Highway 4 between El Dorado and Sutter Streets, Located in the City of Stockton, County of San Joaquin, State of California, commonly known as 10-SJX004-0600/0700, and more particularly described in Article 2.

Lease Term: Twenty (20) Years, commencing August 1, 1996 and expiring on July 31, 2016.
(Article 3)

Rent, Monthly: \$5,775.00

Adjustment to Rent: Method: CPI Frequency: Yearly

Use: Parking and Storage of Vehicles (Article 5)

Liability Insurance: \$2 Million (Article 9)

Address for Notices: (Article 19)

To Landlord: Department of Transportation, Right of Way
P. O. Box 2048
Stockton, CA 95201

To Tenant: City of Stockton, City Manager
305 N. El Dorado Street
Stockton, CA 95202-2306

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

between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. SJX004-0600/0700, situated in the City of Stockton, County of San Joaquin, said land or interest therein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof, and more particularly described as follows:

Parcel 1

Block 29, Block 30 and Block 31 east of Center Street in the City of Stockton according to the official Map thereof filed in the office of the San Joaquin County Recorder.

Parcel 2

All that portion of Hunter Street lying southerly of the southerly line of Washington Street and northerly of the northerly line of Lafayette Street as said streets are shown on said map.

EXCEPTING THEREFROM all those portions of the above described property needed for highway purposes, more particularly that property occupied or to be occupied by the supports and foundations of the viaduct, if any. ALSO EXCEPTING THEREFROM all that portion of said property about a horizontal plane 3 feet below the underside or soffit, whichever is lowest, of the viaduct which plane extends to the vertical boundaries of the above described property.

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to Tenant or of which Tenant has notice, constructive or otherwise including, without limitations, those shown on attached Exhibits "A".

ARTICLE 3. TERM

The term of this Lease shall be for Twenty (20) years, commencing August 1, 1996, and expiring July 31, 2016.

ARTICLE 4. RENT

4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$5,775.00, per month in advance on the first day of each month, commencing on the date the term commences and continuing during the term. Minimum monthly rent for the first month or portion of it shall be paid on the day the term commences. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day.

All rent shall be made payable to the Department of Transportation and delivered to the Department of Transportation, Cashier, PO Box 168019, Sacramento, CA 95816-3819.

4.2 Adjustment to Rent

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment at the commencement of the 2nd year of the term and every year thereafter.

The base for computing the adjustment is the Consumer Price Index (Pacific Cities - All Items) in the San Francisco area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for April 1996 and is currently 153.9 ("Beginning Index"). The period between each adjustment date, or between a reevaluation date and the next adjustment date, is referred to herein as the "Calculation Period". If the index published for the April immediately preceding the adjustment date ("Extension Index") has increased over the Beginning Index, the adjusted minimum monthly rent for the following year shall be set by multiplying the minimum monthly rent, as previously adjusted, by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. If the Extension Index is equal to or less than the Beginning Index, no adjustment shall be made to the minimum monthly rent as previously adjusted. This automatic adjustment shall be calculated using the following formula:

$$A = M \times B/C$$

A = Adjusted minimum monthly rent.

M = Minimum monthly rent stated in Section 4.1, or in effect at the beginning of the current Calculation Period, unless different minimum monthly rent has been established by reevaluation under this Article 4 or by operation of the provisions of Articles 11 or 12, in which case the most recently created rate shall apply.

B = "Extension Index", the Index published for the April prior to the month in which each rental rate adjustment is to become effective.

C = "Beginning Index", the Index published for the April prior to the month in which the term commences or in which the current Calculation Period commences.

In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this section.

If the Index is changed so that the base year differs from that used in calculating the Beginning Index, 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 of this lease, any similar index published by any branch of the United States Government shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative shall be substituted by Landlord.

4.3 Reevaluation of Minimum Monthly Rent

At the request of Landlord during the 9th year from the date of the commencement of the term, a fair market lease rate shall be determined in the manner set forth below and shall be established as the minimum monthly rent commencing on the following dates:

The minimum monthly rent established by this section shall be subject to the adjustment provided in Section 4.2. For the purpose of computing said adjustment, after the new minimum monthly rent has been established pursuant to this section, the Beginning Index shall be the Index published for April prior to the month in which new minimum monthly rent commences.

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

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

Landlord shall set the time and place for a conference between the parties hereto and said two appraisers, which conference shall be held within thirty (30) days of the receipt of notice of appointment by both parties. At such conference, the parties shall agree upon the general instructions to be given to said appraisers. The appraisers shall be instructed that in determining the fair market lease rate they shall consider the use to which the premises are being put and shall not consider the highest and best use for the premises without regard to the restrictions on use of the premises contained in the Lease. It is the intent of the Landlord and Tenant that the rent payable under this Lease not be less than the fair market rental value of the leased premises, and the purpose of this Section 4.3 is to assure the establishment of this rent and to prevent a bonus value from accruing to either party. The appraisers shall be instructed as to this intent. The general instructions shall not place any

additional limitations upon the appraisal techniques to be employed by the appraisers in the evaluation of the rent.

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

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

Landlord and Tenant shall each pay for their respective appraisals and, if a third appraisal is necessary, each shall pay one-half (1/2) of the fees and expenses for said third appraisal. The determination of the fair market lease rate for the leased premises by the third appraiser, as documented in his signed written report submitted to the parties, shall be binding on Landlord and Tenant. The signed report shall be received at least thirty (30) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above or on such other date upon which the parties shall have agreed. It is the intent of Landlord and Tenant that the time limitations specified in this Section 4.3 are guidelines only and not mandatory. The failure to meet any of the time limitations set forth in this Section 4.3 shall not prevent a reevaluation from occurring so long as Landlord requests the reevaluation prior to the scheduled commencement date of the new minimum monthly rent.

If the fair market lease rate for the leased premises shall not have been determined prior to the date of the scheduled commencement of the new minimum monthly rent as set forth above, Tenant shall continue to pay the same rent as was being paid in the preceding period until a final determination has been made. Within thirty (30) days after such final determination is made, Tenant shall pay to Landlord the amount of difference between the rent actually paid during the period between the scheduled date of commencement of the new minimum monthly rent and the date the final determination is made and the amount of rent which should have been paid had the determination of the new minimum monthly rent been timely. Such payment shall include interest thereon at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of the scheduled commencement of the new minimum monthly rent until payment is made. For the purposes of this section, the applicable Federal Reserve Board discount rate shall be that which exists on the date of the scheduled commencement of the new minimum monthly rent. In no case shall the minimum monthly rent reevaluated pursuant to this Section 4.3 be less than the minimum monthly rent set

forth in Section 4.1, as adjusted by Section 4.2, unless said minimum monthly rent has been reduced pursuant to Articles 11 or 12.

ARTICLE 5. USE

5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of Parking of Vehicles and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Article 4 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by this section.

5.2 Condition of Premises

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

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

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

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

5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public

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

5.4 Petroleum Products

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

5.5 Explosives and Flammable Materials

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

5.6 Hazardous Materials

Hazardous materials are those substances listed in Division 4.5, Chapter 11 ~~30~~ ^{SA} ~~Article 1~~ ^{MM} through 5 ~~of~~ of Title 22 of the California Code of Regulations or described for those which meet the toxicity, reactivity, corrosivity or flammability criteria ~~of~~ ~~Article 11 of that Code~~, as well as any other substance which poses a hazard to health or environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the leased premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the leased premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the premises.

Breach of any of these covenants, terms and conditions shall give Landlord authority to immediately terminate this Lease. It is the intent of the parties hereto

that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises during Tenant's period of use and possession as owner, operator or Tenant of the premises. Tenant shall also be responsible for any clean-up and decontamination on or off the leased premises necessitated by the introduction of such hazardous materials on the leased premises. Tenant shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the premises by any party other than Tenant during any period prior to commencement of Tenant's period of use and possession of the leased premises as owner, operator or Tenant. Landlord shall be responsible for removal of hazardous material introduced to the leased premises from a highway accident or other occurrence on the overhead freeway structure.

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

5.7 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. Tenant shall not place, construct or maintain upon the premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

5.8 Landlord's Rules and Regulations

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

5.9 Wrecked Vehicles

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

5.10 Vending

Tenant shall not conduct or permit the vending or sale of any goods or services upon the premises except as specifically permitted under Section 5.1.

ARTICLE 6. IMPROVEMENTS

Tenant shall not place any improvements in, on, or upon the premises, nor shall Tenant make any alterations to said premises without the prior written consent and approval of the Federal Highway Administration.

6.1 Standard of Construction

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

ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY**7.1 Ownership of Improvements**

All improvements constructed on the premises, which consists of paved parking lots, are the property of the Landlord. Tenant shall maintain said improvements in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. In the event said improvements are not delivered to Landlord in good condition and repair, reasonable wear and tear excepted, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made, plus interest as provided in Section 19.11 from the date of completion of work. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

7.2 Removal of Personal Property and Ownership at Termination

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

effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section 7.2.

Tenant may remove any personal property from time to time within forty-five (45) days of the expiration of the term. Tenant shall repair all damage (structural or otherwise) caused by any such removal.

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

ARTICLE 8. MAINTENANCE AND REPAIRS

8.1 Tenant's Obligations

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

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

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

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

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to Tenant's use of said premises and improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned by Landlord, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or

other third parties. At Tenant's request, Landlord will repair the damage to its property and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

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

8.2 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the premises. If within thirty (30) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

ARTICLE 9. INSURANCE

9.1 Exemption of Landlord from Liability

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

9.2 Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the premises, including any and all liability of Landlord for damage to vehicles parked on the leased premises. Such insurance shall be in an amount of not less than \$2,000,000 combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name the State as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of

Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable to Landlord within not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the leased premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

Landlord acknowledges that Tenant may be self-insured. Tenant may elect to provide the insurance required by this Article in the form of self-insurance. If Tenant elects to exercise this option, Tenant shall so notify Landlord in writing and provide Landlord with a written statement explaining how it will provide Landlord with protection equivalent to that provided by the insurance policies required by this section, together with written evidence of the adequacy of this protection. Tenant's exercise of this option is subject to Landlord's approval. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this section effective on that termination date.

9.3 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, Landlord may take out insurance and pay the premiums thereon. The repayment of those premiums, plus payment of interest as provided in Section 19.11 from the date such insurance is obtained, shall be the sole obligation of Tenant and shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the premises and the improvements erected thereon and shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

9.4 Waiver of Subrogation

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

ARTICLE 10. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon said premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the leased premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant shall fail to discharge any of the above obligations, Landlord may, at its option, discharge the same and the amount so paid by Landlord, plus interest as provided in Section 19.11 from the date of payment by Landlord, shall be added to the rentals next accruing under this Lease. Tenant may, at its own expense, and before delinquency occurs, contest, object to or oppose the legality, validity or amount of such taxes. Landlord shall not be required to join in any proceeding or contest brought by Tenant. Immediately upon the final determination of the proceeding or contest, Tenant shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incident to the decision or judgment. If Tenant contests or seeks a reduction in the taxes as provided in this Article, Tenant shall, before the commencement of the proceedings or contest, furnish to Landlord security or other evidence satisfactory to Landlord that Landlord and the Premises will be held harmless from any damage arising out of the proceedings or contest and assuring the payment of any judgment that may be rendered. Any default in the payment of any

of the obligations set forth in this Article shall, at the option of Landlord, be considered a default under the terms of this Lease.

ARTICLE 11. RIGHT OF ENTRY

11.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

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

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

11.2 Future Transportation Project

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

Tenant understands and acknowledges that Landlord may, during the Term of this Lease, construct an "Approved and Funded Transportation Project", which may require the temporary or permanent use of all or a portion of the premises. An "Approved and Funded Transportation Project" is defined as a proposed transportation facility to be constructed by Landlord where the funds necessary to construct the facility are available to Landlord (regardless of the source of the funds) and where the transportation facility can reasonably be expected to be constructed within a reasonable period of time following termination of this Lease as provided in this Section 11.2.

In the event Landlord determines that the premises or any portion thereof will be affected by an "Approved and Funded Transportation Project", Landlord shall immediately notify Tenant of its intent to take possession of all or a portion of the premises and shall provide Tenant with at least one hundred eighty (180) days written notice within which to vacate the required area. Landlord's notice to Tenant shall indicate the area

of the premises to be taken. If possession is to be a temporary use of all or part of the premises, Landlord shall additionally state in such notice to Tenant Landlord's reasonable estimate of the period of time of such temporary use by Landlord. Upon the date Landlord is entitled to possession of the premises, or portion thereof, Tenant shall peaceably surrender possession of the premises, or portion thereof, and comply with the restriction as stated in the notice. The failure of Tenant to vacate the required area of the premises shall constitute a material default and breach of this Lease entitling Landlord to exercise its rights and remedies including those afforded Landlord in Article 15.

(b) Reduction of Monthly Rent if Lease Remains Effective

For the period during which Landlord has taken possession of the premises under this section, and if this Lease remains effective, Tenant shall be entitled to receive a reduction in Monthly Rent for the term of Landlord's use of the area of the premises used by Landlord, calculated as follows:

<u>Percent of Useable Area</u>	<u>Reduction of Monthly Rent</u>
1% -- 25%	25%
26% -- 50%	50%
51% -- 75%	75%
76% -- 100%	100%

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

Landlord's taking of possession of the premises under this Section 11.2 does not constitute a taking or damaging entitling Tenant to compensation under Article 12. The reduction in Monthly Rent as provided herein shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use part or all of the area of the premises as a result of an "Approved and Funded Transportation Project", and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the premises or improvements thereon, and damages to any other property, project or operations including any claim for loss of business goodwill or resulting from Tenant's inability to use or possess all or any portion of the premises as a result of an "Approved and Funded Transportation Project".

In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (United States Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises for an "Approved and Funded Transportation Project". Landlord agrees to instruct its authorized representatives to minimize the effect of any required construction on Tenant's use of the premises, both in the construction phase and in the permanent effect on the premises in connection with an "Approved and Funded Transportation Project".

In furtherance of the objectives of Section 11.2, Tenant acknowledges Landlord's power of eminent domain and Tenant hereby waives all objections that Tenant may have to Landlord's right to take all or part of the premises as provided in Section 11.2.

11.3 Retrofitting of Freeway Structures

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

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement.

Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. The minimum monthly rent as stated, adjusted and reevaluated in accordance with Article 4 shall be reduced by an amount equal to the proportion which the area of the portion of the premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

Tenant shall conduct its operation on the premises in such manner so as not to interfere with Landlord's or its contractor's performance of any required construction in connection with an "Approved and Funded Transportation Project", on or above the premises. Tenant acknowledges the performance of any required construction may cause damage to paving and other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except that at the conclusion of construction, Landlord shall restore the premises to their pre-existing condition at no cost to Tenant. Tenant shall conduct its operations on the premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the premises.

Tenant acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements,

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

ARTICLE 12. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

12.1 Definitions

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

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

(c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

12.2 Termination of Lease as to Part Condemned

In the event the whole or any part of the premises is taken by condemnation by a public entity, other than Landlord, in the lawful exercise of its power of eminent domain, this Lease shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by the public entity.

12.3 Partial Taking

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

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

(a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or

(b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by the public entity.

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

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

12.4 Adjustment of Rent

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

12.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by the public entity. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure.

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

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

ARTICLE 13. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping services and all other materials and utilities supplied to the premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

ARTICLE 14. LIENS

14.1 Exemption of Landlord from Liability

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

14.2 Tenant's Obligations

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

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

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination.

ARTICLE 15. DEFAULT

15.1 Default

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

(a) Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof has been given by Landlord to Tenant.

(b) The abandonment or vacation of the premises by Tenant. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.

(c) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

(d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law

relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

15.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach:

(a) Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new tenant taking possession of the premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially under this subparagraph, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

(b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

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

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

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

(iv) any other amount necessary to compensate Landlord

for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

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

15.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one-half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one-half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any moneys received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

15.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 19.11 from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

ARTICLE 16. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES**16.1 Voluntary Assignments, Subleases and Encumbrances**

Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in the premises, or sublet all or any part of the premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration, unless otherwise expressly permitted by the provisions of this Article.

Landlord may withhold its consent to any such assignment, transfer, or sublease unless all of the following express conditions are satisfied:

(a) Landlord receives compensation from Tenant upon the assignment, transfer, sale, or sublease of any of Tenant's rights in the premises in an amount calculated in accordance with the provisions of Section 4.4.

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

(c) A new minimum monthly rental rate is established in accordance with the provisions of Section 4.6.

Tenant's failure to obtain Landlord's required written approval of any assignment, transfer, or sublease shall render such assignment, transfer, or sublease void. Occupancy of the leased premises by a prospective transferee, sublessee or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's consent to any assignment, or sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, and sublease of this Lease and shall be severally binding upon each and every party thereto. Any document to transfer, sublet, or assign the leased premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

The Department of Transportation recognizes the sublease to the Stockton Farmers Market Association of a portion of the leased area for the sale of produce grown by the Association members. Insurance must be provided in the amount of Two Million Dollars (\$2,000,000.00) naming the State as additional insured.

16.2 Assignment of Rent from Subtenants

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

16.3 Information to be Supplied to Landlord

Tenant shall supply Landlord with the necessary information on all persons or firms to which Tenant proposes to sublet or assign any of its interest in the premises, or which might establish rights to enter, control, or otherwise encumber the premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease or assignment, Tenant shall provide Landlord with:

- (a) a copy of all documents relating thereto,
- (b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
- (c) a copy of the financial statement of the prospective subtenant or assignee.

16.4 Encumbrances

Tenant shall not encumber the premises in any matter whatsoever.

ARTICLE 17. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

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

ARTICLE 18. SECURITY DEPOSIT

No Security Deposit is required

ARTICLE 19. ADDITIONAL PROVISIONS

19.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the premises for the term, subject however, to the terms of the Lease and of any of the mortgages or deeds of trust described above.

19.2 Captions, Attachments, Defined Terms

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

19.3 Entire Agreement

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

19.4 Severability

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

19.5 Costs of Suit

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

any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

19.6 Time, Joint and Several Liability

Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the premises to Tenant.

All the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

19.7 Binding Effect; Choice of Law

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

19.8 Waiver

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

19.9 Surrender of Premises

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

19.10 Holding Over

If Tenant remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable in the amount and at the time specified in this Lease and

such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

19.11 Interest on Past Due Obligations

This section is not applicable.

19.12 Recording

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

19.13 Notices

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

19.14 No Reservation

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

19.15 Corporate Authority

This section is not applicable.

19.16 Force Majeure

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

19.17 Estoppel Certificates

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

19.18 Termination of Lease

This lease may be terminated at any time by Tenant upon providing Landlord with ninety (90) days prior notice, in writing, and by the Landlord upon providing Tenant with ninety (90) days prior notice, in writing. In the event of cancellation by

Landlord, said notice shall be served upon Tenant at his place of business in Stockton, California. In the event of cancellation by Tenant, said notice shall be served upon Landlord, care of the Department of Transportation 1976 E. Charter Way.

If Tenant terminates this lease pursuant to the provisions of this section, and the entire cost of improvements has not been amortized by Tenant as hereinafter provided, Landlord shall not refund or share in the cost of such improvements after the termination of this lease by Tenant.

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

LANDLORD: STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION

By: Scott Athens
Airspace Functional Manager
Right of Way Program

TENANT:

By: Gary A. Podesto
GARY A. PODESTO
Mayor
By: City of Stockton

By: _____

APPROVED AS TO FORM:

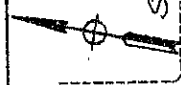
R. THOMAS HARRIS

By: R. Thomas Harris
Deputy City Attorney

ATTEST:

By: Katherine Gong-Meussner
KATHERINE GONG-MEUSNER
City Clerk

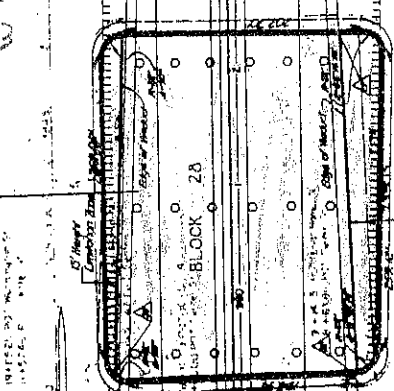
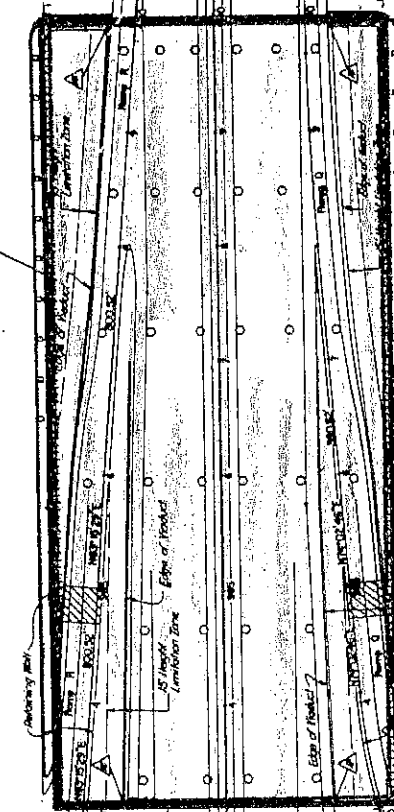
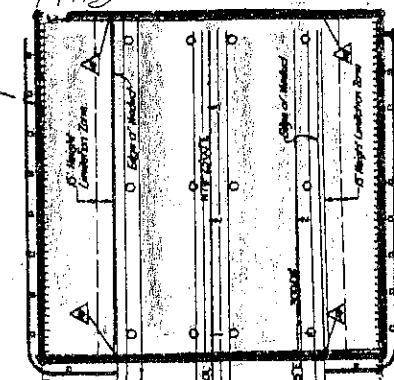
SVX04-0700 ~~10-11-41~~



STREET

STX004-0600

2



LEASE PARCEL	GROSS AREA	BENT AREA	NET MILL FILL AREA	NET AREA	STANDARD
10-FLA-5	79,042	305	72,736	61,850	
10-FLA-6	203,100	500	12,980	194,600	NLS-282
10-FLA-7	9,202	218		9,258	56,281


 2-1

2. Outcomes for all three scenarios to the 2000 survey are 74-75 percent, 80-81, & 79 percent respectively. Outcomes differ as expected.

STATE OF CALIFORNIA
HIGHWAYS AND TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION
DISTRICT 10
FREEWAY LEASE AREA
10-FLA-4-5 10-FLA-4-7

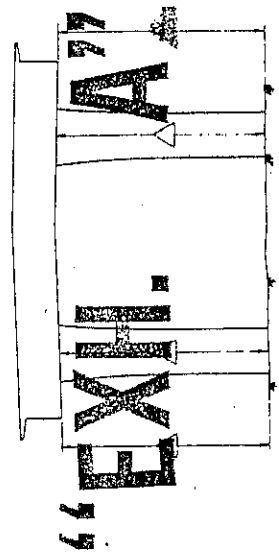
SCALE 1" = 50'

LEGEND

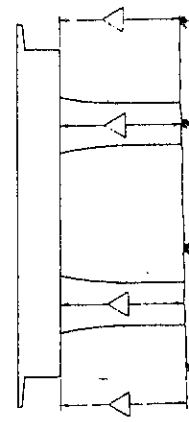
..... Access Drive

Δ Vertical Curve

\bigcirc Support On site



RAMP
TYPICAL VIADUCT SECTION
NO SCALE



MAINLINE
TYPICAL VIADUCT SECTION
NO. SCALE

[illegible]