



CALL AND NOTICE

REVISED

CALL AND NOTICE OF A SPECIAL MEETING OF THE EXECUTIVE BOARD OF THE ASSOCIATION OF BAY AREA GOVERNMENTS

As President of the Executive Board of the Association of Bay Area Governments (ABAG), I am calling a special meeting of the ABAG Executive Board as follows:

Thursday, December 15, 2016, 7:00 PM

Location:

Bay Area Metro Center
Board Room CR 110B
375 Beale Street
San Francisco, California

Teleconference Locations:

4254 Green Acres Court, Fairfield, California
Vietnamese American Community Center, 2072 Lucretia Avenue, San Jose, California

The ABAG Executive Board may act on any item on this agenda.

Agenda and attachments available at <http://www.abag.ca.gov/>

For information, contact Fred Castro, Clerk of the Board, at (415) 820 7913.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. PUBLIC COMMENT

INFORMATION

3. ANNOUNCEMENTS

INFORMATION

4. PRESIDENT'S REPORT

INFORMATION

A. Recognition of Members Stepping Off the ABAG Executive Board

5. ACTING EXECUTIVE DIRECTOR'S REPORT

INFORMATION

ABAG Executive Board

December 15, 2016

Page 2

6. CONSENT CALENDAR

ACTION

- A. Approval of Executive Board Summary Minutes of Meeting No. 419 held on November 17, 2016, and Revised Summary Notes of Special Meeting No. 418 held on October 20, 2016**
- B. Approval to Participate in Proposal to the CA Department of Community Services and Development for Low-Income Weatherization Program**
- C. Adoption of Resolution No. 17-16 Authorizing the Exchange of a Condominium Interest in 101 8th Street, Oakland for a Condominium Interest in 376 Beale Street, San Francisco, and Related Matters**

7. REPORT ON LOCAL COLLABORATION PROGRAMS—ABAG POOLED LIABILITY ASSURANCE NETWORK (ABAG PLAN)

INFORMATION

8. REPORT ON PLAN BAY AREA 2040—PROPOSED ENVIRONMENTAL IMPACT REPORT (EIR) ALTERNATIVES

ACTION

9. REPORT ON ABAG/MTC OPTION 7 IMPLEMENTATION ACTION PLAN

INFORMATION

- A. REPORT ON AD HOC COMMITTEE AND OTHER RECENT DEVELOPMENTS**
- B. REPORT ON MTC DUE DILIGENCE REPORTS—PFM, ORRICK, AND OTHERS**

10. ADJOURNMENT

The next meeting of the ABAG Executive Board will be on January 19, 2017.

Members of the public shall be provided an opportunity to directly address the ABAG Executive Board concerning any item described in this notice before consideration of that item.

Agendas and materials will be posted and distributed for this meeting by ABAG staff in the normal course of business.

Submitted:

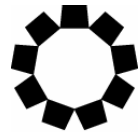
/s/ Julie Pierce
President, Association of Bay Area Governments

Date Submitted: December 9, 2016

Date Posted: December 13, 2016

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

A G E N D A

REVISED

ABAG EXECUTIVE BOARD SPECIAL MEETING NO. 420

Thursday, December 15, 2016, 7:00 PM

Location:

Bay Area Metro Center
Board Room CR 110B
375 Beale Street
San Francisco, California

Teleconference Locations:

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Vietnamese American Community Center, 2072 Lucretia Avenue, San Jose, California

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A. Recognition of Members Stepping Off the ABAG Executive Board

5. ACTING EXECUTIVE DIRECTOR'S REPORT

INFORMATION

6. CONSENT CALENDAR

ACTION

Unless there is a request by an Executive Board member to take up an item on the consent calendar separately, the calendar will be acted upon in one motion.

A. Approval of Executive Board Summary Minutes of Meeting No. 419 held on November 17, 2016, and Revised Summary Notes of Special Meeting No. 418 held on October 20, 2016

Attachments: Summary Minutes of November 17, 2016; Summary Notes of October 20, 2016 Revised

B. Approval to Participate in Proposal to the CA Department of Community Services and Development for Low-Income Weatherization Program

The Executive Board is requested to ratify the submittal of the proposal to CSD in an amount not to exceed \$5.7 million for regional administration of the LIWP, and authorize the ABAG Acting Executive Director to enter negotiations and execute the necessary agreements, if approved.

Attachment: Low Income Weatherization Program

C. Adoption of Resolution No. 17-16 Authorizing the Exchange of a Condominium Interest in 101 8th Street, Oakland for a Condominium Interest in 376 Beale Street, San Francisco, and Related Matters

Attachments: Exchange Real Estate Interest; Resolution No. 17-16; Declaration CCRs; Purchase Sale Agreement; Office Lease; MOU

7. REPORT ON LOCAL COLLABORATION PROGRAMS—ABAG POOLED LIABILITY ASSURANCE NETWORK (ABAG PLAN)

INFORMATION

Staff will present an overview of ABAG's local collaboration programs. The presentation of ABAG's enterprises and service programs is intended to extend over the next three Executive Board meetings. Staff will present the highlights of the local collaboration programs.

Attachments: ABAG PLAN Description; ABAG PLAN Presentation

8. REPORT ON PLAN BAY AREA 2040—PROPOSED ENVIRONMENTAL IMPACT REPORT (EIR) ALTERNATIVES

ACTION

Miriam Chion, ABAG Planning and Research Director, will be joined by Ken Kirkey, MTC Planning Director, to present proposed EIR alternatives for Plan Bay Area 2040.

Attachments: PBA 2040 EIR Scoping Feedback and Alternatives; Presentation Updated

9. REPORT ON ABAG/MTC OPTION 7 IMPLEMENTATION ACTION PLAN

INFORMATION

A. REPORT ON AD HOC COMMITTEE AND OTHER RECENT DEVELOPMENTS

B. REPORT ON MTC DUE DILIGENCE REPORTS—PFM, ORRICK, AND OTHERS

ABAG Executive Board

December 15, 2016

Page 3

10. ADJOURNMENT

The next meeting of the ABAG Executive Board will be on January 19, 2017.

Submitted:

/s/ Brad Paul, Acting Secretary-Treasurer

Date Submitted: December 5, 2016

Date Posted: December 13, 2016

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SUMMARY MINUTES (DRAFT)

ABAG Executive Board Meeting No. 419
Thursday, November 17, 2016
Bay Area Metro Center
375 Beale Street, Board Room
San Francisco, California

1. CALL TO ORDER, ROLL CALL AND CONFIRM QUORUM

ABAG President Julie Pierce, Councilmember, City of Clayton, called the meeting of the Executive Board of the Association of Bay Area Governments to order at about 7:08 p.m.

The ABAG Executive Board met jointly with the Metropolitan Transportation Commission.

President Pierce reported that Johnny Khamis, Councilmember, City of San Jose, and Tam Nguyen, Councilmember, City of San Jose, were participating by teleconference; welcomed AnMarie Rodgers, Senior Policy Advisor, City and County of San Francisco, and Joshua Switzky, Citywide Policy Planning Manager, City and County of San Francisco; and called for a roll call.

A quorum of the ABAG Executive Board was present at about 7:08 p.m.

A quorum of the Metropolitan Transportation Commission was present at about 7:26 p.m.

Representatives and Alternates Present

Jurisdiction

Supervisor Candace Andersen	County of Contra Costa
Supervisor Cindy Chavez	County of Santa Clara
Supervisor Damon Connolly	County of Marin
Supervisor David Cortese	County of Santa Clara
Mayor Pat Eklund	City of Novato
Mayor Leon Garcia	City of American Canyon
Councilmember Abel Guillen	City of Oakland
Vice Mayor Pradeep Gupta	City of South San Francisco
Supervisor Scott Haggerty	County of Alameda
Mayor Barbara Halliday	City of Hayward
Supervisor Erin Hannigan	County of Solano
Mayor Bill Harrison	City of Fremont
Councilmember Dave Hudson	City of San Ramon
Councilmember Johnny Khamis *	City of San Jose
Mayor Wayne Lee	City of Millbrae
Supervisor Mark Luce	County of Napa
Vice Mayor Jake Mackenzie	City of Rohnert Park
Supervisor Eric Mar	County of San Francisco
Supervisor Karen Mitchoff	Count of Contra Costa
Councilmember Tam Nguyen *	City of San Jose
Councilmember Raul Perez	City of San Jose
Councilmember Julie Pierce	City of Clayton
Supervisor David Rabbitt	County of Sonoma
AnMarie Rodgers, Senior Policy Advisor	City of San Francisco
Vice Mayor Greg Scharff	City of Palo Alto
Joshua Switzky, Policy Planning Manager	City of San Francisco

Representatives Absent

Mayor Len Augustine
Councilmember Annie Campbell Washington
Councilmember Jim Davis
Supervisor Jane Kim
Director William Kissinger **
Councilmember Lynette Gibson McElhaney
Supervisor Nathan Miley
Supervisor Dave Pine
Supervisor Warren Slocum

Jurisdiction

City of Vacaville
City of Oakland
City of Sunnyvale
County of San Francisco
RWQCB
City of Oakland
County of Alameda
County of San Mateo
County of San Mateo

[* Participated by Teleconference; ** Non-voting Advisory Member]

2. PLEDGE OF ALLEGIANCE

ABAG President Pierce and MTC Chair Dave Cortese, Supervisor, County of Santa Clara, led the ABAG Executive Board, Metropolitan Transportation Commission, and the public in the Pledge of Allegiance.

3. COMPENSATION ANNOUNCEMENTS

A. ABAG COMPENSATION ANNOUNCEMENT

The ABAG Clerk of the Board gave the ABAG compensation announcement.

B. MTC COMPENSATION ANNOUNCEMENT

The MTC Commission Secretary gave the MTC compensation announcement.

MTC Chair Cortese recognized MTC Commissioner Anne Halsted, and Vice Chair, MTC Planning Committee, who gave the MTC Planning Committee report.

ABAG President Pierce and MTC Chair Cortese reported that the MTC Planning Committee and the ABAG Administrative Committee met jointly in November 4, 2016 and each referred to the Metropolitan Transportation Commission and the ABAG Executive Board, respectively, the approval of the Plan Bay Area 2040 Final Preferred Scenario and Investment Strategy.

4. REPORT ON PLAN BAY AREA 2040 FINAL PREFERRED SCENARIO AND INVESTMENT STRATEGY

Ken Kirkey, MTC Planning Director, reported on the Plan Bay Area 2040 Final Preferred Scenario: Regional Growth Pattern and Investment Strategy, including: a review of past schedule; feedback from local jurisdictions, stakeholders, and members of the public; updated strategies and baseline data inputs, as appropriate; the economy and jobs and housing; changes to the draft preferred scenario; land use strategies; housing growth; job growth; results of the November election; total Plan Bay Area expenditures; regional discretionary revenue; draft transit operating needs and funding; draft transit capital needs and funding; draft local streets and roads needs and funding; key issue areas for Plan Bay Area 2040; closing the GHG gap; sustainable goods movement; core capacity transit; performance target summary; transportation funding allocation; establishing an action plan; and recommended actions to adopt the Final Preferred Scenario and Investment Strategy and to approve the proposed action plan policy statement.

MTC Chair Cortese reported that the Metropolitan Transportation Commission achieved quorum.

The following individuals gave public comment: Pilar Lazano Campo, Silicon Valley at Home; Louise Auerhahn, Working Partnerships USA; Stuart Schillinger, City of Brisbane; Scott Lane, MTC Policy Advisory Council; David Zisser, Public Advocates; Matt Vander Sluis, Greenbelt Alliance; Laura Cohen, Rails to Trails; Stevi Dawson, East Bay Housing Organizations; Elizabeth Gibbons, Vice Mayor, City of Campbell; Marty Martinez, Safe Routes to Schools National Partnerships; Kirsten Snow Spaulding, San Mateo Union Community Alliance; Ken Bukowski; Jeff Levin, East Bay Housing Organizations; Pedro Galvao, Nonprofit Housing Association of Northern California; Janet McBride, Bay Area Ridge Trail.

Kirkey commented on the process for adopting Plan Bay Area 2040 Final Preferred Scenario, Environmental Impact Report, and action plan policy statement.

Miriam Chion, ABAG Planning and Research Director, commented on the implementation action plan related to housing, jobs, resilience, Priority Development Areas, and open space; and ABAG on the work plan and reporting and monitoring.

ABAG President Pierce reviewed the staff recommendation and process regarding the Plan Bay Area 2040 Final Preferred Scenario, the proposed plan and Environmental Impact Review, potential implementation actions, and adoption of the final plan.

Steve Heminger, MTC Executive Director, commented on the implementation action plan and agency authority and funding.

MTC Chair Cortese commented on a policy statement on an action plan.

Members discussed a policy statement on an action plan and involving diverse Bay Area communities; local governments and capacity for generating revenue and development in proximity of transit stations; simplifying vision for citizens and cost of living, housing, and transportation; general plans, Transit Oriented Development, equity issues, inclusionary housing and rent control, urban limit lines and open space, quality of life, Environmental Impact Report and water sustainability, energy use and emissions; housing displacement, economy and workforce; affordability deterioration and study on housing units; jobs production and placement; jobs and housing balance in San Jose, regional tax, and new transportation; regional tools and enabling legislation; housing markets and housing production, and middle wage jobs; PDAs and city-centered growth, urban growth boundaries, city revenues; performance targets terminology; communications on housing growth and public opinion; housing and transportation funding; ABAG Regional Planning Committee work on economic development district, economic strategy and development, Priority Production Areas and goods movement; household and jobs projections, EIR proposed plan and alternatives, land use methodology and UrbanSim inputs; jobs and housing in San Jose; housing affordability and production and displacement; congestion relief and housing production, local control, adequate housing at 100 percent, job density; displacement risk, local solutions; job creation within communities; jobs creation and business incentives; construction types, reinventing suburbia, housing density and congestion; advocacy for new funding resources; future housing, jobs, transportation, environment, and quality of life.

MTC Chair Dave Cortese recognized an MTC motion by Anne Halsted, Vice Chair, MTC Planning Committee, which was seconded by MTC Vice Chair Jake Mackenzie, and

Councilmember, City of Rohnert Park, to approve the Plan Bay Area 2040 Final Preferred Scenario and Investment Strategy and proposed action plan policy statement. Members requested information from staff to be reported back to the Commission on the housing affordability analysis. The MTC motion passed unanimously.

President Pierce recognized an ABAG Executive Board motion by Karen Mitchoff, Supervisor, County of Contra Costa, which was seconded by Greg Scharff, Vice Mayor, City of Palo Alto, to approve the Plan Bay Area 2040 Final Preferred Scenario and Investment Strategy and proposed action plan policy statement.

There was no discussion.

President Pierce called for a roll call vote.

The aye votes were: Andersen, Chavez, Connolly, Cortese, Eklund, Garcia, Guillen, Gupta, Haggerty, Halliday, Hannigan, Harrison, Hudson, Lee, Luce, Mackenzie, Mar, Mitchoff, Peralez, Pierce, Rabbitt, Rodgers, Scharff, Switzky.

The nay votes were: Khamis, Nguyen.

Abstentions were: None.

Absent were: Augustine, Campbell Washington, Davis, Kim, Kissinger **, Gibson McElhaney, Miley, Pine, Slocum.

The motion passed.

5. PUBLIC COMMENT / OTHER BUSINESS

The following individuals gave public comment: Susan Landry; Scott Lane.

6. MTC COMMISSION ADJOURNMENT

The Metropolitan Transportation Commission meeting adjourned at about 9:52 p.m.

President Pierce announced that the ABAG Executive Board meeting will continue.

7. ABAG EXECUTIVE BOARD RECESS

8. ABAG EXECUTIVE BOARD RECONVENE

9. ABAG EXECUTIVE BOARD ANNOUNCEMENTS

There were no ABAG Executive Board member announcements.

10. ABAG PRESIDENT'S REPORT

President Pierce announced that the ABAG Executive Board will meet on December 15, 2016, 7:00 p.m., on January 19, 2017, 7:00 p.m., and February 16, 2017, 7:00 p.m., and that the ABAG General Assembly will meet on January 30, 2017, 10:00 a.m. to 3:00 p.m.

11. ABAG DEPUTY EXECUTIVE DIRECTOR'S REPORT

Brad Paul, ABAG Deputy Executive Director, reported on the staff consolidation and search for an organizational development consultant.

12. ABAG CONSENT CALENDAR

President Pierce recognized a motion by Pat Eklund, City of Novato, which was seconded by Jake Mackenzie, Councilmember, City of Rohnert Park, to approve the ABAG Consent Calendar.

There was no discussion.

There was no public comment.

President Pierce called for a roll call vote.

The aye votes were: Andersen, Chavez, Connolly, Cortese, Eklund, Garcia, Guillen, Gupta, Haggerty, Halliday, Hannigan, Harrison, Hudson, Khamis, Lee, Luce, Mackenzie, Mar, Mitchoff, Nguyen, Peralez, Pierce, Rabbitt, Rodgers, Scharff, Switzky.

The nay votes were: None.

Abstentions were: None.

Absent were: Augustine, Campbell Washington, Davis, Kim, Kissinger **, Gibson McElhaney, Miley, Pine, Slocum.

The motion passed unanimously.

A. Approval of ABAG Executive Board Summary Minutes of Meeting No. 416 on September 15, 2016 and Special Meeting No. 417 on September 15, 2016; and Summary Notes of Meeting No. 418 on October 20, 2016

The ABAG Executive Board approved its Summary Minutes of the meeting on September 15, 2016 and special meeting on September 15, 2016, and its Summary Notes of the meeting on October 20, 2016.

B. Approval of Meeting Schedule for 2017

The ABAG Executive Board approved its meeting schedule for 2017.

C. Accept Grant from Federal Emergency Management Agency (FEMA) for \$530,000 for Cooperating Technical Partnership, Year III

The ABAG Executive Board adopted Resolution No. 14-16 authorizing acceptance of FEMA financial assistance for fiscal year 2016 CTP to conduct Community Engagement and Risk Communication related work.

D. Accept Grant from United States Environmental Protection Agency (USEPA) for \$550,000 for East Bay Coalition Brownfields Assessment

The ABAG Executive Board adopted Resolution No. 15-16 authorizing acceptance of an EPA Brownfields Community Wide Coalition Assessment grant to conduct Phase I and Phase II environmental assessments along East 14th Street/International and Mission Boulevards.

E. Accept Grant from United States Geological Survey (USGS) for \$45,353 for Bay Area Vulnerable Housing Field Guide

The ABAG Executive Board adopted Resolution No. 16-16 authorizing acceptance of a grant from USGS Earthquake Hazards Program to produce a new "Vulnerable Housing Field Guide" for the Bay Area.

F. Real Estate Exchange of ABAG's Interest in 101 8th Street, Oakland for an Interest in 375 Beale Street, San Francisco

The Executive Board granted to the Administrative Committee the authority to authorize the Executive Director, or his designee, subject to approval by Legal Counsel, to execute all documents reasonably necessary to complete the real estate exchange of ABAG's

interest in 101 8th Street, Oakland for an interest in 375 Beale Street, San Francisco if the Executive Board does not meet in December 2016.

President Pierce noted that Khamis and Nguyen ended their participation by teleconference.

13. ABAG LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE REPORT

Committee Chair Scott Haggerty, Supervisor, County of Alameda, reported on committee activities, including the following: committee appointments; approval of summary minutes of September 15, 2016; review of Legislative Session 2016, including statewide propositions, AB 1934, and AB 2442; and report on League of California Cities Guide to Cap and Trade Programs.

14. ABAG FINANCE AND PERSONNEL COMMITTEE REPORT

Committee Chair Bill Harrison, Mayor, City of Fremont, reported on committee activities, including the following: committee appointments; approval of summary minutes of September 9, 2016 and September 15, 2016; report on Financial Reports for September 2016; report on Payment of Membership Dues for Fiscal year 2016-2017; report on Retiree Healthcare Plan, June 2015 Actuarial Valuation; election of Karen Mitchoff, Supervisor, County of Contra Costa, as Chair and Greg Scharff, Vice Mayor, City of Palo Alto, as Vice Chair; a closed session on Conference with Labor Negotiators; and a closed session on Public Employee Appointment, Title: Acting Executive Director.

15. REPORT ON ABAG/MTC OPTION 7 IMPLEMENTATION ACTION PLAN

A. Report on an *Ad Hoc* Committee

President Pierce reported on an *Ad Hoc* Committee, a subset of the ABAG Administrative Committee, to give feedback to staff on the ABAG MTC Contract for Services.

President Pierce recognized a motion by Mitchoff, which was seconded by Dave Hudson, Councilmember, City of San Ramon, to appoint an *Ad Hoc* Committee, to advise staff on the ABAG MTC Contract for Services, comprised of Pierce; David Rabbitt, Supervisor, County of Sonoma; Pat Eklund, Mayor, City of Novato; Pradeep Gupta, Vice Mayor, City of South San Francisco; Raul Peralez, Councilmember, City of San Jose; Greg Scharff, Vice Mayor, City of Palo Alto.

There was no discussion.

There was no public comment.

The aye votes were: Andersen, Chavez, Connolly, Cortese, Eklund, Garcia, Guillen, Gupta, Haggerty, Halliday, Hannigan, Harrison, Hudson, Lee, Luce, Mackenzie, Mar, Mitchoff, Peralez, Pierce, Rabbitt, Rodgers, Scharff, Switzky.

The nay votes were: None.

Abstentions were: None.

Absent were: Augustine, Campbell Washington, Davis, Khamis, Kim, Kissinger **, Gibson McElhaney, Miley, Nguyen, Pine, Slocum.

The motion passed unanimously.

B. Report on MTC Due Diligence

There was no report.

The ABAG Executive Board entered into Closed Session at about 10:06 p.m.

16. CLOSED SESSION

PUBLIC EMPLOYEE APPOINTMENT

Title: Acting Executive Director

The ABAG Executive Board returned into Open Session at about 10:11 p.m.

President Pierce reported on the unanimous action taken in Closed Session to change the job title of for ABAG Deputy Executive Director to Acting Executive Director with compensation commensurate to that of the former Executive Director retroactive to the date of that transition.

17. ADJOURNMENT

President Pierce adjourned the meeting of the ABAG Executive Board at about 10:11 p.m.

The next regular meeting of the ABAG Executive Board will be on January 19, 2016.

Submitted:

/s/ Brad Paul, Acting Secretary-Treasurer

Date Submitted: December 5, 2016

Approved:

For information or to review audio recordings of ABAG Executive Board meetings, contact Fred Castro, Clerk of the Board, at (415) 820 7913 or FredC@abag.ca.gov.

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SUMMARY NOTES

ABAG Executive Board
Thursday, October 20, 2016
Bay Area Metro Center
375 Beale Street, Board Room
San Francisco, California

1. PLEDGE OF ALLEGIANCE

President Julie Pierce, Councilmember, City of Clayton, noted that there was not a quorum of the Executive Board of the Association of Bay Area Governments present at about 7:04 p.m. The President asked that the ABAG staff proceed with their presentation without a quorum present.

President Pierce led the Executive Board and the public in the Pledge of Allegiance.

The following members of the Executive Board were present for part, or all, of the time noted.

Representatives and Alternates Present

Supervisor Candace Andersen
Supervisor Damon Connolly
Councilmember Jim Davis
Mayor Pat Eklund
Vice Mayor Pradeep Gupta
Councilmember Dave Hudson
Mayor Wayne Lee
Supervisor Mark Luce
Vice Mayor Jake Mackenzie
Supervisor Eric Mar
Supervisor Karen Mitchoff
Councilmember Raul Peralez
Councilmember Julie Pierce
Supervisor David Rabbitt
Vice Mayor Greg Scharff
Mayor Trish Spencer

Jurisdiction

County of Contra Costa
County of Marin
City of Sunnyvale
City of Novato
City of South San Francisco
City of San Ramon
City of Milbrae
County of Napa
City of Rohnert Park
County of San Francisco
County of Contra Costa
City of San Jose
City of Clayton
County of Sonoma
City of Palo Alto
City of Alameda

Representatives Absent

Mayor Jack Batchelor
Councilmember Annie Campbell Washington
Supervisor Cindy Chavez
Supervisor David Cortese
Dir Nicole Elliott, Leg and Gov Affairs
Mayor Leon Garcia
Councilmember Abel Guillen
Supervisor Scott Haggerty
Mayor Bill Harrison
Councilmember Charles "Chappie" Jones
Supervisor Jane Kim
Director William Kissinger *

Jurisdiction

City of Dixon
City of Oakland
County of Santa Clara
County of Santa Clara
City of San Francisco
City of American Canyon
City of Oakland
County of Alameda
City of Fremont
City of San Jose
County of San Francisco
RWQCB

Mayor Edwin Lee	City of San Francisco
Councilmember Lynette Gibson McElhaney	City of Oakland
Supervisor Nathan Miley	County of Alameda
Supervisor Dave Pine	County of San Mateo
Supervisor Linda Seifert	County of Solano
Supervisor Warren Slocum	County of San Mateo

[* Non-voting Advisory Member]

2. PUBLIC COMMENT

There was no public comment.

3. ANNOUNCEMENTS

Karen Mitchoff, Supervisor, County of Contra Costa, and Chair, Resiliency Subcommittee, announced the Bay Area Confluence Conference on November 10, 2016.

4. PRESIDENT'S REPORT

President Pierce announced a special General Assembly on Thursday, January 19, 2017. The agenda will include a report on the ABAG MTC Option 7 Implementation Plan and a report on the Plan Bay Area 2040 Preferred Scenario. The regular General Assembly will be in April 2017.

5. EXECUTIVE DIRECTOR'S REPORT

A. Update on the ABAG/MTC Option 7 Implementation Action Plan

Brad Paul, ABAG Deputy Executive Director, reported on the ABAG/MTC Option 7 Implementation Action Plan, including work involving Public Finance Management, Inc. on the financial due diligence, and Orrick, Herrington & Sutcliffe, LLP, on the legal due diligence; the contract for services and memorandum of understanding; employee relations committee; Koff and Associates on the staff consolidation; and organizational development and staff integration.

Members discussed consultant costs and reviewing the draft contract for services and draft memorandum of understanding.

[The ABAG staff presented Item 8 next.]

6. CONSENT CALENDAR

There was no presentation of, or action taken on, the Consent Calendar.

A. Authorize Conveyance of Interest in Real Property to the City of San Ramon

7. REPORT ON ABAG/STARS 457 DEFERRED COMPENSATION PROGRAM

There was no presentation of, or action taken on, the ABAG/STARS 457 Deferred Compensation Program.

8. REPORT ON LOCAL COLLABORATION PROGRAMS—ENTERPRISES AND SERVICE PROGRAMS

Staff presented an overview and highlights of ABAG's local collaboration programs. The presentation of ABAG's enterprises and service programs is intended to extend over the next Executive Board meetings.

A. Presentation on San Francisco Estuary Partnership

Caitlin Sweeney, Director, San Francisco Estuary Partnership, presented the San Francisco Estuary Partnership, including the National Estuary Program under the Clean Water Act; coalition of resource agencies, non-profit organizations, and scientists; operating budget and project and program funding; facilitate partnerships; collaborate on health of the Estuary and land use, resilience, and regional planning; 2016 Estuary Blueprint; and importance of the Estuary.

Nancy Woo, Water Division, U.S. Environmental Protection Agency, Region IX, and Andrew Gunther, Executive Coordinator, Bay Area Ecosystems Climate Change Consortium.

Members discussed preserving the Bay; the San Francisco Bay watershed; active projects in San Francisco and East and West peninsula; San Francisco Regional Water Quality Control Board; the North Bay Climate Adaptation Initiative; the North Bay Watershed Group; green streets; Comprehensive Conservation and Management Plan; storm water treatment; Delta Counties Coalition; storm water management; sea level rise.

9. REPORT ON PLAN BAY AREA 2040—DRAFT PREFERRED SCENARIO COMMENTS

Miriam Chion, ABAG Planning and Research Director, reported on the Plan Bay Area 2040 Preferred Scenario, including preferred scenario adoption; implementation action guidance, and approach to the next Plan Bay Area. She reported on Priority Development Areas; transportation investments; performance targets; draft implementation actions on economic development, housing, resilience, and Priority Development Areas.

The following individuals gave public comment: Matt Vander Sluis, Greenbelt Alliance; Peter Galvao, Nonprofit Housing Association of Northern California.

Members discussed economic sustainability.

Ken Kirkey, MTC Planning Director, reported on the use of Urban Sims and regional land use planning.

Chion announced an Urban Sims informational workshop on November 3, 2016.

Members discussed an economic reality test of goals and projection; developing policy and implementation actions; an economic development strategy; considering individuals and stakeholders; means comparison; water availability; fiscal sustainability; Environmental Impact Review alternatives; greenhouse gas reductions and jobs close to housing; consequences of not approving the Preferred Scenario.

Kirkey reported on the Regional Transportation Plan, transportation and housing, and policy discussions.

Members discussed SB 375; the next Plan Bay Area and Regional Housing Needs Assessment; General Plan policies, Urban Sims, and limited focused update; local land use control and long term growth; Priority Conservation Areas and Priority Development Areas; open space and agricultural lands; preserving urban growth boundaries; technology and transportation; future mobility research; Priority Production Areas; work force zoning and work force priority housing; jobs and housing balance; Sustainable Communities Strategy scoping plan and AB 32.

[Begin Transcript Executive Board Meeting 10/20/16 on Plan Bay Area]

Julie Pierce: Thank you to our guests, this is wonderful, good information and we will talk more about a possible delegations trip to Sacramento, do a little collaboration there. Next item on the agenda is a report on the Plan Bay Area 2040. The draft preferred scenario and the comments we received by the deadline of the fourteenth. Miriam is going to go into that and some of the potential implementation and what our process is going forward. Ken is there too.

Miriam Chion: Yes. Good evening board meeting members. This is your last executive board meeting to discuss the draft preferred scenario for Plan Bay Area. In November you will join the MTC planning committee as well as the full commission to discuss the approval of the final preferred scenario.

This is a meeting for you to discuss your expectations about this plan update, to give us some guidance on the implementation actions for completion by Spring 2017 and to give us your thoughts on how to approach the next Plan Bay Area. We have prepared this plan because there is a state legislation, SB375, Sustainable Community Strategies, requires to do this.

This legislation comes to support the work that our local planners, our planning directors, our city councils have been doing for several years. It is important to remind ourselves that before the legislation was enacted, you had already designated priority development areas but it's even more important to remind ourselves that before the creation of the priority development areas, we had a lot of local plans that started addressing some of the challenges, some of the different lifestyles, some of the issues that were being presented on the ground.

We have the downtown planning in Petaluma, we have West Oakland. We had the Eastern neighborhoods in San Francisco. We have the San Jose general plan. We have a number of local efforts that have started addressing those issues. This plan comes here to help us connect those dots on the ground and to give traction to regional efforts in addressing our housing affordability, access to job, environmental challenges and mobility.

I'll just provide a short overview, the whole purpose of this session was to give you time to discuss the plan so Ken and I then will be happy to address any comments and questions that you might have. On the preferred scenario, we have presented to you the growth pattern allocation, the transportation investments, the performance targets. There is a packet, there's a link on your memo, but there is also a hard copy packet that includes all the letters and comments that we have received. More than thirty jurisdictions submitted very detailed and substantial comments, many of you included.

We receive input from more than forty organization and again, with a lot of depth in their statements. We have received a very diverse set of

comments. We won't go into the details, you have the letters in front of you. Let me just flag a few things. There's a lot of concern about the cost of housing and housing affordability as reflected in some of our performance targets. There are concerns from many jurisdictions about scale of housing or the scale of jobs and the location of that future growth. There are concerns about access to those jobs and middle-wage jobs. There are concerns about what are going to be the implementation actions to help us carry some of those expectations.

Actually, at the last joint ABAG-MTC committee meeting there were a lot of points raised, and there were a lot of emphasis about identifying what are the implementations that will give our plan more traction on the ground.

You have a link and you have received those documents, the outline of some of the implementation actions that we have discussed with the ABAG Executive Board, with the Regional Planning Committee, and many components with MTC.

On the economic development you had full presentation. Pradeep Gupta, chair of the subcommittee, has been carrying a lot of leadership in this effort. There's one specific point that I just want to mention here.

The Regional Planning Committee has a recommendation on priority production areas. Because the time is limited today, in November we have the discussion of the final scenario. We'll bring that to you in January. That will also give us more time to coordinate a report with MTC.

In terms of housing, you are familiar with some of the efforts. This issue of housing affordability is definitely not new to the Bay Area, but as we assess some of the information, the scale of overcrowding, of homelessness and displacement, is way beyond anything we have seen.

There is a lot of attention that will be required for short-term strategies as well as longer term efforts that will require a lot of involvement on the ground.

On resilience, again you had a full presentation at the last meeting. Supervisor Mitchoff shared with us one of the tasks of the implementation work, and she's actually the chair of the Infrastructure Subcommittee, and might provide you with more detail as needed.

Finally, the Priority Development Areas is the framework of a lot of what we do. We've been working on these efforts for a while. We have the MTC funded PDA planning grants, we have efforts on the corridors, the Grand Boulevard Initiative, the East Bay Corridor, and there are more efforts coming up on CEQA streamlining or project entitlement, as well as how to pay attention to the quality of the place, to the culture, character, and history of our communities, which is essential in these efforts.

It's not just about numbers, it's not just about specific housing units, it's about what our people are choosing and what are their visions for those communities.

This Plan is updated every four years, yet the purpose of our Plan is to come together as a collective to figure out how we can improve the quality of life for our communities today and tomorrow, to find better access to housing and jobs.

With each update we learn a little bit and we try to make things a little bit better. We feel very strongly that the public engagement was substantially improved in this Plan. We also feel that we were able to discuss more specifically what was happening in Priority Development Areas and, what were some of the complexities of the Priority Conservation Areas.

Each cycle has a slightly different character. The first one that you approved came together with the Regional Housing Need Allocation, which gives it a different level of complexity. We also pay a lot more attention to local aspirations.

For this one, which we continue to call a limited update, we use a land use model that focuses a lot on the economic trends. As we move forward into the next Plan Bay Area, as we start closing this one it is important for us to hear what is the approach that you think needs to be taken for the next Plan Bay Area? What are the elements that you think are essential as we start thinking about the next Plan?

It will be important for us to understand as the Council of Governments, how do you see your role shaping the next Plan Bay Area. To quote Henry Gardner, "ABAG has no big money, has not a lot of regulatory power, but the power of our agency resides on the collective. It's our ability to come together, to put together better proposals, stronger proposals, to address our regional challenges."

We would appreciate your input on those three areas, the preferred scenario, the implementation actions, and the approach for the next Plan. Thank you.

Julie Pierce: I think I'm going to go to public comment first, and that way we can hear from our speakers. I would go first to Matt Vander Sluis, to be followed by Pedro Galvao.

Matt Vander Sluis: Matt Van Der Slice with Greenbelt Alliance, a pleasure to be with you this evening. I should be on, there we are. Thank you. A few quick comments for you this evening. I wanted to draw your attention to some of the letters that you've received. We helped coordinate a letter from 17 different organizations and agencies including Greenbelt Alliance, the Coastal Conservancy, Rails to Trails Conservancy, Transform, the Nature Conservancy, and many others.

Highlighting several elements of the Draft Preferred Scenario that's currently under discussion this evening. One is that we are glad that the Plan keeps growth within existing urban growth boundaries. Two, we are flagging that there are some areas that more growth is heading to outlying areas. Places like Rio Vista, Brentwood, Gilroy, in this draft, compared to the previous Plan Bay Area, and we hope that some of that growth could be reallocated to places close to jobs and transit.

Third, that we would like to see stronger strategies included in the Plan to address the social equity outcomes so that we do better on these targets, particularly on housing affordability.

Fourth, calling for a strong set of implementation actions, particularly having a conservation agenda in this Plan, for what we should be doing as a region in the coming years to make the open space target achieved.

We also, at Greenbelt Alliance, consulted with Calthorpe Analytics to do an assessment of what's in the Draft Preferred Scenario, and found some really interesting things that align with what we were hearing about from the San Francisco Estuary Partnership earlier this evening.

If we pursue the more focused footprint in the Draft Preferred Scenario compared to business as usual, you would have about half as much development on natural and agricultural lands, saving about 18,000 acres of those important lands around the region.

The benefits that we would accrue in the Bay Area are pretty tremendous. You've got, in your packets, some of these charts from this Calthorpe Analytics. We would save, by protecting watershed lands from sprawl development, we would save the equivalent of about 66,000 families' water supply yearly.

We would also save enough Carbon for about 100,000 automobiles per year, simply by allowing the natural lands to sequester Carbon, as well as protection of natural habitat and protecting about 2,500 acres of important crop lands that produce about \$9 million a year in fresh fruits and vegetables.

We could do even better. We analyzed one of the more compact scenarios from this summer and found that we could reduce that amount of sprawl development by an additional 15% if we choose to have a slightly more compact footprint.

With that, as we think about these implementation actions we would strongly encourage you to come up with a really robust set of implementation actions around housing affordability, around transit, around open space. We would love to see open space be included as one of the key implementation categories.

We saw four categories this evening; it would be great to see one on open space. Thanks so much.

Julie Pierce: Thank you, Matt. Next speaker is Pedro Galvao. Any other speakers want to speak under this item? Okay. Pedro.

Pedro Galvao: Good evening, ABAG Board members. My name is Pedro Galvao and I'm with the Non-Profit Housing Association of Northern California. Thank you so much for the opportunity to speak this evening, and also thank you for having this additional meeting to really dig into the details of the Plan. This was one of our original asks and I'm really glad that you guys are having this conversation.

I'd like to begin by saying that in the Draft Preferred, it gives us a vision of the Bay Area that I don't think any of us really want to live in. It paints a picture where 50% of the population will be paying up to 70% of their income in housing and transportation costs. We owe it to the residents of the Bay Area to do better than that. We really need to plan for the region that we want, not for the region that UrbanSim shows us going towards. So, with that said, I would like to urge you to really push for a thoughtful and robust implementation plan for this iteration for Plan Bay Area 2017. By that I mean specifically it should include. It should quantify both the funding gap that we need to fill in to meet our housing affordability needs, as well as the policy gaps that we also need to address to get us to build the affordable housing that we need to scale to keep our communities whole and prevent economic displacement.

The implementation plan should also establish a road map of short-term, medium-term, and long-term actions that we can take to, again, address our affordability crisis, keep our communities whole. That will include some things that we can do next year, some things that we can do in five years from now, but this plan needs to be robust.

Also, we would like you to commit, both staffs from ABAG and MTC, to creating a work program for the housing actions to be adopted concurrently with the final EIR by next summer. What that will mean is that staff will have specific assignments given to them that they will follow through. In the last Plan, we had a plan to build on and that chapter detailed actions that could be taken by the agencies, and to ABAG and MTC's credit, there have been a lot of actions that were taken but a lot that were left by the wayside. We would like to see a commitment to actually carrying out the actions spelled out in this implementation plan, even if it's not immediate.

Just as importantly, I would really like to urge you to not limit the actions that we can take or the growth allocations that we make to necessarily what can be modeled by UrbanSim right now. UrbanSim is a really great tool. It's a powerful tool that shows us if we make certain policy decisions where is growth going to be. Like any tool, it needs improvement. Some of the issues that UrbanSim doesn't address, for example, is housing growth appropriately distributed. Some jurisdictions, like Palo Alto, UrbanSim assigns less housing growth than Palo Alto calls for in its own general plan. In other jurisdictions like Livermore, San Carlos, and Los Gatos, UrbanSim assigns less housing growth than called for the eight-year RHNA.

UrbanSim also makes assumptions around inclusionary housing that are inconsistent with state law. All of these things need to be improved before we can say that this is the Plan. It's making the need for robust implementation plan all that more necessary, so please, I urge you to not limit your imagination to what can be modeled, and to really take the actions that we need to take to not exacerbate our region's housing affordability crisis or displacement crisis, and our jobs/housing imbalance. Thank you.

Julie Pierce: Thank you, Pedro.

All right, I'm going to bring it back up here. It looks like I have a stack of cards on this side and everybody's still pondering on this side, so we'll give you time. We're going to start down here with Wayne and work our way around.

Wayne Lee: Thank you. I'd like to see if we emphasize more on ... I don't know how to describe it. I guess economic sustainability or livable sustainability, because my vision is that for some towns that are revenue-challenged, let's say, they build ... I think we all want housing because we recognize the fact that there is a crisis in housing and the only answer and solution is to build more housing. Millbrae is definitely wanting to build more housing, but we also recognize by building more housing we provide a deficit of expenses that incurs because of that. Property taxes does not bring in the revenues that we need to sustain our city, especially if we're talking about additional 4,000 people in Millbrae. Anyways, it's going to be quite a bit more, and we don't have ... A lot of the cities on the peninsulas don't have any more room for manufacturing, or they don't have the luxury of having more tax-paying abilities. What we need is to have, make sure that up front and very highlighted as one of the top priorities, is the sustainability which includes the economic basis for sustaining that community that we're trying to build.

Because we're going to add all this extra housing, we need to be able to ... It's like a balloon, like a water balloon. If you imagine you squeeze one side and the other side gets bigger, so you're just shifting the problem from one side to the other. Your cost is going to still ... You're going to drive out the people who can't afford to pay the taxes to maintain the additional people. Now you're going to make those people homeless because they can't afford to pay the taxes, because you got to pay for fire, police, you got to pay for roads, and we all face that, right? We know the money has to come from somewhere and if it's not coming from property taxes, where is it coming from?

I would like to, I would like ... I strongly, strongly like to see ... I know that Commissioner Gupta? here is working on that commission, and I think that he's been doing a fabulous job... But we really like to see that as emphasis, and that we're looking at that. We're not just saying "Housing, housing, transportation, and jobs," because the jobs doesn't mean anything if they're not spending money in the town that needs the money. Thank you.

Julie Pierce: Thank you, Wayne.

I'm going to ask Ken if you would just give us a quick overview of what UrbanSim is intended to do in this Plan versus the way we've always done it before, and kind of explain the economic and reality touchstone that we're trying to accomplish here, versus the aspirational plan.

Ken Kirkey: Sure. I'll give it a shot and then you can tell me what I've missed.

Julie Pierce: Okay.

Ken Kirkey: UrbanSim is a regional land use model. We're using it comprehensively for the first time with this Plan. We didn't use it for anything really other than the EIR the last time around for the first Plan that was adopted. It has as its basis all the general plans in the region. It's a parcel-based model. It is not a machine that sits in the corner; it's about the inputs that it receives relative to those bases that it utilizes. It looks at the forecast total that is input, so the forecast that was developed by the forecasting group at ABAG, and where that might be distributed based upon a number of policy inputs, based upon local zoning, based upon a number of factors. It is, in some respects, different than purely a vision for how the region is going to grow.

For example, there are places that are transit-served in fill neighborhoods in the East Bay on BART lines at BART stations. Those communities would like to see substantial in fill development now. They haven't seen much of that, even in this boom, in part because we don't have tax increment financing. There could be a decision to say, "We assume that redevelopment is coming back. We assume something better than redevelopment is coming back," and that would input where growth would go in this distribution pattern.

For the draft-preferred scenario, we have tried to take an approach that is pretty conservative in terms of looking at local zoning, looking at pretty modest policy inputs, and saying this is what the distribution looks like. Relative to Pedro's comments before, we're not presenting the draft-preferred scenario as necessarily where the region needs to be or where it should be heading. We are saying this is where it is headed based upon fairly modest policy assumptions that we have right now. We think there is a need to do much more. There is much more that needs to be done in terms of policy inputs that influence development and support housing growth relative to economic sustainability. There are arguably a lot of impediments that need to be removed, that make it more difficult to build in certain locations, but those changes, as much as they have been talked about, they have not been advanced to any great degree.

To your comments, President Pierce, or your question, I think we're in part trying to say, "This is the world as it looks right now going forward." It is a bit of a reality check. I'm sure you wish you did, but you don't have to deal with RHNA] this time around. This is a chance to step back and look at some of these issues and really build toward the not limited and not, well still hopefully focused, but not minor update in four years.

Miriam Chion: Julie, I would like to mention that there are a few of you that have requested some kind of information session on UrbanSim. There's a workshop that Paul Waddell, the designer of this model, is hosting here in this building, November 3rd. While the workshop is primarily for modelers and planners, he's willing to accommodate a slot for elected officials, if there was the desire.

Julie Pierce: I think several of us would like to be able to attend that, so if you would email that out to all of the Executive Board members to give us an idea. I

would suspect that there are some of the MTC commissioners that would be interested as well.

The only thing I would add to that and I framed it this way at our joint meeting last Friday is that as I understand how UrbanSim is working and what we need to do to make this work. UrbanSim is giving us an economic reality test of our aspirational goals from the 2013 Plan and from the inputs that we put into it with our projections that ABAG did on what our total housing need is for the next Plan.

What UrbanSim has done is tell us how likely is development to happen in certain places. Is it going to go where we really think we want it to go or is it going to go where it's always wanted to go? What are the hurdles we have to identify that we need to remove to get it to go where we want it to go?

This is our opportunity to look at those policy levers that we may need to include in the next plan as implementation actions that we could each in our own jurisdictions embrace in order to try to accomplish what our own individual goals are to achieve the future that we each need.

I think it identifies where some potential changes might be to our local policies that would inspire that change. I think it also, to some extent, identifies what the hurdles are. I think that's really important. It also tells us that we probably can't do anywhere close to what we really want to do unless we make some pretty dramatic changes.

One of the things that was brought up at the joint meeting is, what is the real number we need to move the needle? Is it the 820,000 units that we're projecting based on our projections? Is that really going to move the needle or is that going to keep us status quo? We see that the affordability index is projected to be pretty dramatic. It's pretty draconian.

If we really wanted to make things improve by 2040, what would we have to do on a sustained basis? How much would it cost? What would the resources be that would be required to change this?

I think this is our opportunity to give some feedback and some policy discussion about some of those things. We had a very robust discussion on Friday with the joint committee with a lot of good ideas and a lot of hard questions being asked. What we directed at that point was that we come back with some really strong policy discussions after the first of the year to start talking about what real implementation actions we can come up with that could be included.

We really want to hear from you the things that you find as challenges, the places where you think this may fall short, understanding that this is to be a reality test and identify the shortcomings of where we were headed before and what we might do in the future.

If there are challenges you see, we need to see those. Any ideas you have to solve this crisis would be greatly welcomed. With that, I'm going to go ahead and go to Pradeep, and then on around the circle.

Pradeep Gupta:

Thank you, President Pierce. Just three quick points. One, yes, I agree fully that the last time we met in the joint meeting with the MTC Planning Committee, we had a robust discussion. I don't want to repeat all the comments that were made, but they were very insightful comments, as well as very productive comments.

One of the things that I just wanted to do in my comment today was to highlight the area that the planning director, Miriam, pointed out, namely, the economic development strategy of the Regional Planning Committee and the subcommittee, Economic Development Strategy Committee are very excited about what these efforts could bring about. We are thinking about concepts like economic development or priority production areas, but I don't think that we'll be able to do that kind of work with the Plan Bay Area at 2040 for this time, but it will lead a foundation thinking for us to include that in our next iteration of the Plan Bay.

Number two, many of the issues that we are talking about today, about equity, displacement, preservation of small industries, matching housing and employment areas, are going to be part of that study that we are looking at and also as a vehicle of putting all these ideas together. It's not new things. Many of these studies have been done already by ABAG in terms of various individual pieces to think of that issue.

With the vehicle of economic development administrations, region-wide economic development district that we are thinking about, the Regional Planning Committee is fully supportive of looking at the issue of putting this whole area as one of the economic district in order to make sure that we get all the federal assistance we can get, both in terms of knowledge, as well as any resources.

To me, a bigger benefit of that study is that it provides a systematic framework in which we'll be able to put many previous studies into the context in one singularly unified approach to the economic strategy because it does require what we call SWOT analysis, which forces you to think step-by-step about your situation, what are the threats, what are the opportunities, and what should be the policies. With that kind of structure that is required, in order to get us into that arena, I think we are moving the right direction.

In terms of our current plan, I fully agree with President Pierce that we are looking at this as more like an economic reality check. Our region is facing extremely uncommon economic forces right now. I would have been surprised if we were able to recreate that economic development by any model in the world, whether it's UrbanSim or any other model.

I think we are learning a little bit as we go further along. I'm optimistic that with the knowledge we gain from this situation, we'll be able to do Plan Bay Area's future additions with much more comprehension.

Let me assure that by the time we come to Plan Bay Area next plan, there will be more issues coming in front of us, and we might be building up on those issues, but let's face it. The planning is a process that is repeated.

Every time we make a plan, we tell ourselves and everybody else, "It's the best plan that was ever done," but we know in our hearts that after 40 years, we want to revisit that.

Keep that in mind. Don't think of every plan as answering all the questions, but raising some good questions. Thank you.

Julie Pierce:

Thanks, Pradeep. Pat?

Pat Eklund:

Thank you very much, President Pierce. First of all, great job so far. I sent some personal comments.

I hope that in the future, individuals are considered also as stakeholders. I don't know what the distinction is there, but the fact that there were only two "individual" comments leads me to be a little bit more concerned about the lack of public engagement on the preferred scenario. I'm hoping that we can start talking about maybe some public workshops, at least in Marin, about the preferred scenario the first part of the year. Maybe Miriam or Ken, we could have a conversation about that a little bit later. We didn't really get very many people from the "public" commenting on this yet.

My concerns are multiple. First is, in my opinion, the 2010 base year should not have changed from 2013. I still don't understand why. I understand that you're using the census whereas 2010 or 2013, I don't know what system we used. But to me, to be able to compare apples and oranges, you really need to start out with the number that was approved in 2013 as the base year. Then if you want to make any changes to update it, then call it 2015 reality check or something like that, just so that there's a means of comparison. Because it's very confusing to people and especially as I went through the comments that were sent in by cities. Virtually, probably 90% of those, maybe even 95% of those, including the 2 county comments, really questioned the numbers and felt that there weren't enough jobs or there was too much housing or not enough housing and too much jobs. The balance just really wasn't as reflected in their general plans.

I'm going to learn hopefully more about Urban Sim, but I think that just having an economic model is not necessarily how you plan. I think the whole idea is just for us to really achieve SB 375 which is what do we need to do in order to reduce greenhouse gas reductions which is not necessarily an economic model. It's really trying to increase the air quality.

That base year is really disconcerting ...

Ken Kirkey:

If I may just clarify the base here. I mentioned this at the joint meeting last Friday. The base year has 2 components, housing and employment. In terms of housing, what happened with this update was that the way it was factored up from census block group levels, there was a bit of overlap of jurisdictions that didn't align perfectly. It would have made, arguably, more sense to just go with the base numbers we used last time for households,

so that's what we're going to do going forward. So that confusion should go away.

As for employment, the way employment is being forecasted with this update is different. That's based upon what the forecasting group at ABAG has come up with. From our perspective, it's a better approach. It's more detailed. It gets into better definitions of employment classifications and so forth. It's simply a different way to come at the employment numbers and that's why the base for employment has changed somewhat for jurisdictions.

Pat Eklund: Maybe we can have more conversation offline about that because I still am struggling with, this is a 30 year, well 2040 ... So, we can have some more discussion offline on that.

The UrbanSim numbers, I looked at San Jose's letter, a lot of different cities ... Oh, that's okay. Did you want to say something, Miriam? No? The numbers, how are you going to adjust this in UrbanSim?

Ken Kirkey: You're referring to ... the feedback from jurisdictions?

Pat Eklund: From all the 33 cities, or 90% of them, that said that the numbers did not reflect what their general plan said.

Ken Kirkey: We've had meetings with planning directors in every county. We've had individual staff to staff meetings with 21 of the cities. Staff has been working on the input that was received from the jurisdictions, looking at UrbanSim, looking at inputs and looking at outputs and adjusting that. When we bring the final preferred scenario to you all in the MTC Commission on November 17th, there will be changes from the draft preferred scenario.

There won't necessarily be 1 for 1, exactly what a given city said because it's a zero sum game and this is a regional plan, but there will be pretty substantial changes that were based upon dialog with the local cities and counties.

Pat Eklund: I know some cities were concerned about expressing concerns about the numbers because they were under the understanding that the numbers were then only going to be adjusted within that county, where I was told that the numbers were still at the regional level.

Ken Kirkey: That's correct.

Pat Eklund: Okay. So I need to go back to those cities in Marin. Somebody from MTC said that no, the numbers would be adjusted within the county so that's why some of the cities did not make comments, including the City of Novato, San Rafael, and some others. I'll go back and I'll correct that. It will be interesting to see how the numbers come up.

In terms of what is not in this plan so far, because I have concerns about the assumptions. I'm sure we're going to get answers to all those questions, but ... We talked about water availability in 2013, that that's

something that we were going to be looking at as part of this update. Is there going to be any section in water availability?

Miriam Chion: We won't have a detailed analysis, but as part of the infrastructure subcommittee, there has been substantial dialog between the water districts and our local planners. What we're hoping to include is a discussion of several of the overarching challenges given the growth that is proposed for the region. At the regional level, you will have an assessment of key challenges and key strategies.

Pat Eklund: So there will be something in there so that we can build on it for the next one? Great.

The other issue that I raised at the, I think it was at the joint meeting, was the fiscal sustainability for cities and counties to actually help pay for the services for all those people that are going to be living here and working here in the future. I know, I think at the last meeting, we talked about, well, we have to modify Prop 13. I think that's one of the comments that was made. I think that's an issue that needs to be highlighted. Not necessarily solved or even ideas for that, but just recognizing the fact that a lot of us are struggling to pay for those services. What we're doing is we're doing Mello-Rooses. We're doing CFDs, which is just adding to the burden of the new folks that are coming in and paying a disproportionate share. That's an issue I think that somehow we're going to have to get our arms around that. I'm not sure how.

Ken Kirkey: That's a common theme that has come up in a lot of the discussions we've heard. A lot of the discussions have been on the policy level. They've been about how can things be changed and what are some of the impediments, such as you just described, to doing so. I think the short answer is that there is not a short answer. I mean this region has been building or not building, toward this for 3 decades. It's going to take a lot of work and a lot of thoughtful discussion and a lot of partnerships and other things to even have a good discussion about how these things could change. We're hearing a lot of what you just described.

Pat Eklund: Yeah. I know Novato and a lot of cities in Marin are hurting. The last question I had is that on the 17th are we going to get an idea of what kind of alternatives are going to be looked at in the EIR?

Ken Kirkey: The current path is that for November 17th, the final preferred scenario will be presented and recommended for adoption. We'll come back in December with recommendations really to the EIR and alternatives. In part because the final preferred scenario should really be adopted so the EIR consultants can do more analysis on it and can also do initial analysis on the alternatives that were presented to us for consideration from various entities. Then we can come forward in December and make a recommendation.

Pat Eklund: That's great. Thank you.

Julie Pierce: Okay, if we all take this long, we will not get out of here in a reasonable time tonight. So I'm going to ask you to be succinct as we go forward.

Trish, welcome. Glad to have you here tonight. I think this is your first meeting here in this building?

Trish Spencer: This is my first meeting here in this building.

Julie Pierce: Welcome to the Metro Center.

Trish Spencer: I apologize for being late. I actually had to walk quite a distance. Thank you and I want to actually thank all of you for your work on this. I do apologize if my comments are ... however you interpret them. When I read this plan and I appreciate the comments from the public.

Greenhouse gas reduction, I see that as a very important issue and when I hear about that, what I think is that we need to have jobs closer to where we're living. When I read this plan and I see what other cities have commented and what the city of Alameda's comments are, we're actually being asked to put housing where we're trying to put jobs. If we're putting housing where we're trying to put jobs, then that exacerbates our problem. Our residents have to commute farther. That is the complete opposite of what I think the goal is. So when I sit as mayor of the city of Alameda, and I think these other mayors do the same thing, we take it very seriously, the charge to reduce greenhouse gas emissions. When I look at this plan, many of these comments, it is the opposite. If we do not have the jobs where we live, we will continue to have transportation issues. We're going to have to make huge investments in transportation that we do not have the money in this state. We do not have, for instance, in Alameda a BART station. We are dependent upon AC Transit to get to BART. That is multiple public transportation, which we know in fact reduces the use of public transportation and increases the use of single occupancy vehicles.

We don't have money for a BART station in Alameda. Rather than going to BART and saying I need you to put, I know that's not going to happen. It's unrealistic. What we're trying to do is create jobs close to us, but when I look at the plan, not only are we being asked apparently to put housing in our job centers, we're actually being asked to put housing where our Least Tern is in a protected area, which I'm not even sure that that is ... I think it's completely impossible as far as I know.

That's why I appreciate some of these speakers in regards to protecting green areas. We have an area that is protected by fish and the feds for our Least Tern. We can't put anything there. Yet when you look at this plan, we're being asked to put, this is an amazing statement to me, 1,425 households planned on the federal nature preserve, home of the endangered Least Tern. That's fascinating to me.

Ken Kirkey: We received a letter from the community development director from Alameda. Staff has been working with Alameda planning staff and have corrected some errors that were found relative to the City of Alameda's allocation of the draft preferred scenario. You'll see some changes when the final preferred scenario is released. That was one of the errors addressed.

- Trish Spencer: I greatly appreciate that because we do want to protect the Least Tern. We put a lot of effort in protecting that. I really believe as a state that I'm going to say the majority of Californians have great respect for our bay and wildlife. I think that any plan has to consider these principles. Greenhouse gas reduction. Protecting our green areas. I'm going to say protecting our Least Tern. It has to happen and so when I see something like this it's like okay. It requires a lot of time to review.
- I'd actually submit that I think it's unlikely that you're going to be ready for this to have final review when, I think I heard November something. That's a lot of work unless you guys don't sleep at all, which I don't know maybe you don't.
- Ken Kirkey: For the most part we don't. You can ask these folks here. They see a lot of me.
- Trish Spencer: There's the issue of planning housing on protected green areas that should not be in this plan at all. Figuring out how to have jobs where housing is, it has to happen. People, anyone that's suggesting that jobs continue to be at other places and we just keep putting housing where, we're not going to have a place to, we're an island but these other cities have similar issues, Benicia, you can go through all these letters.
- We have to have places for jobs. Otherwise we're exacerbating the problem. When I look at this there's a lot of work to do. I hope that you will consider, take these environmental issues, which actually are very important. The housing jobs imbalance has to be addressed in every community. That's the only way you're going to deal with the problem of transportation.
- The problem of transportation is because people have to go from their home far, far away to get to a job. All of that is wasted time. It's unproductive. It's very expensive. To me, the simplest solution is we have an ability to have land, to have jobs where we live, where people live. That principal I do not see being recognized here. It is my opinion it is a critical principle.
- Then with this plan there's going to have to be a huge investment in transportation. Which is not going to happen as far as I know. In regards to Prop 13 you can say let's do that but I have to deal with, and I love some of these comments, solving the crisis. To me this is the opposite. We have to plan the best plan ever done. Well this is not anywhere close to it. This is not anything I'd put my name on. There was another one. Which I'm at a loss for.
- Oh this is where we're headed. This is not going to be a good plan for our state if this is where we're headed. This is actually the opposite. We need to protect. We have to strive for this greenhouse gas reduction, protect our green areas and deal with this job housing imbalance. Those are the critical principles. That has to happen because we don't have enough money for the infrastructure for transportation. Backwards.
- Julie Pierce: Thanks, Trish.

- Raul Peralez: Thank you. I'll try to succinct. I apologize again for being late. Last time was a Giants game. This time was a burning RV on 101 that shut it down for two hours. I think I really should take the train.
- I think I made my comments several times. My city has put in obviously comments as well. Our mayor in San Jose as well as with the mayor of San Francisco and Oakland to echo the last comments in regards to putting jobs where housing is, having the second most housing in the entire 2010 here, on the plan that I would echo that. We're not talking about one small area obviously within San Jose. We're just talking about San Jose in general. That's obviously the biggest sentiment coming from our city. The need for jobs, and our recognition of it, if we're going to make a difference here.
- It hasn't really been brought up, but what are the ramification of not passing this? If a recommendation coming from this body or coming from MTC or if there is so much distaste with what's here, what are those ramifications as we move forward on a timeline?
- Ken Kirkey: Well the ramifications are you blow your timeline. This is ultimately a regional transportation plan. It does have a spending investment package of \$309 billion. Any major transportation project in the Bay Area to move forward needs to be in a regional transportation plan.
- We already have a pretty tight schedule with an adoption slated for late summer next year. If that slips there will be transportation projects that will be delayed.
- I think Steve Heminger, my boss last week when he was at the joint meeting said it well. That this is, it is a limited and focused update. It is not during the RHNA cycle. No one is saying that the draft preferred scenario is perfect, or as I said earlier, that it's the vision the region definitely should be striving for. We're actually trying to say just the opposite.
- That given the policies this region has right now, given the lack of policy supports for jobs in certain locations, for affordable housing generally, for market impediments being removed to get more housing built, this is where we're at as a region. With some fairly ambitious policies thrown in to make it at least more focused to achieve the GHG target and so forth.
- I think it's important to look at it in that vein, not that this is the end of a discussion or it's the end of the planning process. It is, as President Pierce suggested, a reality check in terms of some of the challenges we face as a region. I would encourage you to keep the process moving forward and to really engage on the policy discussions because it is true. We have a section in the currently adopted plan adopted in 2013 called a plan to build on.
- That didn't get that much attention over the last few years. Now there's been a lot going on but some of what was going on should put us in a better position to have those discussions and really address some of the issues that are being raised in these meetings.

- Raul Peralez: Thank you for that. I did bring this up last time in regards to the, just the recognition of sort of where it all comes from and obviously SB 375, reduction of greenhouse gases, leading us to this regional transportation plan that we obviously know has to incorporate housing in the development of transportation around housing. In looking at it and in calling a plan, I think and deciding on how is it going to take us where we want to go versus a snapshot of where we're at.
- I think that that's the report that we have here. I think as we move forward with this, I think obviously the third bullet point here, and that's where I'll transition my comments, because I have no intention on not trying to move this forward. There's a lot at stake, but the reality is that this is not Plan Bay Area. This is Snapshot Bay area. If we want it to turn into Plan Bay Area we can't have ambitious policies assumed in it. We have to have policies required or recommended, necessary, whatever you name it, as you're saying, sort of focusing on the policy of it, that says if we really want to Plan Bay Area, if you're an alcoholic, you don't take a snapshot of how much you drink every day and then say, "I'm going to go get over being an alcoholic by doing the same thing I've been doing." You've set a plan that actually shows you and tells you 12 steps to get there. This is a snapshot. This is the alcoholic continuing to be the alcoholic. If we actually want to plan to not be there, if we want to plan to not have these issues that I know that we're seeing arise in this, then we need to actually make a plan. That's my biggest concern, is that as we move forward, let's actually turn this into Plan Bay Area and not snapshot Bay Area. Thanks.
- Julie Pierce: I think that's the whole purpose of the implementation actions that we need to have those strong policy discussions about. I'm just going to continue on around. Greg, you're next.
- Greg Scharff: Thanks. A couple things. First of all, I actually agree that it would be irresponsible not to pass this. \$309 billion of transportation money, and if we don't think we're going to pass that, that would be frankly irresponsible in my view. That doesn't mean I don't have concerns about this. The reality of the situation is that we should focus on the next plan. We're pretty far along on this, and there's going to be some changes around the edges and stuff, but I don't foresee this is going to change a lot.
- I think the real concern has to be, we have next a next RHNA cycle, how do we make that plan ... As my friend from San Jose said, "How do we make that the real Plan Bay Area?" I think that comes down to ... First of all, I think we need to understand UrbanSim. I actually think UrbanSim is probably right on a macro-level, and has a lot of micro issues, like Trish mentioned. Since she's out of the room, I can say whatever I want. As Trish mentioned, I think we run a risk frankly of when each individual city looks at that, they look at the glitches, and they look at the way UrbanSim says, "If there's vacant land there, you're going to go ahead and build a lot on it," or something.

A lot of those places, communities, would be like, "That's our sacred cow; you're not going to be building there." Communities will then focus and have a rallying cry that, excuse me, "What are those idiots thinking that were going to build on the tern-sacred marsh?" In every community there is a sacred place. I'm sure in Palo Alto we've planned to build on one of our parks or something. What will happen is that you'll create all this opposition for it. I think that's somewhere in UrbanSim we need to understand for the next plan. When people really focus, when their RHNA numbers start coming out.

I am also concerned about what is UrbanSim, and what is transparency? When we did the last RHNA cycle, I remember sitting in the Housing Methodology Committee, there were factors we argued about it. This factor, that factor, different people wanted different factors. There were all sorts of stakeholders in the room, and it was really a bottom-up plan. UrbanSim is a top-down plan. The part I don't understand is ... It doesn't matter what San Jose says about wanting more jobs. That's not going to matter, because UrbanSim spits out ... What I'd want to know if I was San Jose is, "What would move the lever for more jobs in San Jose?" Or, "If we're going to build more housing, what moves the lever in more housing?" I don't know the answers to that.

What I gather with UrbanSim is it doesn't matter what the comments from the public are to some extent, unless it chooses some glitch that you can then fix. What matters is what policies are not accounted for that our city is doing. If we're saying, "Our General Plan says this," and UrbanSim has a completely different number, what are the policies in the General Plan that would affect the UrbanSim? If your policy would be just to approve so much more office space, if UrbanSim for whatever reason, I don't know however it works, doesn't believe the jobs will actually come, then you're not going to get the jobs. I could choose a few communities in the Bay Area: you could say you're going to build tons of housing, but if the market's not there for the housing, you're not going to build the housing.

I think that's where the disconnect with some of the General Plans are. I think UrbanSim is probably on the macro-level correct where we're going for our region. I also think language matters. I think what a lot of people up here are having heartburn of, what I hear, is we keep calling it "the preferred scenario." A lot of people don't prefer it, because they don't like the outcomes they see on the screen. When you look at those outcomes however, they are better than the outcome of doing nothing every time you look at it. It's preferable to doing nothing. I think that's an important point that we need to make.

As we move forward, I think we need more transparency about what actually moves the needle, and what policies would need to be taken. The other thing that interests me is people do Housing Elements, which are the key to Housing. Housing Elements has all sorts of legally ... In fact, when Palo Alto does their Housing Element, HCD is on the phone with, shall we say, the Housing Advocate Stakeholders who are actually on the phone with us, which fascinates me. They complain if we do anything at

all that they think may not increase housing. Yet, still we produce, I believe, less than half of our RHNA numbers, at least in the last cycle.

What are the policies that are causing that to happen on a macro-level, and we're not producing the housing we need to produce? Then, in terms of jobs and the greenhouse gas stuff, I'm thinking to myself, "Yes, put the jobs next to transit. It's the best way to reduce greenhouse gas emissions, over putting housing next to the transit." When you look at that, it's clearly true. On the other hand, what you really want to do is put a bunch of housing next to the jobs as well. Just putting jobs somewhere where there's no housing doesn't necessarily help, and only ... what is it in Palo Alto? It could be different in other places, but it's something like, at best, 30% of the people in for-sale housing actually work in the community in which they live.

If we build rental housing next to the jobs, that is much, much higher. I think we need to think about on a more granular level, "How are we actually going to achieve our goals?", and what that means. Let's see ... I'm almost done. I think that we need to think of this as a limited and focused update that the train has really left the station. How do we possibly create a scenario the next time that really works? One other thing I'd say: I think whatever we plan is probably not going to be what actually happens, because you have technological change. All it's going to take is self-driving cars frankly in the next 10 years to up-end our transportation system. To up-end the way we think about these things.

I'm sure that there will be other technological advances in mobility, which seem to be the big thing. I can tell you in our Stanford Research Park, we have six or seven car companies who have moved out of Detroit and are all in Palo Alto trying to figure out how to disrupt mobility and self-driving cars, and all of that. I think that's going to happen, and I know I sound like maybe I'm science fiction-y, but I think it's happening. It'd be interesting to look at the different levers of what would it take to have the Bay Area we want. That's the question that I have no idea what that is, and so it's very hard for me to make that decision. Anyway, thanks.

Ken Kirkey:

I'll just say very quickly, the last piece in particular is a request that has come up again and again. "What would it take to actually achieve these performance metrics?" "What would it take to actually get real jobs housing balance within the various sub-regions of the region?" "If not within every community, at least within every part of the region, how could that happen?" "How would that relate to some of the fiscal imbalances between communities, in some cases, that are right next door to one another?" Because of the housing and jobs dynamic that's played out over the decades, we have huge imbalances in terms of the physical resources they have. That affects how they look at development going forward. It's a lot of the theme. We've heard many things along these lines from various folks through this process.

Julie Pierce:

David.

David Rabbitt: Thank you, I'll be brief. I signed a letter on behalf of the Sonoma County Transportation Authority, and I know you have it; it's in the packet. Again, in the same theme of verifying and validating their UrbanSim numbers. That was on behalf of the unincorporated cities, as well as the county in Sonoma. I think the UrbanSim parcel-by-parcel tool is just very powerful and a great tool, but obviously we need to go back and check for chads, or whatever it is. Making sure that we do have that complete faith in it, because I know that there are some numbers that are amiss. I think Director Mackenzie will probably elaborate further on the city side of that. Great comments, Greg. I was thinking too about the local land use control, of which we always say that is paramount going forward. Of course, General Plans, rarely do you reach build-out. I think something always happens along the way, and a few units here and there. Before you know it, you're probably lucky if you get 80% at the end of a 20 year plan, but something less than that. But at the same time, being a zero sum game and those cities whose general plans, I look at it as a complete package as well and wouldn't it be nice to have this be a tool that would then influence what your general plan's going to do so you know that the growth that is out there that ... Hopefully you have that discussion as your general plans get updated, that you would want to incorporate that or at least have the discussion to figure out what you're going to do about it going forward ... And knowing that the carrot and the stick and the money that's all tied to it will either come or go or you can actually make that decision rationally. However that gets coordinated, that would be a great opportunity and a powerful tool I think for every jurisdiction in the Bay Area to have to see where they fit in within the overall picture of long-term growth in the Bay Area.

Again, just want to make sure that we ... And I'm sure we'll have representatives here on the third to ... However we can do that to verify those numbers and give complete confidence going forward. I think that would make it even more powerful in the long run. Thanks.

Ken Kirkey: Thank you.

Julie Pierce: Thanks Dave. Jake?

Jake Mackenzie: Yep. Off we go. I'm the city rep from Sonoma. You just heard from the county rep and the chair of SCTA. One thing I just mentioned is that these non-jurisdictions in Sonoma County, the planning directors do meet on a regular basis with the planning people in our transportation authority so these are informed comments informed by the cities and the county planning guy, and I'll just tell the rest of you that the staff, and I've check with them, are very pleased with the give and take that's going on now in the interchange since Ken, Miriam and the gang were up in Sonoma County. We appreciate that.

Changes and additional pieces of information needed. Okay, I will always talk about the need for us to look at the yang to the priority of development areas that is ying. Ying, yang. Yang being priority conservation areas. They're always there on the map at the front of the

document. To me it is particularly important that as we concentrate our development and the transportation corridors of the Bay Area, that we are protecting the open spaces and the Ag land because that's a sure way, and we've found this out in Sonoma County through our Ag preservation and open space district, of preserving the urban growth boundaries that each of our cities in Sonoma County have.

Which brings me to my technical point and that is that the two largest cities in Sonoma County, Santa Rosa and Petaluma ... If you wish to read their letters please do. Their comment is that it seems like through UrbanSim that the housing numbers are way in excess of what was anticipated in our first Plan Bay Area where, as I recollect in the four north Bay counties, our standard was 50% of the housing growth to occur within the PDAs. I'm very comfortable with that given that each city has an urban growth boundary in which to contain our growth. That's a point that is made in both of these letters and I think as we move forward needs to be reflected in any final numbers ... which is a curious thing. I'm gathering that there's this expectation that the digestion of all of these changes and their coming out in its final form is going to be presented en masse on November the 17th and that's it.

Julie Pierce: November the 4th, I believe. Isn't that right?

Jake Mackenzie: Are we getting the...

Miriam Chion: The packet will be released on October 31st and there will be a meeting of the joint committee on November 4th.

Jake Mackenzie: No, no. Fine. Remove my comment. Okay. Director Eklund, she and I have talked before. I'll back up her views. If we're going to be talking about resolving the housing problems and growth in the cities of the nine county Bay Areas, we have not resolved the problem of providing resources to actually service our citizens and our new citizens. I've talked ad nauseam as to what happens in Rohnert Park, that we're creating two cities and it's the Mello-Roos Community Development Fund approach so every new citizen who is moving into the houses that are actually being built in the university district of Rohnert Park at this moment are going to be paying a higher level of taxes. They're going to be paying a maintenance annuity fee over \$10,000 in each housing unit to go into a fund. We have to be looking, as someone said at RailVolution last week when they were trying to explain California to all of these people from around the country, the devastating effects of Proposition 13, that we are living with physicalization of land ... You know the stories. No more on that.

The other point is, as new people move into these houses they're all excited because this is the first time in 15 years there's been a new house to move into in Rohnert Park. They're leaving their houses, some of them in Rohnert Park itself. But we are also seeing a swarm of investors coming into Rohnert Park. We happen to have 9,000 up to 9,500 students who are at Sonoma State University. Gosh! Let's build four or five bedroom two-story houses in University District. You better believe there's

going to be a lot of investors. There's going to be fraternity houses, sorority houses. The consequences of the construction of new houses are many and as we move forward I think we have to take that into account.

The last thing that I will say is something I learned at last week's Bay Area Air Quality Management District Climate Leaders Forum and this buttresses what you said about new forms of transportation. This very interesting Doctor Frankie Jones, who is the head of General Motors Advanced Technology Center in the Silicon Valley, started talking about the new values that are driving, if you will, General Motors. They are in a partnership with Lyft. They have a company or an organization known as Maven in different cities around the United States. They're in the business of providing cars to Lyft. They're in the business of looking at autonomous vehicles and so this is very real. When Greg said that there's all of these motor companies moving out into the peninsula, that is for sure. We met one of the last week. It's not just out in the future. It's right now and I think when you wonder what changes in approach for the next planned Bay Area update, technology and transportation, absolutely.

Thank you, Madame Chair.

Ken Kirkey: I will just mention if I may mention President Pierce very quickly, we do have an MTC a future mobility research study that we're doing with Southern California Association of Government, SCAG, and SANDAG, and it's looking at this very issue of the full breadth of transportation changes that are coming at us pretty quickly and also looking at what would be some of the land use implications of these changes and how do they vary among regions. I don't think there will be anything that will change course for the plan in terms of growth or specific projects, but there will be a look see for this is something that is coming at us and something to actually build on as we move towards the next plan.

Jake Mackenzie: That resonated with me very much, so thank you, Madame Chair.

Julie Pierce: Thank you Jake. Karen?

Karen Mitchoff: Thank you.

I'm going to say something else, but first I want to comment on Greg. Do we have to call this a final preferred scenario? I think we need to use different language. It's been confusing to us and we're supposed to know what we're talking about. The public is going to glom onto that. We need to come up with a different characterization. I don't care what you call it, just don't call it a final preferred scenario. That would be that.

I really don't have answers to these questions. I wasn't going to speak until I heard from the Mayor of Alameda. And I want to bring everybody up to speed with what was discussed at the Regional Planning Committee two weeks ago. We're talking about our planned PDAs. We're talking about PCAs. Miriam mentioned the planned production areas. There is a movement by our housing advocates to make housing the number one priority and I agree. Instead of houses and jobs, we in Contra Costa County are talking about jobs near housing. We have the housing,

but the whole argument conversation at the meeting two weeks ago was, nothing is more important than building houses. We have to have houses as the highest priority ... And that again goes to words, priority development, priority conservation. That's what they're called. It's because it's a priority to build or do something in that area, not that it's a priority of a whole list of priorities. They sort of usurp that, and I want you to be aware of that.

I made a motion to keep everything equal, neutral if you will, because of local control, and was voted down, mostly by the housing advocates. It's very frustrating. They don't sit on this body, which is a good thing, because we are the policy makers and I think it's important to have that input, but you need to be aware, as this moves forward, maybe not in this whatever we're going to call it, snapshot, but as we develop Plan Bay Area 2040, when the RHNA numbers come out, they are going to make a real strong pitch for that.

At least in Contra Costa County, we've got enough houses. We may not have enough affordable houses, but we've got enough houses. We need jobs, and that's why we're pushing or Northern Waterfront Initiative, which will come under this proposed priority production area, because it addresses the GHG. We've got an area where we want to build clean jobs, and people won't have to. Plus, I represent the area that is the Concord Naval Weapons Station, which is going to be the largest development in the Bay Area over the next 40 years. The idea is to have jobs there, even though housing will come, it's near a transit place, but I just want you all to be aware of this. I do not believe that one should have priority over the other.

We are the people that need to make the decisions at our local level, and it really was not only frustrating, but really disrespectful from my perspective, that they felt, this was the BIA, this was the Bay Area Council, these are all people we work with, we like them, they're great people, I go back and forth with Matt Reagan, he's one of my constituents, we all agree to disagree, we all agree that we respect each other, but in the end Matt, you are wrong. I'm sorry. You are wrong. Because we need jobs and housing, but yet they seem to feel the other way around. Please be aware of that as we move forward in this discussion, that there is going to be advocacy, and we are going, if you agree with me, are going to have to push back that these are all three important things, and in your community, maybe one thing, and in your community, it's another, but please, whatever advocacy group you're with, do not tell us which one is the higher priority. It may be a higher priority to you, and we understand that, but it's not when it comes to policies. Thank you.

Julie Pierce:

Thanks Karen. Mark. Let me guess what you're going to talk about.

Mark Luce:

You don't know this time. I'll just incorporate my comments on work proximity housing and the idea of having a workforce zone where you could actually zone a project to be workforce, so that you don't have to

have those external factors of investors and retirees compete for that housing. Which brings me to really my question, it's more philosophical. I guess what I'd like to see is what is any of these plans look like at build out? You've got basically, what, eight billion people in the world? About seven billion of them would like to live in the Bay Area. They're not going to, but they'd like to. You'll always have those constant pressures of these external forces, and what brings them here are our job qualities, whatever those might be, our great ports, our great universities, our great synergies, our lifestyle, and the more we improve in this Bay Area, the more attractive it's going to be.

Our poor transportation system seems to keep a few of them out, but not many, and affordability is keeping a few of them out, but not many. Those four values always play together. I don't think you can have great lifestyle and great economic opportunities and expect affordability and great transportation all in the same place, because then those other six billion people are going to start moving into that community.

The question that I'd like to have, and I think each community has got a little different set of values, if you will, of each of those values, different economic values, different affordability values, and therefore each community is somewhat unique in terms of its ultimate build out.

What would be valuable from a modeling perspective is what I'd call the infinite state, the build out, given what we know today, the constraints that we know today, not Lyft or Uber or whatever changing something, but given what we know today, what does build out look like? What's the ultimate population, how much pain are we willing to endure in transportation? Are we going to have six hour commutes in driverless cars, because we can? Why not? Or what? Actually, don't skip that. Assuming we have driverless cars, we'll worry about that when it comes. What does that look like? What does build out look like, and is that what we want?

Ultimately, is that ... What I see happening is, we keep doing one thing, which then means we've got to do another thing, which means we've got to do another thing, and you just keep going around in circles, and you're never really answering the final question, is where are you going? What is ultimate build out? Is there a Bay Area where we're built out? Where our urban limits are where they want to be, where our transportation limits are where they ought to be, where our lifestyle is where we want it to be, and we're just built out. If so, where is that, when is it, and I think that's really important for us to understand.

Ken Kirkey:

I guess first I'd say it's probably something the region would argue about, what the answer is to that question. But I think variations of what you're putting forward is what we're hearing over and over again, which is too ... First of all, I think there's a general understanding that not just at the regional level in terms of MTC and ABAG, but the Bay Area, this place, has for 30 years or so had more or less an infill approach to growth, or tried to, but it's made infill really hard to do. We haven't built enough

housing. We don't really know what the answer is in terms of how much housing we can accommodate through infill, because we haven't really done it. We haven't done it since we adopted Plan Bay Area in 2013, anywhere near the level that the plan suggests we're supposed to be.

As I said before, there are requests to look at. What would it take to achieve the performance metrics that are actually adopted by the executive board and the commission? What would it take? If we weren't looking at the control total that was adopted. What does that look like?

I think about it in part in terms of the plan, in terms of transportation and land use, how we deal with each is of course quite different. Some of that is understandable, but to some degree ... The way we deal with the transportation side of the plan is very defined. We say, "Here's how much money we can project. Here's how much we believe we will have." We fiscally constrain it, we look at the projects that are submitted, we run them through the wringer, and we prioritize them, and we say, "How much funding is needed to make this happen?" Then we have a strategy to try to close the gap. It's far from perfect, but it is much more refined and much more detailed than what we have done relative to land use and housing. Maybe we need to do something in the future that is more along those lines, so we can understand what it is we're actually trying to get to, and what it would take to get there beyond what we have.

Mark Luce:

I guess it's a theoretical limit, and so it would assume ... Have some basic assumption, like funding is not a problem. The only issue is, how wide can you make the highways, or how wide are you willing to make the highways? Housing is not a problem. It's just how tall do you want to build it, and transportation, how congestion are you willing to accept? What kind of compromises on lifestyle are you willing to accept?

I guess the infinite model of where does this all go if all the constraints are removed, and then it leads to the next question, which is ... And if we don't like that, what policies do we need to make it different than what it would be? I think that's kind of what we're getting at. I don't think we can ... I think with the tools we have today, we're not going to end up where we want to be. I think we need new tools, like what we talked about, to make a difference, and to have something where we've got a little better balance, where transportation isn't a two hour commute every day, just because it's more affordable.

I think no matter how wide we make those highways, there will still be two hour commutes. If there's not something from a policy perspective that's going to change that.

Miriam Chion:

Just to add to what Mark, what a great question. I think if we were to apply your question to 20 years ago, people would probably say, "We are built out. There's nothing, there's no one single person that we can add." But then your other central point, the quality of life, and what our expectations, I think that that's what keeps planning such a dynamic dimension. It's not a plan, it's a planning process, and so before we were not willing to drive more than an hour, now we drive two or three. Before,

as Greg and I were discussing, it was not acceptable to have a roommate if you were a professional. It was not acceptable to live with your parents if you went to a grad school or to a university. Now it's more and more of a pattern. There are all kinds of changes, and maybe some of those are positive. Greg loves to live with his daughter, so it's a great thing. It's a great change in social behavior, in culture, in lifestyle. There are other elements such as the commute or the congestion that we might want to avoid. I think you're raising a very good question. What's the quality of life and what are the adjustments that we want to accommodate and what are the elements that we want to remove? We're hoping that with your input we're able to give you some framework so it's not just this issue of what we want, but we need to work harder and how hard we need to work and what areas we need to work so we can get to where we want or we are able to deliver a Bay Area to our kids or grandkids that is desirable.

Julie Pierce: Thank you Mark, Candace.

Candace Andersen: Yes.

Julie Pierce: And then we'll go to Jim, and then we're going to go to Dave, and then to David and then I'm going to wrap it up and then we will get out of here before 10.

Candace Andersen: Okay and I'm going to go really quick. Karen said a lot of what I wanted to say which was with regard to me, the critical importance of priority production areas. This goes back to each community needing to identify what is the housing/jobs balance they want to see to maintain the quality of life in their own community. In Contra Costa, we have 19 cities, but we do have a plan in place to create more jobs where we've already have housing. Yes, we can always use more housing and we have plans for that but we need to provide some incentives for those areas where there is housing to create those jobs.

We, Julie, Karen and I, are working right now on a transportation half-cent sales tax, and it's a very multi-faceted approach to this, but we have a serious imbalance in where our jobs are versus our housing. Our southbound commute on 680 can take someone an hour and half to two hours to get from one end of the county to the other. The reverse commute is true, as well, showing there is that imbalance. We're continuing to create jobs in Dave's backyard, in San Ramon. With our transit, with our transportation sales tax, we're not just saying we're going to keep building bigger roads, you know, we're testing autonomous vehicles in the Concord Naval Weapons Station right now. We are incorporating into that plan technology.

But again to me, unless we provide that incentive to let the cities, let the counties say, this is where we really need to focus the resources we need, it creates a plan that is not helpful. All of us want, to me, the ultimate goal of Plan Bay Area is to improve the quality of life for the entire Bay Area, without infringing upon open space. I was shocked to hear in Alameda that they're suggesting that you build in protected wetlands or whatever they're saying, you know, and I realize that's an

error. But nevertheless, none of us want to see that in any of our communities. We do want to see a reduction in greenhouse gas emissions, we do want to see a reduction in the time our communities, members of our community are spending in their vehicles, so give us the tools that we can utilize to really find that optimal balance and not just have it be modeling, but having it be presented through grants et cetera that we can see these things happen.

Miriam Chion: Just quickly on the priority production areas, we've been working for two years through the Regional Planning Committee in coordination with MTC and Goods Movement on this concept. This is really based on a lot of the groundwork in the Northern Waterfront, in Hayward, and different parts of the East Bay and the North Bay. We feel there is a lot of mature work to be able to include the concept in this plan. It will take some time to get the designation and implementation at a local level, but it seems that there's enough support, substantial knowledge to get that as a component of this plan conceptually.

Candace Andersen: Thank you and I think even if it's just aspirational, if it's being significantly acknowledged that this is the direction we are going, I think that would be very helpful.

Julie Pierce: Alright, Jim.

Jim Davis: Thank you, I got a few questions, hopefully some clarifying questions. If we don't meet the projected date for the adoption of the update to the Plan Bay Area, what happens?

Ken Kirkey: If it isn't adopted next summer, the time period I referred to, it means we have a, the technical phrasing is, it means we have a lapse in conformity which means the Federal Highways Administration, the Federal Transit Administration, can hold up money coming to the region for various projects.

We have a grace period, but the grace period can only go a month or so.

Jim Davis: So what we need is we need an update to the original Plan Bay Area with some numbers into it so that other planning agencies see that we're trying to forecast what our future is going to look like, is that correct?

Ken Kirkey: Not exactly, California is a unique and special place, as we all know. The regional transportation plan requirement is a federal requirement. MTC, as the Metropolitan Planning Organization, the federal MPO, the federal transportation agency is responsible for updating that every four years. It is on time-certain basis and its statutory and projects have to be in the plan to move forward, move forward on a regular basis.

With SB 375, that said that every RTP, every cycle, would have a sustainable community strategy of forecasted growth pattern which together with the RTP would result in greenhouse gas reduction so we have a target to meet. The forecast component, the SB 375 component is a State requirement, but state law wraps it all into one, so we do still have to do that, we can't leave it aside. But the federal government is kind of, I

think if you ask them they think SB 375 is a good idea, but statutorily, they're agnostic about that piece of it. We by law in California though have to adopt it as one, they can't be adopted separately.

Speaker: It's just on a different schedule, it's every two years that we happen to do something.

Ken Kirkey: It's created a dynamic for our regional transportation plan to adjust funding and so forth, it was complicated but it arguably made a bit more sense. I think one of the challenges that planners find themselves in, as you all know at a city level, you don't update your general plans every four years. The idea of updating a regional land use plan every four years, change only happens so quickly. I think that's in part why looking at the statutory requirements we have tried to say, as Miriam said earlier, that this is a limited and focused update. It doesn't include RHNA, there is no requirement on local jurisdictions to take these numbers and do something with them. It won't be used for the next RHNA but it is a look at where we are at in terms of our development in the region and some of the policy implementation that we should do to hopefully try to move forward and make more progress on some of the issues that have been discussed.

Jim Davis: Let's take for instance, the draft proposal that we've been looking at. Let's say that everybody here in the room was just super happy with it and we figured all the numbers were pretty good and we adopt it. We say, okay this is it. Would that meet all the statutory requirements of all the different governmental agencies so that the money that would be out there for programs and projects would be able to go forward?

Ken Kirkey: If it's adopted as the entire plan, as the investment strategy and growth allocation, yes.

Jim Davis: Okay, let me ask you another question on this UrbanSim, is that or is it not an algorithm? Data in produces data out.

Ken Kirkey: It is.

Jim Davis: Okay, so what we're trying to do I guess here, is to get the very best data that we can to put into that so that we get some sort of prognosis of what's going to happen in the future. Is that what we're trying to do? So if we put bad numbers in, then it produces bad numbers out but we still have a report that everybody becomes happy with and we adopt and we meet all the standards that are imposed upon us by law and regulation, then we've accomplished our goal. Would that be true?

Ken Kirkey: Conceivably, but I, we have made this a pretty transparent process so when people look at where growth is assumed, which they can do. That information was provided to most of the planning staff in the region, they can see when there are errors, and we can see when there are errors and we're asking jurisdictions, and staff, and others looking on to identify when things are not correct so that they can be corrected.

- Jim Davis: Here's my thought, I've got 15 cities in San Clara County, six of those cities have sent in letters discussing the numbers that we have proposed. All six of the cities, to one varying degree or another, said that the numbers are wrong. That's not even taking into consideration cities like, Saratoga and Los Altos Hills, which have thrown up their arms long ago and given up on this whole Plan Bay Area business. I think in consideration, Milpitas, which is a major junction spot in San Clara County, not taking into consideration Santa Clara, who basically doesn't participate. It doesn't take into consideration Campbell which has a very volatile planning process. It doesn't take into consideration the fact that my city is currently updating our land use and transportation element. Our land use and transportation element update is not going to match the calendar for which we have to have this Plan Bay Area update put in place. My numbers, or the numbers that you take from me, or the numbers that you find about my city, are going to be wrong. I've got several other cities that I've just discussed that aren't participating because they don't feel that they're finding a benefit from it. Are we going through a series of steps just in frustration, or are we actually accomplishing something?
- Ken Kirkey: I think we're trying to move toward making the plan, among other things, not just a regional transportation plan, but a growth allocation plan that is useful for the region. A lot of the tough questions that are coming up relative to the scenario are about that. It is important that we get a lot of input from the jurisdictions. This plan is updated every four years. For example, if your city is updating its general plan, and that's the nature of time horizons and we don't capture the most recent update because it occurs in later 2017, it will be captured relatively soon because this plan does get updated every four years. It can be incorporated in the future.
- Jim Davis: It's bad data. You've taken bad data and put it into an algorithm who is producing bad data on the output end. That's what I'm trying to get at.
- Ken Kirkey: It's not perfect data.
- Jim Davis: The thing is, that you quite honestly. I have much more faith in the statistics that the Joint Venture Silicon Value Leadership Group produced for me, than the information that is being produced by Plan Bay Area. Thank you.
- Julie Pierce: Thank you, Jim. Dave Hudson.
- Dave Hudson.: Yeah. Most of what I was going to say has been stolen somewhere during the night.
- Julie Pierce: Good.
- Hudson: I want to go back to basics because I think Ken's been telling us stuff, and for whatever reason we decide to tell him, "No, no, no." SB 375 calls for a sustainable community strategy. We've done this once. We don't have to reinvent the wheel. Came out in 2008 with a scoping plan, that scoping plan said that this sustainable community strategy is responsible for, curing might be the wrong word, 32% of our ills with greenhouse gas.

Transportation is a whole 38%. It's was mandated by AB 32. We're not going to get away from doing this. We might not do it, but somebody else is going to do it, and we're not going to like it.

What I'd ask is, I've heard a lot of no, we can't do this, everything's wrong. Look at the first bullet. Are there changes, or additional pieces of information needed to approve the final preferred scenario? If you want to change it to scenario preferred, or something else so that it's not the same name, so be it. We've been using already, preferred scenario. If it's bad, and this is the time to change words, we change words. These three bullets, we should be taking back to our cities, say, "Hey, we don't have to reinvent the wheel." "We've got to make this as good as we can." "We're looking long-term strategy four years down the road for the one that all of our planning departments hate, those RHNA numbers."

If you've got something that needs to be changed, I heard tonight from a couple people they have to be. Get them the information, let's see what the changes are the next time we meet, and be ready to move on it.

Julie Pierce:

Dave Rabbitt.

Dave Rabbitt

Just a thought.

Julie Pierce:

I'm really not going to go around twice here.

Dave Rabbitt

I appreciate that. Ken, you mention the analytical approach to transportation decisions and said that we don't do the same with housing, but I go back to the general plans and say that yeah we do actually. We don't do it on a regional level, but we do it on a local level. I think that, obviously we need to flip that, and it goes back even with the numbers of trying to coordinate those general plans. I do think the general plan can be a very powerful document. It's the land use constitution of every jurisdiction; it now has so many elements in it that you can factor in quality of life issues, and everything else. To really take that document, and build it into our regional plan. At least you would know the capacity, or at least you'd know the capacity of what all the individual jurisdictions think their capacities may be.

That's where I think then you have to go back and kind of maybe knock some places upside the head and say, "You may think this is what you're ultimate capacity is, but within the entire region we need to accommodate more and this is a reasonable ..." Somehow to coordinate those two, I think really needs to happen because there is a lot of thought given to those land use pieces. Just to kind of pull that in somehow, some way. Then you'd have a document that I think was really coordinated, and would have some buy in. Again, local control would be adhered to. I think local control but with a little, what the word is, but kind of bringing a little reality into the more regional issues of where you're at.

I appreciate that, but I just wanted to mention that again.

Julie Pierce:

Thank you. Jake, your card never went down after your first time so I'm assuming you're done. Okay, good. I just wanted to summarize a couple

of things that were brought up last Friday because I think there were some good things for us to think about. I'm not asking for a discussion on any of these, I just want to throw them out for some fuel for thought as we continue to go forward.

One of the things that Chari Spring talked about was, "What would it take to get us back in balance?" The affordability challenges are real and that our discussion going forward needs to be really bold, aggressive, and have an integrated solution.

Mr. Heminger mentioned, might require the state taking some kind of action to help us out. It may take the state giving us the ability to take actions. He noted that on this election coming up in just over two weeks, that we have \$19 billion of transportation money on local ballots around the Bay Area, and over a billion dollars of housing money. While that's a lot of money, it's probably going to take a billion dollars of housing money per year. Not a one shot, but per year, to actually affect the kinds of numbers that we're talking about.

Scott Weiner mentioned housing numbers are really grim. How many housing units do we really need to diffuse the crisis that we have now, to stop what he called the 'train-wreck' that we're facing? More like a million or more to get to a meaningful outcome. We have 820 thousand in this plan. Does that just keep us status quo, or does that actually improve things? What do we need to do?

Dave Campos mentioned that we have a regional transportation plan, and a regional transportation agency, but we don't have a regional housing agency. Maybe that's something that ABAG, MTC, everything can become more of without taking away local control that we do a better job of regional housing planning. He called it a regional housing marshal plan. That we might need to change some of our standards, we'd need an implementation plan, and would a billion dollars a year for 25 years, what would that mean to housing? I think that tackles what Mark was talking about as well. What does it take to get somewhere, and then what does it look like if we try to do that? If we could even accomplish that.

Amy Worth mentioned that there's a huge disconnect between the large employers between who are producing jobs in one side of the Bay, and their lack of support for the transportation and housing needs of their employees, who many of them have to travel from literally one side of the Bay Area to the other every day for jobs. I was just sharing with Greg that Candace mentioned the disconnect we have in Contra Costa, eastern side of our county in Brentwood, and Antioch, and Pittsburg, and Oakley. Many of those folks travel to Silicon Valley every single day, and that is a brutal commute. It really tears families apart because there is no family time.

Yet, we have a devil of a time trying to get jobs to come out to where the people live in affordable housing, and that part of the Bay Area is having a hard time building the housing needed for the jobs that they already have. I commend those cities who are trying really hard to do more, but I

think one of the things even that Greg said on Friday was it's really hard to get housing and jobs in his town. There is a certain amount of push-back that we all get when we have those planning meetings. We've all been in front of those naysayers who say, "I've got mine, and nobody else gets to come." Even when you tell them, "Well, this is your kids and grandkids that we're trying to accommodate." Some of them tell you, and I've been told this more than once by elected officials, "That's too bad, they can go find another state to live in because we're not going to change where we're going." I think that's really short-sided personally, but we've all heard it.

I think one of the things I want to leave you with is that we're all sensing the frustration here. We all deal with it every day, and what we need going forward is to frame a discussion that transcends just government. It has to include business, it has to include all of our stakeholders, to see how we can work collaboratively to solve these housing and transportation problems.

As Jim Spering and I, as chairs of the two committees, and the joint committee, were talking about it after the meeting, we think very strongly that we need to start immediately after the first of the year to put together some workshop type forums. That kind of a format, smaller groups, to bring the discussion forward, where we incorporate businesses, and stakeholders, and maybe around more concise topics, and issues to try to do some brainstorming and get this to be more of a collaborative issue.

We all know we can write the greatest plans but if we don't have the participation of the rest of the community, it ain't going to happen. If we're going to improve the quality of living for our kids and grandkids, and theirs as well, we've got to get on it now and figure out how to do things a little differently. We've got to figure out what are those policy levers that we've got to push, and how are we going to get that to be accepted by our constituencies.

In some areas of the Bay Area, particularly in Alameda County, there are threats to recall people for trying to put in the housing and the jobs that are needed. They're trying to comply with the plan, they're working hard. The public is doing what we see every day at our councils and our boards, and that's, "I've got mine, nobody else gets theirs." We've got to find a way to educate our community that that is no longer acceptable. The economy of our Bay Area depends on it.

Just some food for thought. We've got a long ways to go. I think it's the time to start those policy discussions. As soon as we get this sent off to an EIR, and we may be able to incorporate some of the ideas into the implementation actions for this plan to build toward what we want to incorporate in the more aspirational plan. This reality check points out where the flaws are, and what we need to do to try to fix it. I think that gives us something to build on. I don't think all is lost. I do still have problems with it being called a preferred plan. Maybe it's just an interim plan, I don't know. Maybe it's a reality check. Anyway, we need to figure

that out. With that, unless there are any other urgent comments ... I will say we are adjourned. Thank you all for coming, thanks for the good discussion.

[End Transcript Executive Board Meeting 10/20/16 on Plan Bay Area]

10. ADJOURNMENT

The ABAG staff presentation concluded at about 9:56 p.m.

The next regular meeting of the Executive Board will be on November 17, 2016.

Submitted:

/s/ Brad Paul, Acting Secretary-Treasurer

Date Submitted: December 7, 2016

Approved:

For information or to review audio recordings of ABAG Executive Board meetings, contact Fred Castro, Clerk of the Board, at (415) 820 7913 or FredC@abag.ca.gov.

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ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



Date: December 2, 2016

To: ABAG Executive Board

From: Jennifer K. Berg
Senior Program Manager, Energy

Subject: **Proposal to Department of Community Services and Development for Low-Income Weatherization Program**

Summary

The Department of Community Services and Development (CSD) has issued a Request for Proposals for Regional Administration for the Low-Income Weatherization Program. ABAG, together with a team of other public agencies and non-profit organizations intends to submit a proposal to be the Administrator for Region 2, which includes disadvantaged communities in the ABAG territory. The award notifications will be made on December 30, 2016. The maximum contract allocation is \$5.7 million for 15 months.

Action

Ratify the submittal of the proposal to CSD in an amount not to exceed \$5.7 million for regional administration of the LIWP, and authorize the ABAG Acting Executive Director to enter negotiations and execute the necessary agreements, if approved.

Background

CSD is a state department under the California Health and Human Services Agency. The mission of CSD is to reduce poverty for Californians by leading the development and coordination of effective and innovative programs.

The Low-Income Weatherization Program (LIWP) is an energy efficiency program administered by CSD to install a variety of weatherization measures, solar photovoltaics (PV) and solar water heater systems on low-income households located in disadvantaged communities (DACs). DACs have been identified by the California Environmental Protection Agency through CalEnviroScreen 2.0.

With program oversight and direction provided by the California Air Resources Board, CSD and a network of Regional Administrators will make services available for the dual purposes of reducing Greenhouse Gas emissions and providing specified co-benefits to qualified households and the communities in which they reside. LIWP is part of the California Climate

Low-Income Weatherization Program

December 2, 2016

Page 2

Investments funded by proceeds from the Cap-and-Trade auctions conducted quarterly by the Air Resources Board and maintained in the Greenhouse Gas Reduction Fund.

ABAG is applying to be the Administrator of LIWP for Region 2, which includes DACs located in the counties of Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Solano, Monterey and Santa Cruz. The maximum award contract is \$5.7 million.

ABAG has teamed with the following agencies on this proposal:

- Association of Monterey Bay Area Governments
- San Francisco Department of the Environment
- Community Energy Services Corporation
- Central Coast Energy Services
- Rising Sun Energy
- San Jose Conservation Corp. and Charter School
- Fresno Economic Opportunities Commission

ABAG's role as the Regional Administrator is to form an organizational structure, coordinate all members of the team and marshal the resources needed to ensure the LIWP goals of reducing GHG emissions by installing cost-effective, Qualifying Measures in single family dwellings located in identified DACs within the region are met. In addition to installing energy efficiency measures and solar PV, the program also includes workforce development targeted at residents living with the DACs.

This proposal for weatherization projects within the low income community builds on ABAG's expertise and leadership as the administrator of the Bay Area Regional Energy Network (BayREN), which already includes energy efficiency programs for market rate residential customers.

The term of the contract is 18 months with an option for an extension.

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



Date: December 9, 2016

To: ABAG Executive Board via ABAG Finance and Personnel Committee

From: Kenneth Moy
Legal Counsel

Subject: **Exchange of Real Estate Interests—101 8th Street, Oakland and 375 Beale Street, San Francisco**

Summary and Requested Action

As described in the attached memorandum dated November 9, the Bay Area Headquarters Authority (BAHA) had completed the physical renovation of 375 Beale Street (Property) necessary to fulfill its obligations to deliver a condominium interest in the Property to ABAG in exchange for AABAG's condominium interest at 101 8th Street but had not completed the process for creating the condominium interest. Documents necessary for the creation of the condominium interest are now available in substantially final form for inspection.

ABAG senior management request Executive Board adoption of Resolution 17-16 authorizing execution of documents necessary for completing the real exchange and appointing the Acting Executive Director of ABAG to the Board of Directors of the 375 Beale Street Corporation (Corporation), a non-profit mutual benefit corporation incorporated in the State of California, which is responsible for oversight of, and policy regarding the Agency Space at the Property.

Discussion

The following documents¹ will be used to create the condominium interest at the property and to complete the exchange of real estate interests at 101 8th Street for a real estate interest at 375 Beale Street:

- (a) Declaration of Covenants, Conditions and Restrictions for 375 Beale Street, San Francisco (CC&Rs)
- (b) Purchase and Sale Agreement and Joint Escrow Instructions (PSA)

¹ These documents are located at: <http://abag.ca.gov/meetings/execboard.html>

Exchange of Real Estate Interests: 101 8th Street and 375 Beale Street

December 9, 2016

Page 2

Please note the following re the CC&Rs that are different from 101 8th Street:

- Includes Exhibit C, the Rules for the operation and maintenance of the Property. Article 1.7 of the Rules describes the fact that each Unit Owner occupies portion(s) other Unit Owners' Units as shown in a referenced Floor Plan (for convenience of review, they have been added to the Rules made available for review). This occupancy arrangement is made necessary by the need to balance two factors: (1) each Unit must be contiguous to enable a Unit Owner to sell it Unit and (2) the placement of the executive offices for ABAG, BAAQMD and BAHA on the 8th floor which makes the ABAG and BAAQMD Units noncontiguous. Therefore, the Rules allow ABAG and BAAQMD to occupy a portion BAHA's Unit on that floor.
- Many decisions by the Corporation Board of Directors require a unanimous vote.
- All capital improvements are the responsibility of BAHA.
- There are provisions that define the relationship between the Agency Space that is subject to the CC&Rs and the Commercial Space that is not.

In my opinion, none of these features have a negative impact on ABAG's ownership interest.

**ASSOCIATION OF BAY AREA GOVERNMENTS
EXECUTIVE BOARD**

RESOLUTION NO. 17-16

AUTHORIZING EXCHANGE OF REAL PROPERTY INTERESTS

WHEREAS, the Association of Bay Area Governments (ABAG) owns a condominium interest (ABAG Unit) located at the Joseph P. Bort MetroCenter, 101 Eighth Street, Oakland; and

WHEREAS, the Bay Area Headquarters Authority (BAHA) had acquired certain improved real property then commonly known as 390 Main Street, San Francisco, California (and subsequently re-designated as 375 Beale Street) (Property) with the intent to redevelop the property into three (3) separate condominium units; and

WHEREAS, ABAG and BAHA entered into a Memorandum of Understanding, dated as of February 13, 2013 (MOU), wherein ABAG agreed to exchange the ABAG Unit for one of the condominium units created at 375 Beale Street (375 Beale Unit); and

WHEREAS, the MOU included the forms of (a) the Purchase and Sale Agreement and Escrow Instructions with pertinent attachments (PSA) and (b) mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all condominiums and the owners thereof [Covenants, Conditions and Restrictions (CC&Rs)]; and

WHEREAS, BAHA has created the 375 Beale Street Unit in accordance with the terms of the MOU; and

WHEREAS, the substantially final forms of the PSA and CC&Rs have been lodged with the office of ABAG's Legal Counsel and is available for review by ABAG policymakers and members of the public; and

WHEREAS, pursuant to the CC&Rs ABAG may designate a director to represent it on the Board of Directors of the 375 Beale Street Corporation a non-profit mutual benefit corporation incorporated in the State of California, which is responsible for oversight of, and policy regarding the Agency Space in the Property.

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 17-16**

NOW, THEREFORE, BE IT RESOLVED, the Executive Board of the Association of Bay Area Governments hereby:

- (a) authorizes the Acting Executive Director, or his designee, with the approval of ABAG's Legal Counsel, to execute all documents and take all actions reasonably necessary, to effectuate the exchange of the ABAG Unit for the 375 Beale Street Unit; and
- (b) designates the Acting Executive Director as ABAG's representative to the Board of Directors of the 375 Beale Street Corporation.

The foregoing was adopted by the Executive Board this 15th day of December, 2016.

Julie Pierce
President

Certification of Executive Board Approval

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 15th day of December, 2016.

Brad Paul
Acting Secretary-Treasurer

Approved as To Legal Form

Kenneth K. Moy
Legal Counsel

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
375 BEALE STREET
SAN FRANCISCO, CALIFORNIA

DATED: _____, 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Declaration, Designation of Units and Common Area	2
Section 1.01. Declaration	2
Section 1.02. Designation of Units and Common Areas.....	2
ARTICLE II Definitions	4
Section 2.01. Defined Terms	4
ARTICLE III Relationship of Unit Owners.....	7
Section 3.01. Relationship of Parties	7
Section 3.02. Board Membership	8
ARTICLE IV Management.....	8
Section 4.01. Management of Agency Space.....	8
Section 4.02. Authority of the Board	9
Section 4.03. Intentionally Omitted.	10
Section 4.04. Authority of the Facility Operator.....	10
ARTICLE V Rights and Responsibilities of Unit Owner.....	14
Section 5.01. Exclusive Ownership and Possession	14
Section 5.02. Leasing.	14
Section 5.03. Maintenance of Unit.....	15
Section 5.04. Alterations to Common Areas	15
Section 5.05. Alterations to Unit.....	15
Section 5.06. Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens	15
Section 5.07. Taxes, Assessments, Utilities, etc	16
Section 5.08. Liability for Obligations Under the Declaration	16
Section 5.09. Use Affecting Insurance Premiums.....	16

TABLE OF CONTENTS

ARTICLE I	Declaration, Designation of Units and Agency Space	1
Section 1.01.	Declaration.....	1
Section 1.02.	Ownership of Units	2
Section 1.03.	Ownership of Units	2
ARTICLE II	Definitions	4
Section 2.01.	Other Defined Terms	4
ARTICLE III	Relationship of Unit Owners	7
Section 3.01.	Relationship of Parties	7
Section 3.02.	Board Membership.....	8
ARTICLE IV	Management	8
Section 4.01.	Management of Jointly Used Space and Common Area.	8
Section 4.02.	Authority of the Board	9
Section 4.03.	Corporation	10
Section 4.04.	Authority of the Facility Operator	10
ARTICLE V	Rights and Responsibilities of Unit Owner.....	14
Section 5.01.	Exclusive Ownership and Possession	14
Section 5.02.	Leasing of Agency Space.....	14
Section 5.03.	Maintenance of Unit	14
Section 5.04.	Alterations	14
Section 5.05.	Alterations to Unit.....	15
Section 5.06.	Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens.....	15
Section 5.07.	Taxes, Assessments, Utilities, etc	16
Section 5.08.	Liability for Obligations Under the Declaration.....	16
Section 5.09.	Use Affecting Insurance Premiums	16
Section 5.10.	Compliance with Laws and Rules.....	17
Section 5.11.	General Restrictions on Use.....	17
Section 5.12.	Special Equipment	18
Section 5.13.	Media Wall and Agenda Display Area	18
Section 5.14.	Handling of Construction Defects	18
ARTICLE VI	Easements	19
Section 6.01.	Utilities.....	19
Section 6.02.	Encroachment	19

Section 6.03. Maintenance and Repair	20
Section 6.04. Nonexclusive Easements	19
Section 6.05. Right of Access	20
Section 6.06. Parking Easements	20
Section 6.07. Network Closets and MPOE	20
Section 6.08. Emergency Access Easement	20
Section 6.09. Laboratory Easement	21
ARTICLE VII Assessment and Collection Procedures	21
Section 7.01. Covenant for Assessments, Creation of Lien, Personal Obligation.....	21
Section 7.02. Allocation of Assessments	22
Section 7.03. Special Assessments	22
Section 7.04. Date of Commencement of Assessments; Due Dates; Charges for Late Payment.....	22
Section 7.05. Assessments Deposited in Maintenance Fund Bank Account; Disposition of Unexpended Funds.	23
Section 7.06. Effect of Nonpayment of Assessment; Delinquency; Notice of Assessment	23
Section 7.07. Acceleration	24
Section 7.08. Notice of Default; Foreclosure Sale.....	24
Section 7.09. Curing of Default	24
Section 7.10. Rights of Board; Waiver of Owners	25
Section 7.11. Remedies Cumulative	25
Section 7.12. Failure to Fix Assessments	25
Section 7.13. Liability for Assessments.....	25
ARTICLE VIII Insurance; Damage and Destruction; Eminent Domain.....	25
Section 8.01. Authority to Purchase.	25
Section 8.02. Manner of Purchase	26
Section 8.03. Insurance Specifications.	26
Section 8.04. Unit Owner Insurance	29
Section 8.05. General Insurance Conditions.....	29
Section 8.06. Decision to Repair or Restore.	30
Section 8.07. Proceeds of Property Insurance - How Settled and Paid.	32
Section 8.08. Eminent Domain.	33
Section 8.09. Unit Mortgagee's Right to Require Independent Trustee.....	34
ARTICLE IX Restrictions on Transfer; Actions for Partition.....	34

Section 9.01. Unity of Interests.....	34
Section 9.02. Right to Partition.....	35
Section 9.03. Proceeds of Sale Incident to Partition.....	35
Section 9.04. Priority on Leases, Sales and Transfers.	35
Section 9.05. Interest in Maintenance and Reserve Fund.....	35
Section 9.06. Conveyance of Condominiums.....	35
Section 9.07. [Reserved].....	35
Section 9.08. Rights of First Refusal – Sale	35
Section 9.09. Right of First Refusal - Lease	40
Section 9.10. [Reserved].....	40
Section 9.11. [Reserved].....	40
Section 9.12. [Reserved].....	40
Section 9.13. Rights in the Event of Foreclosure.....	40
Section 9.14. Recomputation of Interest.....	41
Section 9.15. Other Encumbrances.....	41
ARTICLE X Mortgage Protection.....	41
Section 10.01. Warranty	41
Section 10.02. No Impairment	41
Section 10.03. Reserve Fund	42
Section 10.04. Subordination.....	42
Section 10.05. Amendment of Declaration.....	42
Section 10.06. Additional Subordination Agreements	42
Section 10.07. Prior Written Approval of Mortgagees	42
Section 10.08. Written Notification Obligation.....	43
Section 10.09. Right to Inspect.....	43
Section 10.10. Notice of Damage	43
Section 10.11. Notice of Condemnation Proceeding.....	43
Section 10.12. Authority of Unit Owners to Cure Default	44
Section 10.13. Mortgagee Protection Clause.....	44
Section 10.14. Status of Loan to Facilitate Resale.....	44
Section 10.15. Right of First Refusal Inapplicable to Mortgagee.....	44
Section 10.16. Conflict with Other Provisions	44
ARTICLE XI Compliance, Liability, Breach and Default	45
Section 11.01. Compliance and Breach	45

Section 11.02. Liability	45
Section 11.03. Right of Entry	45
Section 11.04. Nuisance.....	45
Section 11.05. Breach of Duty to Maintain	45
Section 11.06. Enforcement.....	45
Section 11.07. Remedy at Law Inadequate.....	46
ARTICLE XII General Provisions	46
Section 12.01. Severability	46
Section 12.02. Liberal Construction	46
Section 12.03. Waiver.....	46
Section 12.04. Number and Gender.....	46
Section 12.05. Headings; References.....	46
Section 12.06. Notices	46
Section 12.07. Covenants Running with the Land.....	47
Section 12.08. Amendment of Declaration.....	47
Section 12.09. Term of Covenants, Conditions and Restrictions	47
Section 12.10. Successors and Assigns.....	47
Section 12.11. Joint and Several Liability	47
Section 12.12. Priority of Governing Instruments	47
Section 12.13. Arbitration of Dispute	47

RJR REVISIONS OF 12.9.16

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR 375 BEALE STREET, SAN FRANCISCO

This DECLARATION, made and entered into this ____th day of December, 2016, by the BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act, consisting of California Government Code Sections 6500 through 6599.3 (“BAHA” or “Declarant”), with respect to the following facts:

WHEREAS, BAHA acquired certain real property located at 375 Beale Street in the City and County of San Francisco, State of California, described in Exhibit A-1 attached hereto (hereinafter referred to as the “Property”); and

WHEREAS, the Property consists of a building (the “Facility,”) comprised of [518,000] gross square feet over eight floors, each of which are [64,350] square foot rectangular plates, measuring [234 by 275] feet, with ____ parking spaces located on the first and second floors; and

WHEREAS, BAHA has divided the Facility into four separate legal parcels, with Lot 1 consisting of the first through fifth floors (other than the portion of the fifth floor that is part of Lot 2), the exterior skin of the Facility and all exterior areas of the Property (other than the eighth floor terrace), Lot 2 consisting of a portion of the fifth floor, a portion of the seventh floor, and all of the eighth floor (including the eighth floor terrace), Lot 3 consisting of the sixth floor and a portion of the seventh floor, and Lot 4 consisting of a portion of the seventh floor, all as shown on the Condominium Plan attached hereto as Exhibit A-2; and

WHEREAS, BAHA intends, but is not obligated by this Declaration, to retain Lot 1 and Lot 2, sell Lot 3 to the Bay Area Air Quality Management District (“BAAQMD”), and sell Lot 4 to the Association of Bay Area Governments (“ABAG”);

NOW, THEREFORE, the Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DECLARATION, DESIGNATION OF UNITS AND AGENCY SPACE

Section 1.01. Declaration. The Declarant hereby declares that the Facility and every part thereof is held and shall henceforth be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision and ownership of Lots 1, 2, 3, and 4 as commercial condominium units (each a “Unit” or a “Condominium” as defined in Section 2.01), limited to office or commercial uses, and are established and agreed upon for the purposes of enhancing and perfecting the value and attractiveness of the Facility and every part thereof. All of the limitations, easements, covenants, conditions and restrictions set forth herein shall run with the land and each Condominium therein and shall be binding on all parties having or acquiring any right, title or interest in the Facility, or any part thereof, and shall be for the benefit of each Unit Owner. This Declaration is made by Declarant pursuant to Civil Code Section 6500, et seq. Each and all of said limitations,

easements, covenants, conditions and restrictions shall be deemed to be, and shall be construed as equitable servitudes upon such real property enforceable by each Unit Owner.

Section 1.02. Ownership of Units. Ownership of each Condominium shall include, without limitation (i) fee title to a Unit (as defined in Section 1.02(b) below)), (ii) an undivided interest in the common use easements and the ingress and egress easements shown on the Condominium Plan, (iii) the right to appoint one director of the Board (subject to Section 3.02 below), (iv) the easements set forth in Article VI, and (v) such other rights provided for in this Declaration.

(b) Each Unit includes the interior surfaces (inclusive of paint, tile, carpet, wax, wallpaper, or other finishes) of the walls, floors, ceilings, windows, and doors, of the Unit. The Unit consisting of Lot 1 also includes the following portions of the Facility (which are not part of any other Unit): bearing walls, columns, floors, roofs, skylights, windows, foundation, elevators, elevator equipment, emergency stairwells, and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, electrical security and fire alarm system pumps, emergency power supply system, telephone and data transmission lines, servers and other central services, pipes, ducts, flues, chutes, conduits, wiring and other utility installations, including electrical outlets and lights, wherever located.

Notwithstanding the foregoing, plumbing outlets and telephone and data transmission lines located within a Unit, solely for the benefit of such Unit and not part of a distribution system serving multiple Units, are part of the Unit and, except as included in Lot 1, are not part of the Unit consisting of Lot 1.

In interpreting deeds and plans, the existing physical boundaries of a Unit shall be conclusively presumed to be its physical boundaries, rather than the description expressed in the deed to the Condominium or the Condominium Plan in the event of minor variance between boundaries shown on the Condominium Plan or in the deed to the Condominium due to construction anomalies or the settling or lateral movement of the building.

(c) “Common Area” consists of the entrance and reception area located on the first floor, and the hallways marked as Common Area on the Occupancy Plan.

(d) “Occupancy Plan” means the plan that is attached hereto as Exhibit A-3.

Section 1.03. Agency Space.

This Section 1.03 sets forth provisions binding each Unit Owner as to its portion of the Facility that constitutes Agency Space. This Section 1.03 binds each such Unit Owner and contains licenses in favor of the Unit Owners.

(a) “Agency Space” is that portion of the Facility consisting of the first floor meetings rooms (including the Board Room and multi-purpose room) and designated Jointly Used Space in Lot 1, and all of Lot 2, Lot 3, and Lot 4. None of the remainder of Lot 1 is Agency Space, but BAHA may convert any portions of the remainder of Lot 1 from Commercial Space to Agency Space, and with respect to such portions of Lot 1 converted from Commercial Space to Agency Space only, from Agency Space to Commercial Space, effective upon notice to the Unit Owners. Any portion of Lot 1 so converted to Agency Space must be occupied by

BAHA or a tenant that is a Government Entity. Jointly Used Space also includes areas subject to BAAQMD lab easement as described in Section 6.09 and the parking easements specified in Section 6.06.

(b) “Jointly Used Space” consists of the portion of the Agency Space identified on the Occupancy Plan as Jointly Used Space. Jointly Used Space is licensed by the Unit Owners in perpetuity for use by BAHA, BAAQMD and ABAG (each, an “original Unit Owner”) and any successor to an original Unit Owner that is a Government Entity and any Government Entity that is a tenant of an original Unit Owner.

The Jointly Used Space shown on the Occupancy Plan includes kitchen pantries, libraries, copy/print/mail/supply rooms, seventh floor reception area, phone booths, collaboration/teaming areas, restrooms (that are not otherwise designated on the Occupancy Plan as in the Common Area), quiet rooms, IT support rooms, equipment storage rooms, the eighth floor terrace and the hallways and passageways necessary to access the Jointly Used Space. Conference rooms, the first floor multi-purpose room and the first floor Board rooms are Jointly Used Space but will be available only pursuant to a reservation system to be established by the Board. However, executive/legal conference rooms and executive director conference rooms shall not be subject to a reservation system. Rights to use the Jointly Used Space are licenses that will terminate automatically, with respect to any Unit, upon sale, lease or other disposition of the Unit to an entity that is not a Government Entity, unless continuation of the license is Approved by the Board prior to the closing of the sale, lease or other disposition of the Unit.

(c) If all or any portion of Lot 1 is conveyed to a non-Government Entity, then the conference rooms and Board Room that are part of the Jointly Used Space on Lot 1 shall remain subject to the license rights of the Unit Owners in perpetuity, as set forth in Section 1.01(d) above. Other than in this circumstance, if all or any portion of a Lot is conveyed to a third party that is not a Government Entity, then the license to use the Jointly Used Space in the portion of the Lot conveyed shall terminate until such time as the Lot, or previously conveyed portion thereof, is again owned by a Government Entity.

(d) BAAQMD shall have the right to close off or restrict access to the sixth floor on days which are not official BAAQMD work days so long as the other occupants of the Agency Space have a right of access to the IDF closets on the sixth floor. Use of any other portions of the sixth floor Jointly Used Space on non-BAAQMD work days shall be on a case by case basis, as approved by BAAQMD. This provision is subject to subparagraph (c) above.

ARTICLE II

DEFINITIONS

Section 2.01. Other Defined Terms. Unless otherwise defined in this Declaration, the following terms shall have the following meanings in this Declaration:

(a) “Approved by the Board or Approval by the Board (including all actions required by the Board in this Declaration, the Articles or the Bylaws): Approval by a unanimous vote of the members of the Board, except (i) as otherwise provided in Section 4.04(j)(3) of this

Declaration, in the Bylaws and Articles or in any other agreement to which all of the Unit Owners are parties, and (ii) except for any decision of the Board to bring a lawsuit, arbitration proceeding, or to enforce the remedies provided for in Article 7 with regard to the failure to pay Assessments, each against a particular Unit Owner, in which case the board member or members appointed by that Unit Owner shall not be permitted to vote on that decision. Approval by the Board may be obtained by unanimous written consent in accordance with California Corporations Code Section 7211(b).

(b) Articles: The Articles of Incorporation of the Corporation, as amended from time to time.

(c) Assessments: There are three types of Assessments:

(1) Facility Common Assessments: As defined in Section 7.02.

(2) Agency Common Assessments: As defined in Section 7.03.

(3) Special Assessments: As defined in Section 7.04.

(d) Board: The Board of Directors of the Corporation.

(e) Bylaws: The Bylaws of the Corporation, as amended from time to time as provided for in the Bylaws.

(f) Capital Improvements: Any permanent change to the Facility.

(g) Commercial Space: Any portion of Lot 1 not included in the Agency Space.

(h) Common Expenses:

(1) “Common Expenses” means the expenses payable by the Facility Operator for costs of maintenance, management, administration, operation and ordinary repairs to the Facility. There are two subcategories of Common Expenses, “Facility Common Expenses” and “Agency Common Expenses”, each as defined below. Common Expenses shall include each of the expense categories described in subparagraph (2) below and reasonable reserves and contingencies for such purposes, compensation due to the Facility Operator for management of the Common Area, the Jointly Used Space, and the Agency Space, fees due to accountants, attorneys or other employees and agents for services for the benefit of the Unit Owners collectively, and all other costs designated by the Facility Operator as Common Expenses in accordance with the provisions of this Declaration and pursuant to a Budget Approved by the Board.

(2) Included Expenses. Common Expenses shall include the costs of or charges for the following items benefitting the Facility or a portion thereof, by way of illustration but not limitation: water and sewer; premiums for insurance required by this Declaration or obtained by the Board for the benefit of all of the Units, licenses, permits and inspections; heat, light, power and steam; internet services; telephone access; janitorial services; security services; repairs and maintenance of the Facility, replacements, improvements or repairs to existing

building systems or components, maintenance and service agreements on equipment or systems servicing the Facility, including, without limitation, plumbing outlets and data transmission lines; window cleaning; garbage services; maintenance of exterior sidewalks and related improvements and interior driveways and parking areas; costs of air conditioning; costs of supplies, materials, equipment and tools; new improvements that are not Capital Improvements, improvements made to Jointly Used Space or Common Area in accordance with Section 4.05(c), and the cost of contesting by appropriate proceedings the validity of the subdivision of the Facility or any statute, ordinance, rule or regulation affecting the Facility which might increase Common Expenses.

(3) Exclusions from “Common Expenses”. “Common Expenses” shall not include, by way of illustration but not limitation, improvements undertaken by an Owner for the benefit of the Owner’s Unit, expenses that are the responsibility of the Unit Owner under Section 5.03 or other specific provisions of this Declaration, Capital Improvements, depreciation, costs incurred or sums expended contrary to the provisions of this Declaration, advertising costs, leasing expenses, leasing commissions and related property management or lease enforcement costs relating to the rental of any Unit, or portion thereof, by any Unit Owner, real property taxes of any type assessed against the Facility or separately incurred, levied or assessed against a Unit Owner or against a Unit Owner’s Condominium, indebtedness secured by a Unit Owner’s Condominium and/or Unit, and other costs that are the responsibility of each Unit Owner individually, including those described in Sections 5.03 and 11.02; provided that nothing contained herein shall preclude the Facility Operator from collecting monies and paying such expense on behalf of individual Unit Owners where such action is permitted pursuant to the terms of this Declaration.

(4) Facility Common Expenses. “Facility Common Expenses” shall mean any Common Expenses that are incurred for the benefit of both the Agency Space and the Commercial Space, which shall be allocated among all of the Units, in accordance with the formulae set forth in subparagraph (r) below.

(5) Agency Common Expenses. “Agency Common Expenses shall mean any Common Expenses incurred solely for the benefit of the Agency Space and any Common Area that is solely part of the Agency Space. The Agency Common Expenses shall be allocated to the Units that comprise the Agency Space, in accordance with the formulae set forth in subparagraph (r) below.

(6) ABAG Cap. For so long as ABAG is the owner of Lot 4, ABAG’s obligation to pay Common Expenses allocable to its Unit in any calendar year, plus any portion of the annual cost of providing utilities and janitorial services to the ABAG Unit that are not included in that year’s Common Assessment (as defined in Section 7.02 below), shall not exceed \$314,000, adjusted annually for inflation as measured by the Consumer Price Index for San Francisco – Oakland – All Urban Consumers in effect as of May 23, 2016. Any difference between the actual Common Expense allocation to the ABAG Unit for any calendar year and the amount payable by ABAG pursuant to the foregoing formula shall be paid by BAHA. If ABAG is no longer the owner of Lot 4, then this limit on Common Assessments shall not apply.

(i) Condominium: “Condominium” or “Unit” means an estate in real property, as defined in California Civil Code Section 6500 et seq., consisting of an undivided interest in common in the Common Area, together with a separate fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

(j) Condominium Plan: “Condominium Plan” means a condominium plan, as defined in California Civil Code Section 6624, and any amendments to the plan adopted in accordance with California Civil Code Section 6628. The Condominium Plan is attached as Exhibit A-2.

(k) Corporation: 375 Beale Condominium Corporation, a non-profit mutual benefit corporation incorporated in the State of California, which is responsible for oversight of, and policy regarding the Common Area, the Jointly Used Space, the Beale Street entrance and ground floor reception area, and for such aspects of the management and, with the Approval of the Board, the operation of the individual Units as may, from time to time, be requested or be delegated by the respective Unit Owner to the Facility Operator.

(l) Declaration: This Declaration as may be amended from time to time by the Board.

(m) Facility: As defined in the Recitals above.

(n) Facility Operator: BAHA or any entity retained by BAHA and Approved by the Board.

(o) Governing Instruments: This Declaration and the Articles of Incorporation and Bylaws.

(p) “Government Entity”: means any entity controlled by the federal government or by any state or local government.

(q) Mortgage-Mortgagee-Mortgagor; Foreclosure: “Mortgage” means a mortgage or deed of trust encumbering a Condominium. A “Mortgagee” shall include any beneficiary or co-beneficiary under a deed of trust. A “Mortgagor” shall include any trustor under such a deed of trust. “Foreclosure” shall include judicial and non-judicial foreclosure. A “first” Mortgage or “first” Mortgagee is one having priority as to all other Mortgagees or holders of Mortgages encumbering the same Condominium.

(r) Percentage Ownership Interest or Ownership Interest: The percentage ownership interest held by each Unit Owner, shall be the percentage which the rentable square footage (“RSF”) of such Owner’s Unit bears to the total rentable square footage of the entire Facility (the “Facility Percentage Interest”) and, for purposes of allocating Agency Common Expenses among Unit Owners, shall be the percentage which the RSF of such Unit bears to the total RSF of the entire Agency Space excluding the portion of the Agency Space located in Lot 1 (the “Agency Percentage Interest”). The initial Percentage Ownership Interests attributable to each Unit for the purpose of allocating Facility Common Expenses and Agency Common Expenses, and the calculations of such percentages, are set forth on Exhibit B attached hereto. The Percentage

Ownership Interest shall not change unless Approved by the Board, such approval not to be unreasonably withheld if the change is due to a change in the legal boundaries of one more of the Units and/or the Facility.

(s) Property: As defined in the Recitals above.

(t) Rules: The written rules promulgated by the Board providing for the operation of the Agency Space, the Common Area, the Beale Street entrance and building lobby, and the Jointly Used Space. Other than the first floor entrance lobby, the Rules shall not apply to the operation of the Commercial Space. The Rules shall be consistent with the terms and conditions of this Declaration, and in the event of any conflict this Declaration shall prevail. The Rules in force at the time this Declaration is executed are attached as Exhibit C hereto and incorporated herein by this reference. The Rules may be modified by the Facility Operator if permitted by the Rules.

(u) Unit Mortgagee: “Unit Mortgagee” is any holder or co-holder of an indebtedness secured by a recorded Mortgage upon a Condominium.

(v) Unit Owner: “Unit Owner” means each person or entity holding a recorded ownership interest in a Condominium. “Owner” shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

ARTICLE III

RELATIONSHIP OF UNIT OWNERS

Section 3.01. Relationship of Parties. This Declaration shall not constitute any Unit Owners as partners or joint venturers with each other nor constitute any Unit Owner the agent of any other, nor in any manner limit the Unit Owners in occupying or leasing to others their respective Units or in carrying on their respective separate businesses or activities, nor impose upon any Unit Owner any fiduciary duty by reason of its carrying on its separate business or activity, nor impose upon any Unit Owner any liability or obligation not set forth herein, provided that all of the foregoing is conducted in accordance with the limitations and restrictions expressly set forth herein.

Section 3.02. Board Membership. Each Unit Owner, upon becoming the record owner of a Condominium, shall automatically have the right, for so long as it is a Unit Owner, to appoint one director of the Board, provided that for each of BAHA, BAAQMD and ABAG, its appointee shall be, respectively, the Executive Director or the Executive Officer/APCO of same or the person appointed by the Executive Director, the Executive Officer/APCO as his or her representative, or another individual duly appointed by the applicable Unit Owner.

ARTICLE IV

MANAGEMENT

Section 4.01. Management of Jointly Used Space and Common Area.

(a) Creation of Corporation; Appointment of Facility Operator. The Corporation has been created to provide for oversight of and the establishment of policy regarding the Agency Space, the Jointly Used Space, the Common Area, and the Beale Street entrance, and the building lobby, as limited by subparagraph (b) below, and for such aspects of the management and operation of the individual Units as may, from time to time, be requested or be delegated by the Unit Owners. The Facility Operator shall be responsible for implementing the direction of the Board with respect to such matters. BAHA, in its individual capacity, shall be solely responsible for the management and operation of the Commercial Space, and shall have the right to do so without approval from, or oversight of, the Board.

(b) Overall Management and Control. The overall management and control of the Common Area and the Jointly Used Space shall be vested in the Facility Operator, subject to the general policies established by the Board from time to time and, with respect to Common Expenses, the budgets Approved by the Board. The Board shall have the responsibility to oversee and provide input regarding the management of the Common Area and the Jointly Used Space in a first class condition and in a good state of repair, subject to the other limitations in this subparagraph. The Board shall also establish from time to time reasonable policies with respect to signage and events in and the function of the building lobby and the Beale Street entrance and shall have the right to reasonably Approve any commercial signage which BAHA desires to install in the lobby or on the exterior of the Facility, which approval shall not be withheld unless the installation of such signage would have a material detrimental effect on the interests of any Unit Owner, including without limitation a negative public perception of its consistency with the governmental goals and objectives of the Unit Owner. Notwithstanding the foregoing, by acquiring its Unit, each Unit Owner agrees to accept any signage rights granted to commercial tenants with whom leases have been executed prior to the date of this Declaration.

(c) Except as otherwise expressly provided in the Governing Instruments or any other agreement to which all Unit Owners are party, all decisions of the Facility Operator respecting the management and control of the Facility and the Agency Space which are consistent with the policies and budget Approved by the Board shall be binding on all the Unit Owners. The Unit Owners covenant and agree that the management and control of the Agency Space shall be in accordance with the Governing Instruments.

(d) Compensation. Except as may be expressly provided for herein or hereafter Approved by the Board and except for payments made to the Facility Operator, no payment will be made to any Board Member, Unit Owner or any member, stockholder, director or employee of a Unit Owner for services rendered in connection with the business or affairs of the Corporation or pertaining to the management and operation of the Common Area or the Jointly Used Space.

Section 4.02. Authority of the Board. The Board shall treat all Unit Owners fairly and equitably and, for the benefit of the Agency Space as a whole, the Board shall have the following non-delegable powers and duties, to be exercised in accordance with the terms of this Declaration:

(a) To review, Approve, and amend the Rules, which approval shall not be unreasonably withheld. The Rules shall ensure fair and equitable use by all Unit Owners of the

Jointly Used Space and shall prioritize use by the Unit Owners first, then other Governmental Entities and then, with respect to any portion of the Jointly Used Space that the Board elects to make available to tenants of the Commercial Space or other non-governmental users, non-Governmental Entities.

(b) The Rules shall provide for the allocation of parking spaces that are not otherwise allocated by easements under this Declaration, provided however that the Metropolitan Transportation Commission, the Bay Area Toll Authority, the Bay Area Regional Collaborative, the Bay Area Infrastructure Financing Authority, BAHA, ABAG, BAAQMD and any boards or commissions which are required by statute to be established by any of the foregoing agencies shall at all times each have parking within the Facility for the members of their respective Board of Directors or committees established by them in connection with all public meetings attended by such Board members.

(c) To review and Approve policies for booking and use of the first floor Board Rooms, the Claremont Room, the Mission Room, the Ohlone Room, the Yerba Buena Room and such other conference rooms as are shown on the Occupancy Plan as Jointly Used Space. The Board may impose fees for the use of such board rooms and conference rooms as further described in Section 7.03 of this Declaration. The First Floor Board Room, the Claremont Room, and the Mission Room shall be limited to Government Entities only, with priority given to Unit Owners. However, if any space within Lot 1 is leased to a Government Entity and such space does not include conference rooms that are sufficient for such tenant, then such Government Entity tenants of Lot 1 shall only be permitted to use the Ohlone Room and Yerba Buena Room, and shall also be limited in the use of such conference rooms to the extent reasonably necessary to prevent an undue burden on all of the conference rooms. Such limitation shall be reasonably determined by the Board. The Ohlone Room and the Yerba Buena Room may be used by commercial tenants, with priority given to Government Entities, subject to policies and procedures Approved by the Board. Executive/legal conference rooms and executive director conference rooms shall be given priority to the Unit Owner of the Unit in which such rooms are located and shall not be subject to booking or reservation policies.

(d) To review and Approve policies for the functional appearance and function of the building lobby, access to the Facility through the Beale Street entrance and signage in the lobby area and on the exterior of the Facility, including without limitation the addition of tenant or other signage to the lobby, subject to and as more fully set forth in Section 4.01(b) above.

(e) To adopt, review and amend annual budgets for Common Expenses and those Special Assessments payable by all Unit Owners submitted to it by the Facility Operator pursuant to Section 4.04(b) hereof. The Board shall Approve annual budgets in a commercially reasonable manner, with the goal of maintaining the Facility in at least as good of a condition as it existed as of the date this Declaration is recorded in the Official Records. Each annual budget shall be adopted by the end of each fiscal year for the succeeding fiscal year commencing July 1. The budget, as it may be amended, shall include the cost of any improvements or alterations to the Jointly Used Space or the Common Area which the Board has elected to make, which costs shall be treated as an Agency Space Common Expense.

(f) To review quarterly operating statements and supporting documentation, with comparisons to the approved budget and including line items for investments of and investment returns on the reserve funds maintained in accordance with Section 7.05, submitted to it by the Facility Operator, and provide reasonable access to monthly statements on request.

(g) To authorize the Facility Operator to provide and pay for legal and accounting services pertaining to the operation of the Common Area and the Jointly Used Space.

(h) To cause appropriate tax returns for the Corporation to be prepared and filed.

(i) To cause to be prepared and distributed to all Unit Owners within one hundred twenty (120) days after the end of the fiscal year a balance sheet as of the last day of the fiscal year and an operating statement for such fiscal year prepared in accordance with generally accepted accounting principles, reflecting receipts and expenditures of the Facility Operator.

(j) To review the performance of the Facility Operator.

(k) To Approve a budget for the assessment of Common Expenses.

(l) Whenever partition may be had pursuant to Civil Code Section 6656(b) or this Declaration, said power of sale is to be exercised pursuant to Code of Civil Procedure Section 872.010 et seq.

(m) To exercise other powers reasonable and necessary to fulfill the Corporation's purposes.

Section 4.03. Corporation. A majority of the members of the Board shall constitute a quorum for the transaction of business. All regular and special meetings of the Board shall be called, noticed, held, and conducted under the provisions of the Ralph M. Brown Act.

Section 4.04. Authority of the Facility Operator. The Facility Operator shall possess all powers, duties and responsibilities for the day-to-day operation, management and maintenance of the Common Area and the Jointly Used Space, subject to any limitations that may be imposed by this Declaration. Without limiting the generality of the foregoing, the Facility Operator shall have the following powers and duties:

(a) **Rule Making.** For the mutual benefit of all Unit Owners and occupants, the Facility Operator may recommend and the Board may adopt or amend the Rules, as provided for in Sections 2.01(t), 4.02 and 12.08. Such Rules shall relate to the conduct of Unit Owners and occupants (other than the Owner and occupants of the Commercial Space), their employees, agents, contractors or invitees, the hours that services such as heating, air conditioning and cleaning will be operative, restrictions and requirements for the use and maintenance of Units. A copy of such Rules and all amendments thereto shall be mailed to each Unit Owner and a copy shall be available for inspection at the office of the Facility Operator.

(b) **Budget; Allocation of Certain Expenses.** The Facility Operator shall prepare or cause to be prepared, and shall submit to the Board for its consideration, a budget for the next fiscal year (July 1 to June 30), setting forth the estimated Facility Common Expenses and the

Agency Common Expenses, including a reasonable allowance for contingencies and reserves. When adopted by the Board, the budget shall be the basis for the establishment of Assessments pursuant to Article VII of this Declaration. The Facility Operator shall collect all such assessments and implement the Budget, and the expenditures and obligations provided for in the Budget may be made and incurred by the Facility Operator without further Approval by the Board.

Notwithstanding anything to the contrary in this Declaration, any management, operational or maintenance expenses attributable to any of the individual Units shall be allocated to the Unit Owner(s) of such Unit as a Special Assessment so that no other Unit Owner shall be required to bear the expense of managing, maintaining or operating another Unit Owner's Unit. These Special Assessments shall not include any such expenses which are the specific responsibility of the Owner of Lot 1 or are attributable to the Common Area or the Jointly Used Space.

(c) Books and Records. The Facility Operator shall keep full, complete and correct books and records relating to the Assessments and the Budget, including vouchers supporting expenditures, all utilizing generally accepted accounting principles, and the same shall be open during all reasonable hours for inspection by any Unit Owner. Any Unit Owner may at any time and at its own expense cause an audit or inspection to be made of the books and records of the Facility Operator related to its Unit, the Common Area, or the Jointly Used Space, provided that any such audit shall be conducted not later than twenty-four (24) months following the end of the fiscal year for which the records are being audited. In the event an error in the amount of any Assessments paid by one or more Unit Owners is discovered, the Facility Operator shall adjust the next Assessments due from each Unit Owner to correct the error. Any dispute with respect to amounts owed by any Unit Owner shall be resolved in accordance with the provisions of Section 12.13.

(d) Assessments. The Facility Operator shall collect and deposit Assessments and enforce collection of Assessments as provided in Article VII of this Declaration.

(e) Services and Utilities. The Facility Operator shall provide and pay, as a Common Expense, for hot and cold running water, sewer, garbage, electrical, heating and air conditioning, telephone lines (but not regular service charges), data transmission, lighting and gas and other necessary utility service for the Common Area and, if not separately metered or charged, for the Units. The Facility Operator shall also provide and pay, as a Common Expense, for repair, gardening, janitorial and security for the Common Area and Jointly Used Space and necessary elevator service for the Agency Space, and shall cause any and all other acts to be done or take place having to do with the operation and maintenance of the Common Area and the Jointly Used Space in first class condition and repair, as and to the extent provided for in the budget Approved by the Board.

(f) Maintenance, Repair, Replacement. The Facility Operator shall provide or cause to be provided all necessary maintenance, repairs, replacement, and restoration of the Facility, including without limitation all furnishings, equipment and other improvements necessary or appropriate to operate the Common Area and the Jointly Used Space, but excluding Capital Improvements and matters that are expressly the responsibility of Unit Owners under this

Declaration. However, for avoidance of doubt, the Board has no authority over the operation of the Commercial Space.

(g) Action Where Owner Fails to Act. The Facility Operator shall also provide the services described in Section 4.04(f) for any Unit, if and to the extent necessary to protect or preserve the Common Area, the Jointly Used Space or any other portion of the Facility, including a Unit, if either: (A) the Board determines that the Unit Owner has failed or refused to perform said maintenance, repair, replacement, or restoration within a reasonable time (in no event more than thirty (30) days to complete or, if the work cannot reasonably be completed within the 30-day period, to commence within such period and pursue diligently to completion) after written notice of the necessity thereof delivered by the Facility Operator to said Unit Owner; or (B) such maintenance, repair, replacement or restoration, in the discretion of the Facility Operator, should be done immediately to prevent damage to the Unit or any other portion of the Facility or injury to persons or property, in which event no notice is required. The Board shall levy a Special Assessment against such Unit Owner for the cost of any maintenance, repair, replacement or restoration under this subparagraph (g).

(h) Authority to Contract. In addition to the authority granted pursuant to the foregoing subparagraphs (a) through (g), the Facility Operator shall have the authority, but only to the extent such expenditures are provided for in the budget Approved by the Board or otherwise Approved by the Board or, if the cost is to be paid by BAHA, approved by BAHA:

(1) To contract for the labor or services of such personnel, including employees and independent contractors, as the Facility Operator determines shall be necessary or proper for the operation, maintenance and repair of the Common Area and the Jointly Used Space; and

(2) To purchase or contract for materials, supplies, furniture, or structural alterations as are necessary and proper for the operation of the Common Area and the Jointly Used Space.

(i) Payment of Amounts which would Constitute liens. The Facility Operator shall have authority to pay premiums and other assessments which, in the Facility Operator's commercially reasonable opinion, would be a lien upon the Facility or any portion thereof (other than an individual Unit) and to discharge any lien or encumbrance levied against the Facility or any portion thereof (other than an individual Unit), to pay taxes or liens levied against any Unit which, in the commercially reasonable opinion of the Facility Operator, may constitute a lien against the Common Area (unless such lien is being contested by the Unit Owner and the Unit Owner provides to the Board security reasonably acceptable to the Board for payment of the lien if the Unit Owner loses the challenge); provided, however, if the Facility Operator pays any lien or encumbrance levied against an individual Unit, the Board shall levy and the Facility Operator shall collect a Special Assessment against such Unit for the amount thereof, to the extent such amount is separately determinable.

(j) Other Duties. The Facility Operator shall:

(1) Operate all equipment and facilities located within the Common Area and the Jointly Used Space and oversee the operation of the first floor Board Rooms, warming kitchen and the Jointly Used Space to ensure fair and equitable use by all Unit Owners and their tenants, as and to the extent otherwise permitted hereunder or under the policies and Rules Approved by the Board from time to time.

(2) Upon Approval of the Board, delegate any of its duties hereunder to independent contractors hired by the Facility Operator.

(3) Upon Approval of the Board bring or defend any court or administrative action or proceeding on behalf of the Corporation. However, if the proceeding is between the Corporation and a Unit Owner, the Board Member appointed by the Unit Owner that is the potential opposing party in such proceeding shall not be required to approve the pursuit or defense of the action or proceeding.

(k) Insurance. The Facility Operator shall obtain and maintain, as a Common Expense, the insurance required to be carried by the Corporation pursuant to Article VIII.

(l) Leasing of Units. The duties of the Facility Operator shall not include marketing activities related to leasing vacant Units or to finding lessees for Unit Owners or tenants of Unit Owners who are vacating Units. Each Unit Owner must conduct its own leasing activity or contract on its own for such services, provided that BAHA or any other Unit Owner may retain the Facility Operator, at such Unit Owner's cost, to act as the leasing agent for its Units.

(m) Business Directory. The Facility Operator shall maintain a business directory in the Common Area at a location or locations Approved by the Board. The size, size of type, color and contents of each such directory shall be Approved by the Board.

Section 4.05. Capital Improvements.

BAHA shall be responsible for making, shall pay from its own funds and shall make all decisions concerning Capital Improvements to the Facility, inclusive of the Common Area and individual Units, except for improvements (a) to individual Units made by the Unit Owners, (b) which a Unit Owner asks BAHA to make at the cost of the applicable Unit Owner (subject to BAHA's approval) or (c) which the Board elects to make to the Jointly Used Space or Common Area and agrees will be paid for by the Unit Owners as a Common Expense. Other than as provided in subclause (c) of the preceding sentence, the Board shall have no oversight or authority with respect to the construction of, or decision to construct, any Capital Improvements. No Capital Improvements that would adversely affect the use or occupancy an individual Unit shall be made without consultation with and approval of the Unit Owner and, if the proposed Capital Improvement would adversely affect the value, use or square footage of the Unit, shall not be made without either the consent of the affected Unit Owner(s) or, if BAHA and the Unit Owner(s) have made good faith efforts to reach agreement but have failed to do, compensation to the Unit Owner(s) for the loss of fair market value to their Unit(s) and any other costs or losses which are a proximate result of the construction of a Capital Improvement by BAHA.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF UNIT OWNER

Section 5.01. Exclusive Ownership and Possession. Each Unit Owner shall be entitled to the exclusive ownership and possession of its Unit, subject to the terms and conditions of this Declaration.

Section 5.02. Leasing of Agency Space.

(a) Right to Lease Agency Space. Subject to the provisions of Sections 9.04 and 9.09, a Unit Owner may lease all or any portion of the Agency Space within its Unit. Any use of the related Jointly Used Space by the lessee must first be Approved by the Board and shall be limited to the uses permitted by Section 5.11. The Jointly Used Space within any Unit that is owned by a Government Entity may be leased for the exclusive use of a tenant only with the consent of all of the Unit Owners. No Unit Owner shall lease any portion of its Unit to a tenant for exclusive use if such portion is subject to use rights in favor of other Owners without the consent of such Unit Owners.

(b) Lease Terms. Each such lease of Agency Space shall be in writing and a copy provided to the Facility Manager. The lease must provide that the terms of the lease shall be subject to any and all limitations contained in the Governing Instruments.

(c) Right to Lease Commercial Space. Notwithstanding the foregoing provisions of this Section 5.02, the Unit Owner of Lot 1 shall have the right to lease Commercial Space to anyone, on such terms as it shall determine, in its sole discretion, and without any notice to or Approval of the Board, provided that BAHA determines that the prospective tenant and use are consistent with uses permitted by applicable laws and regulations, and not likely to disturb the quiet enjoyment by other occupants of the Facility or their Units.

Section 5.03. Maintenance of Unit. Except as otherwise expressly provided in this Declaration, each Unit Owner shall have the exclusive right and obligation, at its sole cost and expense, to maintain and repair and refinish its Unit in a diligent, good and workmanlike manner and, with respect to Units or portions thereof located in the Agency Space in accordance with the plans and specifications for the Agency Space and the Rules. Each Unit Owner shall have the right to assign its right and obligation to maintain any portion of its Unit located in the Agency Space to any other Unit Owner occupying such space or the tenant of such space (each, a "Transferee"). Such maintenance, repair and refinishing shall include all painting, repainting, tiling, waxing, wallpapering or otherwise finishing and decorating the interior surfaces of the walls, floors, ceilings, windows, and doors, if any, bounding or contained within a Unit.

Section 5.04. Alterations to Common Area or Jointly Used Space. No Unit Owner shall make or permit to be made any modifications or alterations to, or encroach upon, or occupy or obstruct any part of the Common Area, Jointly Used Space, or the improvements located within the Common Area and/or the Jointly Used Space, without in each case the Approval of the Board, which approval shall not be unreasonably withheld. All work performed by or for the Unit Owner pursuant to this Section 5.04 shall be performed in a diligent, good and workmanlike

manner, with the Unit Owners collectively bearing the costs of labor and materials in accordance with their Percentage Ownership Interests unless the work is required in connection with alterations to a Unit being made by the Unit Owner, in which case the cost shall be borne by the Unit Owner for whom the work is being performed. Each Unit Owner's interest in any such modification or alterations shall be the same as its interest in the portion of the Common Area where the modifications or alterations are located.

Section 5.05. Alterations to Unit. Without limitation to the provisions of Section 5.04, no Unit Owner or its agents, employees or Transferees shall make any modifications or alterations to a Unit which affect the Common Area, the Jointly Used Space or other Units or the easements and restrictions of record without the Approval of the Board or BAHA, as applicable, and any Unit Owner(s) whose Units are adversely affected by the modification or alteration, which approval shall not be unreasonably withheld. Nothing shall be done in any Unit which will impair, interfere with or damage the structural integrity, functional operation, use or enjoyment of the Agency Space or any other portion of the Facility, except as provided herein. All work to be performed by or for a Unit Owner pursuant to this Section 5.05 shall be performed in a diligent, good and workmanlike manner, with the Unit Owner performing the work bearing all costs of such alterations or modifications. A Unit Owner shall have the exclusive right to paint, repaint, tile, wax, wallpaper, or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors of its Unit in accordance with the Rules Approved by the Board from time to time. No improvements shall be made to any Unit if such improvements would obstruct or in any way encroach upon the existing atrium, which is subject to a light and air easement, as also shown on the Occupancy Plan. Each Unit Owner shall provide commercially reasonable builder's risk and liability insurance with respect to any alterations or improvements made by a Unit Owner, as reasonably determined by the Board. For avoidance of doubt, the Board shall have no approval rights with respect to any improvements or alterations to the Commercial Space, provided that such improvements or alterations do not adversely impact the Common Area, the Jointly Used Space or any other Units.

Section 5.06. Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens. If a lien is filed by a supplier or contractor against any Unit for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Unit Owner at the request of a Unit Owner or its agents or tenants, said Unit Owner shall forthwith discharge such lien within two (2) weeks from the date of notice from the Board or the Facility Operator, unless the Unit Owner gives notice within such two (2) week period of its intent to contest the lien and furnishes to the Facility Operator a bond or other security satisfactory to the Board in form and amount and thereafter prosecutes such contest with diligence. If the Unit Owner fails to discharge or contest such lien within the two-week period described above and the Board reasonably determines that the lien could attach to any other portion of the Facility or otherwise adversely affect the other Unit Owners, then the Facility Operator may:

- (a) discharge such lien by payment, bond or otherwise without investigation as to its validity or any offsets or defenses thereto; and
- (b) specially assess such Unit Owner for the amounts so paid and all costs, and expenses paid or incurred in connection therewith, together with the interest thereon at the rate of

ten percent (10%) per annum on the unpaid amount calculated from the date advanced by the Facility Operator to and including the date full payment is received by the Facility Operator.

Section 5.07. Taxes, Assessments, Utilities, etc. Each Unit Owner shall be solely responsible for the discharge of obligations which relate solely to use or ownership of its own Unit, including but not limited to any taxes, assessments and separately metered utilities, if any (except to the extent such costs attributable to Jointly Used Space within such Unit are allocated to and treated as Agency Common Expenses). Where an obligation for which one or more Unit Owners is individually responsible is discharged by the Facility Operator, such Unit Owners shall be jointly and severally liable to the Corporation by way of Special Assessment for the cost of discharging such obligation. Where an obligation arises because of a Unit Owner's interest in the Common Area, and such obligation does not relate solely to an individual Unit, each Unit Owner shall be liable by way of a Common Assessment or Special Assessment only for its proportional part of the obligation as determined in accordance with its Percentage Ownership Interest.

Section 5.08. Liability for Obligations Under the Declaration. Any expenses incurred by the Facility Operator in fulfilling any obligation of any Unit Owner under this Declaration shall be a debt of the Unit Owner responsible for such obligation and the Corporation may specially assess said Owner for the amount thereof, together with interest in the amount of ten percent (10%) per annum on the unpaid amount calculated from the due date to and including the date full payment is received by the Facility Operator.

Section 5.09. Use Affecting Insurance Premiums. Nothing shall be done or permitted in or about the Facility, or brought or kept therein, which shall in any way increase the rate of or cause a cancellation of or otherwise affect any fire or other insurance upon the Agency Space or the Facility as a whole or any property kept within, or conflict with:

- (a) any fire laws or regulations;
- (b) any laws governing the use of hazardous materials or toxic materials, as may be defined by applicable laws or regulations;
- (c) any insurance policy upon the Facility or the Agency Space or any part thereof, the cost of which is a Common Expense;
- (d) any statutes, rules or regulations enacted or established by any government or governmental authority with jurisdiction; or
- (e) the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted, to the extent necessary to assure full effectiveness of all insurance on the Agency Space or the Facility as a whole at all times and at rates appropriate to the size and character of the portion of the Facility insured and to supply proper and adequate security, safety, and loss prevention practices.

In the event any use or activity shall lead to an increase in fire or other insurance premiums payable on the insurance obtained by the Board pursuant to Article VIII, or insurance procured by an individual Unit Owner or occupant, the party causing such increase shall be liable

for payment of the same to the Corporation or such individual Unit Owner or occupant as the case may be. The party so charged with increasing premium costs shall have the right to contest the validity of such insurance premium increase with the applicable insurer.

Section 5.10. Compliance with Laws and Rules. Each Unit Owner and its Transferees shall comply with all of the requirements of all governmental authorities, and all laws, ordinances, and rules applicable to its Unit, including the Rules.

Section 5.11. General Restrictions on Use. Unless otherwise designated herein (including, without limitation, Section 5.02(d), each Unit shall be used for general office purposes and uses incidental or related thereto, and for no other use or purpose unless Approved by the Board, acting reasonably and in good faith. The use of the Jointly Used Space shall be restricted to the following permitted uses, which shall apply only to the Jointly Used Space:

(a) The spaces designated on The Occupancy Plan or otherwise constructed as library space and law library space may be used for library purposes and uses incidental and related thereto.

(b) The spaces designated on the Occupancy Plan or otherwise constructed as pantries may be used for food storage and warming purposes and uses incidental and related thereto.

(c) The spaces designated on the Occupancy Plan or otherwise constructed as conference rooms and collaboration/teaming areas may be used for meeting purposes and uses incidental and related thereto.

(d) The spaces designated on the Occupancy Plan or otherwise constructed as the mail/copy center and print/mail/supply rooms may be used for mail room, copy center and supply storage purposes and uses incidental and related thereto.

(e) The spaces designated on the Occupancy Plan as the parking area shall be used solely for parking and related access purposes, and uses directly incidental and related thereto.

(f) BAAQMD has elected to store certain hazardous materials in parking areas that are reserved for use by BAAQMD. Such storage shall be strictly in compliance with applicable laws, rules and regulations. In addition, BAAQMD shall be required to indemnify, defend and hold the other Owners harmless from and against any damages, costs, claims, and expenses, including, without limitation, reasonable attorneys' fees and court costs, to the extent arising from or relating to the storage of such hazardous materials. BAAQMD shall keep the Board notified of the contents of such hazardous materials storage on a regular basis and shall maintain commercially reasonable liability insurance to cover any potential claims, as reasonably determined by the Board.

(g) The space designated on the Occupancy Plan or otherwise constructed as the data center may be used for installation and maintenance of the servers for the telephone and data services supplied to each Unit, which servers shall be the property of the individual Unit Owners.

(h) The space on the first floor of the Facility designated on the Occupancy Plan as the Board Rooms may be used for meetings of the Boards of Directors of those governmental entities specified in Section 4.02(a) and, on a space available basis, for meetings of other Governmental Entities, all subject to the priorities and reservation system established in this Declaration and the Rules.

(i) The spaces designated on the Occupancy Plan as the eighth floor terrace and as the multi-purpose room may be used as meeting space or as passive and entertainment space and uses incidental and related thereto.

(j) The spaces designated on the Occupancy Plan or otherwise constructed as phone booths may be used for private telephone conversations and uses incidental and related thereto.

(k) The space designated on the Occupancy Plan as the Agency Space reception area may be used as a central reception desk for the Unit Owners and their Agency Space tenants and uses incidental and related thereto.

(l) The spaces designated on the Occupancy Plan or otherwise constructed as restrooms may be used for restroom purposes and uses incidental and related thereto.

(m) The spaces designated on the Occupancy Plan or otherwise constructed as quiet rooms may be used for napping, mediation, prayer, lactation or other similar uses.

(n) The spaces designated on the Occupancy Plan or otherwise constructed as IT rooms may be used as offices and uses incidental and related thereto.

(o) The spaces designated on the Occupancy Plan or otherwise constructed as equipment storage rooms may be used to store equipment and uses incidental and related thereto.

Section 5.12. Special Equipment. Unless Approved by the Board, no Unit Owner or Transferee of any portion of the Agency Space shall use in general office space any apparatus or device within a Unit or the Jointly Used Space, including without limitation, machines using current in excess of 220 volts, which will in any way substantially increase the amount of electricity, water or compressed air usually furnished or supplied to such portion of the Facility or which connects with electric current, water or air, other than through existing electrical outlets, water pipes or air pipes, as applicable, or outlets or pipes hereafter installed in accordance with Section 5.04. The foregoing shall not prohibit, however, the installation of laboratory equipment in spaces specifically designed as a laboratory in compliance with all applicable laws and regulations.

Section 5.13. Media Wall and Agenda Display Area. Each Unit Owner shall have the right, at its expense, to have information digitally displayed on the “Media Wall” and its public meeting agendas digitally displayed on the “Agenda Display Area”, each of which are located in the areas designated on the Occupancy Plan in accordance with the Rules.

Section 5.14. Handling of Construction Defects. In the event a Unit Owner discovers any construction defects in its Unit, the Common Area or the Jointly Used Space attributable to improvements or alterations to the Facility made by BAHAs contractors prior to the Unit Owner

taking occupancy of its Unit, the Unit Owner shall give written notice thereof to BAHA and to the Corporation. Upon receipt of any such notice, BAHA shall take all reasonable steps to pursue any warranty or other contract claims against the contractor responsible for the work in question to correct the defective condition, and the Unit Owner shall cooperate with BAHA, at no cost to the Unit Owner, in seeking the requested correction of the defects. The foregoing shall not constitute a waiver of any rights the Unit Owner may have to seek redress from BAHA, but by taking title to its Unit, each Unit Owner agrees to exercise good faith efforts to attempt to reach a satisfactory resolution through the procedures set forth above before taking any legal action to pursue its remedies. Nothing in this Section 5.14 shall be construed as an admission by BAHA that it is responsible for any construction defects.

ARTICLE VI

EASEMENTS

There are hereby specifically reserved for the benefit of the Unit Owners, in common and for each Unit Owner severally, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way and access particularly identified in this Article.

Section 6.01. Utilities. There is reserved for the benefit of each Unit, as dominant tenement, an easement for utility services over, under and through the Common Area, and each other Unit, jointly as the servient tenement, in the locations shown on the Condominium Plan or any amendment thereto, or as otherwise constructed at the Facility.

Section 6.02. Encroachment. There is reserved for the benefit of each Unit, as dominant tenement, an easement for encroachment, occupancy, use and maintenance of such portion of the remainder of the Facility, including other Units, as the servient tenement, as shall be encroached upon, used and occupied by the owner of the dominant tenement as a result of any vertical or lateral displacement of any of the building structures or any portion thereof, deviation in construction or reconstruction plans or any reasonably necessary encroachments of one Unit or improvement onto another which does not interfere with the use of the encroached-upon Unit by the Unit Owner or occupant thereof. The easement of encroachment here reserved shall continue notwithstanding that the encroachment may be cured by repair and restoration of the structure.

Section 6.03. Maintenance and Repair. The Corporation and each Unit Owner shall have an easement which is appurtenant to the Common Area and all Units, through each Unit and the Common Area for the maintenance and repair of the Units (with respect to the Unit Owners), the Common Area (with respect to the Corporation or BAHA, as applicable), the Jointly Used Space (with respect to the Corporation or Facility Operator, as applicable), and the easements set forth in this Article, subject in the case of access to an individual Unit to the provisions of Section 6.05 below.

Section 6.04. Nonexclusive Easements for Common Area. Each Unit Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress and support over and through the Common Area, and through the elevator and elevator lobby areas as necessary to access their particular Unit and any Common Area or Jointly Used Space that

such Owner is entitled to use. This easement shall be appurtenant to each Unit and shall be subordinate to any rights reserved to the Board or delegated to the Facility Operator to regulate time and manner of use in order to perform their respective obligations under this Declaration.

Section 6.05. Right of Access. The Board, the Facility Operator, BAHA or any person designated by any of the foregoing, shall have an irrevocable right of access to each Unit for the purpose of making inspections or for the purpose of correcting any condition originating in a Unit which threatens damage to another Unit, to the Common Area or to any other portion of the Facility, or for the purpose of performing any maintenance or repairs or making any improvements for which the Corporation or BAHA is responsible. A request for entry shall be made in advance to the Unit Owner or occupant of affected Unit and such entry shall occur at a time reasonably convenient to them. The person or persons making such entry on behalf of the Board, the Facility Operator or BAHA as provided herein shall be accompanied by an authorized representative of the Unit Owner or occupant. In an emergency, such right of entry shall be immediate, whether or not notice has been given or whether or not an authorized representative is present. Any entry hereunder shall be made with as little inconvenience to the Unit Owner or occupant as practicable, and any damage caused thereby shall be repaired by the Corporation and charged as a Common Expense, unless repair of the damage is the responsibility of the Facility Operator under the terms of its contract with BAHA or the responsibility of BAHA or the Unit Owner.

Section 6.06. Parking Easements. There is reserved for the benefit of Lots 3 and 4, as the dominant tenements, exclusive easements for the benefit of the respective Unit Owners to park in the areas on the second floor of the Facility so designated in the Occupancy Plan attached hereto, which easements shall be appurtenant to and shall run with the ownership of the benefitted Unit.

Section 6.07 Network Closets and MPOE. Each Unit Owner shall have the right to the following easements, which are appurtenant to each Unit:

- (a) Easements for access to and the right to maintain equipment and cabling within the network closets located within the Agency Space; and
- (b) Easements for access to the MPOE room which provides for the main point of entry into the Facility for all utilities serving the Facility, subject to such rules as the Facility Operator may reasonably establish from time to time.

Section 6.08 Emergency Access Easement.

- (a) In order to provide an emergency exit from the library, and public meeting spaces and Common Area on the first floor and for any emergency purposes, there is reserved a non-exclusive easement for emergency ingress and egress through the public hallways of the Facility to the emergency exits as designated in the Building, for the benefit of all Unit Owners, the Board and the Facility Operator, referred to in this Section 6.07 as “grantees” and to the grantees’ transferees, successors and assigns, and for the benefit of their invitees (including members of the public) and guests. Said easement is subject to the conditions set forth in Subsection (b). There is also reserved for the benefit of all Unit Owners, and their transferees, successors and assigns, and for the benefit of their invitees (including members of the public)

and guests, an emergency exit easement through any locations that are designated for emergency access purposes, which easement shall be usable only in the case of an emergency.

(b) The emergency access easements referred to in subparagraph (a) above are non-exclusive easements and the applicable Unit Owners shall have the full right to use the Unit that is subject to the emergency access easement, subject to the terms of the easement. The Unit Owners shall refrain from placing any obstructions over the emergency access areas that would impair the use of the emergency access easement. The emergency access easements shall exist for as long as the Facility shall continue to exist, shall not be extinguished by non-use or abandonment.

Section 6.09. Laboratory Easement. There is reserved for the benefit of Lot 3 an exclusive easement appurtenant to Lot 3 to occupy that portion of the second floor designated as “lab space” on the Occupancy Plan for the purpose of testing air and air quality related samples collected by BAAQMD in the performance of its governmental oversight and regulatory duties and other uses incidental thereto. BAAQMD shall comply with the Rules and all applicable laws and governmental rules and regulations in the conduct of such activities, including without limitation those relating to the handling and disposal of hazardous substances. In the event BAAQMD elects to sell its Unit (Lot 3), BAAQMD shall have the right, at its option, of retaining the lab space as an easement appurtenant to the Unit if BAAQMD conveys to the Unit Owner of Lot 2 fee simple title to an equivalent amount of space located on the 7th Floor of the Facility and part of Lot 3 by means of an amendment to the Condominium Plan. Such space located on the 7th Floor of the Facility and part of Lot 3 is currently subject to an easement in favor of the Owner of Lot 2, as shown on the Occupancy Plan, which easement shall be extinguished if the Condominium Plan is so amended. All of the Unit Owners shall be required to cooperate with any amendment of the Condominium Plan that is necessary to accomplish the purpose described in this Section, at no out of pocket expense to the other Unit Owners, but with no right to be reimbursed for any internal fees or legal review fees.

ARTICLE VII

ASSESSMENT AND COLLECTION PROCEDURES

Section 7.01. Covenant for Assessments, Creation of Lien, Personal Obligation. Declarant hereby covenants and each successor Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Facility Operator its share of: (1) Facility Common Assessments; (2) Agency Common Assessments; (3) Special Assessments and (4) any other costs required by this Declaration to be borne by such Owner; such Assessments to be fixed, established and collected from time to time, as hereinafter provided. The Assessments together with interest thereon and costs of collection, as hereinafter provided, shall be a lien upon the Condominium against which each such Assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article VII. Each such Assessment together with late charges, interest, costs, penalties and reasonable attorney’s fees, as provided for herein, shall also be the joint and several personal obligation of each person or entity which was the Unit Owner at the time the assessment fell due.

Section 7.02. Allocation of Assessments - Facility and Agency Space.

(a) Assessments. Upon Approval of the budget or any amendment to the budget, the Board shall separately assess each Unit Owner its share of the estimated Agency Common Expenses and Facility Common Expenses for such budget year, according, respectively, to its Agency Percentage Interest or Facility Percentage Interest, which assessment shall be due and payable to the Facility Operator in accordance with the provisions of Section 7.06. Such assessment is herein referred to as either a “Facility Common Assessment or an “Agency Common Assessment,” as the case may be.

(b) Amendments to the Budget. Upon Approval of an expenditure by the Board as a Common Expense not contained in the budget, the Board shall provide each Unit Owner with an updated notice of Assessments based on such amendment to the Budget.

Section 7.03. Special Assessments. The Board shall also separately assess each Unit Owner when and as such costs are incurred, for any costs incurred or payments made on behalf of such Unit Owner or to cure conditions for which such Unit Owner is responsible as provided in this Declaration and for any Jointly Used Space costs that are reasonably allocable to such Unit Owner based on usage of such Jointly Shared Space, as such Jointly Used Space costs and allocation method are reasonably determined by the Board. As an example of such allocation, but without limitation of the above, use of the Board Room located on the first floor and meeting rooms that are part of the Jointly Used Space, each of which are subject to reservation procedures under Section 1.03(c), are examples of Jointly Use Space that may be subject to this separate assessment. Such an assessment is herein referred to as a “Special Assessment”. Special Assessments shall include, without limitation, all costs of providing valet parking services to the members of the Board of such Unit Owner and to the members of any other governmental boards or commissions established by such Unit Owner to whom valet services are offered by such Unit Owner, and, in the case of BAHA, this shall include members of the Boards of the Metropolitan Transportation Commission and the Bay Area Toll Authority the Bay Area Infrastructure Financing Authority and the Bay Area Regional Collaborative. If the Board levies a Special Assessment in accordance with Section 8.06(a)(2) below, then the Special Assessment shall be levied and paid in accordance with the Facility Percentage Interest. All Special Assessments shall be for the benefit of the Corporation. All Special Assessments shall be due and payable as provided in Section 7.04.

Section 7.04. Date of Commencement of Assessments; Due Dates; Charges for Late Payments. A single written notice (the Schedule of Assessments) shall be given annually to each Unit Owner setting forth the Facility Common Assessments and Agency Common Assessments payable by such Unit Owner for the succeeding fiscal year and any Special Assessments known at the time of such notice. Written notice of Special Assessments levied after the initial Schedule of Assessments has been provided for a fiscal year, and any adjustments to Assessments Approved by the Board, shall be given to each Unit Owner by the Facility Operator at least thirty (30) days prior to their due date. The Schedule of Assessments, or any amendment thereof, shall specify the amounts and due dates for installment payments of the Assessments by each Unit Owner. Assessments which appear in the annual notice shall be paid by each Unit Owner to the Facility Operator in equal monthly installments, in advance, on the first day of each month, unless some other due date is established by the Board. Special

Assessments not contained in the annual notice shall be paid to the Facility Operator within thirty (30) days of receipt of a notice to pay same or such later due date as shall be set forth in the notice. Each installment of Assessments shall become delinquent if not paid within ten (10) days after due. Interest thereon shall accrue on each delinquent installment at the rate of ten percent (10%) per annum on the unpaid amount calculated from the date delinquent to and including the date full payment is received by the Facility Operator.

Section 7.05. Assessments Deposited in Maintenance Fund Bank Account; Disposition of Unexpended Funds.

(a) Condominium Maintenance Fund Account. Upon Approval by the Board, all Assessments levied and collected in accordance with this Declaration, with the exception of those Assessments set forth in Subsection (b) hereof, shall be deposited by the Facility Operator in an account(s) established by it and clearly designed as the “Owners’ Account”. The Facility Operator shall have the control of said account and shall be responsible to the Board for the maintenance of accurate records thereof at all times. The Facility Operator shall act as a fiduciary for the Unit Owners collectively in handling of all accounts.

(b) Condominium Reserve Fund Account. Upon Approval by the Board, there shall be established by the Facility Operator an account clearly designated as the “Condominium Reserve Fund Account”. Such account will be established for the purpose of establishing reserves for, without limitation, repairs, replacements and improvements which are not Capital Improvements or the responsibility of individual Unit Owners, as well as uninsured damage to the Facility, other than damage to those elements thereof which are excluded from coverage in the definition of “full replacement cost” set forth in Section 8.03(a)(1)(A) hereof. Reserve amounts shall be included as separate line items in the annual budget, included in and collected as part of the Assessments, and shall be deposited by the Facility Operator and held in the Condominium Reserve Fund Account and accounted for separately as reserves for Facility Common Expenses or Agency Common Expenses, as the case may be.

(c) Investment. Unexpended and excess funds in the above referenced accounts may be invested in the name of the Corporation in accordance with California Government Code Section 53600, et. seq., and the investment policies adopted by the Metropolitan Transportation Commission.

(d) Account Disbursements. Disbursements by the Facility Operator from accounts established under this Section shall be governed by this Declaration and made in accordance with the budget and any procedures Approved by the Board.

Section 7.06. Effect of Nonpayment of Assessment; Delinquency; Notice of Assessment.

The Assessments which each Unit Owner is obligated to pay shall be a debt of such Unit Owner at the time such Assessments become due and payable. In the event of default by any Unit Owner in making such payment, such amounts as may be in default, together with interest thereon at the rate of ten percent (10%) per annum from the date delinquent and all costs that are incurred by the Facility Operator or its authorized representative in the collection of such charges, including reasonable attorney’s fees, shall be and become a lien upon the Condominium of the defaulting Unit Owner(s) upon the recordation in the Office of the Recorder of the City

and County of San Francisco of a Notice of Assessment; said Notice shall be filed by the Facility Operator as provided in California Civil Code Section 6814. The Notice of Assessment shall not be recorded unless and until the Facility Operator has delivered to the delinquent Unit Owner(s), not less than thirty (30) days before the recordation of the Notice of Assessment, a written notice of default and demand for payment in the form required pursuant to California Civil Code Section 6814 and unless such delinquency has not been cured within thirty (30) days after delivery of such notice of default.

(a) Subordination to Mortgages. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of the Mortgagee under any First Mortgage made in good faith and for value, and no such lien shall, in any way, defeat, invalidate or impair the obligation or the priority of such Mortgage, unless the Mortgagee shall expressly subordinate its interest in writing to such lien.

(b) Priority Over Other Liens. Any Assessment or other lien created pursuant to this Declaration shall be superior in lien priority to all other liens which are recorded subsequent to the recordation of said Notice of Assessment but shall be junior in priority to the lien of those Mortgages described in (a) above.

Section 7.07. Acceleration. Upon a Unit Owner becoming three (3) months delinquent in the payment of any Assessment, the Board may declare the entire balance of all Assessments then due, or to become due in the then current fiscal year, from such defaulting Unit Owner due and payable, which total sum may then be included in any suit, action or proceeding brought to collect said sum. If any action is filed by the Board to enforce the provisions of this Article, any judgment rendered against the defaulting Unit Owner shall include all costs and expenses and reasonable attorney's fees necessarily incurred in prosecuting such action, including, without limitation, collection costs and attorneys' fees. Notwithstanding acceleration under this section, only the amounts which would have come due under the monthly Assessment payment schedule prior to the date the lien is recorded pursuant to Section 7.08 may be secured by said lien.

Section 7.08. Notice of Default; Foreclosure Sale. After recording of said Notice of Assessment, the Facility Operator shall cause a Notice of Default to be recorded for the benefit of the Corporation and thereafter shall cause the Condominium of said defaulting Unit Owner to be sold in any manner permitted by California Civil Code Section 6820 et seq. The Facility Operator or an authorized agent, acting on behalf of the Corporation, shall have the power to bid at the foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium which is subject to said default.

Section 7.09. Curing of Default. Within twenty-one (21) days following the payment or other satisfaction of all delinquent assessments of a Unit Owner set forth in the Notice of Assessment filed and recorded in accordance with this Article, together with all costs and interest at the rate of ten percent (10%) per annum which accrued thereon and reasonable attorney's fees, the Facility Operator shall cause to be recorded in the Office of the City and County of San Francisco Recorder a further notice, stating the satisfaction and release of the lien created by the Notice of Assessment. A fee in the amount of Twenty-Five Dollars (\$25) covering the cost of preparation and recordation of the Notice of Release and Satisfaction shall be paid to the Facility Operator prior to the execution, filing and recordation of such Notice of Release and Satisfaction.

Such Notice of Release and Satisfaction of lien may be executed by a designee of the Board or the Facility Operator. For the purposes of this Section 7.11, the term “costs” shall include costs and expenses actually incurred or expended by the Corporation in connection with the preparation and recordation of the Notice of Assessment and in efforts to collect the delinquent assessments secured by the lien created by the Notice of Assessment, including without limitation reasonable attorney’s fees.

Section 7.10. Rights of Board; Waiver of Owners. Each Unit Owner hereby vests in and delegates to the Board, and the Facility Operator, acting at the direction of the Board, the right and power to bring all actions at law or in equity or lien foreclosures, whether judicially or by power of sale, against, any Unit Owner(s) for the collection of delinquent Assessments in accordance herewith, and the authority and power to sell the Condominium of such defaulting Unit Owner(s), subject to a First Mortgage or any other superior lien, and hereby expressly waives any objection to the enforcement of the obligation to pay Assessments in accordance with this Declaration.

Section 7.11. Remedies Cumulative. Any lien created or claimed under this Article and the right to foreclose the same shall be additional to and not in substitution for all other rights and remedies which the Unit Owner(s) and the Board and the Facility Operator may have to enforce the provisions of the Governing Instruments, and each and all legal or equitable remedies provided for in this Declaration shall be deemed to be cumulative, whether so expressly provided or not.

Section 7.12. Failure to Fix Assessments. Either (a) the omission by the Facility Operator, before the expiration of any fiscal year, to fix the Assessments hereunder for that fiscal year, or (b) the failure of the Board to Approve an annual budget, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Unit Owner or tenant from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

Section 7.13. Liability for Assessments. A Unit Owner’s liability may not be avoided by a waiver of the use or enjoyment of the Common Area, the Jointly Used Space or any portion of either or by abandonment of the Condominium against which such assessments are made.

ARTICLE VIII

INSURANCE; DAMAGE AND DESTRUCTION; EMINENT DOMAIN

Section 8.01. Authority to Purchase.

(a) Common Expenses. All insurance pertaining to the Common Area, the Agency Space or operations of the Corporation (except as hereinafter permitted in Section 8.04) which is acquired and maintained by the Corporation pursuant to this Article shall be a Common Expense.

(b) Independent Advice. To assist in the purchase and administration of its insurance, the Facility Operator may employ the services of independent appraisers and insurance analysts, consultants or brokers, the expense of which shall be a Common Expense.

Section 8.02. Manner of Purchase. Except as provided in Section 8.04, all insurance shall be purchased from insurance companies and in forms and amounts Approved by the Board and approved by each Mortgagee and shall include, but not be limited to, the coverages required by this Article. The cost of any insurance coverage which may be required by a Unit Mortgagee in excess of that which may otherwise be required by this Article or Approved by the Board, and which cannot be placed separately by the Unit Owner, shall be paid by the Unit Owner of the Condominium subject to such indebtedness as a Special Assessment.

Section 8.03. Insurance Specifications.

(a) Property Coverage. The property insurance shall cover the entire Facility and the Unit Owners' interests in all other insurable improvements within the Facility. This includes business personal property purchased by the Corporation or by the Facility Operator on behalf of the Corporation and/or the Unit Owners for use in the operation of the Common Area and Jointly Used Space or in the maintenance of the Agency Space, except BAAQMD's laboratory improvements, internal laboratory fixtures and furniture, and the lab equipment. (BAAQMD shall be obligated to separately insure the laboratory improvements, fixtures, furniture and equipment installed by or at the direction of BAAQMD, at its sole expense.) Such Property insurance shall be for the mutual benefit of the Unit Owners under a blanket property policy(ies) with coverage at least as broad as Special Form and Boiler and Machinery coverages, subject to the standard exclusions, for 100% of the full replacement cost thereof without deduction for physical depreciation and against such perils and in such manner as presently or at any time in the future may commonly be insured against by informed, prudent management of property of like size and character in the San Francisco area and as may from time to time be required by any Unit Mortgagee. The cost of any such insurance policy covering the entire Facility shall be treated as a Facility-wide Common Expense.

(1) Replacement Cost Coverage.

(A) Definition. For purposes of this Article, "Full Replacement Cost" shall mean the actual cost, without deduction for depreciation, of reconstructing the Facility, the Unit Owners' interests in all insurable improvements and betterments, and business personal property purchased and installed by the Corporation or by BAHA on behalf of the Corporation for use in the Agency Space by all Unit Owners whether part of individual Units, Common Area or Jointly Used Space, and the Unit Owners' and the Corporation's interest in all furnishings, equipment and business personal property used in operation and management of the Common Area and the Jointly Used Space, including architects' and engineers' supervisory fees. Notwithstanding the foregoing, any insurable improvements and betterments or business personal property purchased or installed by BAHA which are located in the Commercial Space shall not be covered by the policies described in this Section 8.03, but instead shall be covered pursuant to Section 8.04.

(B) Determination. "Full replacement cost" shall be determined by a recognized appraisal firm every three (3) years beginning with completion of the renovation of the Facility and installation of all improvements and betterments of the Unit Owners and their lessees, if any. Between each three (3) year appraisal, the replacement costs will be updated annually, using recognized inflation factors Approved by the Board. Each Unit Owner and its

lessees, if any, shall promptly supply such data as may be required by the appraiser for the purposes hereof.

(b) Required Provisions. The provisions required by subparagraphs (1) through (5) below or equivalents thereof, in form Approved by the Board and approved by any Mortgagee, shall at all times be part of such blanket policy(ies) to the extent obtainable from the insurers.

(1) Replacement Cost Coverage. Such blanket policy(ies) shall provide for settlement of loss thereunder as to the Facility and all insured improvements and property in accordance with the Replacement Cost Endorsement, or its equivalent, which shall be part of the policy(ies).

(2) Unit Mortgagee/Lender's Loss Payable Endorsement. Such blanket policy(ies) shall provide for insuring each Unit Mortgagee in accordance with the Lender's Loss Payable Endorsement, or equivalent, in form satisfactory to such Unit Mortgagee. The aforesaid Lender's Loss Payable Endorsement shall be modified by the following language to be added to such policy(ies) by endorsement:

“Named Mortgagee(s): Subject in all other respects to the provisions of the Mortgage Clause in this policy, or the Lender's Loss Payable Endorsement attached hereto, any loss to building(s), and all improvements thereto, including business personal property used in connection therewith, covered under this policy, which normally would be payable to the named insured(s) and named Mortgagee(s) shall be payable only to the Insurance Trustee named by the insured(s) or such other payee as is elsewhere in this policy provided.”

(3) Primary Insurance. Such blanket policy(ies) shall provide that coverage is primary insurance, subject to an occurrence deductible and shall not be affected or diminished by reason of any other insurance coverage maintained by any individual Unit Owner(s) or the Corporation.

(4) Waiver of Subrogation. Such blanket policy(ies) shall provide for a waiver of subrogation against individual Unit Owner(s) and the Corporation and their affiliated and subsidiary companies and all of their officers, agents and employees.

(5) Notice of Cancellation. Upon receiving a notice of cancellation the Corporation shall immediately advise each Unit Owner and each Unit Mortgagee of the date of coverage cancellation. The Corporation shall use all due diligence to obtain replacement coverage with no coverage gap and advise each Unit Owner and Unit Mortgagee when replacement coverage has been bound or of the extraordinary circumstances which prevent new coverage from going into effect.

(c) Commercial General Liability Insurance.

(1) Commercial General Liability Insurance for Bodily Injury and Property Damage liability for the premises exposure, covering all Unit Owners, the Corporation and the officers, agents and employees of the Corporation as their interests may appear against liability for injuries to persons, including death, or damage to property of members of the public or tenants, agents, employees, licensees or invitees of the Unit Owner(s) or person(s) claiming under them, arising out of any "occurrence" incident taking place in, on or about the Facility, individual Units, the Common Area, the Jointly Used Space or any elevators or any escalators therein and the adjoining sidewalks, streets and passageways. Limits of liability shall not be less than \$2,000,000 combined single limit per occurrence with a general aggregate limit of not less than \$3,000,000.

(2) Additional Policy Provisions. The insurance policies specified in Sections 8.03(c), (d) and (e) shall contain the additional policy provisions specified in Sections 8.03(b)(3), (4), and (5). The Commercial General Liability and Business Automobile Liability policies shall also contain a Severability of Interests clause.

(d) Automobile. Automobile Liability Insurance for all automobiles owned, non-owned, hired or leased by the Corporation if any, and not otherwise insured, in furthering the operation and maintenance of the Facility. Limits of liability shall not be less than \$1,000,000 combined single limit per accident.

(e) Umbrella Policy. Excess (Umbrella) Liability Insurance for the mutual benefit of all Unit Owners and the Corporation and the Corporation's directors, officers, agents and employees as their interests may appear shall at all times be maintained under a policy (or policies issued in layers) which shall follow all terms and conditions of, and be no less comprehensive as to coverage than, the primary insurance policies specified in Section 8.03(c) and (d); such policy(ies) shall, when combined with the aforesaid primary policy, produce a total single limit of liability not less than Ten million dollars (\$10,000,000). The policy will schedule the primary liability policies, as well as the employer's liability section of the Workers' Compensation policy, as underlying insurance.

(f) Workers' Compensation. Workers' Compensation Insurance with Statutory limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees, and \$1,000,000 of Employers Liability Insurance, shall be carried for employees of the Corporation, if any.

(g) Employee Dishonesty and Crime Insurance. Employee Dishonesty Insurance in an amount not less than Two hundred fifty thousand dollars (\$250,000) shall be carried for the benefit of the Corporation against loss caused by dishonest acts of all officers, agents, independent contractors, and employees of the Corporation, if any.

(h) Other Insurance. Such other insurance shall be carried for such amounts and coverage as may be Approved by the Board for preservation of the Facility and protection of the interests of the Unit Owners in connection therewith, or as may be required by any Unit

Mortgagee (to the extent any coverage required by a Unit Mortgagee cannot be placed separately by that Unit Owner). The Required Insurance described above shall be subject to change from time to time as to coverage and amounts as may be Approved by the Board.

Section 8.04. Unit Owner Insurance. Each Unit Owner shall procure and maintain the following insurance.

(a) Property Insurance. Property Insurance with Replacement Cost coverage to cover its business personal property, improvements and equipment purchased or installed by the Unit Owner or any of its lessees, including rental value or business interruption insurance as the Unit Owner may elect to carry.

(b) Commercial Liability Insurance. Commercial General Liability Insurance covering its business operations separate from premises exposures at the Facility. Limits of liability shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate limit of not less than \$2,000,000.

(c) Automobile Insurance. Business Automobile Liability Insurance for all owned, non-owned, hired or leased automobiles of the Unit Owner. Limits of liability shall not be less than \$1,000,000 combined single limit per accident.

(d) Workers' Compensation. Workers' Compensation Insurance with Statutory limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees, and \$1,000,000 of Employers Liability Insurance, shall be carried for the employees of the Unit Owner.

(e) Waiver of Subrogation. All insurance policies carried by the Unit Owner shall contain a waiver of subrogation in favor of the Corporation, the Facility Manager, and other Unit Owners and their affiliated and subsidiary companies and all of their officers, agents and employees. The insurance of each Unit Owner shall be carried for the sole protection and at the sole expense of such Unit Owner. Such insurance shall not be contributory with any insurance maintained by the Corporation in accordance with Section 8.03.

Section 8.05. General Insurance Conditions.

(a) Copies of Policies. Each Unit Owner, each Unit Mortgagee, if any, and the Facility Operator shall be supplied with certificates of insurance evidencing all coverage carried by the Corporation. Upon request, Unit Owners may obtain certified copies of insurance maintained in accordance with Section 8.03.

(b) Loss Adjustment Provisions.

(1) Adjustment of Casualty losses. Subject to the rights of a Unit Mortgagee to require adjustment by and payment to an independent third party adjuster pursuant to Section 8.09, insurance policies specified in Section 8.03(a) and if applicable Section 8.03(h), shall name the Corporation as Insurance Trustee. All losses covered by such policies shall be adjusted with the insurers by the Corporation. All proceeds shall be paid to the Corporation to be held in trust for the named insureds and disbursed as provided in Section 8.06 and 8.07.

Section 8.06. Decision to Repair or Restore.

(a) Damage or Destruction.

(1) Insurance Proceeds Available. In the event of any damage or destruction to any portion of the Facility by fire or other casualty, if the cost of restoration is fully covered by the proceeds of insurance carried by or benefitting the Corporation and/or the Owners, excluding any deductibles that are required to be paid, then the Board shall cause the Facility to be repaired or restored to substantially the condition that it existed prior to the casualty. Such repair or restoration shall include the Facility, the Unit Owners' interests in all insurable improvements and betterments, and business personal property purchased and installed by the Corporation or by BAHA on behalf of the Corporation for use in the Agency Space by all Unit Owners whether part of individual Units, Common Area or Jointly Used Space, and the Unit Owners' and the Corporation's interest in all furnishings, equipment and business personal property used in operation and management of the Common Area and the Jointly Used Space. Notwithstanding the foregoing, any insurable improvements and betterments or business personal property purchased or installed by BAHA which are located in the Commercial Space shall not be part of such restoration obligation, but shall be the responsibility of BAHA to repair or restore.

(2) Insurance Proceeds not Available. If the damage or destruction to any portion of the Facility by fire or other casualty is not fully covered by the proceeds of insurance carried by or benefitting the Corporation and/or the Owners, excluding any deductibles that are required to be paid, then the Board shall decide within one hundred eighty (180) days after the occurrence of such damage or destruction, unless such date is extended by the Approval of the Board, whether or not the Facility or, if only the Agency Space is affected, the Agency Space, shall be repaired or restored. The decision of the Board must be unanimous. If the Board votes to repair or restore the Facility and/or the Agency Space, then the Board shall levy a Special Assessment in accordance with Section 7.03 to cover any shortfall of insurance proceeds. If the Board does not vote to repair or restore the Facility and/or the Agency Space in accordance with this subparagraph within ninety (90) days after the occurrence of the damage or destruction, then the entire Facility shall be sold in accordance with the procedures set forth in subparagraphs (e), (f), (g) and (h) below. Notwithstanding anything in this subparagraph to the contrary, any Owner may elect to repair both the Facility and the Agency Space (but such repairs must include both the Facility and the Agency Space) at its sole expense.

(b) Insurance Proceeds. If the Facility or the Agency Space, as applicable, is to be repaired or restored in accordance with Sections 8.06(a) and, as appropriate, (j), the proceeds of

insurance carried pursuant to Section 8.03 received as a result of such damage or destruction shall be used to pay the cost of such repair or restoration and shall be disbursed as provided in Section 8.07(b).

(c) Costs Exceeding Insurance Proceeds. If either BAHA or the Corporation repairs or restores the Facility or the Agency Space, as applicable, and the cost thereof is more than the amount of such proceeds, the deficiency between such proceeds and such cost shall be paid by the Unit Owners collectively as a Special Assessment as provided in Section 7.14.

(d) Distribution of Excess Insurance Proceeds. If either BAHA or the Corporation repairs or restores the Facility or the Agency Space, as applicable, and the cost thereof is less than the amount of such insurance proceeds, the balance of such proceeds remaining after payment of the costs of restoration and repair shall be distributed to the Unit Owners in accordance with the Facility Percentage Interest or Agency Percentage Interest, as applicable, except that excess proceeds attributable to coverage(s) which exceed the coverage requirements established by the Board and which are paid for by one Unit Owner shall be paid to such Owner.

(e) Notice of Election Not to Repair; Recordation. If a decision of the Board not to repair or restore the Facility or the Agency Space, as applicable, is made pursuant to Section 8.06(a), the Corporation shall cause to be recorded a notice in the official records setting forth such decision.

(f) Tenants In Common. Upon the recording of such notice referred to in subparagraph (e) above, the Unit Owners shall be deemed to be tenants in common in the Facility and the Board shall cause an appraisal to be made by a disinterested appraiser of recognized competence in the valuation of property of the nature and in the locality in which the Facility is situated, which appraisal shall set forth an opinion as to the value of the Facility as it then exists, together with an opinion of any incremental value, if any, which would accrue if the Facility were razed.

(g) Sale of Project. As soon as is reasonably possible after completion of said appraisal described in subparagraph (f) above, the Unit Owners shall sell the Facility. If necessary to such sale, the Unit Owners may, but shall not be required to, cause any construction then standing to be razed; provided the costs thereof shall be paid out of any insurance or sales proceeds. The Unit Owners shall prepare and file a corrected subdivision map, if required, converting the Facility into a single unimproved parcel of land. Such sale shall be free from the effect of this Declaration, with the exception that any provisions hereof relating to distribution of sale and insurance proceeds to the Unit Owners and Mortgagees, and liabilities of the Unit Owners *inter se* shall continue to have full force and effect until such distribution is completed. The Unit Owners are authorized to sell the Facility, but if the price is, or the terms of such sale have the effect of reducing such price by, more than fifteen percent (15%) below the appraised value previously obtained pursuant to subparagraph (f) above, the Unit Owners may not sell the Facility without the consent of each Mortgagee.

(h) Proceeds of Sale. The net proceeds of such sale, together with any proceeds of insurance received as a result of such damage or destruction, shall be shared among the Unit Owners in accordance with the respective Facility Percentage Interest; provided that, if there is

an amount secured by a Mortgage or a lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit, the amount payable to the Owner of the encumbered Unit shall first be paid to the First Mortgagee, then any balance shall be paid to the holder or holders of any other liens on such Unit, in their order of priority, before any distribution of proceeds to the Unit Owner whose Unit is so encumbered. If within one (1) year after the date of the recording of a notice pursuant to Section 8.06(e) setting forth the Board's decision not to repair or restore the Facility, the Facility has not been sold as provided in Section 8.06(g), then an action may be brought by any Unit Owner(s) for partition of the Agency Space by sale as provided in Civil Code Section 6656(b).

(i) Recordation of Notice of Damage. Within ninety (90) days after any such damage or destruction occurs, any Unit Owner, any insurer, or the Corporation, may record a notice stating that such damage or destruction has occurred, describing it, identifying the part of the Facility suffering such damage or destruction, the name of any insurer against whom claim is made, reciting that such notice is recorded pursuant to this Section 8.06(i) and that a copy of such notice has been served on the Corporation and all Unit Owners and Unit Mortgagees.

(j) Restoration of Individual Unit. Repair and restoration of damage to the interior of any Unit shall be made by and at the expense, including any insurance proceeds distributed to such Owner, of the Unit Owner(s) whose Unit is damaged as provided for in Section 7.16(b).

Section 8.07. Proceeds of Property Insurance - How Settled and Paid.

(a) Responsibility for Negotiations. Except as otherwise provided in Section 8.05(b), in the event of any insured casualty, the Corporation is charged with the duty and responsibility of negotiating settlement of property losses with insurance carrier(s). However, if the cost to repair or restore exceeds the best obtainable settlement by Two Hundred Thousand Dollars (\$200,000), and if the Board determines not to repair or restore the Facility as hereinbefore provided, the Board shall, prior to the acceptance of any such award, obtain in writing the approval of each Unit Mortgagee as to any amount which may be accepted on account of the damage to or destruction of the Unit in which such Unit Mortgagee has an interest. If the Board and any Unit Mortgagees cannot reach an agreement within sixty (60) days following a request for such approval, the question of the amount of the settlement award shall be submitted to arbitration in accordance with the arbitration provisions of the policies involved.

(b) Distribution of Proceeds. The proceeds of any insurance carried pursuant to Sections 8.03(a) and, where applicable, Section 8.03(h), shall be disbursed in accordance with sound construction loan procedures and controls, which shall be Approved by the Board, for the purpose of repairing or restoring the affected portions of the Facility (other than the Commercial Space, as to which all decisions with respect to the disbursement of insurance proceeds allocated to the Commercial Space shall be made by BAHA), or, if the Board does not elect to repair or restore the Facility or Agency Space, as applicable, pursuant to Section 8.06(b), the Board shall disburse such funds to the Unit Owners in accordance with Section 8.06; provided that if there is any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to provisions of Article VII on any Unit, the amount otherwise payable to the Unit Owner shall first be paid to the First Mortgagee, then to the holder or holders of such other

lien(s) on such Unit before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 8.08. Eminent Domain.

(a) Definition; Notice; Representation; Participation in Proceedings.

(1) “Taking”; “Award”. The term “taking” shall mean condemnation by eminent domain or sale under threat of condemnation. The term “award” shall include a settlement made in lieu of award.

(2) Notice. In the event of a threatened taking of all or a portion of the Facility, the Facility Operator shall immediately notify all Mortgagees and Unit Owners.

(3) Representation. The Board, or its designee, shall represent the affected Unit Owners in connection with a taking, provided that if the taking affects only the Commercial Space, BAHA shall represent itself in connection with the taking.

(4) Participation in Proceedings. Each Unit Mortgagee and each Unit Owner may, at its option, if permitted by the court, participate in the proceedings incident to a taking, but in any proceeding, the damages shall be determined for such taking as a whole and not for each Unit Owner’s interest therein.

(b) Taking of the Entire Project. If the entire Facility or the entire Agency Space is taken, any award shall be payable to and collected by the Corporation. Subject to Section 8.08(d), the net proceeds of award shall be divided among the Unit Owners in accordance with their Percentage Ownership Interests.

(c) Partial Taking. If any portion of the Facility other than the Commercial Space is taken, the Board shall unanimously decide, if the remainder of the Facility is impacted, whether (i) to restore the remainder of the Facility or (ii) to bring or permit an action for partition or to sell the remaining portion of the Facility in the manner provided in Sections 8.06(e), (f) and (g).

(1) No Board Decision; Partition. If the Board does not reach a unanimous decision pursuant to Section 8.08(c) within ninety (90) days after such taking becomes final, then the Board shall be deemed to permit an action for partition under the conditions of Civil Code Section 6656(b), which conditions shall be deemed to have been met. At any time following the fifteenth (15th) day after said ninety (90) days, a Unit Owner may record a Notice of Decision. Upon the recording of such notice, the Unit Owners shall be deemed to be tenants in common in the Facility and an action for partition by sale may be brought by any Unit Owner(s) as provided in Civil Code Section 6656(b).

(2) Restoration. If the Board unanimously decides to restore the remainder of the Facility other than the Commercial Space, as provided in Section 8.08(c), then the proceeds of award shall be payable to and collected by the Corporation and shall be disbursed first to compensate any Unit Owner whose Unit has been taken and then applied in accordance with sound construction loan procedures and controls Approved by the Board and all Unit Mortgagees as reasonably necessary for the purpose of restoring the remainder of the Facility exclusive of the

Commercial Space. Any proceeds allocable to the Commercial Space shall be paid to BAHA. Any deficiency between the award and costs of restoration shall be treated as a Capital Improvement payable by BAHA.

(3) Balance of Award; Sale Proceeds. If the proceeds of award exceed the compensation payable to any Unit Owner whose Unit is taken plus cost of restoration of the Common Area and remaining Agency Space, the award, or the balance thereof remaining after deducting such costs, shall be divided among the Unit Owner(s) according to their Percentage Ownership Interests in the portions of the Facility taken, subject to the provisions of Section 8.08(d). Upon sale by partition or if sale is authorized under Sections 8.06(e),(f) and (g) by decision of the Board as provided in this Section 8.08(c), the net proceeds of sale shall be divided in accordance with each Unit Owner's Percentage Ownership Interest; provided that such distribution is subject to the provisions of Section 8.08(d).

(d) Lien. The Board shall disburse any such funds to the Unit Owners as determined under Section 8.08(c)(3) set forth above; provided that if there is any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit remaining, such amount shall first be paid to the First Mortgagee and then to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

(e) Waiver of Power of Eminent Domain. Declarant by execution hereof and each subsequent Unit Owner, upon acceptance of the conveyance of its Condominium and/or interest therein, agrees that, as to each or any of them which now or in the future possesses the power of eminent domain, the exercise of such power is hereby waived and shall not be exercised against or applied to any Condominium or interest in a Condominium within the Agency Space.

Section 8.09. Unit Mortgagee's Right to Require Independent Trustee. Notwithstanding any provision in this Article VIII to the contrary, any Unit Mortgagee, upon written request to the Corporation, shall have the absolute right to require that an independent insurance trustee Approved by the Board and such Mortgagee be appointed forthwith to replace the Corporation to administer insurance proceeds in accordance with the provisions of this Article VIII. The replacement insurance trustee shall be a commercial bank or other financial institution with trust powers with a place of business in the City and County of San Francisco, California, which trustee agrees in writing to accept the trust. The costs of such trustee's service shall be paid by the Unit Owner whose Unit is encumbered and whose Unit Mortgagee makes the request.

ARTICLE IX

RESTRICTIONS ON TRANSFER; ACTIONS FOR PARTITION

Section 9.01. Unity of Interests. The Common Area shall remain undivided as set forth herein, and no Unit Owner shall be entitled to sever its interest in a Unit from the appurtenant undivided interest in the Common Area. No Unit may be dealt with, sold, conveyed, hypothecated or encumbered separately from its appurtenant interest in the Common Area. Any effort to do so shall be null and void. It is intended hereby to restrict severability in the manner

provided in Civil Code Section 6670, or as subsequently amended; provided, however, that no restrictions upon severability contained herein shall extend beyond the period in which the right to partition is suspended under Civil Code Section 6656(b).

Section 9.02. Right to Partition. No Unit Owner shall have the right to bring any action for partition of the Facility, except as permitted by the provisions of this Declaration, the provisions of Civil Code Section 6656(b), or as may be Approved by the Board and all Unit Mortgages.

Section 9.03. Proceeds of Sale Incident to Partition. In the event the Facility is sold incident to a partition thereof, the proceeds of such sale shall be shared among the Unit Owners in accordance with their Percentage Ownership Interests; provided that, if there is any amount secured by a First Mortgage or by any other lien on any Unit created in good faith and for value or created pursuant to the provisions of Article VII, such amount shall first be paid to the First Mortgagee, then any balance remaining which is otherwise payable to the Unit Owner of the encumbered Unit shall be paid first to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 9.04. Priority on Leases and Subleases. The right of a Unit Owner to lease (or approve a sublease for) any interest in its portion of the Agency Space to any person or entity which is not then a Unit Owner shall be subject, in the case of each of BAAQMD and ABAG, to Section 9.09 and, in the case of all Unit Owners, shall be subject to the requirement that such Unit Owner make reasonable attempts to lease (or sublease) to transferees or lessees in the following order of priority:

- (1) other Government Entities;
- (2) nonprofit entities; or
- (3) such other lessees or transferees as shall have been first Approved by the Board, which approval shall not be unreasonably withheld.

Section 9.05. Interest in Maintenance and Reserve Fund. Upon sale or transfer of any interest in a Unit by any Unit Owner, said Unit Owner's interests in the Condominium Maintenance Fund Account and in the Condominium Reserve Fund Account shall thereupon automatically be transferred to said Unit Owner's successor or transferee.

Section 9.06. Conveyance of Condominiums. No Unit Owner may convey its undivided interest as a tenant in common in the Common Area, except as specifically permitted herein or as part of a conveyance of all its interest in its Unit.

Section 9.07. [Reserved]

Section 9.08. Rights of First Refusal – Sale. Each owner of any Unit (hereinafter an "offeree Unit Owner") shall have a non-assignable right of first refusal, as set forth in this Section 9.08, upon the proposed sale by any Unit Owner (hereinafter "selling Unit Owner") of its Unit.

(a) Covered Transactions. The offeree Unit Owners' rights of first refusal shall apply to the assignment, sale or exchange of any other Unit (the "Offered Interest"). Upon the valid and timely exercise of its right of first refusal under this section, the offeree Unit Owner selected pursuant to Section 9.08(c) below shall purchase the entire Offered Interest or none of it. The following transactions are exempted from this right of first refusal:

(1) the placing of any encumbrance or security interest on a Condominium interest, including a Mortgage;

(2) advances made on account of any obligation secured by an encumbrance upon a Unit Owner's Condominium interest;

(3) transfer of title pursuant to deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings instituted against a Condominium interest; or any subsequent sale of such interest by the Mortgagee, the Mortgagee's assignee or the Mortgagee's successor in interest or their successors in interest.

(4) except as provided in Section 9.08(f), any transfer or sale of any kind of any portion, or all, of a Unit Owner's condominium interest which was previously subject to a right of first refusal which was not exercised;

(5) any transfer to a replacement entity (of any type) which among other things performs substantially the same or similar public functions as the transferring Unit Owner;

(6) transfer to an entity that is an affiliate, parent or subsidiary of the transferring Unit Owner. For purposes of this subclause (6), an "affiliate" is an entity that is controlled by or controls the transferring Unit Owner, or that has common board members, in whole, or is a joint powers authority formed by a Unit Owner and its affiliate; and

(7) any transfer pursuant to which BAHA or the Metropolitan Transportation Commission acquires the Unit originally owned by ABAG.

(b) Purchase Price. The purchase price for the Unit shall be the purchase price set forth in the bona fide offer from a third party described in Section 9.07(1) below or such higher price as shall be set forth in the Purchase Notice or, if more than one, the Purchase Notice accepted pursuant to subparagraph (3) below, unless the offeree Unit Owner and the selling Unit Owner agree to a lesser purchase price (the "Purchase Price").

(c) Procedure. If an offeree Unit Owner desires to exercise its right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Sell. If a Unit Owner desires to sell or transfer the Offered Interest in a transaction not exempted pursuant to Section 9.08(a) above, then such selling Unit Owner shall, upon receipt of a bona fide written offer from a third party to purchase the Offered Interest, which offer the selling Unit Owner desires to accept (hereinafter "bona fide offer"), deliver notice ("Notice") to the offeree Unit Owners by registered or certified mail, return receipt requested, or better service with evidence of delivery, of its intention to sell or otherwise transfer such Offered Interest. The Notice shall set forth the legal description of the

Offered Interest, the terms and conditions of sale or transfer, and the amount secured by each and every Mortgage or lien on part or all of the Offered Interest (if the proposed purchase is to be subject to such existing Mortgage or lien); provided that, the bona fide offer may be inspected and/or copied by the offeree Unit Owners upon a reasonable advance request to the selling Unit Owner. Where the bona fide offer includes an exchange for some other property interest, the fair market value of such property interest shall be determined by an independent, professional real estate appraiser who shall be acceptable to the selling Unit Owner and the offeree Unit Owner; provided that the parties shall cooperate in good faith in the expeditious selection of such appraiser. If the parties are unable to agree on an appraiser, a list of names shall be agreed to by the parties. The parties, in an order determined by lot, shall alternately strike one (1) name from the list until the name of one (1) appraiser remains who shall serve as the appraiser for purposes of this paragraph. The cost of appraisal shall be divided equally among the participating Unit Owners.

(2) Response; Forty-Five (45) Day Time Limit. If an offeree Unit Owner desires to purchase the Offered Interest of the selling Unit Owner, then it shall deliver notice ("Purchase Notice") to the selling Unit Owner in a sealed envelope by registered or certified mail, return receipt requested, or better service with evidence of delivery, to its address set forth in Section 12.06. A Purchase Notice shall cover the entire Offered Interest or shall be deemed invalid.

To be valid, each such Purchase Notice must be executed by the offeree Unit Owner and shall contain or enclose the following:

(A) Certified copies of resolutions or motions duly adopted by the governing body of the offeree Unit Owner authorizing unconditional exercise of the right of first refusal and consummation of the purchase of the Offered Interest in accordance with the terms and conditions of this Section 9.08:

(B) A statement of the Purchase Price;

(C) The legal description of the Offered Interest;

(D) The agreement that the offeree Unit Owner shall accept title to the Offered Interest, with only those representations and warranties as are customary for an "AS IS/WHERE IS" sale of real estate. The sale may be conditioned upon a nationally recognized title insurance company being prepared to issue title insurance to the offeree Unit Owner upon recordation of the deed, subject only to such liens, encumbrances and other exceptions to title as shall be reasonably acceptable to the offeree Unit Owner. To validly exercise the right of first refusal granted in this section, the offeree Unit Owner must cause its Purchase Notice to be received by the selling Unit Owner not later than forty-five (45) calendar days after the date of receipt by the offeree Unit Owner of the Notice.

If the offeree Unit Owner fails to cause the selling Unit Owner to receive a timely, valid Purchase Notice, the offeree Unit Owner shall be deemed to have automatically waived its rights of first refusal in respect to such sale of the Offered Interest. If no valid Purchase Notice is timely received by the selling Unit Owner, the selling Unit Owner shall have the absolute right to

sell the Offered Interest as provided in Section 9.08(e). Upon request of the selling Unit Owner, the waiving offeree Unit Owners shall promptly furnish, without charge, to the selling Unit Owner an irrevocable written waiver of its right of first refusal with respect to such purchase of the Offered Interest. Such waiver shall be in form acceptable to the selling Unit Owner's title insurer.

(3) Multiple Offers. If more than one offeree Unit Owner timely submits a Purchase Notice to the selling Unit Owner, the selling Unit Owner shall accept the offer having the highest Purchase Price. The selling Unit Owner shall hold unopened any Purchase Notices received, in a confidential manner, and shall open such Notices only upon expiration of the forty-five (45) day period described above for receipt of Purchase Notices. The selling Unit Owner shall not share the contents of the offer with any other party prior to the expiration of such forty-five (45) day period.

(4) Time to Consummate Right of First Refusal Transaction. If one or more timely Purchase Notices is received by the selling Unit Owner, the offeree Unit Owner proposing the highest Purchase Price shall have sixty (60) calendar days from the expiration of the forty-five (45) day response period within which to close escrow on the Offered Interest and to complete the purchase transaction unless such sixty (60) day period is extended in writing by the selling Unit Owner. Said purchase shall be made on the same terms and conditions as the bona fide offer except that:

(A) Irrevocable escrow instructions, duly executed by the offeree Unit Owner, shall be submitted to the escrow agent (selected by the offeree Unit Owner) on such agent's standard form and setting forth instructions consistent with the provisions hereof and specifically instructing said agent to disburse the full Purchase Price first to the Mortgagee holding the first lien priority Mortgage against the Offered Interest to the extent of the obligation secured by such Mortgage (unless the offeree Unit Owner has agreed to take title subject to or to assume the First Mortgage), then to any other holders of liens against the Offered Interest, in their order of priority and any balance to the selling Unit Owner;

(B) The time for consummation of said transaction and consequences of failing to timely consummate said transaction shall be as set forth in this section.

(d) Withdrawal. After a selling Unit Owner has delivered a Notice as provided in Section 9.08(c)(1) which has been accepted by the selling Unit Owner, it may not thereafter extinguish the rights herein granted or withdraw the Offered Interest from sale pursuant to the terms and conditions of the right of first refusal set forth herein, except with the express written consent of the offeree Unit Owner.

(e) Failure to Exercise Right of First Refusal. If all of the offeree Unit Owners fail to cause the selling Unit Owner to receive a timely Purchase Notice pursuant to Section 9.08(c)(2) or if the selling Unit Owner receives notice from all offeree Unit Owners waiving their rights of first refusal, then the selling Unit Owner shall have a period of two hundred seventy (270) days from the date of Notice under Section 9.08(c)(1) within which to consummate a sale or transfer of the Offered Interest to third parties; provided that such sale or transfer shall be on substantially

the same terms and conditions as contained in the bona fide offer; provided further that any approvals required from the Board shall not be unreasonably withheld.

(f) Sale after Two Hundred Seventy (270) Day Period. If the sale described in the bona fide offer referred to in Section 9.08(e) is not consummated within such two hundred seventy (270) day period or if the terms of such proposed sale are modified in any material respect, the Offered Interest shall be subject once again to the offeree Unit Owners' right of first refusal upon delivery of a new Notice pursuant to Section 9.08(c)(1).

(g) Holding Period. The first refusal rights set forth in this Section 9.08 are intended to allow a remaining Unit Owner to acquire the selling Unit Owner's Offered Interest for its use and not for speculation and resale at a profit. Therefore, in the event that any Offered Interest is acquired by a Unit Owner as provided in this Section 9.08, such Unit Owner shall not transfer fee title to such Offered Interest for a period of two (2) years from the date transfer of title is made. The holding period set forth in this paragraph shall not apply to the initial sale by BAHA of any of the Units in the Agency Space or to judicial and nonjudicial foreclosures or deeds given in lieu of foreclosure.

(h) Termination of Right of First Refusal. Upon transfer of any Unit Owner's interest in its Unit to a third party, other than a Government Entity, the right of first refusal appurtenant to the transferred Unit shall terminate.

Section 9.09. Right of First Refusal – Lease. BAHA hereby reserves for itself a non-assignable right of first refusal set forth in this Section 9.09 to lease all or any portion of any other Unit Owner's Unit which such Unit Owner elects, in its sole discretion, to offer for lease to third parties, subject to the limitations set forth in Section 9.09(a) below.

(a) Covered Transactions. BAHA's right of first refusal shall apply to the leasing by either BAAQMD or ABAG (the "Initial Purchaser") of any interest in the Initial Purchaser's Unit to a non-Unit Owner and to any assignment of or sublease under any such lease to a non-Unit Owner. The following transactions are exempted from this right of first refusal:

(1) leases by any successor owner of a Unit, whether its interest is acquired by purchase or by a deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings.

(2) any lease to a replacement or companion entity (of any type) which among other things performs substantially the same or similar public functions as the Initial Purchaser.

(b) Procedure. If BAHA exercises the right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Lease; Bona Fide Offer. Upon receipt of a bona fide written offer to lease or sublease all or a portion of the Initial Purchaser's Unit, which the Initial Purchaser is prepared to accept (hereinafter "bona fide offer"), the Initial Purchaser shall give Notice to BAHA of its intention to lease such Condominium interest on the terms and conditions contained in the bona fide offer. The Notice shall identify the interest to be leased (hereinafter "Offered Interest") and the terms and condition of lease. The third party bona fide

offer to lease may be inspected and copied by BAHA upon reasonable notice to the Initial Purchaser.

(2) BAHA shall lease the Offered Interest in its “as is” condition or as otherwise provided in the bona fide offer, and the lease shall be subject to Mortgages and other liens of record;

(c) Agreement to Lease. BAHA shall have forty (40) days from the date of the Notice under Section 9.09(b)(1) within which to give Initial Purchaser a written Notice of Intention to lease the entire Offered Interest and fifty (50) days from the date of the Notice under Section 9.09(b)(1) within which to execute a lease for the entire Offered Interest on the same terms and conditions as contained in the bona fide offer.

(d) Lease to Third Party. If a lease is not timely executed as provided herein by BAHA, then the Initial Purchaser may lease the offered space to third parties at the same or higher rates as those contained in the bona fide offer and otherwise on substantially the same terms and conditions contained in such offer, provided that, such lease shall be executed within one hundred eighty (180) days of the notice set forth in Section 9.09(b)(1). If such lease is not executed within such one hundred eighty (180) day period, BAHA’s right of first refusal shall be reinstated as to any leases occurring after such time period.

Section 9.10. [Reserved]

Section 9.11. [Reserved]

Section 9.12. [Reserved]

Section 9.13. Rights in the Event of Foreclosure. Declarant and any future Unit Owner shall have the non-assignable rights in event of foreclosure described in this Section 9.13.

(a) Foreclosure. Each Unit Owner shall be deemed to have, and shall have, an interest entitling them to redeem any other Unit from the lien of any mortgage under Civil Code Section 2903 and that, upon redemption of the mortgaged property, such other Unit Owners shall have the rights against the mortgagor Unit Owner which are set forth in Civil Code Section 2903.

(b) Deed in Lieu of Foreclosure.

(1) Notice. If, in lieu of foreclosure, a mortgagor Unit Owner proposes to give a deed to the mortgaged property to a Mortgagee, the Unit Owner and Mortgagee shall reduce their agreement to writing and the mortgagor Unit Owner shall give notice in writing to the other Unit Owners advising them of the terms and conditions of the proposed transaction, providing each with copies of such written agreement.

(2) Right of Other Unit Owners. Upon receipt of a Notice under Section 9.13(b)(1) above, the other Unit Owners, acting in concert or otherwise, shall have the right to acquire the mortgaged property by making the following payments in cash within ninety (90) days of the Notice under Section 9.13(b)(1).

(A) To the Mortgagee: the full amount of the indebtedness secured by such mortgage, together with the Mortgagee's cost and expenses allowable under Civil Code Section 2924(d).

(B) To the mortgagor Unit Owner: the consideration, if any, that was agreed by the Mortgagee to be paid to such mortgagor Unit Owner in consideration of its giving such deed in lieu of foreclosure.

If the other Unit Owners oversubscribe the mortgaged interest and cannot reach timely agreement to divide such interest among themselves, then the Unit Owner which shall acquire the mortgaged interest shall be chosen by the mortgagor Unit Owner by lot.

(3) Waiver. If the other Unit Owner(s) fail to make timely payment for such mortgaged interest as required herein, then the right to purchase under Section 9.13(b) shall be waived and the mortgagor Unit Owner may give such deed in lieu of foreclosure to the Mortgagee pursuant to the terms of their agreement.

Section 9.14. Recomputation of Interest. Upon acquisition by an existing Unit Owner of any interest of another Unit Owner through outright purchase, purchase at foreclosure or otherwise, the acquiring Unit Owner's Percentage Ownership Interest shall be recomputed, as necessary, to reflect the acquiring Unit Owner's new holdings.

Section 9.15. Other Encumbrances. So long as BAHA, BAAQMD and ABAG each own an interest in the Agency Space, none of them shall voluntarily encumber its interests in the Agency Space, or any portion thereof, without the prior written consent of the others, which consent shall not be unreasonably withheld. At such time as BAHA no longer owns any interest in the Facility, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAHA. At such time as BAAQMD no longer owns any interest in the Facility, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAAQMD. At such time as ABAG no longer owns any interest in the Facility, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by ABAG.

ARTICLE X

MORTGAGE PROTECTION

Section 10.01. Warranty. Declarant and each Unit Owner, by accepting a deed subject to this Declaration, covenants and warrants that any Unit Mortgagees shall be entitled to the rights and guarantees set forth in this Article X.

Section 10.02. No Impairment. The following rights of a Unit Mortgagee shall not be impaired:

(a) Subject to compliance with Section 9.13(a), to foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage; or

(b) Subject to compliance with Section 9.13(b), to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or

- (c) To sell or lease a Unit so acquired by the Unit Mortgagee without interference.

Section 10.03. Reserve Fund. The Corporation's assessments shall provide an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis. The Condominium Reserve Fund Account shall be funded through Common Assessments.

Section 10.04. Subordination. Any lien created or claimed in the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage which encumbers all or any interest in a Condominium, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Condominium and/or interest therein is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium or interest therein free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium and/or interest therein, the foreclosure purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Corporation that become due or payable on or after the foreclosure purchaser acquired title to the Condominium and/or interest therein. The subsequently levied assessment or other charges may include previously unpaid assessments, provided all Unit Owners, including the foreclosure-purchaser and its successors and assigns, are required to pay their proportionate share of such assessment as provided in Section 7.02(a) relating to Assessments. As used herein, the term "foreclosure" shall include both judicial and nonjudicial (i.e., trustee's sales), and a deed (or assignment) in lieu of foreclosure.

Section 10.05. Amendment of Declaration. No amendment to this Declaration shall affect the rights of the holder of any First Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

Section 10.06. Additional Subordination Agreements. By subordination agreement Approved by the Board, the benefits of Sections 10.04 and 10.05 may be extended to Mortgagees not otherwise entitled thereto; provided, however, that nothing contained herein shall give the Board the power to affect the rights of the holders of a recorded Mortgage.

Section 10.07. Prior Written Approval of Mortgagees. The prior written approval of each Unit Mortgagee shall be required for the following:

- (a) The abandonment or termination of the Common Area, except for abandonment or termination in the case of substantial destruction by fire or other casualty under Section 8.06, or in the case of a taking by condemnation or eminent domain under Section 8.08, unless the taking by condemnation violates the provisions of Section 8.08(e) regarding waiver of the power of eminent domain.

(b) Any change in the method of determining the obligations, assessments, dues or other charges that may be levied against a Unit Owner, or to change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of insurance proceeds or condemnation awards for determining the pro rata share of ownership of each Unit Owner in the Common Area.

(c) Any action or omission to act by the Corporation seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area for the benefit of one or more of the Unit Owners shall not be deemed a transfer within the meaning of this Section 10.07(c).

(d) The use of hazard insurance proceeds from losses to any Unit or portion of Common Area for other than the repair, replacement or a restoration of the improvements thereon, except as provided in Section 8.06.

(e) The failure to maintain fire and extended coverage insurance on insurable Corporation property and on the Common Area and Units on a current replacement cost basis in an amount not less than required under Section 8.03(a).

Section 10.08. Written Notification Obligation. The Facility Operator shall notify in writing all Mortgagees holding a Mortgage on a particular Unit of any default by the Owner of such Unit in the performance of its obligations under the Governing Instruments and any other related documents, if such default is not cured within thirty (30) days. It shall be the responsibility of each Unit Owner to notify the Facility Operator within thirty (30) days after the Mortgage is given of the name and address of the holder of any Mortgage on its Unit.

Section 10.09. Right to Inspect. Upon reasonable request, a Unit Mortgagee shall be entitled to:

(a) Inspect the books and records kept by the Facility Operator during normal business hours.

(b) Receive an annual financial statement, preparation of which is required under Section 4.02(f).

Section 10.10. Notice of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, a Unit Mortgagee shall be entitled to timely notice of any such damage or destruction and no provisions of the Governing Instruments shall entitle the Unit Owner of the Unit subject to the mortgage to have priority over the Unit Mortgagee holding the mortgage on such Unit with respect to the distribution to such Unit Owner of any insurance proceeds.

Section 10.11. Notice of Condemnation Proceeding. In the event of a threatened taking of all or a portion of the Facility, the Facility Operator shall give notice to Mortgagees as provided in Section 8.08(a)(2). No provision of the Governing Instruments shall entitle the Owner of a Unit subject to a Mortgage to priority over a Mortgagee holding the Mortgage on such Unit with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

Section 10.12. Authority of Unit Owners to Cure Default. Nothing herein contained shall be deemed to limit or restrict the right of the Corporation or any Unit Owner(s), pursuant to Civil Code Section 2924(c), to cure any defaults under Mortgages. Upon Approval by the Board, the Corporation is expressly authorized, but not required to, cure any and all such defaults by payment to the Mortgagee(s) of the defaulting Unit Owner(s). Without limitation on any remedy of the Unit Owners provided in Section 9.13, such payments shall be a debt of the defaulting Unit Owners and be made a Special Assessment against the defaulting Unit Owner(s) and, if so assessed, shall be secured by the lien created under Section 7.08, which lien shall be subject to this Article X. In no event shall any amounts advanced by the Corporation to cure defaults under a Mortgage secured by an individual Unit Owner's Unit become the responsibility of or be assessed against the other Unit Owners.

Section 10.13. Mortgagee Protection Clause. No breach of any of the covenants, conditions and restrictions in this Declaration, nor the enforcement of any of the lien provisions herein, shall defeat or render invalid the rights under any Mortgage on any Unit made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Unit Owner whose title is derived through foreclosure or otherwise. Any Mortgagee who acquires title to a Condominium and/or interest therein by foreclosure or by deed (or assignment) in lieu of foreclosure shall not be obligated to cure any breach of this Declaration occurring prior to its acquisition of title to the Condominium, but shall be obligated to cure any continuing breach of the terms hereof (other than unpaid assessments attributable to the period prior to the transfer of title to the Unit to the Mortgagee).

Section 10.14. Status of Loan to Facilitate Resale. Any Mortgage given to secure a loan to facilitate the resale of a Condominium or interest therein after acquisition by foreclosure or by deed (or assignment) in lieu of foreclosure shall be deemed to be a loan made in good faith and for a value and entitled to all the rights and protections of Mortgages under this Declaration.

Section 10.15. Right of First Refusal Inapplicable to Mortgagee. Except for the right of first refusal described in Section 9.08 as originally recorded, no right of first refusal or similar restriction on the right of a Unit Owner to sell, lease, transfer, or otherwise convey such Unit Owner's Condominium and/or interest therein shall be granted to the Corporation or other Unit Owners or persons without the written consent of each Mortgagee of the affected Condominium or interest therein. Any right of first refusal or option to purchase a Condominium or interest therein that may hereafter be granted to the Corporation (or other person, firm or entity, including Unit Owners) shall not impair the rights of a First Mortgagee (i) to foreclose or take title to the Condominium or interest therein pursuant to the remedies provided in the Mortgage; or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or (iii) to sell or lease a Condominium acquired by the Mortgagee.

Section 10.16. Conflict with Other Provisions. In the event of any conflict between any of the provisions of this Article X and any other provisions of this Declaration or the Articles, or the Bylaws, the provisions of this Article X shall control.

ARTICLE XI

COMPLIANCE, LIABILITY, BREACH AND DEFAULT

Section 11.01. Compliance and Breach. Each Unit Owner shall comply with all provisions of the Governing Instruments.

Section 11.02. Liability. Each Unit Owner shall be liable for the expense of any maintenance, repair, restoration or replacement rendered necessary by, or any loss, cost, expense, damage or other liability, including attorney fees, caused or occasioned by, its negligence or misconduct or that of its tenants, agents, employees, licensees or invitees, or its failure to comply with the provisions of this Declaration, but only to the extent that such expense, loss, cost, damage or other liability is not covered by the proceeds of insurance carried by the Corporation, but without waiving any obligation to pay the applicable insurance deductible.

Section 11.03. Right of Entry. Violation of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained shall give the Board, or the Facility Operator with the Approval of the Board, the right to enter the property upon or as to which such violation exists and to summarily abate and remove at the expense of the Unit Owner thereof, any erection, thing or condition that exists thereon contrary to the intent and meaning of the provisions of this Declaration. The Facility Operator and the Board shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

Section 11.04. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Unit Owner or the Corporation, provided that the offending Unit Owner shall be given written notice of, and a thirty (30) day period following notice to cure, any such violation. Such remedies shall be deemed cumulative and not exclusive.

Section 11.05. Breach of Duty to Maintain. In addition to the other rights hereunder, if any Unit Owner fails to maintain its Unit or make repairs thereto, in such manner as may be necessary to preserve and protect the attractive appearance and value of the Agency Space, the Corporation shall cause to be performed the necessary work in accordance with Section 4.04(f)(3).

Section 11.06. Enforcement. The Unit Owners and/or the Board may bring a legal action for damages against any Unit Owner which defaults in the performance of any of the provisions, conditions, restrictions, easements, covenants or reservations of the Governing Instruments including, but not limited to, the covenant to pay assessments. Further, they shall be entitled to enjoin any violation of the Governing Instruments and shall further be entitled to prosecute any other legal or equitable action that may be necessary to protect the Agency Space or the Facility. If they shall deem it necessary to initiate any legal or equitable action for the protection of the Agency Space or the Facility against any Unit Owner, the prevailing party in such litigation shall be entitled to receive its reasonable attorney's fees and costs. Failure to enforce any provision of the Governing Instruments shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.07. Remedy at Law Inadequate. The respective rights and obligations of the Unit Owners shall be enforceable in equity as well as at law or otherwise. Each Unit Owner confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Declaration. Each Unit Owner agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing herein contained is intended to, nor shall limit or affect any rights at law or by statute or otherwise of any Unit Owner aggrieved as against another for a breach or threatened breach of any provision hereof.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provisions of this Declaration.

Section 12.02. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Facility.

Section 12.03. Waiver. No consent or waiver, express or implied, by any party hereto of any breach or default by any other party in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party under this Declaration. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any of the other parties in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

Section 12.04. Number and Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural, and vice versa.

Section 12.05. Headings; References. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration, and all references herein to Articles, Sections or subdivision thereof shall refer to the corresponding Article, Section or subdivision thereof of this Declaration, unless specific reference is made to the Articles, Sections or subdivisions of another document or instrument.

Section 12.06. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Declaration shall be in writing and shall be sent to the parties at the address of each such Unit Owner's Unit or at such other address as the Unit Owner may specify in writing to the Facility Operator from time to time and addressed to the chief executive officer or equivalent of such Unit Owner. Unless otherwise provided herein, all notices shall be given by personal delivery, by overnight courier or by U.S. mail, certified with return receipt requested. All notices shall be deemed received upon the earlier of actual receipt, one business

day after deposit with a nationally or regionally recognized overnight courier or three (3) business days after deposit in the U.S. mail.

Section 12.07. Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto.

Section 12.08. Amendment of Declaration. Subject to the rights of Mortgagees described in Article X of this Declaration, the Board may amend this Declaration or any exhibit to this Declaration, only by a unanimous vote, unless otherwise provided in the exhibit. A copy of each amendment shall be certified by each Unit Owner as having been duly adopted and shall be effective when recorded in the Official Records of the Recorder of the City and County of San Francisco; provided that an amendment to the Rules adopted by the Board need not be recorded.

Section 12.09. Term of Covenants, Conditions and Restrictions. Subject to the provisions of Article X relating to the rights of Mortgagees, these Covenants, Conditions and Restrictions shall continue and be effective until all of the Unit Owners deem that they shall terminate, in the event of which determination the Board shall place on record with the City and County of San Francisco Recorder a duly executed notice of such termination.

Section 12.10. Successors and Assigns. This Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, personal representatives, successors, purchasers, lessees, sublessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

Section 12.11. Joint and Several Liability. In the case of joint ownership of a Condominium, if any, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

Section 12.12. Priority of Governing Instruments. In the event that there are any conflicts or inconsistencies in or between the Governing Instruments, such conflict or inconsistency shall be resolved by giving precedence to the Governing Instruments in the following order: this Declaration, any exhibit to this Declaration, the Articles and the Bylaws.

Section 12.13. Arbitration of Disputes. Any controversy arising among Unit Owners or between a Unit Owner and the Board concerning the rights and obligations of any party under the terms of this Declaration shall be determined by binding arbitration by and under the commercial rules of the American Arbitration Association ("Commercial Rules"). Arbitration hearings shall be held in the City and County of San Francisco. Any such controversy shall be arbitrated by a single arbitrator, who shall be an impartial real estate professional or lawyer having not less than ten years experience developing, managing or representing owners of commercial office properties in the San Francisco area or, if the controversy pertains to calculation or allocation of Common Area Expenses or similar accounting-related matters, an impartial certified public accountant having not less than ten years experience providing accounting services to owners of commercial office properties in the San Francisco area. The arbitrator shall be appointed under the Commercial Rules and shall determine the controversy in accordance with applicable law, the intention of the parties as expressed in the Declaration and

any amendments thereto and the evidence produced at the arbitration hearing. Pre-arbitration discovery shall be permitted in accordance with the Commercial Rules or California law applicable to arbitration proceedings. The arbitrator's determination shall be rendered within thirty days after the conclusion of the hearing and may include an award of attorneys' fees and costs to the prevailing party. By accepting title to a Unit, each Unit Owner agrees to be bound by the provisions of this Section 12.13.

[Signatures continued on next page.]

WHEREFORE, this Declaration has been executed in San Francisco, California as of the date first written above.

BAY AREA HEADQUARTERS AUTHORITY

By: _____
Executive Director

By: _____
Treasurer-Auditor

Approved as to form:

General Counsel

EXHIBIT A – 1

LEGAL DESCRIPTION OF 375 BEALE STREET

PARCEL A OF PARCEL MAP NO. 8905, IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 130, PAGES 126 THROUGH 128, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 002-3746

EXHIBIT A – 2
CONDOMINIUM PLAN

EXHIBIT A – 3

OCCUPANCY PLAN

EXHIBIT B

PERCENTAGE OWNERSHIP INTERESTS

Floors	BAHA Commercial Lot 1	BAHA Lot 2	Air District Lot 3	ABAG Lot 4	Total
Floor 1	67,194				67,194
Floor 2	62,308				62,308
Floor 3	63,261				63,261
Floor 4	60,629				60,629
Floor 5	42,793	20,884			63,677
Floor 6	1,272		58,913		60,185
Floor 7	1,028	22,455	18,250	17,687	59,420
Floor 8	875	56,478			57,353

Total Facility RSF	299,360	99,817	77,163	17,687	494,027
% of total (FACILITY PERCENTAGE INTEREST)	60.60%	20.20%	15.62%	3.58%	100.00%

Total Agency Space RSF		99,817	77,163	17,687	194,667
% of total (AGENCY PERCENTAGE INTEREST)		51.28%	39.64%	9.09%	100.00%

Exhibit B

Exhibit B

EXHIBIT C

RULES OF THE CORPORATION

Exhibit C

RJR 12.9.16

EXHIBIT C

ASSOCIATION RULES

Introduction. These rules (“Rules”) have been promulgated by the Board of Directors (“Board”) of 375 Beale Condominium Corporation, a California non-profit mutual benefit corporation (“Corporation” or “Association”), for the four unit commercial condominium located at 375 Beale Street, San Francisco, California, and are the Rules referred to in the recorded Declaration of Covenants, Conditions and Restrictions for that four unit commercial condominium (“Declaration”). The Declaration shall govern in the event of any inconsistency between the Rules and the Declaration.

Terms used in these Rules that are defined in the Declaration have the meanings in these Rules that are assigned in the Declaration.

These Rules may be amended by the Board at any time in accordance with Section 12.08 of the Declaration, except as provided in Articles 1.7 and 2.29 of these Rules. A copy of these Rules and all amendments of these Rules shall be mailed to each Unit Owner and a copy shall be available for inspection in the office of the Facility Operator.

Article 1. The Rules in this Article 1 provide for the operation of the Agency Space, the Beale Street entrance and building lobby, and the Jointly Used Space.

- 1.1. All Unit Owners that are governmental entities shall have first priority use of the Jointly Used Space. All other governmental users shall have second priority use of the Jointly Used Space. All the tenants of Unit Owners of the Commercial Space shall have third priority use of the Jointly Used Space, but only with respect to the conference rooms designated for use of such commercial tenants, and subject to the limitations provided for in Section 1.03(b) of the Declaration.
- 1.2. Booking and use of the first floor Board Room, the Claremont Room and the Mission Room shall be coordinated by the Facility Operator with use limited to governmental users only and with priority given to Unit Owners. The Yerba Buena and Ohlone Conference Rooms shall be managed by the Facility Operator with priority given to Unit Owners.
- 1.3. Use or and booking of the first floor conference rooms and the Jointly Used Space conference rooms on the Agency Floors shall be managed in accordance to a Room Reservation Policy and a scheduling system to be established by the Board of Directors and coordinated by the Facility Operator. The policy will not apply to the designated executive director and legal conference rooms or agency specialty rooms. Any fees collected for the use of such conference rooms shall be paid to the Corporation.
- 1.4. The Facility Operator shall have overall management and control of the Agency Space, the Agency Space Common Area, and the Jointly Used Space, subject to direction from BAHA, the Declaration, and to any general policies established by the Board.
- 1.5. The Facility Operator shall have overall management and control of signage and events in and the functional appearance of 375 Beale Street lobby and Beale Street entrance, subject to direction from BAHA and to any general policies established by the Board. The Board shall have the right to reasonably approve any commercial signage that BAHA desires to install in the lobby or on the Beale Street entrance of the exterior of the Facility, as further described in Section 4.01(b) of the Declaration.

- 1.6. Facility Common Assessments, Agency Common Assessments and Special Assessments approved by the Board shall be payable by all Unit Owners to the Facility Operator at the times and in the manner provided in the Declaration.
- 1.7. The Unit Owners have agreed to allow other Unit Owner's employees and agents to occupy and use certain other portions of their respective Units. This right only applies to Lots 2, 3 and 4, and shall not apply to the Commercial Space. The locations of such occupancy and use rights are described on that certain set of "All Floor Plans" dated May 4, 2016, and prepared by Relocation Connections, Inc. (the "Floor Plans"), which are incorporated by this reference. For avoidance of doubt, the red lines and bracketing on the Floor Plans define the space a Unit Owner may occupy and the names attached to specific spaces are illustrative only as employees change from time to time.. Each Unit Owner shall maintain such portion of any other Unit used in accordance with the Floor Plans in a good and clean condition, and shall repair any damage caused by the use of the applicable Unit, normal wear and tear excepted. The use and occupancy rights described in this Article 1.7 are licenses and shall not run with title to the Unit. The licenses given by this Article 1.7 shall continue so long as each Unit Owner owns their respective Unit, until such time as the applicable Owners agree to terminate or modify such license(s). If a Unit Owner transfer title to their Unit, then that Owner's Unit shall no longer be subject to the licenses described in this Article 1.7, and the new Owner shall not have the right to use the licenses in favor of the Unit Owner transferring title to their Unit. The Unit Owners shall cooperate reasonably and in good faith with respect to such licenses.

Article 2. The Rules in this Article 2 apply to all Unit Owners. Each Unit Owner is responsible for compliance with these Rules by its occupants and its and their employees, agents, contractors, and invitees, each of whom shall faithfully observe and comply with these Rules.

- 2.1. Access to the 375 Beale Street building and spaces inside shall be controlled by a card access system administered and controlled by the Facility Operator. Each Unit Owner shall have the right and responsibility to control access, including hours of access and levels of security clearance, to the portions of its Unit that are used exclusively by the Unit Owner and that are not part of the open office plan shared with other governmental the Unit Owners, subject to any rights of the Facility Operator or other occupants of the Agency Space to obtain access to IDF or network closets. Each Unit Owner, at its sole expense, may install its own security system within the above-described portions of its Unit or provide its own security service for such portions of its Unit, or both; provided that any such security system shall be subject to the Facility Operator's prior written approval and shall be compatible with The Facility Operator's card access system and that the Unit Owner shall give the Facility Operator keys or access codes to any such system.
- 2.2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to 375 Beale Street, unless electrical hold backs have been installed.
- 2.3. The Facility Operator has the right to close and keep locked all entrance and exit doors of 375 Beale Street during such hours as are customary for comparable buildings in the downtown San Francisco area. Each Unit Owner must be sure that the doors to 375 Beale Street are securely closed and locked when leaving the building after the normal hours of business for 375 Beale Street. Any person entering or leaving 375 Beale Street at any time when it is so locked, or any time when it is considered to be after normal business hours for 375 Beale Street, may be required to sign a register. After-hours access by persons authorized by a Unit Owner may be provided by card-key access or other procedures adopted by the Facility Operator from time to time. The Facility Operator shall in no case be liable for damages for any error with regard to the admission to or exclusion from 375 Beale Street of any person.
- 2.4 Each Unit Owner shall pay for the costs of all access cards provided to its authorized persons and all replacements thereof for lost, stolen or damaged cards. Access to 375 Beale Street may be refused unless the person seeking access has proper identification or has a previously arranged a pass for such access.
- 2.5 In case of invasion, mob, riot, public excitement, or other commotion, the Facility Operator reserves the right to prevent access to 375 Beale Street during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

- 2.6 Residency in or overnight use and occupancy of any portion of 375 Beale Street is strictly prohibited.
- 2.7 Each Unit Owner shall not disturb, solicit, or canvass any occupant of 375 Beale Street, except any canvassing conducted in the normal course of carrying out its governmentally mandated duties, excluding reasonable fundraising activities or charitable events that are approved by the Facility Operator.
- 2.8 The Facility Operator reserves the right to exclude or expel from 375 Beale Street any person who, in the judgment of the Facility Operator, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules.
- 2.9 The Facility Operator shall maintain a property management office and/or a designated office location for the Facility Operator at 375 Beale Street that is accessible to the Unit Owners during regular business hours. An after-hour number will be made available for emergencies. The Facility Operator shall maintain staff, contractors and consultants to carry out the responsibilities of the Facility Operator. Unit Owners shall follow established protocols for communicating service requirements to the Facility Operator or representatives.
- 2.10 No furniture, freight, packages, supplies, equipment or merchandise will be brought into or removed from 375 Beale Street or carried up or down in the elevators, except upon prior notice to The Facility Operator, and in such manner, in such specific elevator, and between such hours as shall be designated by The Facility Operator. The Unit Owner shall provide The Facility Operator with not less than 24 hours' prior notice of the need to utilize an elevator for any such purpose, so as to provide The Facility Operator with a reasonable period to schedule such use and to install such padding or take such other actions or prescribe such procedures as are appropriate to protect against damage to the elevators or other parts of 375 Beale Street. Courier delivery services companies such as FedEx, UPS, and DHL are excluded from these requirements.
- 2.11 Any improvements or alterations shall be subject to the limitations and provisions of Sections 5.03 and 5.04 of the Declaration, and such other construction rules and procedures reasonably imposed by the Facility Operator.
- 2.12 The Facility Operator shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into 375 Beale Street. Safes and other heavy objects shall, if considered necessary by the Facility Operator, stand on supports of such thickness as is necessary to properly distribute the weight. The Facility Operator will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of 375 Beale Street, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility of the Unit Owner and any expense of said damage or injury shall be borne by the Unit Owner. The Unit Owner shall not overload the floor of its Unit.
- 2.13 The Unit Owner shall provide its occupants and employees with pertinent information that is provided by the Facility Operator for distribution.
- 2.14 The Unit Owners are responsible for the cost of the installation, maintenance and replacement of all interior signage related to their operations and services within their Units.
- 2.15 The Facility Operator shall have the right to control and operate the public portions of 375 Beale Street, the public facilities, the heating and air conditioning, and any other facilities furnished for the common use of the Unit Owners and other occupants of 375 Beale Street, in such manner as is customary for comparable buildings in the vicinity of 375 Beale Street.
- 2.16 Licensed service animals are not allowed to roam unattended or off leash in 375 Beale Street. Pets are not allowed in 375 Beale Street.
- 2.17 The Unit Owners shall not use any method of heating or air conditioning other than that which may be supplied as part of the existing condition of the building, without the prior written consent of the Facility Operator.

- 2.18 The Unit Owners shall not waste electricity, water or air conditioning and shall cooperate fully with the Facility Operator to ensure the most effective operation of 375 Beale Street's heating and air conditioning system, and shall refrain from attempting to adjust any controls.
- 2.19 Space heaters are not allowed in 375 Beale Street.
- 2.20 The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Unit Owner who, or whose employees or agents, shall have caused it.
- 2.21 No cooking shall be done or permitted by the Unit Owners at 375 Beale Street, except for barbeques as part of special events in Rincon Place, that are approved by the Facility Operator. No gas or electric stove, range tops, toaster ovens and/or hot plates are permitted. Underwriter's Laboratory-approved equipment and microwave ovens may be used in the designated kitchen/pantry areas for heating food and brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, and does not cause odors that are objectionable to the Facility Operator, other Unit Owners or occupants of 375 Beale Street. No open fire flames are permitted including but not limited to chafing dishes or candles.
- 2.22 Refrigerators are not permitted to be used in areas other than a kitchen/pantry area.
- 2.23 Each Unit Owner shall store all its trash and garbage within the interior of 375 Beale Street. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City and County of San Francisco without violation of any law or ordinance governing such disposal. Each Unit Owner shall comply with any recycling programs imposed by applicable laws or Facility Operator. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as the Facility Operator shall designate.
- 2.24 Each Unit Owner shall comply with all safety, fire protection and evacuation procedures and regulations established by the Facility Operator or any governmental agency.
- 2.25 Except for any such materials used or tested in the laboratory designated on the Occupancy Plan, no Unit Owner shall use or keep in 375 Beale Street any kerosene, gasoline or other inflammable or combustible fluid or material or use, keep or permit to be used or kept, any foul or noxious gas or substance in 375 Beale Street, or permit or allow it Unit to be occupied or used in a manner offensive or objectionable to the Facility Operator or other occupants of 375 Beale Street by reason of noise, odors, or vibrations, or interfere in any way with other Unit Owners or occupants of 375 Beale Street or those having business therewith. BAQMD SHALL BE REQUIRED TO PROVIDE INFORMATION ABOUT AND PROCEDURES FOR USE OF ANY SUCH LABORATORY MATERIALS, WHICH PROCEDURES SHALL BE SUBJECT TO THE BOARD'S REASONABLE APPROVAL.
- 2.26 Unit Owners shall provide the Facility Operator with notification of the use or storage of any hazardous materials and chemicals
- 2.27 Smoking is not permitted in the Building or within 25 feet of the building including air intakes and entrances to the Building. Each Unit Owner shall comply with all other non-smoking ordinance adopted by any applicable governmental authority.
- 2.28 The Facility Operator will provide vehicle parking to members of Unit Owner's governing boards to attend public meetings at no charge to the board members. Unit Owners shall park all other vehicles in designated agency parking spaces in accordance to parking plans established by the Board, and consistent with the Declaration. All other visitors and users of the parking facilities will comply with the rules established by the Facility Operator and at rates adopted by BAHA.

2.29 Bicycles of any kind are not permitted in 375 Beale Street at any time except in the designated storage spaces. Each Unit Owner shall comply with the following Rules for the Bicycle Storage and Locker Area (BSL Area).

BIKE STORAGE

- a) Bike racks will be accessible by the Unit Owners and other occupants of 375 Beale Street only.
- b) Users must store bicycles on the provided bicycle racks only. If the rack is full, the user shall inquire of the Facility Operator for the location of alternate bike storage areas.
- c) Users shall not block the entrance to the BSL Area or position bicycles in a manner that will impede others from entering or exiting the BSL Area.
- d) Bicycle owners' locks should be used to secure bikes stored in the BSL Area at all times.
- e) Locks will not be provided.
- f) Bike racks are intended to be used by Users while they are present at 375 Beale Street. Bike racks will be checked nightly by Building Security. If a bicycle is left on the rack for more than three consecutive nights without prior permission from the Facility Operator, the lock will be cut and the bicycle removed by Building Security. Contact Building Security to reclaim your bike.
- g) Users shall report any suspicious activity, vandalism or damage to Building Security immediately.
- h) All Users agree to use the bike racks at their own risk and assume any and all liability.

Any violations of this Rule 2.29 will result in cancellation of bike storage privileges.

LOCKERS

- a) The BSL Area will be accessible by the Unit Owners and other occupants of 375 Beale Street only and on a first come, first serve basis.
- b) The BSL Area may be subject to closure from time to time by the Facility Operator for the purposes of maintenance, repair, renovation or construction.
- c) Locks should be used to secure personal belongings stored in the Locker Areas at all times and removed daily.
- d) Locks will not be provided.
- e) Personal items, including, without limitation, clothes and towels, may not be stored in lockers overnight.
- f) The Locker Areas will be checked nightly by Building Security and any locks remaining on lockers will be cut and contents confiscated for pick up by locker user at a later date.
- g) All Users agree to use the BSL Area at their own risk and assume any and all liability.

Any violations of this Rule 2.29 will result in cancellation of the locker room privileges.

For the safety of all the Unit Owners and personnel of the Facility Operator, the only access permitted to and from the bike racks is via the **Harrison Street entrance/exit**. Bicycles are not permitted on vehicle entrance and exit lanes or the Loading Dock.

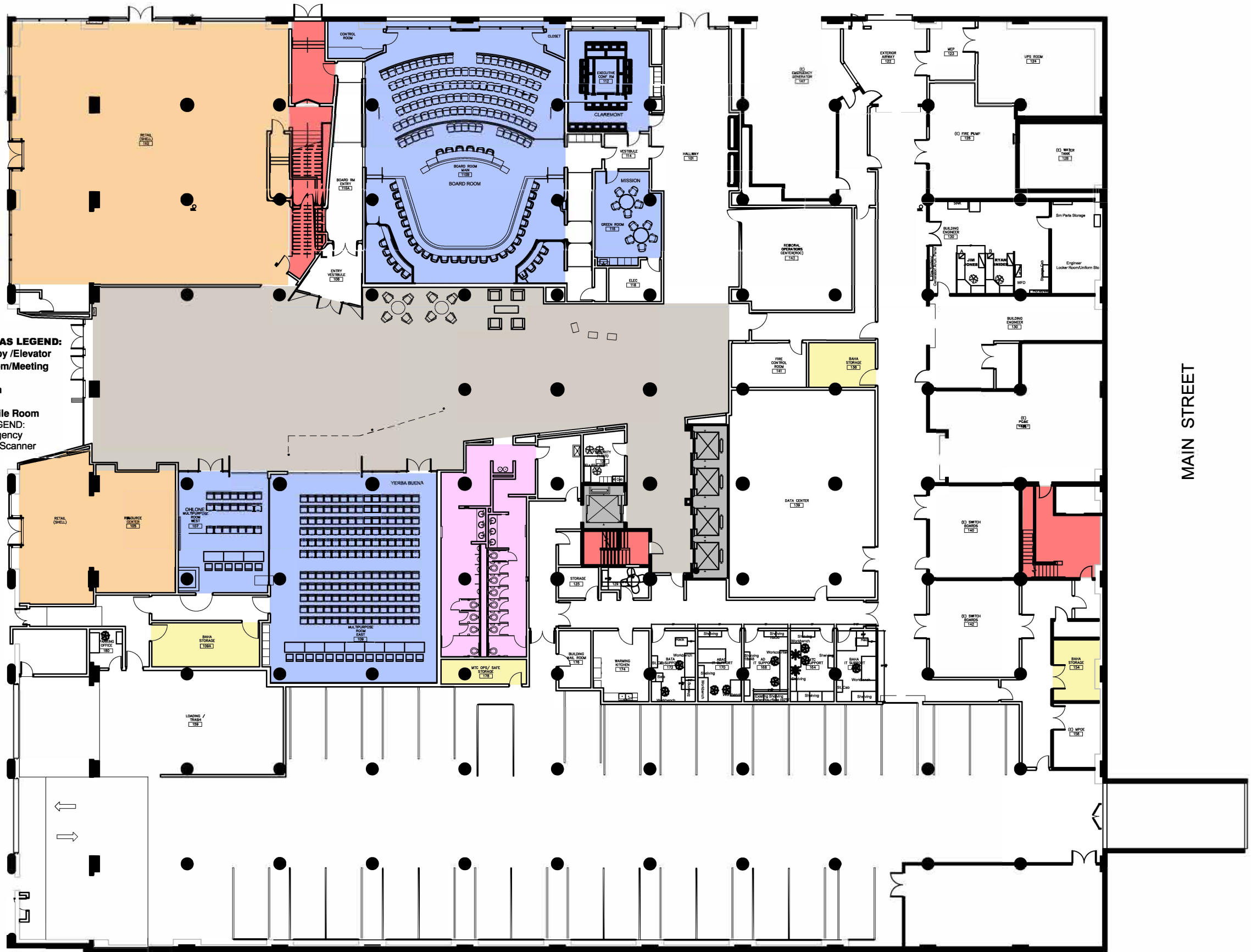
The Facility Operator may add, change or delete any portion of this Rule 2.29 and change the method of operation to ensure maximum enjoyment of the BSL Area.

2.30 The Facility Operator shall have the right to interpret these Rules as necessary or appropriate for the management of 375 Beale Street and the preservation of good order therein.

RINCON PLACE

- COMMON AREAS LEGEND:**
- Entry Lobby / Elevator
 - Board Room/Meeting
 - Retail
 - Rest Room
 - Exit Stair
 - Storage/ File Room
- EQUIPMENT LEGEND:**
- Printer - Agency
 - Copy/Print Scanner

BEALE STREET



MAIN STREET

HARRISON STREET

BAHA
375 Beale St.
San Francisco, CA

REVISIONS:	
1	
2	
3	
4	
5	
6	
7	

relocationconnections inc.
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
1st Floor

Scale: NTS
Date: 12/29/15
By: [Signature]
Project Number: 1

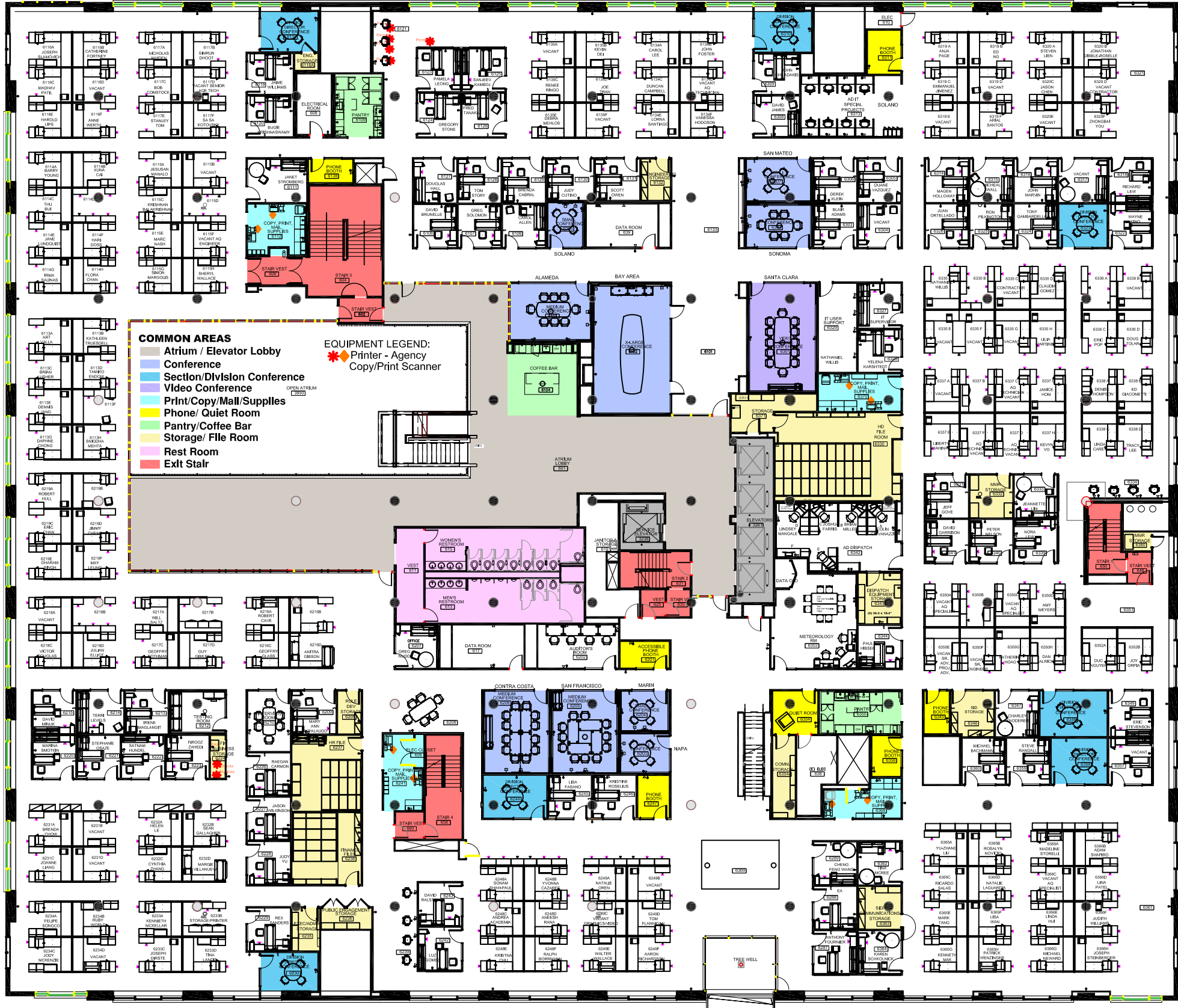
Item 6.C., Declaration of

RINCON PLACE
AIR DISTRICT

BEALE STREET

MAIN STREET

HARRISON STREET



BAHA
375 Beale St
San Francisco, CA

REVISIONS	1	2	3	4	5	6	7

relocationconnections inc
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
6th Floor

Scale: NTS
Date: 01/04/16
By: [Signature]

Item 6.C., Declaration of [Signature]



BEALE STREET



MAIN STREET

MT C



BAHA
375 Beale St
San Francisco, CA

REVISIONS	
1	
2	
3	
4	
5	
6	
7	

relocationconnections inc
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
8th Floor

Scale: NTS
Date: 01/04/16
By: [Signature]

Project Number: 1

Item 6.C., Declaration

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PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the ____ day of _____, 2016, by and between BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("BAHA"), and ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("ABAG"), and Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code §66500 ("MTC"),

WHEREAS, BAHA has divided its building at 375 Beale Street in the City and County of San Francisco into the four separate legal parcels shown on the Condominium Plan recorded in the Official Records of the City and County of San Francisco as Document No. ____ on _____2016 ("Condominium Plan"), a copy of which is attached hereto as Exhibit A-1, and BAHA intends to sell Lot 4 to ABAG;

WHEREAS, BAHA has made the Declaration of Covenants, Conditions and Restrictions for 375 Beale Street. recorded in the Official Records of the City and County of San Francisco as Document No. ____ on _____2016 ("CC&Rs"), a copy of which attached hereto as Exhibit E;

WHEREAS, ABAG owns a condominium unit in the building located at 101 Eighth Street in Oakland and MTC wants to acquire that condominium unit so that MTC can sell its own condominium unit in that building and the ABAG condominium unit to the San Francisco Bay Area Rapid Transit District; and

WHEREAS, ABAG wants to proceed with the proposed transactions described in the foregoing recitals;

IN CONSIDERATION of the respective agreements hereinafter set forth, BAHA, ABAG, and MTC hereby agree as follows:

1. Property. BAHA hereby agrees to sell and convey to ABAG, and ABAG hereby agrees to purchase from BAHA, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

(a) that certain office condominium unit identified as Lot 4 on the Condominium Plan (the "Unit"), together with all rights, privileges, easements and appurtenances to or affecting the Unit set forth in the CC&Rs (collectively, the "Real Property");

(b) all of Seller's right, title and interest in and to the furniture and other personal property installed by Seller in Exhibit C attached hereto (the "Personal Property"); and

(c) all "as-built" plans and specifications and governmental permits and approvals to the extent relating to the use and occupancy of the Unit (the "Intangible Property").

All capitalized terms not otherwise defined herein shall have the meanings set forth in the CC&R's.

2. Purchase Price; Independent Consideration.

(a) Purchase Price and Manner of Payment. The purchase price (the "Purchase Price") to be paid by ABAG for the Property at closing shall be the transfer to MTC of ABAG's condominium ownership interest in its condominium unit ("ABAG Unit") located at 101 Eighth Street, Oakland, California 94607 ("MetroCenter"), as more particularly described in Exhibit A-2, together with all rights, privileges, easements and appurtenances to or affecting the ABAG Unit, including without limitation, the right to use the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit, as such terms are defined in the Declaration of Covenants, Conditions and Restrictions of the Regional Administrative Facility, recorded in the Official Records of Alameda County as Instrument No. 84-254126 (the "MetroCenter CC&R's") (collectively, the "ABAG Real Property"), together with (1) all of ABAG's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer cabling and other equipment installed by ABAG ("ABAG Personal Property") and (2) all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the ABAG Unit ("ABAG Intangible Property" and together with the ABAG Real Property and the ABAG Personal Property, the "ABAG Property"). The Purchase Price shall be paid through recordation of deed and execution of other necessary documents through the escrow established pursuant to Section 9 below.

(b) Independent Consideration. Upon mutual execution of this Agreement, ABAG shall deliver to BAHA in cash the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "Independent Contract Consideration") which amount has been bargained for and agreed to as consideration for ABAG's exclusive option to purchase the Property provided hereunder and for BAHA's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events.

3. BAHA's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, BAHA shall, to the extent BAHA has not already done so, deliver or cause to be delivered to ABAG the following, to the extent in BAHA's actual possession (collectively, the "Due Diligence Materials") at BAHA's sole cost and expense: (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the Property, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the Property (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the Property which BAHA desires ABAG or the 375 Beale Condominium Corporation to assume; and (f) copies of all building occupancy permits, including certificates of occupancy, for the Unit. The Due Diligence Materials are for ABAG's use in connection with ABAG's investigation of the Property. ABAG acknowledges that, except as otherwise provided in Section 11 below, BAHA is not making any

representation or warranty of any kind with respect to the Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by ABAG.

4. ABAG's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, ABAG shall, to the extent ABAG has not already done so, deliver or cause to be delivered to MTC the following, to the extent in ABAG's actual possession (collectively, the "ABAG Due Diligence Materials"): (a) a current preliminary title report prepared by Title Company with respect to the ABAG Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "ABAG Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the ABAG Unit or the real property on which it is located (the "ABAG Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the ABAG Unit and the MetroCenter, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the ABAG Unit and the MetroCenter (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the ABAG Unit and the MetroCenter which ABAG desires BAHA to assume; (f) copies of all building occupancy permits, including certificates of occupancy, for the ABAG Unit and the MetroCenter, and (g) copies of all documents relating to ABAG's compliance with the provisions of section 9.08 of the MetroCenter CC&R's. The ABAG Due Diligence Materials are for MTC's use in connection with MTC's investigation of the ABAG Unit and the MetroCenter. BAHA and MTC acknowledge that, except as otherwise provided in Section 12 below, ABAG is not making any representation or warranty of any kind with respect to the ABAG Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by BAHA and MTC.

5. ABAG's Review and BAHA's Disclaimer.

(a) Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by ABAG, MTC, and BAHA or (ii) the date on which BAHA has delivered the Due Diligence Materials to ABAG.

(b) Physical Inspection. ABAG hereby acknowledges that it currently occupies a portion of the Unit pursuant to the terms of the Office Lease, dated May 19, 2016 and has had a reasonable opportunity to observe and inspect the physical condition of the Unit and some portions of the building of which it is part.

(c) Title. ABAG shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by ABAG in writing within the applicable review period shall be deemed approved and shall be referred to as "Permitted Exceptions." In the event that ABAG notifies BAHA in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("Objections"), BAHA shall have the right, but not the obligation, to cure any of the Objections by removing or causing the Title Company to insure over such Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed if necessary. If BAHA is unable to cure any Objections within said

thirty (30) day period, or if BAHA gives ABAG written notice at anytime during said thirty (30) day period stating that BAHA declines to attempt to cure any of the Objections, then ABAG will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from BAHA, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the Objections (and the ABAG's Condition Precedent described in Section 7(b) of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, BAHA shall be obligated to remove from title on or before Closing any monetary liens affecting the Property (other than monetary liens resulting from ABAG's acts).

(d) As-Is Sale. Except as otherwise expressly set forth in Section 11 and Section 17 of this Agreement and any of the documents delivered by BAHA at Closing, neither BAHA nor its directors, officers, employees, agents, representatives or attorneys (collectively, the "BAHA Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to ABAG including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the Property for ABAG's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the Due Diligence Materials, or as to any other past, present or future matter whatsoever. ABAG acknowledges and agrees that it has satisfied itself regarding the condition of the Property and the foregoing matters, and, except as otherwise provided in this Section 5(d), that the Property will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that ABAG assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

(e) ABAG's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by BAHA at Closing, ABAG, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges BAHA, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which ABAG has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. ABAG hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

ABAG hereby specifically acknowledges that ABAG has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

ABAG Initials

6. MTC's Review and ABAG's Disclaimer.

(a) Inspection Period. As used herein, the term "ABAG Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by BAHA, MTC and ABAG or (ii) the date on which ABAG has delivered the ABAG Due Diligence Materials to MTC.

(b) Physical Inspection. MTC hereby covenants that it will observe and inspect the physical condition of the ABAG Unit, the MetroCenter of which it is a part, including without limitation the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit (as such terms are defined in the MetroCenter CC&R's). Further, MTC agrees to the selection and the installation of the ABAG Personal Property in the ABAG Unit.

(c) Title. MTC shall complete its review of the ABAG Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by MTC in writing within the applicable review period shall be deemed approved and shall be referred to as "ABAG Permitted Exceptions." In the event that MTC notifies ABAG in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("ABAG Objections"), ABAG shall have the right, but not the obligation, to cure any of the ABAG Objections by removing or causing the Title Company to insure over such ABAG Objections within thirty (30) days after receipt of the ABAG Objections, during which period the Closing will be postponed if necessary. If ABAG is unable to cure any ABAG Objections within said thirty (30) day period, or if ABAG gives MTC written notice at anytime during said thirty (30) day period stating that ABAG declines to attempt to cure any of the ABAG Objections, then MTC will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from ABAG, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the ABAG Objections (and MTC's Condition Precedent described in Section 8(d) of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, ABAG shall be obligated to remove from title on or before Closing any monetary liens affecting the ABAG Unit (other than monetary liens resulting from MTC's acts).

(d) As-Is Sale. Except as otherwise expressly set forth in Section 10 and Section 17 of this Agreement and any of the documents delivered by ABAG at Closing, neither ABAG nor its members, directors, officers, employees, agents, representatives or attorneys (collectively, the "ABAG Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to MTC including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the ABAG Unit for MTC's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the ABAG Unit, the condition of title thereto, the truth, accuracy or completeness of the ABAG Due Diligence Materials, or as to any other past, present or future matter whatsoever. MTC acknowledges and agrees that it has satisfied itself regarding the condition of the ABAG Unit and the foregoing matters, and, except as otherwise provided in this Section 6(d), that the ABAG Unit will be purchased in its "AS IS" condition and

"WITH ALL FAULTS" on the Closing Date and that MTC assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

(e) MTC's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by ABAG at Closing, MTC, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges ABAG, its members, agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which MTC has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. MTC hereby specifically waives the provisions of Section 1542 and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

MTC hereby specifically acknowledges that MTC has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

MTC Initials

(f) MetroCenter Right of First Refusal. BAHA, MTC and ABAG acknowledge that the transaction contemplated under this Agreement is subject to rights of first refusal (MetroCenter RoFR) as set forth in section 9.08 of the MetroCenter CC&Rs, and BAHA, MTC and ABAG agree that compliance with the MetroCenter RoFR has been completed.

7. ABAG's Conditions Precedent to Closing. The following are conditions precedent to ABAG's obligation to purchase the Property (the "ABAG's Conditions Precedent"). ABAG's Conditions Precedent are intended solely for the benefit of ABAG and may be waived only by ABAG in writing. In the event any ABAG's Condition Precedent is not satisfied, ABAG may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Property Condition. ABAG's inspection, review and approval, prior to expiration of the Inspection Period, of the Due Diligence Materials, including, without limitation, the Preliminary Report and the Environmental Documents, which approval shall be deemed given unless ABAG shall give written notice of disapproval prior to the expiration of the Inspection Period;

(b) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to ABAG upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined to equal the fair market value of

the ABAG Unit, as reflected in an independent appraisal of a certified commercial real property appraiser jointly selected by BAHA and Purchaser), insuring fee simple title to the Property in ABAG, subject only to the Permitted Exceptions and such other exceptions as ABAG shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "Title Policy").

(c) Performance by BAHA and MTC. BAHA and MTC shall have complied, in all material respects, with all of their respective duties and obligations contained in this Agreement and all of their respective representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

8. BAHA's and MTC's Conditions Precedent to Closing. The following are conditions precedent to BAHA's obligation to sell the Property and MTC's obligation to acquire the ABAG Property ("BAHA's and MTC's Conditions Precedent"). BAHA's and MTC's Conditions Precedent are intended solely for the benefit of BAHA and MTC and may be waived only by BAHA and MTC in writing. In the event any BAHA's and MTC's Condition Precedent is not satisfied, BAHA and MTC may, in their joint and absolute discretion and without limiting any of their other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Property Condition. MTC's inspection, review and approval, prior to expiration of the ABAG Inspection Period, of the ABAG Due Diligence Materials, including, without limitation, the ABAG Preliminary Report and the ABAG Environmental Documents, which approval shall be deemed given unless MTC shall give written notice of disapproval prior to the expiration of the ABAG Inspection Period;

(b) Recordation of Grant Deed for ABAG Real Property. One or more grant deeds showing the ownership of the ABAG Real Property as transferred to MTC.

(c) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to MTC (or its assignee) upon the Closing an ALTA owner's policy of title insurance (2006) in an amount mutually agreed to by ABAG and MTC (which shall be determined by reference to recent appraisals for the ABAG Real Property), insuring fee simple title to the ABAG Real Property in MTC (or its assignee), subject only to the ABAG Permitted Exceptions and such other exceptions as MTC shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the ABAG Inspection Period (the "ABAG Unit Title Policy").

(d) Performance by ABAG. ABAG shall have complied, in all material respects, with all of ABAG's duties and obligations contained in this Agreement and all of ABAG's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

9. Escrow; Closing.

(a) Escrow. Upon mutual execution of this Agreement, the parties hereto shall deposit a fully executed copy of this Agreement with First American Title Insurance Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, California 94596; Escrow Officer: Kitty Schlesinger) (hereinafter "Title Company" or "Escrow Holder") and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchases contemplated hereby. BAHA, MTC, and ABAG shall execute such supplemental escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by ABAG and/or BAHA and/or MTC, the terms of this Agreement shall control.

(b) Closing. The parties intend for the consummation of the sale of the Property as provided hereunder (the "Closing") to take place through escrow on such date as may be agreed to by ABAG, MTC, and BAHA (the "Closing Date").

(c) BAHA's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, BAHA (or its assignee) shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-1 (the "375 Beale Street Deed");

(ii) Bill of Sale. Two (2) duly executed counterpart originals of two separate bills of sale with respect to the Personal Property and the ABAG Personal Property, respectively, in the form attached to this Agreement as Exhibit C (the "Bills of Sale");

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of two separate assignments and assumption of intangible property in the form attached to this Agreement as Exhibit D (the "Assignments");

(iv) Certificate. A duly executed Certificate of BAHA and MTC confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 11, except as otherwise may be set forth in the Certificate;

(v) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required);

(vi) Closing Costs. Immediately available funds in the amount of BAHA's share of Closing Costs; and.

(vii) Interagency Agreement. The duly executed and acknowledged Interagency Agreement between MTC and BAHA dated April 22, 2016 (the "Interagency Agreement").

(d) ABAG's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, ABAG shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-2 (the "MetroCenter Deed" and together with the 375 Beale Street Deed, the "Deeds")

(ii) Bill of Sale. Two (2) duly executed counterpart originals of each of the separate Bills of Sale;

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of each of the separate Assignments;

(iv) ABAG's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 12, except as otherwise may be set forth in the Certificate.

(v) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required); and

(vi) Closing Costs. Immediately available funds in the amount of the ABAG's share of Closing Costs.

(e) Additional Closing Documents. BAHA, MTC, and ABAG shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

10. Closing Costs and Prorations. BAHA, MTC and ABAG agree to the following prorations and allocation of costs ("Closing Costs") regarding this Agreement:

(a) Real Estate Taxes Assessments. ABAG, MTC, and BAHA are each governmental entities and are not subject to real property taxes. In the event there are any assessments which attach to governmentally owned real property, such assessments shall be prorated and adjusted between BAHA and ABAG as of the Closing Date so that (1) with respect to the Property, BAHA shall pay, or give ABAG credit for, any such assessments that accrued on or prior to the Closing Date and ABAG shall pay, or assume, any such assessments that accrue after the Closing Date, and (2) with respect to the ABAG Property, ABAG shall pay, or give MTC credit for, any such assessments that accrued on or prior to the Closing Date and MTC shall pay, or assume, any such assessments that accrue after the Closing Date. The obligations of ABAG, MTC, and BAHA set forth in this Section 10(a) shall survive the Closing.

(b) Property Expenses. There shall be no proration at Closing of utilities and common area assessments for the Property or the ABAG Property. These expenses shall be paid by ABAG and MTC, respectively, after Closing.

(c) Title Insurance and Escrow Fee. BAHA shall pay the premium attributable to the Title Policy and the ABAG Title Policy and any reasonable and customary escrow fee or charge imposed by Escrow Holder.

(d) Recording Costs. BAHA shall pay the cost of recording the Deeds and all other documents, if any, recorded pursuant to the terms of this Agreement.

(e) Transfer Taxes. No governmental documentary transfer or transaction taxes or fees shall be payable in connection with this transaction because MTC, ABAG and BAHA are exempt governmental entities.

The provisions of this Section 10 shall survive the Closing.

11. Representations and Warranties of BAHA and Metropolitan Transportation Commission ("MTC"). BAHA hereby represents and warrants to ABAG as follows:

(a) Power and Authority. BAHA has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (iii) to complete the transactions contemplated by this Agreement. BAHA has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (B) the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing, and (C) the completion of the transactions contemplated by this Agreement, including but not limited to, any assignment of its rights under this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing have been duly executed and delivered by BAHA and constitute valid and binding obligations of BAHA.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing and the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and the completion of the transactions contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which BAHA is party or by which BAHA is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to BAHA or any judgment, order or decree of any court or governmental authority that is binding on BAHA.

(d) BAHA's Investigation. BAHA has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the ABAG Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in BAHA's judgment bear upon the value and suitability of the ABAG Property for BAHA's purposes. BAHA acknowledges that, except as otherwise provided herein, ABAG has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the ABAG Property, and BAHA is relying solely on BAHA's own inspection and examination of such items and not on any representation of ABAG.

(e) Ownership. BAHA has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the Property.

(f) Actions. To BAHA's knowledge, (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the Property, (ii) there are no special assessment proceedings affecting the Property, (iii) there is no litigation pending or threatened in writing against BAHA arising out of the ownership or operation of the Property or that might detrimentally affect the Property or the ability of BAHA to perform its obligations under this Agreement. BAHA shall notify ABAG promptly of any such proceedings or litigation of which BAHA becomes aware, and (iv) BAHA has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

(g) Contracts for Improvements and Other Encumbrances. To BAHA's knowledge, other than possible construction contract retentions for which funds have been reserved by BAHA or contracts related to 375 Beale Street generally that will not be assumed by ABAG at closing, at the time of Closing there will be no outstanding written or oral contracts made by BAHA for any improvements to the Property which have not been fully paid for and, except as set forth in the Preliminary Report, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which were not disclosed in writing to ABAG prior to the date of this Agreement.

(h) Hazardous Materials. To BAHA's knowledge and except as set forth in the Due Diligence Materials, there has been no release, storage, treatment, generation or disposal of Hazardous Materials by BAHA, or any other party during BAHA's ownership of the Property, on, under or from the Property in violation of any applicable laws, ordinances or regulations. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

(i) MTC Representation. MTC hereby represents and warrants to ABAG re the following: (1) Power and Authority. MTC has the power and authority (i) to enter into the Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing, (ii) to perform its obligations under the Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing and (iii) to complete the transactions contemplated by the Interagency Agreement. MTC has taken all governmental action necessary to authorize (A) the execution and delivery of the Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing, (B) the performance by MTC of its obligations under the Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing, and (C) the completion of the

transactions contemplated by the Interagency Agreement. (2) Binding and Enforceable. The Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing have been duly executed and delivered by MTC and constitute valid and binding obligations of MTC. (3) No Conflict. The execution and delivery of the Interagency Agreement and any documents to be executed and delivered by MTC to ABAG at the Closing and the performance by MTC of its obligations under the Interagency Agreement and under any documents to be executed and delivered by MTC to ABAG at the Closing and the completion of the transactions contemplated by the Interagency Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which MTC is party or by which MTC is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to MTC or any judgment, order or decree of any court or governmental authority that is binding on MTC.

12. Representations and Warranties of ABAG. ABAG hereby represents and warrants to BAHA and MTC as follows:

(a) Power and Authority. ABAG has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing and (iii) to complete the transaction contemplated by this Agreement. ABAG has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing, (B) the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing and (C) the completion of the transaction contemplated by this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing have been duly executed and delivered by ABAG and constitute valid and binding obligations of ABAG.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing and the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA or MTC at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which ABAG is party or by which ABAG is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to ABAG or any judgment, order or decree of any court or governmental authority that is binding on ABAG.

(d) ABAG's Investigation. ABAG has or, prior to the expiration of the Due Diligence Period, will have examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in ABAG's judgment bear upon the value and suitability of the Property for ABAG's purposes. ABAG acknowledges that, except as otherwise provided herein, BAHA has not made any representation

of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the Property, and ABAG is relying solely on ABAG's own inspection and examination of such items and not on any representation of BAHA.

(e) Ownership. Except for the MetroCenter RoFR, ABAG has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the ABAG Property.

(f) Actions. To ABAG's knowledge (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the ABAG Property, (ii) there are no special assessment proceedings affecting the ABAG Property, (iii) there is no litigation pending or threatened in writing against ABAG arising out of the ownership or operation of the ABAG Property or that might detrimentally affect the ABAG Property or the ability of ABAG to perform its obligations under this Agreement. ABAG shall notify BAHA promptly of any such proceedings or litigation of which ABAG becomes aware, and (iv) ABAG has received no written notice from any governmental entity that the ABAG Property is in violation of any applicable laws, ordinances or regulations.

(g) Contracts for Improvements and Other Encumbrances. To ABAG's knowledge, at the time of Closing there will be no outstanding written or oral contracts made by ABAG for any improvements to the ABAG Property that have not been fully paid for and, except as set forth in the preliminary title report pertaining to the ABAG Property, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the ABAG Property and which were not disclosed in writing to MTC prior to the date of this Agreement.

(h) Hazardous Materials. To ABAG's knowledge there has been no release, storage, treatment, generation or disposal of Hazardous Materials by ABAG, or any other party during ABAG's ownership of the ABAG Property, on, under or from the ABAG Property in violation of any applicable laws, ordinances or regulations.

13. Survival. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and shall survive the execution and delivery of this Agreement, the 375 Beale Street Deed, the MetroCenter Deed and the Closing, provided that the representations and warranties set forth in Sections 11(d) through 11(h) and 12(d) through 12(h) shall survive the Closing only for a period of nine (9) months following the Closing Date and, if no claim is made in writing within such period, shall expire and be of no further force and effect.

14. Casualty or Condemnation.

(a) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000), then ABAG shall have the right to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG

has received written notice from BAHA of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(b) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing where (i) the cost to repair and/or restore such damage and/or destruction does not exceed Fifty Million Dollars (\$50,000,000), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000) but this Agreement is not terminated pursuant to Section 14(a) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such damage; provided, however, that BAHA shall be obligated, at its cost, to restore or repair the Unit to its prior condition and shall retain its interest in all insurance proceeds payable in connection with such damage or destruction. BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

(c) In the event a governmental entity commences eminent domain proceedings (or threatens in writing to commence such proceedings) to take any portion of the Unit, or the ABAG Unit, or any other portion of the building in which either is located which would impair ABAG's use of the Unit, or MTC's (or its assignees) use of the ABAG Unit, respectively, after the date hereof and prior to the Closing, then (1) with respect to the Unit, ABAG shall have the option to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such commencement or threatened commencement, and (2) with respect to the ABAG Unit, MTC shall have the option to terminate this Agreement by written notice to ABAG within five (5) business days after MTC has received written notice from ABAG of the occurrence of such commencement or threatened commencement. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(d) In the event a governmental entity commences any such eminent domain proceedings after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 14(c) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that (1) with respect to the Unit, BAHA's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the Unit shall be assigned to ABAG as of the Closing or credited to ABAG if previously received by BAHA and (2) with respect to the ABAG Unit, ABAG's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the ABAG Unit shall be assigned to MTC (or its assignee) as of the Closing or credited to MTC (or its assignee) if previously received by ABAG. ABAG's, MTC's and BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

15. Covenants.

(a) BAHA Covenant.

(i) Continued Operation of the Property. Between BAHA's execution of this Agreement and the Closing, BAHA shall cause the Property to be operated and maintained in substantially the condition existing upon the date of this Agreement.

(b) ABAG Covenant. Between ABAG's execution of this Agreement and the Closing, ABAG shall cause the ABAG Unit to be operated and maintained in substantially the condition existing upon the date of this Agreement, provided that ABAG may vacate the ABAG Unit. Prior to the Closing, ABAG may not materially alter the ABAG Unit in any way without MTC's prior written authorization.

16. Brokers. Each party hereby agrees to indemnify, protect and defend the other (by counsel reasonably acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a real estate commission, finder's fee or other real estate brokerage-type compensation by any person or entity based upon the acts of that party with respect to the transaction contemplated by this Agreement. The obligations of ABAG, MTC, and BAHA under this Section 16 shall survive the Closing.

17. Hazardous Materials Indemnity.

(a) BAHA Indemnity. BAHA shall indemnify, defend and hold harmless ABAG from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by BAHA or any of its employees, agents or contractors of Hazardous Materials on, under or from the Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the Unit, any cost of repair of the Unit necessitated by the remediation or removal of Hazardous Materials from the Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the Unit. The indemnification obligations set forth in this Section 17 shall survive the Closing. BAHA expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

(b) ABAG Indemnity. ABAG shall indemnify, defend and hold harmless MTC (or its assignee) from any ABAG Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by ABAG or any of its employees, agents or contractors of Hazardous Materials on, under or from the ABAG Unit occurring prior to the Closing. As used in this subparagraph the term "ABAG Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the ABAG Unit, any cost of repair of the ABAG Unit necessitated by the remediation or removal of Hazardous Materials from the ABAG Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the

ABAG Unit. The indemnification obligations set forth in this Section 17 shall survive the Closing. ABAG expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

18. Miscellaneous.

(a) Notices. Any and all notices, elections, approvals, consents, demands, requests and responses ("Notice") permitted or required to be given under this Agreement shall be given in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section 18(a). Any Notice shall be effective upon receipt but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Notices sent by telecopy shall be effective only if also sent by nationally recognized express overnight courier service for delivery within two (2) business days.

If to ABAG:

Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA 94105

Attn: _____

Tel: _____

Fax: _____

With a copy to:

Attn: _____

Tel: _____

Fax: _____

If to BAHA or MTC:

Metropolitan Transportation Commission
Bay Area Headquarters Authority
375 Beale Street, Suite 800_____
San Francisco, CA 94105

Attn: Executive Director

Tel: _____

Fax: _____

with a copy to:

Attn: _____
Tel: _____
Fax: _____

If to Escrow Holder:

First American Title Insurance Company
1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, California 94596
Attn: Kitty Schlesinger
Tel: 925-927-2154
Fax: 925-927-2180

(b) Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon the successors and assigns of BAHA, MTC, and ABAG. The parties acknowledge that the right to purchase the Property pursuant to the terms of this Agreement is personal to ABAG or any successor governmental agency performing the same functions, and, except as provided in this Agreement, neither ABAG's nor MTC's or BAHA's rights hereunder may be otherwise assigned without the prior written consent of BAHA or MTC or ABAG, respectively, which may be withheld in BAHA's or MTC's or ABAG's, respectively, sole discretion. Any assignment in violation of this Section 18(b) shall be void.

(c) Attorneys' Fees. In the event of any litigation or other proceeding to enforce the provisions of this Agreement or to resolve any dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other proceeding shall be entitled to, in addition to any other damages assessed, its or his reasonable attorneys' fees and all other costs and expenses incurred in connection with such litigation or other proceeding.

(d) Amendments. This Agreement may be amended or modified only by a written instrument executed by BAHA, MTC and ABAG.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Schedules and Exhibits. Each of the schedules and exhibits attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

(g) Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including, without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

(h) Captions. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

(i) Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

(j) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: Executive Director

Approved as to form:

Legal Counsel

By: _____
Name: _____
Its: Treasurer-Auditor

Approved as to form:

General Counsel

METROPOLITAN TRANSPORTATION COMMISSION

By: _____
Name: _____
Its: Executive Director

By: _____
Name: _____
Its: Treasurer-Auditor

Approved as to form:

General Counsel

EXHIBIT A-1
CONDOMINIUM PLAN

EXHIBIT A-2

LEGAL DESCRIPTION OF ABAG REAL PROPERTY

EXHIBIT B-1

FORM OF 375 BEALE STREET DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

Pursuant to Section 27383 of the Government Code, no recording fee is due.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantor"), hereby grants, transfers and assigns to ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority ("Grantee"), that certain real property located in the City and County of San Francisco, State of California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

BAY AREA HEADQUARTERS AUTHORITY, a
joint powers authority established pursuant to the
California Joint Exercise of Powers Act

By: _____
Name: _____
Its: _____

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

STATE OF _____)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

EXHIBIT B-2

FORM OF METROCENTER DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

Pursuant to Section 27383 of the Government Code, no recording fee is due.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority ("Grantor"), hereby grants, transfers and assigns to METROPOLITAN TRANSPORTATION COMMISSION, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantee"), that certain real property located in the City and County of Alameda, California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

ASSOCIATION OF BAY AREA
GOVERNMENTS, a regional planning agency

By: _____

Name: _____

Its: _____

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

STATE OF _____)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

EXHIBIT C

FORM OF BILL OF SALE

[to be conformed to sale of each of the Unit and the ABAG Unit]

This BILL OF SALE is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Seller") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Buyer").

WHEREAS, Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller an office condominium unit located at 375 Beale Street, Suite ____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement.

WHEREAS, pursuant to the Agreement, Seller is to convey to Buyer certain furniture and other personal property (collectively, the "Personal Property") listed in the attachment hereto.

NOW, THEREFORE, in consideration of Buyer entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby:

1. sells, transfers, conveys and assigns all of Seller's right, title and interest in and to the Personal Property, to have and to hold the Personal Property unto the Buyer and its successors and assigns forever, and
2. agrees to cooperate with Buyer to enforce any warranties pertaining to the Personal Property.

EXCEPT FOR ANY EXPRESS REPRESENTATIONS OR WARRANTIES SET FORTH IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE ABOVE-DESCRIBED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ENVIRONMENTAL CONDITION, AND BUYER ACCEPTS THE ABOVE-DESCRIBED PROPERTY IN AN "AS IS - WHERE IS" CONDITION, WITH ALL FAULTS.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first written above.

BUYER:

SELLER:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT D

FORM OF ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY [AND CONTRACTS]

[to be conformed to sale of each of the Unit and the ABAG Unit]

This ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PERSONAL PROPERTY [AND CONTRACTS] (this "Assignment") is made and entered into to be effective as of the ____ day of _____, 20____, by and between BAY AREA HEADQUARTERS AUTHORITY ("Assignor") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20____ (the "Agreement"), pursuant to which Assignor agreed to sell to Assignee and Assignee agreed to purchase from Assignor an office condominium unit located at 375 Beale Street, Suite _____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement (the "Real Property"). Capitalized terms used but not defined herein shall have the meaning given such terms in the Agreement.

WHEREAS, pursuant to the Agreement, Assignor is to convey to Assignee certain Intangible Property relating to the Real Property.

[WHEREAS, pursuant to the Agreement, Assignor is to assign its interest in certain service agreements, maintenance agreements and other contracts relating to the Real Property which agreements and contracts are listed in Schedule 1 attached hereto (collectively, the "Contracts").]

NOW, THEREFORE, in consideration of Assignee entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee and Assignor hereby agree as follows:

1. Intangible Property. Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Intangible Property.

2. Contracts. **[TO BE DELETED IF NO CONTRACTS]**

(a) Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Contracts. Assignor agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Contracts to be performed prior to the date hereof.

(b) Assignee shall perform or cause to be performed Assignors' obligations, if any, under the Contracts from and after the date of this Assignment, and agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignor relating to obligations with respect to the Contracts to be performed after the date hereof. Assignors agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Leases and Contracts to be performed before the date hereof.

3. Further Actions. Each of Assignor and Assignee hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to the other, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which the other, its successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its successors and/or assigns, to realize upon or otherwise enjoy any such assets, or to effect the allocation of responsibility for performance under the Contracts.

4. Miscellaneous. The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and assigns. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Intangible Property [and Contracts] as of the date first written above.

ASSIGNEE:

ASSIGNOR:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Schedule 1 to Assignment

List of Contracts

[to be attached]

EXHIBIT E

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

375 BEALE STREET

375 BEALE STREET

OFFICE LEASE

BAY AREA HEADQUARTERS AUTHORITY

as Landlord,

and

ASSOCIATION OF BAY AREA GOVERNMENTS

as Tenant

TABLE OF CONTENTS

Page(s)

OFFICE LEASE

SUMMARY OF BASIC LEASE INFORMATION	i
ARTICLE 1 BUILDING AND PREMISES	1
ARTICLE 2 LEASE TERM	2
ARTICLE 3 NO BASE RENT	2
ARTICLE 4 ADDITIONAL RENT	2
ARTICLE 5 USE OF PREMISES	4
ARTICLE 6 SERVICES AND UTILITIES	4
ARTICLE 7 REPAIRS	6
ARTICLE 8 ADDITIONS AND ALTERATIONS	7
ARTICLE 9 COVENANT AGAINST LIENS	8
ARTICLE 10 INDEMNIFICATION AND INSURANCE	8
ARTICLE 11 DAMAGE AND DESTRUCTION	10
ARTICLE 12 CONDEMNATION	11
ARTICLE 13 COVENANT OF QUIET ENJOYMENT	12
ARTICLE 14 NO ASSIGNMENT OR SUBLETTING	12
ARTICLE 15 SURRENDER, OWNERSHIP AND REMOVAL OF TRADE FIXTURES	12
ARTICLE 16 HOLDING OVER	13
ARTICLE 17 ESTOPPEL CERTIFICATES	13
ARTICLE 18 SUBORDINATION	14
ARTICLE 19 TENANT'S DEFAULTS; LANDLORD'S REMEDIES	14
ARTICLE 20 COMPLIANCE WITH LAW	17
ARTICLE 21 ENTRY BY LANDLORD	17
ARTICLE 22 TENANT PARKING	17
ARTICLE 23 OPTION TO PURCHASE PREMISES	18
ARTICLE 24 MISCELLANEOUS PROVISIONS	18

EXHIBITS

A	OUTLINE OF PREMISES
A-1	LEGAL DESCRIPTION OF REAL PROPERTY
B	COMMON EXPENSES DEFINITION
C	RESERVED
D	RULES AND REGULATIONS
E	FORM OF PURCHASE AND SALE AGREEMENT

SUMMARY OF BASIC LEASE INFORMATION

This Summary of Basic Lease Information ("**Summary**") is hereby incorporated into and made a part of the attached Office Lease. Each reference in the Office Lease to any term of this Summary shall have the meaning as set forth in this Summary for such term. In the event of a conflict between the terms of this Summary and the Office Lease, the terms of the Office Lease shall prevail. Any capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Office Lease.

TERMS OF LEASE

(References are to the Office Lease)

DESCRIPTION

- | | |
|---|---|
| 1. Effective Date: | May 19, 2016 |
| 2. Landlord: | BAY AREA HEADQUARTERS
AUTHORITY , a joint powers authority
established pursuant to the California Joint
Exercise of Powers Act |
| 3. Address of Landlord
(<u>Section 24.16</u>): | Bay Area Headquarters Authority
101 8 th Street
Oakland, CA 94607
Attn: Executive Director
(Prior to Lease Commencement Date)

and

Bay Area Headquarters Authority
375 Beale Street, Suite 800
San Francisco, California 94105
Attn: Attn: Executive Director
(After Lease Commencement Date) |
| 4. Tenant: | ASSOCIATION OF BAY AREA
GOVERNMENTS ,
a joint powers authority established pursuant
to the California Joint Exercise of Powers Act |
| 5. Address of Tenant
(<u>Section 24.16</u>): | Association of Bay Area Governments
101 8 th Street
Oakland, CA 94607
Attn: Executive Director
(Prior to Lease Commencement Date) |

TERMS OF LEASE

(References are to the Office Lease)

DESCRIPTION

and

Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, California 94105
Attn: Executive Director
(After Lease Commencement Date)

6. Premises (Article 1):

6.1 Premises:

Approximately 14,400 rentable square feet of office space located on the seventh floor, and approximately 2,000 rentable square feet of office space located on the eighth floor, of the Building (as defined below), as shown in Exhibit A.

6.2 Building:

The Premises are located in the "Building" whose address is 375 Beale Street, San Francisco, CA 94105, which Building is divided into "Agency Space" (including the Premises) and "Commercial Space".

7. Term (Article 2).

7.1 Lease Term:

Two (2) years.

7.2 Lease Commencement Date

May 23, 2016

7.3 Lease Expiration Date:

The earliest to occur of: (a) May 31, 2018, (b) the date of Tenant's purchase of a condominium unit pursuant to Article 23, or (c) the date when Tenant has failed to consummate a condominium unit pursuant to Article 23 within ninety (90) days after all conditions precedent to such purchase that are within Landlord's control have been met or waived.

7.4 Amendment to Lease:

Landlord and Tenant may modify the Lease Commencement Date and Lease Expiration Date in an amendment to Lease.

8. Reserved

TERMS OF LEASE

(References are to the Office Lease)

DESCRIPTION

9. Tenant's Share
(Article 4):

The percentage which the usable square feet within the Premises bears to the total usable square feet within the Agency Space or, with respect to Jointly Used Space Expenses, such percentage as adjusted for usage; provided, however, that Tenant's Share of Common Area Expenses shall not exceed \$314,000 per year, adjusted annually for inflation, commencing with the Lease Commencement Date, as measured by the CPI for San Francisco – Oakland – All Urban Consumers; provided that this cap shall be applied on a prorated basis for Common Area Expenses collected for less than a one-year period. (See Article 4 of the Office Lease).

10. Parking (Article 22):

Parking for Tenant's Board members in attendance at its public meetings and the number of passenger car parking spaces for daily use determined in accordance with Article 22.

OFFICE LEASE

This Office Lease, which includes the preceding Summary and the exhibits attached hereto and incorporated herein by this reference (the Office Lease, Summary and the exhibits to be known sometimes collectively hereafter as the "Lease"), dated as of the date set forth in Section 1 of the Summary, is made by and between the BAY AREA HEADQUARTERS AUTHORITY ("Landlord"), and the ASSOCIATION OF BAY AREA GOVERNMENTS ("Tenant").

ARTICLE 1

BUILDING AND PREMISES

1.1 Building and Premises. Upon and subject to the terms, covenants and conditions hereinafter set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 6.1 of the Summary (the "Premises"), which Premises are located within the Agency Space in the Building, each as defined in Section 6.2 of the Summary, situated on the Real Property more particularly described on Exhibit A-1 attached hereto (the "Real Property"). The outline of the floor plan of the Premises is set forth in Exhibit A attached hereto. The Premises shall be inclusive of the furnishings and telephone and computer systems installed in the Premises as of the Commencement Date and shall also include the right to use, in common with other occupants of the Agency Space, the library, meeting rooms, mail room, server rooms and other areas of the Agency Space designated as "Jointly Used Space" and the common entry, corridors, hallways, stairwells, elevators, restrooms and other areas designated as "Common Area". Use of the Jointly Used Space and the Common Area will be subject to the Rules and Regulations attached hereto as Exhibit D and such other rules and regulations as Landlord shall promulgate from time to time, which rules and regulations shall be applied equally to all occupants of the Agency Space.

1.2 Condition of Premises. Except as expressly set forth in this Lease or in the Purchase and Sale Agreement, if any, executed by Landlord and Tenant pursuant to Article 23, Landlord shall not be obligated to provide or pay for any improvement, remodeling or refurbishment work or services related to the improvement, remodeling or refurbishment of the Premises, and Tenant shall accept the Premises in its "As Is" condition on the Lease Commencement Date. Landlord agrees to cooperate with Tenant to enforce any warranties pertaining to the personal property installed in the Premises as of the Commencement Date.

1.3 Square Footage. If, upon finalization of the condominium map for the Agency Space, the rentable square footage or usable square footage, as applicable, of the condominium unit to be sold to ABAG, as shown on such condominium map, is different than the rentable square footage or usable square footage, as applicable, set forth in Section 6.1 of the Summary, rent that is based on rentable area shall be recalculated in accordance with that determination. On the recalculation of rent as provided in this Section 1.3, the parties shall execute an amendment to this Lease stating the recalculated rent. Execution of that amendment shall not be a condition precedent to the effectiveness of the recalculated rent.

ARTICLE 2

LEASE TERM

The terms and provisions of this Lease shall be effective as of the date of this Lease except for the provisions of this Lease relating to the payment of Rent. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 7.1 of the Summary and shall be measured from the date Tenant commences operations in the Premises (the "**Lease Commencement Date**") as provided in Section 7.2 of the Summary, and shall terminate on the date (the "**Lease Expiration Date**") set forth in Section 7.4 of the Summary, unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term, provided that the last Lease Year shall end on the Lease Expiration Date. Tenant shall use commercially reasonable efforts to commence business operations in the Premises as soon as possible following issuance by the City & County of San Francisco of a certificate of occupancy for the Premises, subject to Tenant's moving date and completion of related activities, all as agreed upon by Tenant and Landlord. If Landlord does not deliver possession of the Premises to Tenant on or before the anticipated Lease Commencement Date (as set forth in Section 7.2 of the Summary), Landlord shall not be subject to any liability nor shall the validity of this Lease nor the obligations of Tenant hereunder be affected, except such obligations of Tenant that are pendent on its occupancy of the Premises. In the event that the Lease Commencement Date is a date which is other than the anticipated Lease Commencement Date set forth in Section 7.2 of the Summary, within a reasonable period of time after the date Tenant takes possession of the Premises Landlord shall deliver to Tenant an amendment to lease setting forth the Lease Commencement Date and the Lease Expiration Date, and Tenant shall execute and return such amendment to Landlord within five (5) days after Tenant's receipt thereof.

ARTICLE 3

NO BASE RENT

3.1 No Base Rent. No base rental shall be payable under this Lease.

ARTICLE 4

ADDITIONAL RENT

4.1 Additional Rent. From and after the Lease Commencement Date, Tenant shall pay as additional rent the "Operating Expenses" (as such term is defined below). Such additional rent, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease (including, without limitation, pursuant to Article 6), shall be hereinafter collectively referred to as the "**Additional Rent**." The Base Rent and Additional Rent are herein collectively referred to as the "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable in equal monthly installments in advance on or before the first day of each and every month during Lease Term, without any setoff or deduction whatsoever. If any rental payment date falls on a day of the month other than the first day of such month or if any rental payment is for a period which is shorter than one month, then the rental for any such fractional month shall be a proportionate amount of a full calendar month's rental based on the proportion that the number of days in such fractional month bears to the number of days in the calendar month during which such fractional month occurs. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time

basis shall be prorated on the same basis. Tenant shall commence paying Additional Rent on the Lease Commencement Date. Without limitation on other obligations of Tenant which shall survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 Definitions. As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "**Calendar Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

4.2.2 "**Expense Year**" shall mean each Calendar Year, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive-month period, and, in the event of any such change, Tenant's Share of Common Area Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.3 "**Operating Expenses**" shall mean Tenant's Share of all "Common Expenses" attributable to the Agency Space as defined in Exhibit B; provided, that the Operating Expenses shall not exceed \$314,000 per year, adjusted annually for inflation, commencing with the Lease Commencement Date, as measured by the CPI for San Francisco – Oakland – All Urban Consumers, provided that this cap shall be applied on a prorated basis for Common Area Expenses collected for less than a one-year period.

4.3 Calculation and Payment of Additional Rent.

4.3.1 Statement of Operating Expenses and Payment by Tenant. Landlord shall endeavor to give to Tenant on or before the first day of the fourth month following the end of each Expense Year, a statement (the "**Statement**") which shall state Tenant's Operating Expenses actually incurred or accrued for such preceding Expense Year. Upon receipt of the Statement for each Expense Year ending during the Lease Term, Tenant shall pay, with its next installment of Additional Rent due, the full amount of the Operating Expenses for such Expense Year, less the amounts paid during such Expense Year as "Tenant's Estimated Share," as that term is defined in Section 4.3.3 below. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this Article 4. Even though the Lease Term has expired, when the final determination is made of Operating Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord the amount of any difference between Tenant's Share and Tenant's Estimated Share. The provisions of this Section 4.3.1 shall survive the expiration or earlier termination of the Lease Term.

4.3.2 Statement of Estimated Expenses. In addition, Landlord shall give Tenant an expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of the total amount of Operating Expenses for the succeeding Expense Year ("**Tenant's Estimated Share**"). Tenant shall pay, as each installment of Additional Rent due for the succeeding Expense Year, one-twelfth of Tenant's Estimated Share set forth in the Estimate Statement.

4.4 Late Charges. 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) business days following the due date therefor, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the amount due. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder, at law and/or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) business days following Tenant's receipt of written notice of delinquency shall thereafter bear interest until paid at a rate (the "Interest Rate") equal to the lesser of (i) the "Prime Rate" or "Reference Rate" announced from time to time by the Bank of America (or such reasonable comparable national banking institution as selected by Landlord in the event Bank of America ceases to exist or publish a Prime Rate or Reference Rate), plus two percent (2%), or (ii) the highest rate permitted by applicable law.

ARTICLE 5

USE OF PREMISES

Tenant shall use the Premises solely for general office purposes consistent with the character of the Agency Space as office space for governmental entities, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes whatsoever. Tenant further covenants and agrees that it shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of Exhibit D, attached hereto, or in violation of the laws of the United States of America, the state in which the Real Property is located, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Real Property. Tenant shall not do or permit anything to be done on or about the Premises which may in any way increase the existing rate of any insurance policy covering the Building or Real Property or any of its contents or cause cancellation of any such insurance policy. Tenant shall comply with all recorded covenants, conditions, and restrictions, now or hereafter affecting the Real Property. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage, use, treatment, manufacture or sale of "Hazardous Material," as that term is defined below, or for the transport of such materials through the Common Area, except in compliance with all laws or regulations applicable to the use, transport or storage of Hazardous Materials. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Real Property is located or the United States Government.

ARTICLE 6

SERVICES AND UTILITIES

6.1 Standard Tenant Services. Landlord shall provide the following services on all days during the Lease Term, unless otherwise stated below.

6.1.1 Subject to reasonable changes implemented by Landlord and to all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating, ventilation and air conditioning ("HVAC") when necessary for normal comfort for normal office use in the Premises, from Monday through Friday, during the period from 7:00 a.m. to 7:00 p.m., (the "Building Hours"), except for the date of observation of New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence

Day, Labor Day, Thanksgiving Day and the day thereafter, Christmas Day and other locally or nationally recognized holidays as designated by Landlord (collectively, the "Holidays").

6.1.2 Landlord shall provide adequate electrical wiring and facilities and power for normal general office use as determined by Landlord. Landlord shall replace lamps, starters and ballasts for Building standard lighting fixtures within the Premises. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises.

6.1.3 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes.

6.1.4 Landlord shall provide janitorial services five (5) days per week, except the date of observation of the Holidays, in and about the Premises and window washing services in a manner consistent with other comparable buildings in the vicinity of the Building.

6.1.5 Landlord shall provide nonexclusive automatic passenger elevator service at all times.

6.1.6 Landlord shall provide nonexclusive freight elevator service subject to scheduling by Landlord.

6.1.7 Landlord shall provide telecommunications, Internet and data transmission services to all offices and work stations within the Premises.

6.1.8 Landlord shall provide, as part of the Jointly Used Spaces, server room(s), mail services, graphics and printing services and library and meeting rooms. Use of the meeting rooms shall be subject to such advance reservation and other rules as Landlord may reasonably establish from time to time with input from Tenant.

6.2 Overstandard Tenant Use. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than building standard lights in the office portion of the Premises, which may affect the temperature otherwise maintained by the air conditioning system or increase the need for water above that normally furnished to other offices in the Agency Space by Landlord pursuant to the terms of Section 6.1 of this Lease. If Tenant uses water or HVAC in excess of that supplied by Landlord pursuant to Section 6.1 of this Lease, or if Tenant's consumption of electricity shall exceed such levels, as determined by Landlord based on sub-metering of such usage, then Tenant shall pay to Landlord, within ten (10) days after billing and as additional rent, the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord may install devices (including without limitation Quadlogic revenue grade meters (or comparable devices) and related data transmission and collection systems and software) to separately meter any increased use, and in such event Tenant shall pay, as additional rent, the increased cost directly to Landlord, within ten (10) days after demand. If Tenant desires to use HVAC during hours other than the Building Hours, Tenant shall give Landlord such prior notice, as Landlord shall from time to time establish as appropriate, of Tenant's desired use.

6.3 Interruption of Use. Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Real Property after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6.

ARTICLE 7

REPAIRS

7.1 Tenant's Repairs. Subject to Landlord's repair obligations in Sections 7.2 and 11.1 below, Tenant shall, at Tenant's own expense, keep the Premises, including all improvements, fixtures and furnishings therein, in good order, repair and condition at all times during the Lease Term, which repair obligations shall include, without limitation, the obligation to promptly and adequately repair all damage to the Premises and replace or repair all damaged or broken fixtures and appurtenances; provided however, that, at Landlord's option, or if Tenant fails to make such repairs, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof. Tenant agrees to promptly notify Landlord or its representative of any accidents or defects in the Building of which Tenant becomes aware, including defects in pipes, electrical wiring and HVAC equipment. In addition, Tenant shall provide Landlord with prompt notification of any matter or condition which may cause injury or damage to the Building or any person or property therein.

7.2 Landlord's Repairs. Anything contained in Section 7.1 above to the contrary notwithstanding, and subject to Articles 11 and 12 of this Lease, Landlord shall repair and maintain the structural portions of the Building, including without limitation the Premises and the Common Area and the Jointly Used Spaces, including the basic plumbing, heating, ventilating, air conditioning, electrical telecommunications and data systems serving the Building or the Agency Space; provided, however, if such maintenance and repairs are caused in part or in whole by the act, neglect, fault of or omission of any duty by Tenant, its agents, servants, employees or invitees, Tenant shall pay to Landlord as Additional Rent, the reasonable cost of such maintenance and repairs. There shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Real Property, Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 Landlord's Consent to Alterations. Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "Alterations") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord; provided, however, Landlord may withhold its consent in its sole and absolute discretion with respect to any Alterations which may affect the structural components of the Building or the Systems and Equipment. Tenant shall pay for all costs and expenses of the Alterations. The construction of the initial improvements to the Premises shall be governed by the terms of the Memorandum of Understanding, dated as of February 13, 2013 (the "2013 MOU"), between Landlord and Tenant, and not the terms of this Article 8.

8.2 Manner of Construction. Landlord may impose, as a condition of its consent to all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable with respect to any work affecting the structural components of the Building or Systems and Equipment (including designating specific contractors to perform such work and requiring Tenant to comply with the terms of the Project Stabilization Agreement for the Bay Area Headquarters Project, made and entered into the 14th day of June 2012 (the "Stabilization Agreement"), between Landlord, together with any prime contractor and subcontractors at all tiers, and the San Francisco Building & Construction Trades Council and its affiliated local unions who have executed the Stabilization Agreement). Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code or ordinance and pursuant to a valid building permit, issued by the city in which the Real Property is located. Landlord's approval of the plans, specifications and working drawings for Tenant's Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing the work of any such Alterations, Tenant shall have the work performed in such manner as not to obstruct access to the Building or the Common Area, and as not to obstruct the business of Landlord or other tenants of the Agency Space, or interfere with the labor force working at the Real Property. If Tenant makes any Alterations, Tenant agrees to carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require. In addition, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee. Upon completion of any Alterations, Tenant shall (i) cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Real Property is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, (ii) deliver to Landlord or its facility operator a reproducible copy of the "as built" drawings of the Alterations, and (iii) deliver to Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

8.3 Landlord's Property. All Alterations, improvements or fixtures which may be installed or placed in or about the Premises, from time to time, shall be and become the property of Landlord. Furthermore, Landlord may require that Tenant remove any improvement or Alteration upon the expiration or early termination of the Lease Term, and repair any damage to the Premises and Building caused by such removal. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations, Landlord may do so and may charge the cost thereof to Tenant.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Real Property, Building or Premises, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Real Property, the Building or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the Premises, and, in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Lease, if any such lien is not released and removed on or before the date notice of such lien is delivered by Landlord to Tenant, Landlord, at its sole option, may immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed Additional Rent under this Lease and shall immediately be due and payable by Tenant.

ARTICLE 10

INDEMNIFICATION AND INSURANCE

10.1 Indemnification and Waiver. Tenant hereby assumes all risk of damage to property and injury to persons, in, on, or about the Premises from any cause whatsoever and agrees that Landlord and its officers, agents, property managers, employees, and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage to property or injury to persons or resulting from the loss of use thereof, which damage or injury is sustained by Tenant or by other persons claiming through Tenant, except to the extent caused by the negligence or willful misconduct of any Landlord Party. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises (including, without limitation, Tenant's installation, placement and removal of Alterations, improvements, fixtures and/or equipment in, on or about the Premises), and any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, licensees or invitees of Tenant or any such person, in, on or about the Premises, Building and Real Property; provided, however, that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of

Landlord or any Landlord Party. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease.

10.2 Tenant's Compliance with Landlord's Fire and Casualty Insurance. Tenant shall, at Tenant's expense, comply as to the Premises with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies, then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 Tenant's Insurance. Tenant shall maintain the following coverages in the following amounts, which amounts and coverages shall be subject to adjustment by Landlord from time to time upon not less than ninety (90) days prior written notice to Tenant, provided however that Landlord may not require coverages or insurance amounts in excess of insurance requirements generally being imposed upon commercial office tenants of comparable space by landlords in the City of San Francisco central business district at the time of the required change in coverage or amount.

10.3.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Tenant's operations, assumed liabilities or use of the Premises, including a Broad Form Commercial General Liability endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease for limits of liability not less than:

Bodily Injury and Property Damage Liability	\$2,000,000 each occurrence \$2,000,000 annual aggregate
Personal Injury Liability	\$2,000,000 each occurrence \$2,000,000 annual aggregate

10.3.2 Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise and all other items of personal property on the Premises installed or owned by Tenant. Such insurance shall be written on a "physical loss or damage" basis under a "special form" policy for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage coverage.

10.3.3 Workers' compensation insurance as required by law.

10.3.4 Tenant shall carry comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance or use of any owned, hired or non-owned automobiles.

10.3.5 The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall: (i) name Landlord, and any other party it so specifies, as an additional

insured; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the state in which the Real Property is located; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. If Tenant shall fail to procure such insurance, or to deliver such policies or certificate, within such time periods, Landlord may, at its option, in addition to all of its other rights and remedies under this Lease, and without regard to any notice and cure periods set forth in Section 19.1, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within ten (10) days after delivery of bills therefor.

10.4 Subrogation. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be. Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insured under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 Repair of Damage to Premises by Landlord. Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any common areas of the Building or Real Property serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the base, shell, and core of the Premises and such common areas. Such restoration shall be to substantially the same condition of the base, shell, and core of the Premises and common areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Real Property, or any other modifications to the common areas deemed desirable by Landlord, provided access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Notwithstanding any other provision of this Lease, upon the occurrence of any damage to the Premises, Landlord shall also repair any injury or damage to the tenant improvements and alterations installed in the Premises and shall return such tenant improvements and alterations to their original condition. In connection with such repairs and replacements, Tenant shall, prior to the commencement of construction, submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or common areas necessary to Tenant's occupancy, and if such damage is not the

result of the negligence or willful misconduct of Tenant or Tenant's employees, contractors, licensees, or invitees, Landlord shall allow Tenant a proportionate abatement of Operating Expenses during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result thereof.

11.2 Landlord's Option to Repair. Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, the Building and/or any other portion of the Real Property and instead terminate this Lease by notifying Tenant in writing of such termination within sixty (60) days after the date of damage, such notice to include a termination date giving Tenant ninety (90) days to vacate the Premises, but Landlord may so elect only if the Building shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) repairs cannot reasonably be completed within twelve (12) months following the issuance of building permits for each reconstruction; or (ii) the holder of any mortgage on the Real Property shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt. Additionally, Tenant shall have the right to terminate this Lease if the repairs cannot reasonably be completed, or have not been completed, within twelve (12) months following the date of the damage. Upon any such termination of this Lease pursuant to this Section 11.2, Tenant shall pay the Additional Rent, properly apportioned up to such date of termination, and both parties hereto shall thereafter be freed and discharged of all further obligations hereunder, except for any monetary obligations of Tenant which, by the terms of this Lease, survive the expiration or earlier termination of this Lease Term.

11.3 Waiver of Statutory Provisions. The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or any other portion of the Real Property, and any statute or regulation of the state in which the Real Property is located, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or any other portion of the Real Property.

ARTICLE 12

CONDEMNATION

12.1 Permanent Taking. If the whole or any part of the Premises or the Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose (other than a taking of existing office space other than the Premises for use by a governmental entity), or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking, condemnation, reconfiguration, vacation, deed or other instrument. If any portion of Premises is taken, or if access to the Premises is substantially impaired, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to receive the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to

the terms of this Lease, and for moving expenses, so long as such claim does not diminish the award available to Landlord or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

12.2 Temporary Taking. Notwithstanding anything to the contrary contained in this Article 12, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the award made in connection with any such temporary taking to the extent required to compensate Landlord for any Additional Rent not payable by Tenant for such period, and any remaining award shall be payable to Tenant.

ARTICLE 13

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 14

NO ASSIGNMENT OR SUBLETTING

14.1 Transfers. Tenant shall not assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Tenant and its employees.

ARTICLE 15

SURRENDER; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 Surrender of Premises. No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender

of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

15.2 Removal of Tenant Property by Tenant. Unless this Lease terminates as a result of Tenant's purchase of the Premises pursuant to Article 23 below, upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein. Landlord hereby expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within ten (10) days following a request in writing by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be in the form as may be required by any prospective mortgagee or purchaser of the Real Property (or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of Tenant to timely execute and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE 18

SUBORDINATION

This Lease is subject and subordinate to all present and future ground or underlying leases of the Real Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Real Property, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage, or if any ground or underlying lease is terminated, to attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or underlying lease, as the case may be, if so requested to do so by such purchaser or lessor and/or if required to do so pursuant to any subordination, non-disturbance and attornment agreement executed by Tenant pursuant to this Article 18, and to recognize such purchaser or lessor as the lessor under this Lease. Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument or instruments if Tenant fails to do so, provided that such authorization shall in no way relieve Tenant from the obligation of executing such instruments of subordination or superiority. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

ARTICLE 19

TENANT'S DEFAULTS; LANDLORD'S REMEDIES

19.1 Events of Default by Tenant. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. The occurrence of any of the following shall constitute a default of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within ten (10) business days following the date due;

19.1.2 Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30)-day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said default as soon as possible; or

19.1.3 Abandonment of the Premises by Tenant; or

19.1.4 Repudiation, termination or failure by Tenant to diligently prosecute its obligations under the 2013 MOU or any Purchase and Sale Agreement executed by Landlord and Tenant pursuant to Article 23.

19.2 Landlord's Remedies Upon Default. Upon the occurrence of any such default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has 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 Tenant proves 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 Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been 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 things would be likely to result therefrom; and

(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 law.

The term "rent" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate set forth in Section 4.5 of this Lease. As used in Section 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord may, but shall not be obligated to, make any such payment or perform or otherwise cure any such obligation, provision, covenant or condition on Tenant's part to be observed or performed (and may enter the Premises for such purposes). In the event of Tenant's failure to perform any of its obligations or covenants under this Lease, and such failure to perform poses a material risk of injury or harm to persons or damage to or loss of property, then Landlord shall have the right to cure or otherwise perform such covenant or obligation at any time after such failure to perform by Tenant, whether or not any such notice or cure period set forth in Section 19.1 above has expired. Any such actions undertaken by Landlord pursuant to the foregoing provisions of this Section 19.2.3 shall not be deemed a waiver of Landlord's rights and remedies as a result of Tenant's failure to perform and shall not release Tenant from any of its obligations under this Lease.

19.3 Payment by Tenant. Tenant shall pay to Landlord, within fifteen (15) days after delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with Landlord's performance or cure of any of Tenant's obligations pursuant to the provisions of Section 19.2.3 above; and (ii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 19.3 shall survive the expiration or sooner termination of the Lease Term.

19.4 Sublessees of Tenant. In the event Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.5 Waiver of Default. No waiver by Landlord of any violation or breach by Tenant of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach by Tenant of the same or any other of the terms, provisions, and covenants herein contained. Forbearance by Landlord in enforcement of one or more of the remedies herein provided upon a default by Tenant shall not be deemed or construed to constitute a waiver of such default. The acceptance of any Rent hereunder by Landlord following the occurrence of any default, whether or not known to Landlord, shall not be deemed a waiver of any such default, except only a default in the payment of the Rent so accepted.

19.6 Efforts to Relet. For the purposes of this Article 19, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession.

ARTICLE 20

COMPLIANCE WITH LAW

Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures, other than the making of structural changes or changes to the Building's life safety system (collectively the "**Excluded Changes**") except to the extent such Excluded Changes are required due to Tenant's alterations to or manner of use of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

ARTICLE 21

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant to enter the Premises to: (i) inspect them; (ii) to post notices of nonresponsibility; (iii) alter, improve or repair the Premises or the Building if necessary to comply with current building codes or other applicable laws; (iv) for alterations, repairs or improvements to the Common Area or Jointly Used Space; or (v) as Landlord may otherwise reasonably desire or deem necessary. Notwithstanding anything to the contrary contained in this Article 21, Landlord may enter the Premises at any time, without notice to Tenant, in emergency situations and/or to perform janitorial or other services required of Landlord pursuant to this Lease. Any such entries shall be without the abatement of Rent and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby except to the extent caused by the negligence or willful misconduct of any Landlord Parties. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to enter without notice and use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

ARTICLE 22

TENANT PARKING

Landlord agrees to provide, at no additional cost, parking in the Building for Tenant's Board members in connection with all public meetings in the Building. Landlord shall provide to Tenant not less than four (4) valet-attended parking spaces in the Building. Such parking spaces shall be provided at no additional cost to Tenant. Tenant's continued right to use the parking spaces is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facilities and upon Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules

and regulations. Landlord specifically reserves the right, from time to time, to change the size, configuration, design, layout, location and all other aspects of the parking facilities, and Tenant acknowledges and agrees that Landlord, from time to time, may, without incurring any liability to Tenant and without any abatement of Rent under this Lease temporarily close-off or restrict access to the parking facilities, or temporarily relocate Tenant's parking spaces to other areas within a reasonable distance from the parking facilities, for purposes of permitting or facilitating any such construction, alteration or improvements or to accommodate or facilitate renovation, alteration, construction or other modification of other improvements or structures located on the Real Property. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to Landlord. The parking spaces provided to Tenant pursuant to this Article 22 are provided solely for use by Tenant's own personnel and the right to use such spaces may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval.

ARTICLE 23

OPTION TO PURCHASE PREMISES

Landlord and Tenant each acknowledge that they are entering into this Lease with the understanding that Landlord intends to convert the Agency Space into individual office condominium units, one or more of which will be occupied by Landlord or one or more of its constituent members, the Metropolitan Transportation Commission and the Bay Area Toll Authority, and one of which will be occupied by Tenant. Landlord hereby grants to Tenant the right to purchase a condominium unit of size approximately equivalent to the size of the Premises (the "**Purchase Option**"), inclusive of the furnishings and equipment provided by Landlord and an easement for use of the parking spaces allocated to the Premises pursuant to Article 22 hereof (the "**Condominium Unit**"), following recordation of a condominium subdivision map and otherwise on the terms and conditions set forth in the form of Purchase and Sale Agreement and Joint Escrow Instructions attached as Exhibit E to this Lease (the "**Purchase Agreement**"). Landlord shall, at Landlord's cost, file all applications and take all other actions necessary to obtain all required governmental approvals of a condominium map establishing the Condominium Unit as a separate legal parcel and shall cause the condominium map to be recorded in the Official Records of the City and County of San Francisco as expeditiously as is commercially reasonable. Landlord and Tenant expect that Tenant's occupancy of the space constituting the Premises would continue after such purchase. The Purchase Option expires on the Lease Expiration Date.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1 Terms; Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

24.2 Binding Effect. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of

their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

24.3 No Waiver. No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

24.4 Transfer of Landlord's Interest. Tenant acknowledges that, subject to Tenant's rights under the 2013 MOU, Landlord has the right to transfer all or any portion of its interest in the Real Property, the Building and/or in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. The liability of any transferee of Landlord shall be limited to the interest of such transferee in the Real Property and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

24.5 Landlord's Title; Air Rights. Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

24.6 Tenant's Signs. Tenant shall be entitled to (i) one (1) identification sign on or near the entry doors of the Premises, and (ii) a listing in the ground floor lobby directory for the Agency Space. The location, quality, design, style, lighting and size of such signs shall be consistent with the Landlord's Building standard signage program and shall be subject to Landlord's prior written approval, in its reasonable discretion. Upon the expiration or earlier termination of this Lease for any reason other than Tenant's exercise of the Purchase Option and purchase of the Premises, Tenant shall be responsible, at its sole cost and expense, for the removal of such signage and the repair of all damage to the Building caused by such removal. Except for such identification signs, Tenant may not install any signs on the exterior or roof of the Building or the Common Area of the Agency Space. Any signs, window coverings, or blinds (even if the same are located behind the Landlord approved window coverings for the Building), or other items visible from the exterior of the Premises or Building are subject to the prior approval of Landlord, in its sole and absolute discretion.

24.7 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.8 Application of Payments. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

24.9 Time of Essence. Time is of the essence of this Lease and each of its provisions.

24.10 Partial Invalidity. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

24.11 No Warranty. In executing and delivering this Lease, Tenant has not relied on any representation, including, but not limited to, any representation whatsoever as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the Exhibits attached hereto.

24.12 Landlord Exculpation. It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord and the Landlord Parties hereunder (including any successor landlord) and any recourse by Tenant against Landlord or the Landlord Parties shall be limited solely and exclusively to an amount which is equal to the interest of Landlord in the Real Property, and neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

24.13 Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease, including all exhibits attached hereto, supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto, and none thereof shall be used to interpret or construe this Lease. This Lease and any side letter or separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all

reliance with respect to representations is based totally upon the representations and agreements contained in this Lease.

24.14 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Building as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building and Real Property, provided that Landlord shall exercise its best efforts to lease all office space within the Agency Space to other governmental agencies or instrumentalities. Except as provided in this Section 24.14, Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Real Property.

24.15 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, the "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

24.16 Notices. All notices, demands, statements or communications (collectively, "Notices") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or delivered personally (i) to Tenant at the appropriate address set forth in Section 5 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord; or (ii) to Landlord at the addresses set forth in Section 3 of the Summary, or to such other firm or to such other place as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given on the date it is mailed as provided in this Section 24.16 or upon the date personal delivery is made. If Tenant is notified of the identity and address of Landlord's mortgagee, Tenant shall give to such mortgagee written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant.

24.17 Authority. Tenant confirms that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

24.18 Dispute Resolution. In the event of a dispute between the parties with respect to any of the provisions of this Lease other than the non-payment by Tenant of Rent, if the parties are unable to resolve the dispute, either party may require mediation in accordance with this Section 24.18. The mediation shall proceed in accordance with rules promulgated by the mediator chosen pursuant to this Section 24.18. The mediation process shall be confidential and treated as a compromise negotiation for purposes of Federal and State rules of evidence. The parties shall each pay one-half of the cost of the mediator. Within ten (10) days following notice by either party that it elects to resolve the dispute by mediation, Landlord and Tenant shall meet and select a disinterested third party to act as mediator. If the parties fail to agree on a mediator, either party may request the American Arbitration Association in San Francisco to appoint a mediator. The mediator may be replaced upon ten (10) days written request by

either party, using the procedure outlined above, provided, however that either party may replace the mediator only once. The mediator shall convene the mediation session not later than ten (10) business days after his or her selection. If the parties are able to resolve their dispute through mediation, the representatives of the parties in attendance at the meeting shall execute a written agreement or memorandum that shall set forth in reasonable detail the resolution terms, the actions to be taken by a party as part of the resolution and the period in which such action or actions are to be completed. The executed agreement or memorandum shall be binding on the parties to this Lease. If the parties are unable to resolve their disputes through mediation, the matter in dispute shall be determined by binding arbitration under the Commercial Rules of the American Arbitration Association (the "Commercial Rules"). The arbitration hearing shall be held within the City and County of San Francisco. Any such controversy shall be arbitrated by a single arbitrator, who shall be an impartial real estate professional or lawyer having not less than ten years experience developing, managing and representing owners of commercial office properties in the San Francisco area. The arbitrator shall be appointed under the Commercial Rules and shall determine the controversy in accordance with applicable law, the intention of the parties as expressed in the Lease and any amendments thereto and any evidence produced at the arbitration hearing. Arbitration discovery shall be permitted in accordance with the Commercial Rules or California law applicable to arbitration proceedings. The arbitrator's determination shall be rendered within thirty (30) days after the conclusion of the hearing and may include an award of attorneys' fees and costs to the prevailing party. The foregoing shall not prevent Landlord from bringing an unlawful detainer proceedings in the event Tenant is in default of its obligation to pay Rent or is otherwise in material breach of the provisions of this Lease, nor shall the dispute resolution procedures described in this Section 24.18 apply to disputes involving claims by or against third parties which require the joinder of any such party for complete resolution of the claim.

24.19 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

24.20 Brokers. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease (the "Brokers"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Brokers.

24.21 Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building, Real Property or any portion thereof, of whose address Tenant has theretofore been notified, and an opportunity is granted to Landlord and such holder to correct such violations as provided above.

24.22 Building Name and Signage. Landlord shall have the right at any time to change the name of the Building and Real Property and to install, affix and maintain any and all signs on the exterior and on the interior of the Building and any portion of the Real Property as Landlord may, in Landlord's sole discretion, desire.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

"Landlord:"

BAY AREA HEADQUARTERS AUTHORITY

By: 

Name: Steve Heminger

Title: Executive Director

By: 

Name: Brian Mayhew

Title: Chief Financial Officer

Approved as to form:


General Counsel

"Tenant:"

ASSOCIATION OF BAY AREA GOVERNMENTS

By: 

Name: Ezra Rapport

Title: Executive Director

Approved as to form:

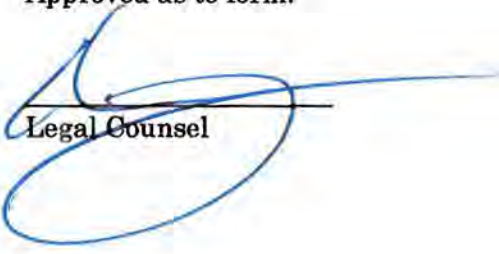

Legal Counsel

EXHIBIT A

OUTLINE OF FLOOR PLAN OF PREMISES

RINCON PLACE

- COMMON AREAS LEGEND:**
- Entry Lobby / Elevator
 - Board Room/Meeting
 - Retail
 - Rest Room
 - Exit Stair
 - Storage/ File Room
- EQUIPMENT LEGEND:**
- Printer - Agency
 - Copy/Print Scanner

BEALE STREET



MAIN STREET

HARRISON STREET



Item 6.C., Office Lease

BAHA
375 Beale St.
San Francisco, CA

REVISIONS:	
1	
2	
3	
4	
5	
6	
7	

relocationconnections inc.
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
1st Floor

Scale: NTS
Date: 12/29/15
By: [Signature]
Project Number: [Number]

RINCON PLACE

MAIN STREET

BEALE STREET

HARRISON STREET

- COMMON AREAS LEGEND:**
- Elevator Lobby
 - Conference
 - Print/Copy/Mail/Supplies
 - Phone
 - Pantry/ Break Room
 - Storage/ File Room
 - Rest Room/Fitness
 - Exit Stair
- EQUIPMENT LEGEND:**
- Printer - Agency
 - Copy/Print Scanner



BAHA
375 Beale St.
San Francisco, CA

REVISIONS:
1
2
3
4
5
6
7

relocationconnections inc
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
2nd Floor

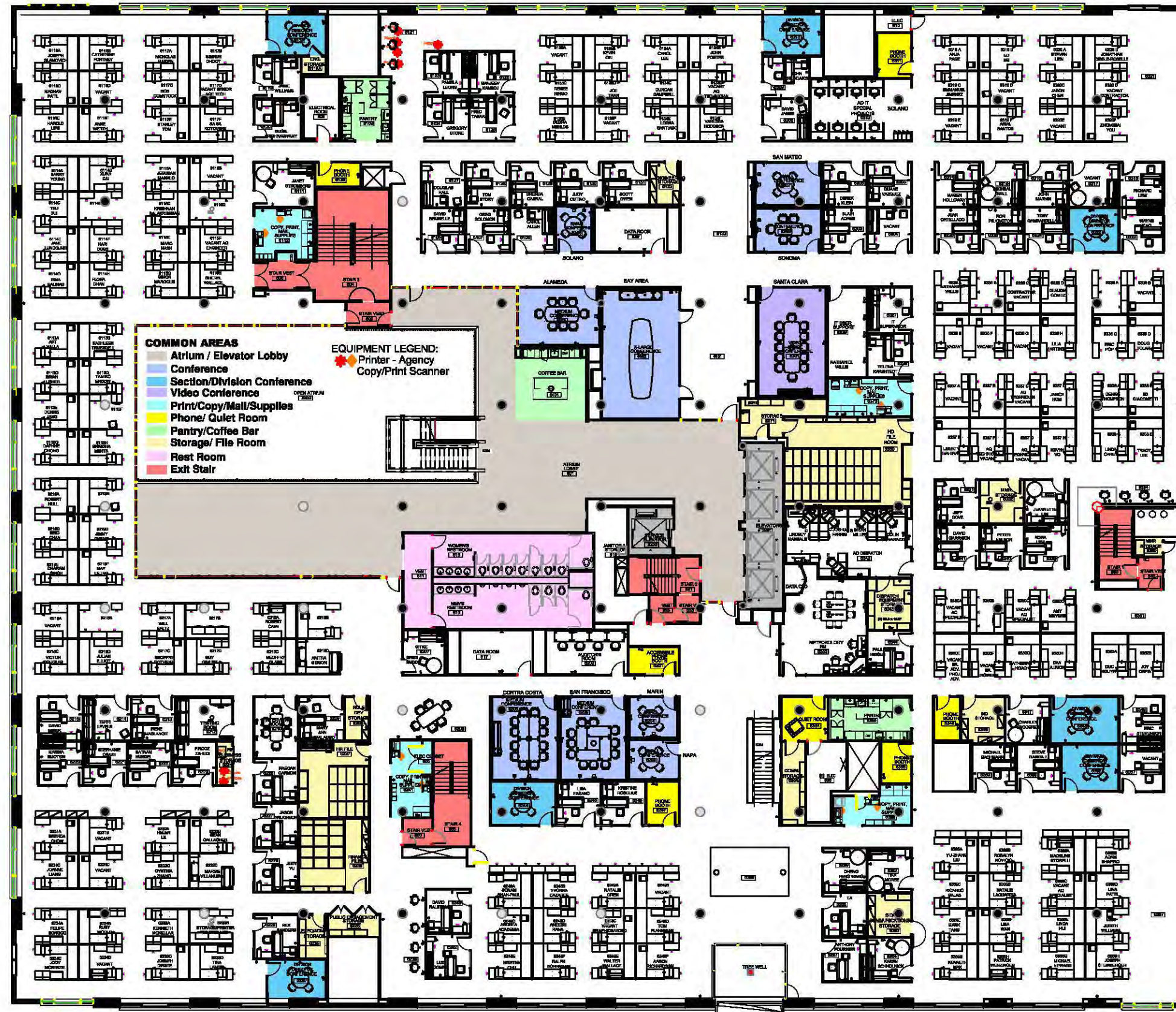
Scale
NTS
Date
12/23/15
By
[Signature]

Item 6.C., Office Lease

RINCON PLACE
AIR DISTRICT

BEALE STREET

MAIN STREET



HARRISON STREET



BAHA

375 Beale St.
San Francisco, CA

REVISIONS:

1
2
3
4
5
6
7

relocationconnections inc
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
6th Floor

Scale

NTS

Date

01/04/16

By

Project Number

Item 6.C., Office Lease



BAHA

375 Beale St.
San Francisco, CA

REVISIONS:	DATE	BY
1		
2		
3		
4		
5		
6		
7		

relocationconnections inc.

3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan

7th Floor

Scale

NTS

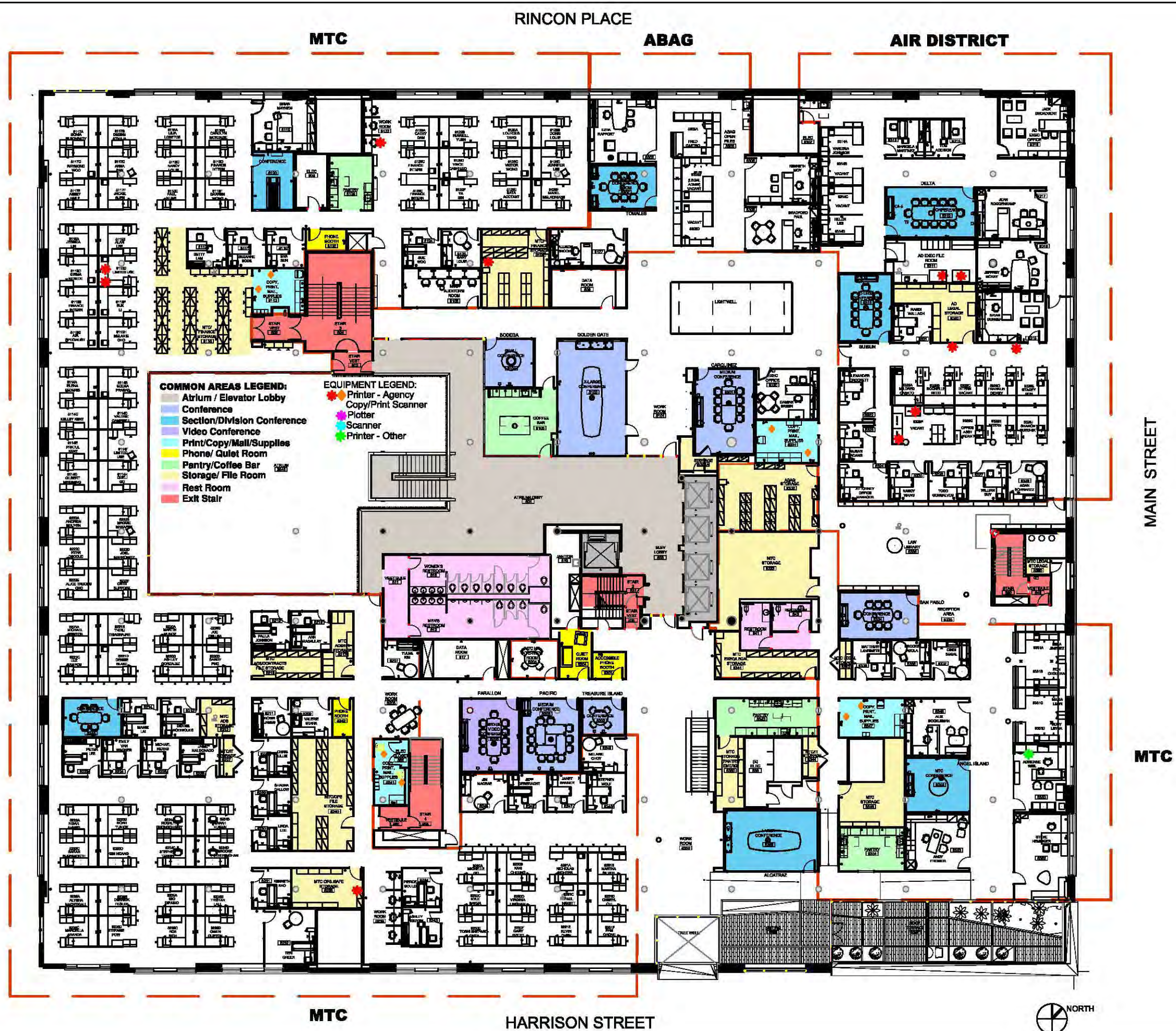
Date

01/04/16

By

Item 6.C., Office Lease

BEALE STREET



MAIN STREET

MTC

RINCON PLACE

ABAG

AIR DISTRICT

MTC

MTC

HARRISON STREET



BAHA
375 Beale St.
San Francisco, CA

REVISIONS:
1
2
3
4
5
6
7

relocationconnections inc
3170 Crow Canyon Place, Suite 210
San Ramon, CA 94583

Floor Plan
8th Floor

Scale: NTS
Date: 01/04/16
By: [Signature]

Item 6.C., Office Lease

EXHIBIT A-1

Legal Description of Real Property

That certain real property situated in the City of San Francisco, County of San Francisco, State of California, and described as follows:

Parcel A, as said parcel is shown on the map recorded July 15, 2008 in Book 47 of Parcel Maps, Pages 142 and 143, San Francisco County Records.

Being part of 100 Vara Block No. 332.

APN: Block 3746, Lot 002

EXHIBIT B

COMMON EXPENSES

(a) **Defined Terms:**

"Agency" means Landlord and its affiliated governmental entities, the Bay Area Air Quality Management District (BAAQMD) and the Association of Bay Area Governments (ABAG).

"Agency Space" means the portion of the first and fifth floors used by BAHA and other Agencies and all of the sixth through eighth floors and certain related facilities used as governmental agency space.

"Agency Space Common Area" consists of that portion of the Common Area that serves only the Agency Space.

"Capital Improvements" means any improvements or alterations which increase the size, value or life of the Facility. For avoidance of doubt, "Capital Improvements" do not include (i) routine repairs and maintenance, (ii) replacements, improvements or repairs to existing building systems or components and (iii) other improvements having a useful life of less than five years.

"Commercial Space" consists of that portion of the Facility on the first through fifth floors leased or available for lease by Landlord to commercial and retail tenants.

"Facility" means the building located on the Real Property.

"Facility-wide Common Area" consists of that portion of the Common Area which serves the entire Facility.

"Jointly Used Space" consists of those spaces that are available for use generally by each Agency in common with all other occupants of the Agency Space or on an advance reservation basis, as and to the extent provided herein and in any rules and regulations promulgated by the 375 Beale Street Committee from time to time. The pantries, libraries, mail and copy centers, reception area, phone booths, collaboration/teaming areas, restrooms, quiet rooms, IT rooms, equipment storage rooms, the eighth floor terrace and the hallways and passageways between and among offices within the Agency Space shall be available for use by all occupants of the Agency Space. Conference rooms, data centers, multi-purpose room and the first floor Board room, warming kitchen and related facilities will be available to Agencies pursuant to a reservation system to be established by the 375 Beale Street Committee and administered either by BAHA or by the affected Agency, provided that BAAQMD shall have the right to close off or restrict access to the sixth floor on days which are not official BAAQMD work days so long as the other Unit Owners have a right of access to the network closets on the sixth floor. Use of any other portions of the sixth floor Jointly Used Space on non-BAAQMD work days shall be on a case by case basis, as approved by BAAQMD.

(b) Common Expenses:

(1) Definition: "Common Expenses" means the expenses payable by Landlord for costs of: maintenance, management, administration, operation and ordinary repairs to the Facility, but excluding any such expenses which are the responsibility of a tenant with respect to its leased premises. Common Expenses attributable to the Agency Space shall include such expenses for the Agency Space Common Area, the Jointly Used Space and a prorata share of the Facility-wide Common Area. The Commercial Space shall bear a prorata share of Common Expenses attributable to the Facility-wide Common Area, and Landlord, as the owner of the Commercial Space, shall be responsible for all maintenance, management, operation and repair of the Commercial Space, which costs shall not be included in Common Expenses. Common Expenses shall include each of the expense categories described in (2) below and reasonable reserves and contingencies for such purposes, compensation paid by Landlord for management of the Common Area and the Agency Space, fees paid to accountants, attorneys or other employees and agents for services rendered to the Landlord for the benefit of the tenants of the Agency Space collectively, and all other costs specifically designated to be Common Expenses by or in accordance with the provisions of this Exhibit B, but expressly excluding Capital Improvements made by Landlord to the Facility or any portion thereof, which costs shall be borne solely by Landlord.

(2) Included Expenses: Except as otherwise undertaken by a tenant solely for the benefit of that tenant's Leased Premises, "Common Expenses" shall include the costs of or charges for the following, by way of illustration but not limitation: water and sewer; insurance premiums, licenses, permits and inspections; heat, light, power and steam; internet services; telephone access; janitorial services; security services; maintenance and service agreements on equipment servicing the Facility; window cleaning; garbage services; costs of air conditioning; costs of supplies, materials, equipment and tools; and the cost of contesting by appropriate proceedings the validity of the subdivision of the Facility or any statute, ordinance, rule or regulation affecting the Facility which might increase Common Expenses. All replacements, improvements and repairs which cost in excess of \$250,000 or add five (5) years or more to the useful life of the building system or component being replaced, improved or repaired, but which do not constitute Capital Improvements, shall be amortized over the useful life of the improvement, replacement or repair and the annual amortized portion included in Common Expenses until fully amortized.

(3) Allocation of Common Expenses. Any Common Expenses which are incurred for the benefit of both the Agency Space and the Commercial Space shall be allocated among all premises leased by Agencies, and any Common Expenses incurred solely for the benefit of the Agency Space shall be allocated to the Agency Space, in accordance with the formulae set forth in subparagraph(s) below, as determined by Landlord. All Common Expenses allocated to the Agency Space pursuant to the foregoing sentence are hereinafter referred to as the Agency Space Common Expenses, and all Common Expenses allocated to all leased premises are hereinafter referred to as the Facility-wide Common Expenses.

(4) Exclusions from "Common Expenses": "Common Expenses" shall not include depreciation, advertising costs, leasing expenses, leasing commissions and related property management or lease enforcement costs relating to the rental of any portion of the Facility, real property taxes of any type assessed against the Facility or separately incurred, levied or assessed against a tenant or its premises, indebtedness secured by the Facility as a whole, and other costs that are the responsibility of each tenant individually; provided that nothing contained herein shall preclude the Landlord from collecting monies and paying such

expense on behalf of individual tenants where such action is permitted pursuant to the terms of the applicable lease.

EXHIBIT C

[RESERVED]

EXHIBIT D

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Building.

1. Access to the Building and the Premises shall be controlled by a card access system. Tenant shall have the right and responsibility to control access to the Premises or portions thereof, including hours of access and levels of security clearance. Tenant, at Tenant's sole expense, may install its own security system within the Premises, provide Tenant's own security service for the Premises, or both; provided that any such Tenant-installed security system shall be subject to Landlord's prior approval and shall be compatible with Landlord's card access system and that Tenant shall give Landlord keys or access codes to any such system.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises, unless electrical hold backs have been installed.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the vicinity of the Building. Tenant and its Representatives must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building.

Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building Register when so doing.

After-hours access by Tenant's authorized Representatives may be provided by card-key access or other procedures adopted by Landlord from time to time. Tenant shall pay for the costs of all access cards provided to Tenant's Representatives and all replacements thereof for lost, stolen or damaged cards.

Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged a pass for such access. Landlord and its agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person.

In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

4. Residency in or overnight use and occupancy of any portion of Building is strictly prohibited.

5. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed, when the Premises are not occupied.

6. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate with Landlord or Landlord's agents to prevent same.

7. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

8. The requirements of Tenant will be attended to only upon application at the management office of the Building or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

9. No furniture, freight, packages, supplies, equipment or merchandise will be brought into or removed from the Building or carried up or down in the elevators, except upon prior notice to Landlord, and in such manner, in such specific elevator, and between such hours as shall be designated by Landlord. Tenant shall provide Landlord with not less than 24 hours' prior notice of the need to utilize an elevator for any such purpose, so as to provide Landlord with a reasonable period to schedule such use and to install such padding or take such other actions or prescribe such procedures as are appropriate to protect against damage to the elevators or other parts of the Building. Courier delivery services companies such as FedEx, UPS, and DHS excepted.

10. Tenant shall not overload the floor of the Premises. Tenant shall not mark, drive nails or screws, or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof without Landlord's consent first had and obtained; provided, however, Landlord's prior consent shall not be required with respect to Tenant's placement of pictures and other normal office wall hangings on the interior walls of the Premises (but at the end of the Term, Tenant shall repair any holes and other damage to the Premises resulting therefrom).

11. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility of Tenant and any expense of said damage or injury shall be borne by Tenant.

12. Tenant must comply with requests by the Landlord concerning the informing of Tenant's Representatives of items of importance to the Landlord.

13. Tenants are responsible for the cost of the installation, maintenance and replacement of all interior signage related to their operations and services within their premises and Landlord's prior approval.

14. Landlord shall have the right to control and operate the public portions of the Building, the public facilities, the heating and air conditioning, and any other facilities furnished for the common use of tenants and other occupants of the Building, in such manner as is customary for comparable buildings in the vicinity of the Building.

15. Licensed service animals are not allowed to roam unattended or off leash in the Building. Pets are not allowed in buildings.

16. Tenant shall not use any method of heating or air conditioning other than that which may be supplied by Landlord, without the prior written consent of Landlord.

17. Tenant shall not waste electricity, water or air conditioning and shall cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall refrain from attempting to adjust any controls.

18. Space heaters are not allowed in the Building.

19. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or agents, shall have caused it.

20. No cooking shall be done or permitted by Tenant on the Premises. No gas or electric stove, range tops, toaster ovens and hot plates are permitted. Underwriter's Laboratory-approved equipment, microwave ovens and toasters (but not toaster ovens) may be used in the designated kitchen/pantry areas for heating food and brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, and does not cause odors that are objectionable to Landlord, other tenants or occupants of the Building.

21. Refrigerators are not permitted to be used in areas other than a kitchen/pantry area.

22. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City and County of San Francisco without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate.

23. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

24. Except for any such materials used or tested in Tenant's laboratory that is part of the Premises, Tenant shall not use or keep in or on the Premises or the Building any kerosene, gasoline or other inflammable or combustible fluid or material or use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, or vibrations, or interfere in any way with other tenants or occupants of the Building or those having business therewith.

25. Tenant shall comply with any non-smoking ordinance adopted by any applicable governmental authority.

26. Bicycles of any kind are not permitted in the building at any time except in the designated storage spaces.

27. Tenants shall comply with the following Rules and Regulations for the Bicycle Storage and Locker Area (BSL Area).

BIKE STORAGE

- a) Bike racks will be accessible by tenants and other occupants of the Building only.
- b) Users must store bicycles on the provided bicycle racks only. If the rack is full, the User shall inquire with the Property Manager for the location of alternate bike storage area.
- c) User shall not block the entrance to the BSL Area or position bicycles in a manner that will impede others from entering or exiting the BSL Area.
- d) Bicycle owners' locks should be used to secure bikes stored in the BSL Area at all times.
- e) Locks will not be provided.
- f) Bike racks are intended to be used by Users while they are present at 375 Beale. Bike racks will be checked nightly by Building Security. If a bicycle is left on the rack for more than three consecutive nights without prior permission from the Property Manager the lock will be cut and the bicycle removed by Building Security. Contact Building Security to reclaim your bike.
- g) Users shall report any suspicious activity, vandalism or damage to Building Security immediately.
- h) All Users agree to use the bike racks at their own risk and assume any and all liability.

Any violations of these Rules and Regulations will result in cancellation of bike storage privileges.

LOCKERS

- a) The BSL Area will be accessible by tenants and other occupants of the Building only and available on a first come, first serve basis.
- b) The BSL Area may be subject to closure from time to time by the property manager for the purposes of maintenance, repair, renovation or construction. To the extent possible, a minimum of 24 hours of advance notice will be posted on the website.
- c) Locks should be used to secure personal belongings stored in the Locker Areas at all times and removed daily.
- d) Locks will not be provided.
- e) Personal items may not be stored in lockers overnight.
- f) The Locker Areas will be checked nightly by Building Security and any locks remaining on lockers will be cut and contents confiscated for pick up by locker user at a later date.
- g) All Users agree to use the BSL Area at their own risk and assume any and all liability.

Any violations of these Rules and Regulations will result in cancellation of the locker room privileges.

For the safety of all tenants and personnel of Landlord, the only access permitted to and from the bike racks is via the **Harrison Street**. Bicycles are not permitted on vehicle entrance and exit lanes, or Loading Dock.

The Property Manager reserves the right to add, change or delete any Rule or Regulation herein contained and to change the method of operation to ensure maximum enjoyment of the BSL Area.

28. Landlord shall have the right to make such other reasonable Rules and Regulations pertaining to the Building, including without limitation the Premises, or the Common Area as necessary or appropriate for the management of the Building and the preservation of good order therein.

EXHIBIT E

**FORM OF PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS**

[See Attached]

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the ____ day of _____, 2016, by and between BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("BAHA"), and ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("ABAG").

IN CONSIDERATION of the respective agreements hereinafter set forth, BAHA and ABAG hereby agree as follows:

1. Property. BAHA hereby agrees to sell and convey to ABAG, and ABAG hereby agrees to purchase from BAHA, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

(a) that certain office condominium unit identified as Unit 4 located at 375 Beale Street, San Francisco, California 94105 (the "Unit"), as more particularly described in the draft map attached hereto as Exhibit A-1 (the "Draft Map"), together with all rights, privileges, easements and appurtenances to or affecting the Unit, including without limitation membership in the Corporation, the right to use the Common Area, and the Jointly Used Spaces, and the right to occupy space in other condominium units at 375 Beale Street, San Francisco, California 94105, all as more fully set forth in that certain Declaration of Covenants, Conditions and Restrictions (the "CC&R's") to be recorded in the Official Records of the City and County of San Francisco, a draft of which is attached hereto as Exhibit E (collectively, the "Real Property");

(b) all of BAHA's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer systems and other equipment installed by BAHA in the Unit, other than the personal property that is installed in Right of Occupancy Spaces and the Jointly Used Spaces and intended to be retained by BAHA (the "Personal Property"); and

(c) all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the Unit (the ("Intangible Property").

All capitalized terms not otherwise defined herein shall have the meanings set forth in the CC&R's.

2. Purchase Price; Independent Consideration.

(a) Purchase Price and Manner of Payment. The purchase price (the "Purchase Price") to be paid by ABAG to BAHA for the Property at closing shall be ABAG's condominium ownership interest in its condominium unit ("ABAG Unit") located in the MetroCenter, located at 101 Eighth Street, Oakland, California 94607 ("MetroCenter"), as more particularly described in Exhibit A-2, together with all rights, privileges, easements and appurtenances to or affecting the ABAG Unit, including without limitation, ABAG's ownership interest in the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit, as such terms are defined in the Declaration of Covenants, Conditions and

Restrictions of the Regional Administrative Facility, recorded in the Official Records of Alameda County as Instrument No. 84-254126 (the "MetroCenter CC&R's") (collectively, the "ABAG Real Property"), together with (1) all of ABAG's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer cabling and other equipment installed by ABAG ("ABAG Personal Property") and (2) all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the ABAG Unit ("ABAG Intangible Property" and together with the ABAG Real Property and the ABAG Personal Property, the "ABAG Property"). The Purchase Price shall be paid through recordation of deed and execution of other necessary documents through the escrow established pursuant to Section 9 below.

(b) Independent Consideration. Upon mutual execution of this Agreement, ABAG shall deliver to BAHA in cash the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "Independent Contract Consideration") which amount has been bargained for and agreed to as consideration for ABAG's exclusive option to purchase the Property provided hereunder and for BAHA's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events.

3. BAHA's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, BAHA shall, to the extent BAHA has not already done so, deliver or cause to be delivered to ABAG the following, to the extent in BAHA's actual possession (collectively, the "Due Diligence Materials") at BAHA's sole cost and expense: (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the Property, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the Property (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the Property which BAHA desires ABAG to assume; (f) copies of all building occupancy permits, including certificates of occupancy, for the Unit; and (g) copies of the articles of incorporation and bylaws for association under the CC&R's. The Due Diligence Materials are for ABAG's use in connection with ABAG's investigation of the Property. ABAG acknowledges that, except as otherwise provided in Section 11 below, BAHA is not making any representation or warranty of any kind with respect to the Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by ABAG.

4. ABAG's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, ABAG shall, to the extent ABAG has not already done so, deliver or cause to be delivered to BAHA the following, to the extent in ABAG's actual possession (collectively, the "ABAG Due Diligence Materials"): (a) a current preliminary title report prepared by Title Company with respect to the ABAG Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "ABAG Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the ABAG Unit or the real property on which it is

located and that are not already available to BAHA or its assignee through affiliation with the Regional Agency Facility Corporation (the "ABAG Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the ABAG Unit and the MetroCenter, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the ABAG Unit and the MetroCenter (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the ABAG Unit and the MetroCenter which ABAG desires BAHA to assume; (f) copies of all building occupancy permits, including certificates of occupancy, for the ABAG Unit and the MetroCenter, that are not already available to BAHA or its assignee through affiliation with the Regional Agency Facility Corporation, and (g) copies of all documents relating to ABAG's compliance with the provisions of section 9.08 of the MetroCenter CC&R's. The ABAG Due Diligence Materials are for BAHA's use in connection with BAHA's investigation of the ABAG Unit and the MetroCenter. BAHA acknowledges that, except as otherwise provided in Section 12 below, ABAG is not making any representation or warranty of any kind with respect to the ABAG Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by BAHA.

5. ABAG's Review and BAHA's Disclaimer.

(a) Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by ABAG and BAHA or (ii) the date on which BAHA has delivered the Due Diligence Materials to ABAG.

(b) Physical Inspection. ABAG hereby covenants that it will observe and inspect the physical condition of the Unit, the building of which it is a part, including without limitation the Common Area and the Jointly Used Spaces. Further, ABAG acknowledges that it is currently in possession and occupancy of a substantial portion of the Property pursuant to a lease between ABAG and BAHA dated as of _____, 2016, and has had the opportunity to review and select the Personal Property in the course of its tenancy under such lease.

(c) Title. ABAG shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by ABAG in writing within the applicable review period shall be deemed approved and shall be referred to as "Permitted Exceptions." In the event that ABAG notifies BAHA in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("Objections"), BAHA shall have the right, but not the obligation, to cure any of the Objections by removing or causing the Title Company to insure over such Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed if necessary. If BAHA is unable to cure any Objections within said thirty (30) day period, or if BAHA gives ABAG written notice at anytime during said thirty (30) day period stating that BAHA declines to attempt to cure any of the Objections, then ABAG will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from BAHA, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination

or (ii) waive the Objections (and the ABAG's Condition Precedent described in Section 7(b) of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, BAHA shall be obligated to remove from title on or before Closing any monetary liens affecting the Property (other than monetary liens resulting from ABAG's acts).

(d) As-Is Sale. Except as otherwise expressly set forth in Section 11 and Section 17 of this Agreement and any of the documents delivered by BAHA at Closing, neither BAHA nor its directors, officers, employees, agents, representatives or attorneys (collectively, the "BAHA Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to ABAG including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the Property for ABAG's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the Due Diligence Materials, or as to any other past, present or future matter whatsoever. ABAG acknowledges and agrees that it has satisfied itself regarding the condition of the Property and the foregoing matters, and, except as otherwise provided in this Section 5(d), that the Property will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that ABAG assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

(e) ABAG's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by BAHA at Closing, ABAG, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges BAHA, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which ABAG has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. ABAG hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

ABAG hereby specifically acknowledges that ABAG has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

ABAG Initials

(f) [Map]. BAHA and ABAG acknowledge that the Unit does not currently constitute a separate legal parcel under the California Subdivision Map Act (the "Act"). Accordingly, Closing under this Agreement is conditioned on the Unit being mapped as a separate legal parcel under the Act and in compliance with the San Francisco subdivision regulations and San Francisco Subdivision Code allowing such property to be legally conveyed to ABAG (the "Map Act Condition"). The Map Act Condition cannot be waived by either party

to this Agreement, and shall be deemed satisfied only upon the recordation of a parcel map or a final map, in substantially the form attached hereto Exhibit A-1, causing the Unit to constitute a separate legal parcel in compliance with the Act (the "Map"). Closing shall not occur unless and until the Map Act Condition has been satisfied. If the Map has not been recorded on or before _____, then this Agreement will automatically terminate.] [*Note: All provisions relating to the Map and the Map Act Condition will be deleted if the Map is recorded prior to execution of this Agreement.*]

6. BAHA's Review and ABAG's Disclaimer.

(a) Inspection Period. As used herein, the term "ABAG Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by BAHA and ABAG or (ii) the date on which ABAG has delivered the ABAG Due Diligence Materials to BAHA.

(b) Physical Inspection. BAHA hereby covenants that it will observe and inspect the physical condition of the ABAG Unit, the MetroCenter of which it is a part, including without limitation the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit (as such terms are defined in the MetroCenter CC&R's). Further, BAHA agrees to the selection and the installation of the ABAG Personal Property in the ABAG Unit.

(c) Title. BAHA shall complete its review of the ABAG Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by BAHA in writing within the applicable review period shall be deemed approved and shall be referred to as "ABAG Permitted Exceptions." In the event that BAHA notifies ABAG in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("ABAG Objections"), ABAG shall have the right, but not the obligation, to cure any of the ABAG Objections by removing or causing the Title Company to insure over such ABAG Objections within thirty (30) days after receipt of the ABAG Objections, during which period the Closing will be postponed if necessary. If ABAG is unable to cure any ABAG Objections within said thirty (30) day period, or if ABAG gives BAHA written notice at anytime during said thirty (30) day period stating that ABAG declines to attempt to cure any of the ABAG Objections, then BAHA will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from ABAG, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the ABAG Objections (and BAHA's Condition Precedent described in Section 8(d) of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, ABAG shall be obligated to remove from title on or before Closing any monetary liens affecting the ABAG Unit (other than monetary liens resulting from BAHA's acts).

(d) As-Is Sale. Except as otherwise expressly set forth in Section 10 and Section 17 of this Agreement and any of the documents delivered by ABAG at Closing, neither ABAG nor its members, directors, officers, employees, agents, representatives or attorneys (collectively, the "ABAG Parties") or contractors have made any representations, guaranties,

promises, statements, assurances or warranties, express or implied, to BAHA including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the ABAG Unit for BAHA's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the ABAG Unit, the condition of title thereto, the truth, accuracy or completeness of the ABAG Due Diligence Materials, or as to any other past, present or future matter whatsoever. BAHA acknowledges and agrees that it has satisfied itself regarding the condition of the ABAG Unit and the foregoing matters, and, except as otherwise provided in this Section 6(d), that the ABAG Unit will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that BAHA assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

(e) BAHA's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by ABAG at Closing, BAHA, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges ABAG, its members, agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which BAHA has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. BAHA hereby specifically waives the provisions of Section 1542 and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

BAHA hereby specifically acknowledges that BAHA has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

BAHA Initials

7. ABAG's Conditions Precedent to Closing. The following are conditions precedent to ABAG's obligation to purchase the Property (the "ABAG's Conditions Precedent"). ABAG's Conditions Precedent are intended solely for the benefit of ABAG and may be waived only by ABAG in writing. In the event any ABAG's Condition Precedent is not satisfied, ABAG may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Property Condition. ABAG's inspection, review and approval, prior to expiration of the Inspection Period, of the Due Diligence Materials, including, without limitation, the Preliminary Report and the Environmental Documents, which approval shall be deemed given unless ABAG shall give written notice of disapproval prior to the expiration of the Inspection Period;

(b) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to ABAG upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined in a manner approved by BAHA and ABAG), insuring fee simple title to the Property in ABAG, subject only to the Permitted Exceptions and such other exceptions as ABAG shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "Title Policy").

(c) Performance by BAHA. BAHA shall have complied, in all material respects, with all of BAHA's duties and obligations contained in this Agreement and all of BAHA's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

(d) [Map Act Condition. The Map Act Condition shall have been satisfied.]
[*Note: To be deleted if map is recorded prior to execution of purchase agreement.*]

(e) [Recordation of CC&R's. The CC&R's shall have been recorded in the Official Records of the City and County of San Francisco in substantially the form attached hereto as Exhibit E with such modifications as are reasonably determined by BAHA, provided that BAHA may not make any modifications that materially affect the benefits, burdens or obligations of ABAG with respect to the Unit or with respect to the usable area that ABAG has a right to occupy as defined in Exhibit E without ABAG's prior written consent unless required by law or by any governmental agencies whose approval is required to create the Unit.] [*Note: To be deleted if CC&R's are recorded prior to execution of purchase agreement.*]

8. BAHA's Conditions Precedent to Closing. The following are conditions precedent to BAHA's obligation to sell the Property (the "BAHA's Conditions Precedent"). BAHA's Conditions Precedent are intended solely for the benefit of BAHA and may be waived only by BAHA in writing. In the event any BAHA's Condition Precedent is not satisfied, BAHA may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Property Condition. BAHA's inspection, review and approval, prior to expiration of the ABAG Inspection Period, of the ABAG Due Diligence Materials, including, without limitation, the ABAG Preliminary Report and the ABAG Environmental Documents, which approval shall be deemed given unless BAHA shall give written notice of disapproval prior to the expiration of the ABAG Inspection Period;

(b) [Map Act Condition. The Map Act Condition shall have been satisfied.]
[*Note: To be deleted if map is recorded prior to execution of purchase agreement.*]

(c) Recordation of Grant Deed for ABAG Real Property. One or more grant deeds showing the ownership of the ABAG Real Property as transferred to BAHA (or its assignee).

(d) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to BAHA (or its assignee) upon the Closing an ALTA owner's policy of title

insurance (2006) in an amount mutually agreed to by ABAG and BAHA (which shall be determined by reference to recent appraisals for the ABAG Real Property), insuring fee simple title to the ABAG Real Property in BAHA (or its assignee), subject only to the ABAG Permitted Exceptions and such other exceptions as BAHA shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the ABAG Inspection Period (the "ABAG Unit Title Policy").

(e) Performance by ABAG. ABAG shall have complied, in all material respects, with all of ABAG's duties and obligations contained in this Agreement and all of ABAG's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

(f) [Recordation of CC&R's. The CC&R's shall have been recorded in the Official Records of the City and County of San Francisco in substantially the form attached hereto as Exhibit E with such modifications as are reasonably determined by BAHA, provided that BAHA may not make any modifications that materially affect the benefits, burdens or obligations of ABAG with respect to the Unit or with respect to the usable area that ABAG has a right to occupy as defined in Exhibit E without ABAG's prior written consent unless required by law or by any governmental agencies whose approval is required to create the Unit.] **[*Note: To be deleted if CC&R's are recorded prior to execution of purchase agreement.*]**

9. Escrow; Closing.

(a) Escrow. Upon mutual execution of this Agreement, the parties hereto shall deposit a fully executed copy of this Agreement with First American Title Insurance Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, California 94596; Escrow Officer: Kitty Schlesinger) (hereinafter "Title Company" or "Escrow Holder") and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase contemplated hereby. BAHA and ABAG shall execute such supplemental escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by ABAG and/or BAHA, the terms of this Agreement shall control.

(b) Closing. The parties intend for the consummation of the sale of the Property as provided hereunder (the "Closing") to take place through escrow on the date that is ten (10) business days after the satisfaction of the Map Act Condition (the "Closing Date").

(c) BAHA's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, BAHA shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-1 (the "375 Beale Street Deed");

(ii) Bill of Sale. Two (2) duly executed counterpart originals of two separate bills of sale with respect to the Personal Property and the ABAG Personal Property, respectively, in the form attached to this Agreement as Exhibit C (the "Bills of Sale");

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of two separate assignments and assumption of intangible property in the form attached to this Agreement as Exhibit D (the "Assignments");

(iv) BAHA's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 11, except as otherwise may be set forth in the Certificate;

(v) MTC Certificate. A certificate duly executed by MTC confirming the truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 11A, except as otherwise may be set forth in the certificate;

(vi) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required); and

(vii) Closing Costs. Immediately available funds in the amount of BAHA's share of Closing Costs.

(d) ABAG's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, ABAG shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-2 (the "MetroCenter Deed" and together with the 375 Beale Street Deed, the "Deeds")

(ii) Bill of Sale. Two (2) duly executed counterpart originals of each of the separate Bills of Sale;

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of each of the separate Assignments;

(iv) ABAG's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 12, except as otherwise may be set forth in the Certificate.

(v) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required); and

(vi) Closing Costs. Immediately available funds in the amount of the ABAG's share of Closing Costs.

(e) Additional Closing Documents. BAHA and ABAG shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to

close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

10. Closing Costs and Prorations. BAHA and ABAG agree to the following prorations and allocation of costs ("Closing Costs") regarding this Agreement:

(a) Real Estate Taxes Assessments. ABAG and BAHA are each governmental entities and are not subject to real property taxes. In the event there are any assessments which attach to governmentally owned real property, such assessments shall be prorated and adjusted between BAHA and ABAG as of the Closing Date so that (1) with respect to the Unit, BAHA shall pay, or give ABAG credit for, any such assessments that accrued on or prior to the Closing Date and ABAG shall pay, or assume, any such assessments that accrue after the Closing Date, and (2) with respect to the ABAG Unit, ABAG shall pay, or give BAHA credit for, any such assessments that accrued on or prior to the Closing Date and BAHA shall pay, or assume, any such assessments that accrue after the Closing Date. The obligations of ABAG and BAHA set forth in this Section 10(a) shall survive the Closing.

(b) Property Expenses. There shall be no proration at Closing of utilities and common area assessments for the Unit or the ABAG Unit. These expenses shall be paid by ABAG and BAHA, respectively, after Closing.

(c) Title Insurance and Escrow Fee. BAHA shall pay the premium attributable to the Title Policy and the ABAG Title Policy and any reasonable and customary escrow fee or charge imposed by Escrow Holder.

(d) Recording Costs. BAHA shall pay the cost of recording the Deeds and all other documents, if any, recorded pursuant to the terms of this Agreement.

(e) Transfer Taxes. No governmental documentary transfer or transaction taxes or fees shall be payable in connection with this transaction because both ABAG and BAHA are exempt governmental entities.

The provisions of this Section 10 shall survive the Closing.

11. Representations and Warranties of BAHA and Assignee(s). BAHA hereby represents and warrants to ABAG as follows [***Note: Reps and Warranties are still under review and a disclosure schedule will be prepared if necessary.***]:

(a) Power and Authority. Taking into account the effect of the Partial MTC Assignment, BAHA has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (iii) to complete the transactions contemplated by this Agreement. BAHA has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (B) the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing, and

(C) the completion of the transactions contemplated by this Agreement, including but not limited to, any assignment of its rights under this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing have been duly executed and delivered by BAHA and constitute valid and binding obligations of BAHA.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing and the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and the completion of the transactions contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which BAHA is party or by which BAHA is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to BAHA or any judgment, order or decree of any court or governmental authority that is binding on BAHA.

(d) BAHA's Investigation. BAHA has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the ABAG Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in BAHA's judgment bear upon the value and suitability of the ABAG Property for BAHA's purposes. BAHA acknowledges that, except as otherwise provided herein, ABAG has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the ABAG Property, and BAHA is relying solely on BAHA's own inspection and examination of such items and not on any representation of ABAG.

(e) Ownership. BAHA has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the Property.

(f) Actions. To BAHA's knowledge, except for the on-going discussions with the San Francisco Planning Department concerning the current zoning of the Real Property, (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the Property, (ii) there are no special assessment proceedings affecting the Property, (iii) there is no litigation pending or threatened in writing against BAHA arising out of the ownership or operation of the Property or that might detrimentally affect the Property or the ability of BAHA to perform its obligations under this Agreement. BAHA shall notify ABAG promptly of any such proceedings or litigation of which BAHA becomes aware, and (iv) BAHA has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

(g) Contracts for Improvements and Other Encumbrances. To BAHA's knowledge, other than possible construction contract retentions for which funds have been reserved by BAHA or contracts related to 375 Beale Street generally that will not be assumed by ABAG at Closing, at the time of Closing there will be no outstanding written or oral contracts made by BAHA for any improvements to the Property which have not been fully paid for and, except as set forth in the Preliminary Report, there are no existing or proposed easements,

covenants, restrictions, agreements or other documents which affect title to the Property and which were not disclosed in writing to ABAG prior to the date of this Agreement.

(h) Hazardous Materials. To BAHA's knowledge and except as set forth in the Due Diligence Materials, there has been no release, storage, treatment, generation or disposal of Hazardous Materials by BAHA, or any other party during BAHA's ownership of the Property, on, under or from the Property in violation of any applicable laws, ordinances or regulations. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

11A. Representations and Warranties of MTC. If BAHA completes the Partial MTC Assignment and assigns its rights with respect to the ABAG Property to MTC, then MTC will be deemed to make the following representations and warranties to ABAG:

(a) Power and Authority. MTC has the power and authority (i) to partially assume BAHA's rights under this Agreement, (ii) to enter into all of the documents to be executed and delivered by MTC to ABAG at the Closing, (iii) to perform its obligations under this Agreement and the documents to be executed and delivered by MTC to ABAG at the Closing and (iii) to complete the transaction contemplated by this Agreement. MTC has taken all governmental action necessary to authorize (A) the partial assumption of this Agreement and the execution of the documents to be executed and delivered by MTC to ABAG at the Closing, (B) the performance by MTC of its obligations under this Agreement and under the documents to be executed and delivered by MTC to ABAG at the Closing and (C) the completion of the transaction contemplated by this Agreement.

(b) Binding and Enforceable. The partial assumption of this Agreement and all of the documents to be executed and delivered by MTC to ABAG at the Closing will have been duly executed and delivered by MTC and constitute valid and binding obligations of MTC.

(c) No Conflict. The partial assumption of this Agreement and all of the documents to be executed and delivered by MTC to ABAG at the Closing and the performance by MTC of its obligations under this Agreement and under the documents to be executed and delivered by MTC to ABAG at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which MTC is party or by which MTC is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to MTC or any judgment, order or decree of any court or governmental authority that is binding on MTC.

(d) MTC's Investigation. MTC has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the ABAG Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in MTC's judgment bear upon the value and suitability of the ABAG Property for MTC's purposes. MTC acknowledges that, except as otherwise provided herein, ABAG has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the ABAG Property, and MTC is relying solely on MTC's own inspection and examination of such items and not on any representation of ABAG.

12. Representations and Warranties of ABAG. ABAG hereby represents and warrants to BAHA as follows:

(a) Power and Authority. ABAG has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing and (iii) to complete the transaction contemplated by this Agreement. ABAG has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing, (B) the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing and (C) the completion of the transaction contemplated by this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing have been duly executed and delivered by ABAG and constitute valid and binding obligations of ABAG.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing and the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA (or its assignee) at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which ABAG is party or by which ABAG is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to ABAG or any judgment, order or decree of any court or governmental authority that is binding on ABAG.

(d) ABAG's Investigation. ABAG has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in ABAG's judgment bear upon the value and suitability of the Property for ABAG's purposes. ABAG acknowledges that, except as otherwise provided herein, BAHA has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the Property, and ABAG is relying solely on ABAG's own inspection and examination of such items and not on any representation of BAHA.

(e) Ownership. Except for those rights of first refusal as set forth in section 9.08 of the MetroCenter CC&Rs, all of which have been waived in writing with respect to the transaction contemplated by this Agreement, ABAG has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the ABAG Unit.

(f) Actions. To ABAG's knowledge (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the ABAG Unit, (ii) there are no special assessment proceedings affecting the ABAG Unit, (iii) there is no litigation pending or threatened in writing against ABAG arising out of the ownership or operation of the ABAG Unit or that might detrimentally affect the ABAG Unit or the ability of ABAG to perform its obligations under this Agreement. ABAG shall notify BAHA promptly of any such proceedings or litigation of which ABAG becomes aware, and (iv) ABAG has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

(g) Contracts for Improvements and Other Encumbrances. To ABAG's knowledge, at the time of Closing there will be no outstanding written or oral contracts made by ABAG for any improvements to the ABAG Unit which have not been fully paid for and, except as set forth in the preliminary title report pertaining to the ABAG Unit, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the ABAG Unit and which were not disclosed in writing to BAHA prior to the date of this Agreement.

(h) Hazardous Materials. To ABAG's knowledge there has been no release, storage, treatment, generation or disposal of Hazardous Materials by ABAG, or any other party during ABAG's ownership of the ABAG Unit, on, under or from the ABAG Unit in violation of any applicable laws, ordinances or regulations.

13. Survival. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and shall survive the execution and delivery of this Agreement, the 375 Beale Street Deed, the MetroCenter Deed and the Closing, provided that the representations and warranties set forth in Sections 11(d) through 11(h), 11A(d), and 12(d) through 12(h) shall survive the Closing only for a period of nine (9) months following the Closing Date and, if no claim is made in writing within such period, shall expire and be of no further force and effect.

14. Casualty or Condemnation.

(a) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000), then ABAG shall have the right to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, ABAG and BAHA shall each be

liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(b) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing where (i) the cost to repair and/or restore such damage and/or destruction does not exceed Fifty Million Dollars (\$50,000,000), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000) but this Agreement is not terminated pursuant to Section 14(a) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such damage; provided, however, that BAHA shall be obligated, at its cost, to restore or repair the Unit to its prior condition and shall retain its interest in all insurance proceeds payable in connection with such damage or destruction. BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

(c) In the event a governmental entity commences eminent domain proceedings (or threatens in writing to commence such proceedings) to take any portion of the Unit, or the ABAG Unit, or any other portion of the building in which either is located which would impair ABAG's use of the Unit, or BAHA's (or its assignees) use of the ABAG Unit, respectively, after the date hereof and prior to the Closing, then (1) with respect to the Unit, ABAG shall have the option to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such commencement or threatened commencement, and (2) with respect to the ABAG Unit, BAHA shall have the option to terminate this Agreement by written notice to ABAG within five (5) business days after BAHA has received written notice from ABAG of the occurrence of such commencement or threatened commencement. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(d) In the event a governmental entity commences any such eminent domain proceedings after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 14(c) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that (1) with respect to the Unit, BAHA's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the Unit shall be assigned to ABAG as of the Closing or credited to ABAG if previously received by BAHA and (2) with respect to the ABAG Unit, ABAG's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the ABAG Unit shall be assigned to BAHA (or its assignee) as of the Closing or credited to BAHA (or its assignee) if previously received by ABAG. ABAG's and BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

15. Covenants.

(a) BAHA Covenants.

(i) Continued Operation of the Property. Between BAHA's execution of this Agreement and the Closing, BAHA shall cause the Property to be operated and maintained in substantially the condition existing upon the date of this Agreement. Prior to the Closing, BAHA may not materially alter the Property in any way without ABAG's prior written

authorization. **[*Note: This section might need to be updated prior to execution if there are ongoing improvement activities.*]**

(ii) [Recordation of the Map]. BAHA shall, at BAHA's cost, file all applications and take all other actions necessary to obtain all required approvals of the Map, in substantially the form attached hereto as Exhibit A-1, establishing the Unit as a separate legal parcel and shall cause the Map to be recorded in the Official Records of the City and County of San Francisco as expeditiously as is commercial reasonable.] **[*Note: This section can be deleted if the map is recorded prior to execution of the purchase agreement.*]**

(iii) [CC&R's]. BAHA shall, at BAHA's cost, take all actions necessary to cause the CC&R's to be recorded in the Official Records of the City and County of San Francisco in substantially the form attached hereto as Exhibit E with such modifications as are reasonably determined by BAHA, provided that BAHA may not make any modifications that materially increase the burdens or obligations of the owner of the Unit without ABAG's prior written consent unless required by law or by any governmental agencies who approval is required to create the Unit.] **[*Note: This section can be deleted if the map is recorded prior to execution of the purchase agreement.*]**

(b) ABAG Covenant. Between ABAG's execution of this Agreement and the Closing, ABAG shall cause the ABAG Unit to be operated and maintained in substantially the condition existing upon the date of this Agreement, provided that ABAG may vacate the ABAG Unit and **[*Note: Insert conditions to be negotiated in consultation with RAFC*]**. Prior to the Closing, ABAG may not materially alter the ABAG Unit in any way without BAHA's prior written authorization.

16. Brokers. Each party hereby agrees to indemnify, protect and defend the other (by counsel reasonably acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a real estate commission, finder's fee or other real estate brokerage-type compensation by any person or entity based upon the acts of that party with respect to the transaction contemplated by this Agreement. The obligations of ABAG and BAHA under this Section 16 shall survive the Closing.

17. Hazardous Materials Indemnity.

(a) BAHA Indemnity. BAHA shall indemnify, defend and hold harmless ABAG from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by BAHA or any of its employees, agents or contractors of Hazardous Materials on, under or from the Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the Unit, any cost of repair of the Unit necessitated by the remediation or removal of Hazardous Materials from the Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the Unit. The indemnification obligations set forth in this Section 17 shall

survive the Closing. BAHA expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

(b) ABAG Indemnity. ABAG shall indemnify, defend and hold harmless BAHA (or its assignee) from any ABAG Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by ABAG or any of its employees, agents or contractors of Hazardous Materials on, under or from the ABAG Unit occurring prior to the Closing. As used in this subparagraph the term "ABAG Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the ABAG Unit, any cost of repair of the ABAG Unit necessitated by the remediation or removal of Hazardous Materials from the ABAG Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the ABAG Unit. The indemnification obligations set forth in this Section 17 shall survive the Closing. ABAG expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

18. Miscellaneous.

(a) Notices. Any and all notices, elections, approvals, consents, demands, requests and responses ("Notice") permitted or required to be given under this Agreement shall be given in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section 18(a). Any Notice shall be effective upon receipt but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Notices sent by telecopy shall be effective only if also sent by nationally recognized express overnight courier service for delivery within two (2) business days.

If to ABAG:

Association of Bay Area Governments
375 Beale Street, Suite _____
San Francisco, CA 94105

Attn: _____

Tel: _____

Fax: _____

With a copy to:

Attn: _____

Tel: _____

Fax: _____

If to BAHA:

Bay Area Headquarters Authority
375 Beale Street, Suite _____
San Francisco, CA 94105
Attn: Executive Director
Tel: _____
Fax: _____

with a copy to:

Attn: _____
Tel: _____
Fax: _____

If to Escrow Holder:

First American Title Insurance Company
1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, California 94596
Attn: Kitty Schlesinger
Tel: 925-927-2154
Fax: 925-927-2180

(b) Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon the successors and assigns of BAHA and ABAG. The parties acknowledge that the right to purchase the Property pursuant to the terms of this Agreement is personal to the Association of Bay Area Governments or any successor governmental agency performing the same functions, and, except as provided in this Agreement, neither ABAG's nor BAHA's rights hereunder may be otherwise assigned without the prior written consent of BAHA or ABAG, respectively, which may be withheld in BAHA's or ABAG's, respectively, sole discretion. Any assignment in violation of this Section 18(b) shall be void.

(i) Partial MTC Assignment. Notwithstanding the foregoing, concurrently with its execution of this Agreement, BAHA is assigning its right to take title to the ABAG Property under this Agreement and the right to rely on ABAG's representations, warranties and covenant as set forth in Sections 2(a), 4, 6, 8, 9, 10, 12, 13, 14, 15(b), 16, 17, and 18 of this Agreement to the Metropolitan Transportation Commission ("MTC") without ABAG's consent (the "Partial MTC Assignment") pursuant to the assignment and assumption agreement attached hereto as Exhibit F. MTC is an express third-party beneficiary of this Agreement.

(c) Attorneys' Fees. In the event of any litigation or other proceeding to enforce the provisions of this Agreement or to resolve any dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other proceeding shall be entitled to, in addition to any other damages assessed, its or his reasonable attorneys' fees and all other costs and expenses incurred in connection with such litigation or other proceeding.

(d) Amendments. This Agreement may be amended or modified only by a written instrument executed by BAHA and ABAG.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Schedules and Exhibits. Each of the schedules and exhibits attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

(g) Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including, without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

(h) Captions. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

(i) Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

(j) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: Executive Director

Approved as to form:

Legal Counsel

By: _____
Name: _____
Its: Treasurer-Auditor

Approved as to form:

General Counsel

EXHIBIT A-1

DRAFT MAP OF THE UNIT

EXHIBIT A-2

LEGAL DESCRIPTION OF ABAG REAL PROPERTY

EXHIBIT B-1

FORM OF 375 BEALE STREET DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

Pursuant to Section 27383 of the Government Code, no recording fee is due.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantor"), hereby grants, transfers and assigns to ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority ("Grantee"), that certain real property located in the City and County of San Francisco, State of California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

BAY AREA HEADQUARTERS AUTHORITY, a
joint powers authority established pursuant to the
California Joint Exercise of Powers Act

By: _____
Name: _____
Its: _____

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

STATE OF _____)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

Exhibit B

275895255170.4

Item 6.C., Office Lease

EXHIBIT B-2

FORM OF METROCENTER DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

Pursuant to Section 27383 of the Government Code, no recording fee is due.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority ("Grantor"), hereby grants, transfers and assigns to BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantee"), that certain real property located in the City and County of Alameda, California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

ASSOCIATION OF BAY AREA
GOVERNMENTS, a regional planning agency

By: _____
Name: _____
Its: _____

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

STATE OF _____)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

Exhibit B

27589\5255170.4

Item 6.C., Office Lease

EXHIBIT C

FORM OF BILL OF SALE

[to be conformed to sale of each of the Unit and the ABAG Unit]

This BILL OF SALE is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Seller") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Buyer").

WHEREAS, Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller an office condominium unit located at 375 Beale Street, Suite ____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement.

WHEREAS, pursuant to the Agreement, Seller is to convey to Buyer certain office furnishings, equipment and other personal property (collectively, the "Personal Property").

NOW, THEREFORE, in consideration of Buyer entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby:

1. sells, transfers, conveys and assigns all of Seller's right, title and interest in and to the Personal Property, to have and to hold the Personal Property unto the Buyer and its successors and assigns forever, and
2. agrees to cooperate with Buyer to enforce any warranties pertaining to the Personal Property.

EXCEPT FOR ANY EXPRESS REPRESENTATIONS OR WARRANTIES SET FORTH IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE ABOVE-DESCRIBED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ENVIRONMENTAL CONDITION, AND BUYER ACCEPTS THE ABOVE-DESCRIBED PROPERTY IN AN "AS IS - WHERE IS" CONDITION, WITH ALL FAULTS.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first written above.

BUYER:

SELLER:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT D

FORM OF ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY [AND CONTRACTS]

[to be conformed to sale of each of the Unit and the ABAG Unit]

This ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PERSONAL PROPERTY [AND CONTRACTS] (this "Assignment") is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Assignor") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Assignor agreed to sell to Assignee and Assignee agreed to purchase from Assignor an office condominium unit located at 375 Beale Street, Suite _____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement (the "Real Property"). Capitalized terms used but not defined herein shall have the meaning given such terms in the Agreement.

WHEREAS, pursuant to the Agreement, Assignor is to convey to Assignee certain Intangible Property relating to the Real Property.

[WHEREAS, pursuant to the Agreement, Assignor is to assign its interest in certain service agreements, maintenance agreements and other contracts relating to the Real Property which agreements and contracts are listed in Schedule 1 attached hereto (collectively, the "Contracts").]

NOW, THEREFORE, in consideration of Assignee entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee and Assignor hereby agree as follows:

1. Intangible Property. Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Intangible Property.

2. Contracts. **[TO BE DELETED IF NO CONTRACTS]**

(a) Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Contracts. Assignor agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Contracts to be performed prior to the date hereof.

(b) Assignee shall perform or cause to be performed Assignors' obligations, if any, under the Contracts from and after the date of this Assignment, and agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignor relating to obligations with respect to the Contracts to be performed after the date hereof. Assignors agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Leases and Contracts to be performed before the date hereof.

3. Further Actions. Each of Assignor and Assignee hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to the other, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which the other, its successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its successors and/or assigns, to realize upon or otherwise enjoy any such assets, or to effect the allocation of responsibility for performance under the Contracts.

4. Miscellaneous. The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and assigns. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Intangible Property [and Contracts] as of the date first written above.

ASSIGNEE:

ASSIGNOR:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Schedule 1 to Assignment

List of Contracts

[to be attached]

EXHIBIT E

FORM OF CC&R's

[TO BE ATTACHED UPON EXECUTION OF THIS PURCHASE AND SALE
AGREEMENT]

Exhibit E

27589\5255170.4

EXHIBIT F

COPY OF ASSIGNMENT FOR PARTIAL MTC ASSIGNMENT

(see attached)

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MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, dated as of February 13, 2013 by and between the BAY AREA HEADQUARTERS AUTHORITY ("BAHA"), a joint powers authority established by the Metropolitan Transportation Commission ("MTC") and the Bay Area Toll Authority ("BATA") pursuant to the California Joint Exercise of Powers Act, consisting of California Government Code Sections 6500 through 6599.3 ("Act"), and the ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), a joint powers authority established by the San Francisco Bay Area's cities, towns and counties pursuant to the Act:

WHEREAS, BAHA is the owner of certain real property (the "Property") located at 390 Main Street in the City and County of San Francisco, State of California; and

WHEREAS, the Property consists of a building (the "Facility") comprised of 518,000 gross square feet over eight floors, each of which are identical 64,350-square-foot rectangular plates, measuring 234 by 275 feet, and the ground level which contains approximately 100 parking spaces; and

WHEREAS, BAHA will divide the Facility into two separate components, with approximately 260,000 square feet allocated to the development of separate condominium units to be acquired or leased by governmental agencies, who will also share certain jointly used and common areas (the "Agency Space") and the balance of the Facility to be owned and retained by BAHA for future expansion of the Agency Space and leased by BAHA to public and commercial sector tenants until expansion occurs; and

WHEREAS, BAHA has entered into an architectural and engineering contract to design and plan the retrofit and remodel the Facility, including the creation of individual tenant or condominium units, and concurrently therewith or subsequent thereto will enter into a construction contract or contracts to execute the retrofit and remodel, at BAHA's sole cost; and

WHEREAS, ABAG and MTC each hold condominium interests in the MetroCenter, located at 101 Eighth Street, Oakland, California 94607 (the "MetroCenter"); and

WHEREAS, it is the desire and intention of BAHA to subdivide the Agency Space at the Facility into three (3) separate condominium units, which will be owned by BAHA and leased or sold to other government agencies, including the Bay Area Air Quality Management District and ABAG, and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said condominiums and the owners thereof;

WHEREAS, such mutually beneficial restrictions are to be memorialized in a Bay Area Facility Declaration of Covenants ("CCRs"), a form of which is attached hereto as Appendix 1, and which shall be recorded by BAHA at or about the time of occupation of the Facility; and

WHEREAS, ABAG and BAHA intend to enter into a Purchase and Sale Agreement and Joint Escrow Instructions, a form of which is attached hereto as Appendix 2 ("ABAG Purchase

Agreement”) for the purchase by ABAG from BAHA of condominium space within the Agency Space in exchange for ABAG’s condominium interests in the MetroCenter; and

WHEREAS, ABAG and BAHA wish to memorialize certain ancillary terms related to the purchase by ABAG of the Agency Space, and which are not otherwise covered by the ABAG Purchase Agreement or the CCRs;

NOW, THEREFORE, BAHA and ABAG, for valuable consideration, agree to the following additional terms as follows:

1. BAHA shall deliver the ABAG’s portion of the Agency Space to ABAG in “turnkey” condition, designed to the same standards as the space to be occupied by MTC and the Bay Area Toll Authority (“BATA”).

2. BAHA shall pay for ABAG’s moving costs, which shall be provided by the same vendor moving MTC and BATA, and which move shall be coordinated with MTC and BATA to provide efficiencies of cost and scale. BAHA shall direct the move and have control over decisions related to the logistics thereto.

3. ABAG shall provide \$4.2 million for capital tenant improvements to the Agency Space from funds provided by MTC to ABAG per the funding framework approved by MTC in February.

4. BAHA will execute space plans providing for the functionalities described in Appendix 3, and assigned conference rooms within ABAG space, separate filing area to accommodate 2,000 linear feet of active files and intern workstations.

5. ABAG shall pay in full its share of the MetroCenter’s Seismic Retrofit Local Match (\$90,920) from its own funds.

6. ABAG’s share of the annual Common Expenses at the Facility plus ABAG’s annual costs for utilities and janitorial services for the unit ABAG occupies in the Facility that are not included in that year’s Common Assessment shall not exceed \$314,000 adjusted annually for inflation as measured by the CPI for San Francisco – Oakland – All Urban Consumers, commencing July 1, 2014, or the date ABAG occupies its unit at the Facility, whichever occurs later. ABAG and BAHA shall agree on a methodology to implement this provision. All capitalized terms not defined herein shall have the meanings ascribed to them in the CCRs.

7. Subject to adequate demand, shuttle service from the Embarcadero BART station to the Facility will be provided for all public agency board and committee meetings. BAHA shall determine, in consultation with ABAG, what constitutes “adequate demand.”


8. BAHA will provide an on-site food market/deli and coffee shop on the ground floor space of the Facility adjacent to the Board Room and will include alternate seating accommodations for staff and elected officials. Further, the design and proposal process will

include an exploration of ways to create an amenity for the building and make on-site food affordable to building occupants.

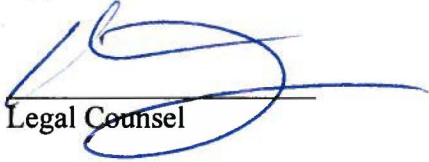
9. The ABAG Purchase Agreement and the CCRs in the forms attached hereto substantially reflect the additional terms ABAG and BAHA desire to memorialize as the transaction between the two agencies. ABAG and BAHA shall proceed to conclude negotiation of, and execute said documents in due course.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first above written.

ASSOCIATION OF BAY AREA
GOVERNMENTS

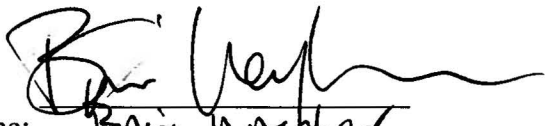
By: 
Name: Ezra Rapport
Its: Executive Director

Approved as to form:


Legal Counsel

BAY AREA HEADQUARTERS
AUTHORITY

By: 
Name: _____
Its: Executive Director

By: 
Name: Brian Macpherson
Its: Treasurer-Auditor

Approved as to form:


General Counsel

J:\CONTRACT\Contracts-New\Con BAHA\390 Main Purchase\Purchase Agreements\MOU between ABAG and BAHA 390
Main Condo acquisition_final.docx

APPENDIX 1

[FORM OF BAY AREA FACILITY DECLARATION OF COVENANTS]

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF THE

AGENCY SPACE

AT

390 MAIN STREET

SAN FRANCISCO, CALIFORNIA

BY THE

BAY AREA HEADQUARTERS AUTHORITY

DATED: _____, 201~~1~~₂

Recorded: _____

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Declaration, Designation of Units and Common Area	2
Section 1.01. Declaration	2
Section 1.02. Designation of Units and Common Areas.....	2
ARTICLE II Definitions.....	3
Section 2.01. Defined Terms.....	3
ARTICLE III Relationship of Unit Owners	7
Section 3.01. Relationship of Parties	7
Section 3.02. Membership.....	7
ARTICLE IV Management.....	7
Section 4.01. Management of Agency Space.....	7
Section 4.02. Authority of the Board	8
Section 4.03. Intentionally Omitted.	9
Section 4.04. Authority of the Facility Operator.....	9
ARTICLE V Rights and Responsibilities of Unit Owner	13
Section 5.01. Exclusive Ownership and Possession	13
Section 5.02. Leasing.	13
Section 5.03. Maintenance of Unit.....	14
Section 5.04. Alterations to Common Areas.....	14
Section 5.05. Alterations to Unit.....	14
Section 5.06. Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens.....	14
Section 5.07. Taxes, Assessments, Utilities, etc	15
Section 5.08. Liability for Obligations Under the Declaration	15
Section 5.09. Use Affecting Insurance Premiums.....	15

Section 5.10.	Compliance with Laws and Rules	16
Section 5.11.	General Restrictions on Use	16
Section 5.12.	Special Equipment.....	17
ARTICLE VI	Easements	17
Section 6.01.	Utilities	17
Section 6.02.	Encroachment.....	17
Section 6.03.	Maintenance and Repair.....	17
Section 6.04.	Nonexclusive Easements.....	17
Section 6.05.	Right of Access	18
Section 6.06.	[Reserved].	18
Section 6.07.	Restricted Easement	18
Section 6.08.	Reserved Exclusive Easement for BAHA Emergency Power System. 19	
ARTICLE VII	Assessment and Collection Procedures	20
Section 7.01.	Covenant for Assessments, Creation of Lien, Personal Obligation	20
Section 7.02.	Common Assessments.....	20
Section 7.03.	Extra Common Assessment	20
Section 7.04.	Special Assessments.....	20
Section 7.05.	Proration of Common Assessments.	20
Section 7.06.	Date of Commencement of Assessments; Due Dates; Charges for Late Payments	21
Section 7.07.	Assessments Deposited in Maintenance Fund Bank Account; Disposition of Unexpended Funds.....	21
Section 7.08.	Effect of Nonpayment of Assessment; Delinquency; Notice of Assessment.....	22
Section 7.09.	Acceleration	23

Section 7.10.	Notice of Default; Foreclosure Sale	23
Section 7.11.	Curing of Default	23
Section 7.12.	Rights of Board; Waiver of Owners.....	23
Section 7.13.	Remedies Cumulative	24
Section 7.14.	Failure to Fix Assessments.....	24
Section 7.15.	Liability for Assessments	24
Section 7.16.	Contributions.....	24
ARTICLE VIII	Insurance; Damage and Destruction; Eminent Domain.....	25
Section 8.01.	Authority to Purchase.....	25
Section 8.02.	Manner of Purchase.....	25
Section 8.03.	Insurance Specifications.....	25
Section 8.04.	Unit Owner Insurance	28
Section 8.05.	General Insurance Conditions.	29
Section 8.06.	Decision to Repair or Restore.	29
Section 8.07.	Proceeds of Property Insurance - How Settled and Paid.....	31
Section 8.08.	Eminent Domain.	32
Section 8.09.	Unit Mortgagee's Right to Require Independent Trustee.....	33
ARTICLE IX	Restrictions on Transfer; Actions for Partition.....	34
Section 9.01.	Unity of Interests	34
Section 9.02.	Right to Partition	34
Section 9.03.	Proceeds of Sale Incident to Partition	34
Section 9.04.	Priority on Leases, Sales and Transfers.	34
Section 9.05.	Interest in Maintenance and Reserve Fund	35
Section 9.06.	Conveyance of Condominiums	35
Section 9.07.	Transfer of Membership.....	35

Section 9.08.	Rights of First Refusal – Sale.....	36
Section 9.09.	Right of First Refusal - Lease	39
Section 9.10.	[Reserved]	40
Section 9.11.	[Reserved]	40
Section 9.12.	[Reserved]	40
Section 9.13.	Rights in the Event of Foreclosure	40
Section 9.14.	Recomputation of Interest	41
Section 9.15.	Other Encumbrances	41
ARTICLE X	Mortgage Protection.....	41
Section 10.01.	Warranty	41
Section 10.02.	No Impairment	41
Section 10.03.	Reserve Fund.....	42
Section 10.04.	Subordination	42
Section 10.05.	Amendment of Declaration	42
Section 10.06.	Additional Subordination Agreements.....	42
Section 10.07.	Prior Written Approval of Mortgagees	42
Section 10.08.	Written Notification Obligation	43
Section 10.09.	Right to Inspect	43
Section 10.10.	Notice of Damage.....	43
Section 10.11.	Notice of Condemnation Proceeding	44
Section 10.12.	Authority of Unit Owners to Cure Default.....	44
Section 10.13.	Mortgagee Protection Clause	44
Section 10.14.	Status of Loan to Facilitate Resale	44
Section 10.15.	Right of First Refusal Inapplicable to Mortgagee	44
Section 10.16.	Conflict with Other Provisions.....	45

ARTICLE XI	Compliance, Liability, Breach and Default	45
Section 11.01.	Compliance and Breach	45
Section 11.02.	Liability	45
Section 11.03.	Right of Entry	45
Section 11.04.	Nuisance	45
Section 11.05.	Breach of Duty to Maintain.....	45
Section 11.06.	Enforcement	46
Section 11.07.	Remedy at Law Inadequate	46
ARTICLE XII	General Provisions	46
Section 12.01.	Severability.....	46
Section 12.02.	Liberal Construction.....	46
Section 12.03.	Waiver	46
Section 12.04.	Number and Gender	47
Section 12.05.	Headings; References	47
Section 12.06.	Notices.....	47
Section 12.07.	Covenants Running with the Land	47
Section 12.08.	Amendment of Declaration	47
Section 12.09.	Term of Covenants, Conditions and Restrictions.....	47
Section 12.10.	Successors and Assigns	47
Section 12.11.	Joint and Several Liability.....	48
Section 12.12.	Priority of Governing Instruments	48
Section 12.13.	Arbitration of Dispute	48

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE AGENCY SPACE

This DECLARATION, made and entered into this ____th day of _____, 2012, by the BAY AREA HEADQUARTERS AUTHORITY (herein called "BAHA" or "Declarant"), a joint powers authority established pursuant to the California Joint Exercise of Powers Act, consisting of California Government Code Sections 6500 through 6599.3; and

WHEREAS, BAHA is the owner of certain real property located at 390 Main Street in the City and County of San Francisco, State of California, described in Exhibit A-1 attached hereto (hereinafter referred to as the "Property"); and

WHEREAS, the Property consists of a building (the "Facility") comprised of 518,000 gross square feet over eight floors, each of which are identical 64,350-square-foot rectangular plates, measuring 234 by 275 feet, and the ground level which contains ____ parking spaces; and

WHEREAS, BAHA will divide the Facility into two separate components, with approximately _____ square feet allocated to the development of separate condominium units to be acquired or leased by governmental agencies, who will also share certain jointly used and common areas (the "Agency Space") and the balance of the Facility to be owned and leased by BAHA to commercial office users (the "Commercial Space") as shown on Exhibit A-2 attached hereto; and

WHEREAS, BAHA will enter into an architectural and engineering contract to design and plan the retrofit and remodel the Facility, including the creation of individual tenant or condominium units, and concurrently therewith or subsequent thereto will enter into a construction contract or contracts to execute the retrofit and remodel, at BAHA's sole cost; and

WHEREAS, the BAY AREA AIR QUALITY MANAGEMENT DISTRICT, a regional air pollution control agency created by the California State Legislature in 1955 pursuant to California Health & Safety Code Sections 40200, et seq. ("BAAQMD") has entered into a lease with BAHA for a portion of the Agency Space (the "BAAQMD Lease"), which lease contains an option to purchase the space leased by it on the terms set forth in the Sale and Purchase Agreement appended as an exhibit to the BAAQMD Lease, and

WHEREAS, the ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority created in 1961 by the San Francisco Bay Area's cities, towns and counties ("ABAG"), has entered into a Purchase and Sale Agreement and Joint Escrow Instructions with BAHA, dated _____, 2013 ("ABAG Purchase Agreement") for the purchase of space within the Agency Space; and

WHEREAS, it is the desire and intention of BAHA to subdivide the Agency Space into _____three (3) separate condominium units, which will be owned by BAHA and leased or sold to other government agencies, including BAAQMD, and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said condominiums and the owners thereof;

NOW, THEREFORE, BAHA, as the owner of the Agency Space and for the purposes set forth above, hereby declares, covenants and agrees as follows:

ARTICLE I

DECLARATION, DESIGNATION OF UNITS AND COMMON AREA

Section 1.01. Declaration. BAHA hereby declares that the Agency Space and every part thereof is held and shall henceforth be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision and ownership of condominium units within the Agency Space (each a "Condominium" and as further defined in Section 2.01), and are established and agreed upon for the purposes of enhancing and perfecting the value and attractiveness of the Agency Space and every part thereof. All of the limitations, covenants, conditions and restrictions set forth herein shall run with the land and each Condominium therein and shall be binding on all parties having or acquiring any right, title or interest in the Agency Space, or any part thereof, and shall be for the benefit of each owner of any portion of the Agency Space or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. This Declaration is made by BAHA pursuant to Civil Code Section 1350, et seq. Each and all of said limitations, easements, and restrictions shall be deemed to be, and shall be construed as equitable servitudes upon such real property enforceable by each owner ("Unit Owner" and as further defined in Section 2.01) of any portion of the Agency Space or any interest therein.

Section 1.02. Designation of Units and Common Areas. Ownership of each Condominium within the Agency Space shall include (i) fee title to an individually owned unit ("Unit", and as further defined in Section 2.01(w)), (ii) an undivided interest in the common area as defined below and as shown on the condominium plan attached hereto as Exhibit B ("Common Area" and as further defined in Section 1.02(b)), which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration, (iii) a right to use in common with other occupants of the Facility, as and to the extent provided herein and in any rules and regulations promulgated by the Board from time to time, the library, cafeteria, meeting rooms, server rooms, parking areas and other shared spaces owned by BAHA (the "Jointly Shared Spaces" and as further defined in Section 1.02(c)), (iv) a membership in the Corporation and representation on the Board (both as defined in Section 2.01 below), and (v) any exclusive or nonexclusive easement or easements appurtenant to such Condominium as described in this Declaration, the condominium plan attached hereto as Exhibit B ("Condominium Plan" and as further defined in Section 2.01(l)) and the deed to the Condominium.

(a) Each Unit consists of the space bounded by and contained within:

(1) the interior unfinished surfaces (exclusive of paint, tile, carpet, wax, wallpaper, or other finishes) of the perimeter walls, floors, ceilings, windows, and doors thereof;

(2) the network closet or closets serving the Unit, whether or not located within the Unit, and all related cabling from the network closet(s) to individual offices and cubicles within the Unit and

(3) if applicable, the parking spaces in the Facility which are appurtenant to the Unit.

The following are not part of a "Unit": bearing walls, columns, floors except surface finishes thereof, roofs, skylights, windows, foundation, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, electrical security and fire alarm system pumps, telephone and data transmission lines, servers and other central services, pipes, ducts, flues, chutes, conduits, wiring and other utility installations, including electrical and fire sprinklers outlets and lights, wherever located, except plumbing outlets and telephone and data transmission lines located within a Unit solely for the benefit of such Unit and not part of a distribution system serving multiple Units and except BAHA's emergency power supply system located within the BAHA Unit which will be maintained by BAHA for the benefit of the entire Facility as a Common Expense (as defined in Section 2.01(j)).

(b) "Common Area" consists of the entire Agency Space except all Units and the Jointly Shared Space, as defined and designated in this Declaration and as shown on the Condominium Plan and shall include any portions of the Commercial Space housing building systems serving both the Commercial Space and the Agency Space.

(c) "Jointly Shared Space" consists of the publicly accessible library, the cafeteria, the meeting rooms, copier and mail services, record and equipment storage, parking areas, server rooms and those other spaces which are so designated on the Condominium Plan. The Jointly Shared Spaces shall be owned by BAHA and available for use by Unit Owners and other occupants of the Agency Space in common with all other occupants or on an advance reservation basis pursuant to rules established by the Board and administered by the Facility Operator.

ARTICLE II

DEFINITIONS

Section 2.01. Defined Terms. Unless otherwise provided or unless the context requires otherwise, the following terms shall be defined as provided in this Section:

(a) Agency Space: That portion of the Facility containing individual office condominium units for lease to or ownership by governmental entities, the Jointly Shared Spaces and the Common Area.

(b) Approved by the Board or Approval by the Board (including all actions required by the Board in this Declaration, the Articles or the Bylaws): Approved by a majority of the members of the Board ~~holding a majority of the Percentage Ownership Interests~~, except as otherwise expressly provided in this Declaration, in the Bylaws and Articles or in any other agreement to which all of the Unit Owners are parties.

(c) Articles: The Articles of Incorporation of the Corporation, as amended from time to time.

(d) Assessments: There are three types of Assessments:

(1) Common Assessments: As defined in Section 7.02.

(2) Extra Common Assessments: As defined in Section 7.03.

(3) Special Assessments: As defined in Section 7.04.

(e) Board: The Board of Directors of the Corporation.

(f) Bylaws: The duly adopted Bylaws of the Corporation, as amended from time to time.

(g) Capital Improvements: Any improvements or alterations which increase the size, value or life of the Facility.

(h) Commercial Space: That portion of the Facility which is owned by BAHA and leased or available for lease to commercial office users.

(i) Common Area: As defined in Section 1.02(b).

(j) Common Expenses:

(1) Definition: "Common Expenses" means the expenses payable by the Corporation for costs of: maintenance, management, administration, operation and ordinary repairs to the Agency Space, including the Common Areas and the Jointly Shared Spaces, but excluding any such expenses which are the responsibility of a Unit Owner or tenant with respect to its Unit. Common Expenses shall include each of the expense categories described in (2) below and reasonable reserves and contingencies for such purposes, compensation paid by BAHA to the Facility Operator for management of the Agency Space, fees paid to accountants, attorneys or other employees and agents for services rendered to the Corporation for the benefit of the Unit Owners collectively in connection with the Agency Space, and all other costs specifically designated to be Common Expenses by or in accordance with the provisions of this Declaration but expressly excluding Capital Improvements made by BAHA to the Facility or the Agency Space, which costs shall be borne solely by BAHA.

(2) Included Expenses: Except as otherwise Approved by the Board, "Common Expenses" shall include the costs of or charges for the following, by way of illustration but not limitation: water and sewer; insurance premiums. licenses, permits and inspections; heat, light, power and steam; internet services; telephone access; janitorial services; maintenance and service agreements on equipment servicing the Agency Space as a whole; window cleaning; garbage services; costs of air conditioning; costs of supplies, materials, equipment and tools; and the cost of contesting by appropriate proceedings the applicability to the Agency Space or the validity of any statute, ordinance, rule or regulation affecting the Agency Space which might increase Common Expenses. All replacements, improvements and

repairs which cost in excess of \$250,000 or add five (5) years or more to the useful life of the building system or component being replaced, improved or repaired, but which do not constitute Capital Improvements, shall be amortized over the useful life of the improvement, replacement or repair and the annual amortized portion included in Common Expenses until fully amortized. To the extent any Common Expenses are incurred for the benefit of both the Agency Space and the Commercial Space, the portion of such cost allocated to the Agency Space shall not be greater than the percentage which the square footage of the Agency Space bears to the square footage of the Facility as a whole.

(3) Exclusions from "Common Expenses": "Common Expenses" shall not include depreciation, costs incurred or sums expended contrary to the provisions of this Declaration, advertising costs, leasing expenses, leasing commissions and related property management or lease enforcement costs relating to the rental of any Unit, or portion thereof, by any Unit Owner, real property taxes of any type assessed against the Facility or separately incurred, levied or assessed against a Unit Owner or against a Unit Owner's Condominium, indebtedness secured by a Unit Owner's Condominium and/or Unit or by the Facility as a whole, and other costs that are the responsibility of each Unit Owner individually, including those pursuant to Sections 5.03 and 11.02; provided that nothing contained herein shall preclude the Corporation from collecting monies and paying such expense on behalf of individual Unit Owners where such action is permitted pursuant to the terms of this Declaration.

(k) Condominium: "Condominium" means an estate in real property, as defined in California Civil Code Section 783, consisting of an undivided interest in common in the Common Area, together with a separate fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

(l) Condominium Plan: "Condominium Plan" means a condominium plan, as defined in California Civil Code Section 1351, respecting the Agency Space, and any amendments to the plan. A copy of the Condominium Plan is attached as Exhibit B.

(m) Corporation: One Bay Area Facility Corporation, a non-profit mutual benefit corporation incorporated in the State of California, which is responsible for oversight of, and policy regarding the Common Area and the Jointly Shared Spaces, and for such aspects of the management and operation of the individual Units as may, from time to time, be requested or be delegated by the respective Unit Owner and Approved by the Board; it being understood that the management and operation of the Common Area and the Jointly Shared Spaces shall be coordinated by BAHA in connection with its contract with the Facility Operator pursuant to the policies established by and the budget Approved by the Board.

(n) Declaration: This Declaration as may be amended from time to time.

(o) Facility: As defined in the Recitals above.

(p) Facility Operator: The entity retained or employed by BAHA and charged with the day to day operation, management, maintenance and upkeep of the Agency Space.

(q) Governing Instruments: The Declaration and the Articles of Incorporation and Bylaws of the Corporation, as they may be amended from time to time.

(r) Member: "Member" means each Unit Owner in its role as a member of the Corporation or any permitted delegate of such Unit Owner.

(s) Mortgage-Mortgagee-Mortgagor; Foreclosure: "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Facility. A "Mortgagee" shall include any beneficiary or co-beneficiary under a deed of trust. A "Mortgagor" shall include any trustor under such a deed of trust. "Foreclosure" shall include judicial and nonjudicial foreclosure. A "first" Mortgage or "first" Mortgagee is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Condominium.

(t) Percentage Ownership Interest or Ownership Interest. The percentage ownership interest held by each Unit Owner, which shall be the percentage which the square footage of such Unit Owner's Unit bears to the total square footage of all Units.

(u) Property: As defined in the Recitals above.

(v) Rules: The written rules promulgated by the Board providing for the operation of the Agency Space, including the Common Areas and the Jointly Shared Spaces. Such rules shall be consistent with the terms and conditions of this Declaration, and in the event of any conflict this Declaration shall prevail. The rules in force at the time this Declaration is executed are attached as Exhibit "C."

(w) Unit: "Unit" is defined in Section 1.02(a). "Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan, regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component space, described in Section 1.02(a).

(x) Unit Mortgagee: "Unit Mortgagee" is any holder or co-holder of an indebtedness secured by a recorded Mortgage upon a Condominium.

(y) Unit Owner: "Unit Owner" means each person or entity holding a record ownership interest in a Condominium, including Declarant. "Unit Owner" shall also mean a lessee of an entire Condominium under a long-term lease from the issuer of a Certificate of Participation; provided that such lease assigns all rights as a "Unit Owner" to the lessee; and provided further that in no event shall both the Unit Owner and its lessee under this Section 2.01(y) have simultaneous membership in the Corporation. Subject to the preceding, "Ownership" shall include membership in the Corporation. "Owner" shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

ARTICLE III

RELATIONSHIP OF UNIT OWNERS

Section 3.01. **Relationship of Parties.** This Declaration shall not constitute any Unit Owners as partners or joint venturers with each other nor constitute any Unit Owner the agent of any other, nor in any manner limit the Unit Owners in occupying or leasing to others their respective Units or in carrying on their respective separate businesses or activities, nor impose upon any Unit Owner any fiduciary duty by reason of its carrying on its separate business or activity, nor impose upon any Unit Owner any liability or obligation not set forth herein, provided that all of the foregoing is conducted in accordance with the limitations and restrictions expressly set forth herein.

Section 3.02. **Membership.** Declarant and each additional Unit Owner, upon becoming the record owner of a Condominium, shall automatically become a Member of the Corporation and shall remain a Member thereof until it no longer owns any Condominium, at which time its membership in the Corporation shall automatically cease. Ownership of a Condominium shall be the sole qualification for membership in the Corporation. All memberships shall be appurtenant to the Condominium conveyed. A membership held by any Unit Owner shall not be transferred or alienated in any way, except as provided in Section 9.07. Each Member shall appoint one director of the Board, provided that for each of BAHA and BAAQMD, so long as each owns an interest in the Agency Space, its appointee shall be, respectively, the Executive Director and the Executive Officer/APCO of same or the person appointed by the Executive Director or Executive Officer/APCO as his or her representative. Each director shall serve at the pleasure of the appointing Member. The provisions of this Section 3.02 shall not be amended except with the unanimous approval of the Board and each holder of a First Mortgage then encumbering any Condominium.

ARTICLE IV

MANAGEMENT

Section 4.01. **Management of Agency Space.**

(a) **Creation of Corporation; Appointment of Facility Operator.** The Corporation has been created to provide for oversight of and the establishment of policy regarding the Common Area and the Jointly Shared Spaces and for such aspects of the management and operation of the individual Units as may, from time to time, be requested or be delegated by the Unit Owners and Approved by the Board. The Facility Operator shall be responsible for implementing the directions of BAHA and the Board and for conducting the ordinary and usual business and affairs with respect to the Agency Space.

(b) **Overall Management and Control.** The overall management and control of the Agency Space shall be vested in BAHA subject to the general policies established by the Board

from time to time and, with respect to Common Expenses, the budgets Approved by the Board. The Board shall have the responsibility to oversee and provide input regarding the management of all of the Common Area in a first class condition and in a good state of repair. Upon request of the applicable Unit Owners(s) and as Approved by the Board, the Corporation, acting by and through the Facility Operator, shall also have the responsibility to manage certain aspects of one or more individual Units. BAHA shall be responsible for making, shall pay from its own funds and shall make all decisions concerning Capital Improvements to the Agency Space, including individual Units, and to the remainder of the Facility, except for improvements to individual Units which the Unit Owners are permitted to make hereunder or which a Unit Owner asks BAHA to make at the cost of the applicable Unit Owner. Except as otherwise expressly provided in the Governing Instruments or any other agreement to which all Unit Owners are party, all decisions of the BAHA respecting the management and control of the Facility and the Agency Space which are consistent with the policies and budget Approved by the Board shall be binding on all the Unit Owners. The Unit Owners covenant and agree that the management and control of the Agency Space shall be in accordance with the Governing Instruments.

(c) Compensation. Except as may be expressly provided for herein or hereafter Approved by the Board and except for payments made to the Facility Operator, no payment will be made to any Board Member, Unit Owner or any member, stockholder, director or employee of a Unit Owner for services rendered in connection with the business or affairs of the Corporation or pertaining to the Agency Space.

Section 4.02. **Authority of the Board.** The Board shall treat all Unit Owners fairly and equitably and, for the benefit of the Agency Space as a whole, the Board shall have the following nondelegable powers and duties:

(a) To review and approve the policies for operation of the Agency Space, including without limitation the allocation of parking spaces, provided however that the Metropolitan Transportation Commission, the Bay Area Toll Authority and BAAQMD shall at all times each have parking within the Facility for the members of their respective Board of Directors in connection with all public meetings attended by such Board members.

(b) To adopt, review and amend two-year budgets for Common Expenses and those Special Assessments payable by all Unit Owners submitted to it by the Facility Manager pursuant to Section 4.04(b) hereof. Each two-year budget shall be adopted or, as appropriate, amended on or before January 1 of each calendar year for the succeeding fiscal year commencing July 1.

(c) To review monthly operating statements of the Corporation, with comparisons to the approved budget, submitted to it by the Facility Operator.

(d) To provide and pay for legal and accounting services pertaining to the operation of the Common Areas and the Jointly Shared Spaces.

(e) To cause appropriate tax returns for the Corporation to be prepared and filed.

(f) To cause to be prepared and distributed to all Unit Owners within one-hundred twenty (120) days after the end of the fiscal year a balance sheet as of the last day of the Corporation's fiscal year and an operating statement for such fiscal year prepared by a Certified Public Accountant reflecting receipts and expenditures of the Corporation.

(g) to review the performance of the Facility Operator, and to delegate authority to and review the performance of employees and independent contractors hired by the Corporation.

(h) To hire and terminate employees and independent contractors.

(i) To assess and cause the Facility Operator to collect from the Unit Owners all applicable Common Assessments, Extra Common Assessments and Special Assessments.

(j) To adopt and amend reasonable written rules governing the Common Area and Jointly Shared Spaces, provided that such rules shall require that, in the event of a scheduling conflict for use of any of the Jointly Shared Spaces, Unit Owners shall have priority over tenants.

(k) Whenever partition may be had pursuant to Civil Code Section 1359(b) or this Declaration, said power of sale is to be exercised pursuant to Code of Civil Procedure Section 872.010 et seq.

(l) To exercise other powers reasonable and necessary to fulfill the Corporation's purposes.

Section 4.03. Intentionally Omitted.

Section 4.04. Authority of the Facility Operator. The Facility Operator may possess all BAHA delegated powers, duties and responsibilities for the day to day operation, management and maintenance of the Agency Space, subject to any limitations that may be imposed by BAHA and the policies established by and the budget Approved by the Board. Without limiting the generality of the foregoing, the Facility Operator may be delegated the following powers and duties:

(a) Rule Making. For the mutual benefit of all Unit Owners and occupants, the Facility Operator may recommend and the Board may adopt or amend reasonable written rules. Such rules shall relate to the operation and use of the Common Area, the Jointly Shared Spaces, the conduct of Unit Owners and occupants, their employees, agents, contractors or invitees, the hours that services such as heating, air conditioning and cleaning will be operative, [restrictions and requirements for the use and maintenance of Units], and the successful operation of the Agency Space for the benefit of all Unit Owners and their employees and tenants. A copy of such rules and all amendments thereto shall be mailed to each Unit Owner and a copy shall be available for inspection. The rules in force at the time this Declaration is executed are attached as Exhibit "C". Said rules and any reasonable amendments, changes or additions thereto which the Board may hereafter make are hereby incorporated in this Declaration and shall be binding upon the Unit Owners and occupants; provided that, it shall not be necessary to re-record this Declaration when the rules are amended.

(b) Budget. Not later than each January 1, prior to the beginning of each fiscal year (July 1 to June 30), the Facility Operator shall prepare or cause to be prepared, and shall submit to the Board for its consideration, a two-year budget or an update of the existing two-year budget for the next fiscal year, setting forth the estimated expenses of operation of the Common Area, the Jointly Shared Spaces and, if applicable, estimated expenses for those management, operation or maintenance functions for any of the Units which may have been delegated to the Corporation pursuant to Section 4.01 (b) and including a reasonable allowance for contingencies and reserves. When adopted by the Board, the budget shall be the basis for the establishment of Common Assessments and Special Assessments pursuant to Article VII of this Declaration. When Approved by the Board, the Facility Operator shall implement the budget, and the expenditures and obligations provided for in the Budget may be made and incurred without further approval by the Board, subject to such limitations as the Board may impose.

Notwithstanding anything to the contrary in this Declaration, any management, operational or maintenance expenses attributable to any of the individual Units shall be allocated to the Unit Owner(s) of such Unit as a Special Assessment so that no other Unit Owner shall be required to bear the expense of managing, maintaining or operating another Unit Owner's Unit. Management, operational and maintenance costs of the Common Area and the Jointly Shared Spaces shall be allocated in accordance with Percentage Ownership Interests; provided, however, that costs attributable to those Jointly Shared Spaces, such as meeting rooms, which are used on a reservation basis, rather than in common by all Unit Owners, shall be allocated, on an estimated basis, in accordance with Percentage Ownership Interest, with a year-end true-up based on percentage of actual use by each Unit Owner and/or its tenants. Actual use shall include the booking of a conference or meeting room, whether or not actually used, and as otherwise determined by the Board from time to time.

(c) Books and Records. The Facility Operator shall maintain copies of the budget approved by the Board, together with any Approved amendments thereto. The Facility Operator shall keep full, complete and correct books of account of the operation of the Common Area and the Jointly Shared Spaces and any other Common Expenses, including vouchers supporting expenditures, and the same shall be open during all reasonable hours for inspection by any Unit Owner. Any Unit Owner may at any time and at its own expense cause an audit or inspection to be made of the books and records of the Facility Operator related to its Unit, the Common Area or the Jointly Shared Spaces, provided that any such audit shall be conducted not later than twenty-four (24) months following the end of the fiscal year for which the records are being audited. In the event an error in the amount of any assessments paid by one or more Unit Owners is discovered, the Facility Operator shall adjust the next assessments due from each Unit Owner to correct the error. Any dispute with respect to amounts owed by any Unit Owner shall be resolved in accordance with the provisions of Section 12.14.

(d) Assessments. The Facility Operator shall collect and deposit assessments and enforce collection of assessments as provided in Article VII of this Declaration.

(e) Services and Utilities. The Facility Operator shall provide and pay, as a Common Expense, for hot and cold running water, sewer, garbage, electrical, heating and air conditioning, telephone, data transmission, lighting and gas and other necessary utility service for the Common Area, Jointly Shared Spaces and, if not separately metered or charged, for the Units. The Facility

Operator shall also provide and pay, as a Common Expense, for repair, gardening, janitorial and security for the Common Area and Jointly Shared Spaces and necessary elevator service for the Agency Space, and shall cause any and all other acts to be done or take place having to do with the operation and maintenance of the Common Area and the Jointly Shared Spaces in first class condition and repair, as and to the extent provided for in the budget Approved by the Board.

(f) Maintenance, Repair, Replacement; Action Where Owner Fails to Act. The Facility Operator shall provide or cause to be provided all necessary maintenance, repairs, replacement, and restoration of the Common Areas and Jointly Shared Spaces, including without limitation all furnishings, equipment and other improvements necessary or appropriate to operate the Common Areas and the Jointly Shared Space, but excluding Capital Improvements.

(1) All costs of ordinary maintenance, repair, replacement and improvements other than Capital Improvements shall be borne by all of the Unit Owners as a Common Expense. All Capital Improvements and restoration (to the extent not covered by insurance carried by the Corporation) and all costs of the initial furnishing of the Common Areas and Jointly Shared Spaces shall be borne by BAHA.

(2) The Facility Operator shall also provide such services for any Unit, if and to the extent necessary to protect or preserve the Common Area, the Jointly Shared Spaces or any other portion of the Facility, including a Unit, and either (A) the Board determines that the Unit Owner has failed or refused to perform said maintenance, repair, replacement, or restoration within a reasonable time (in no event more than thirty (30) days to complete or, if the work cannot reasonably be completed within the 30-day period, to commence within such period and pursue diligently to completion) after written notice of the necessity thereof delivered by the Facility Operator to said Unit Owner or (B) such maintenance, repair, replacement or restoration, in the discretion of the Facility Operator, should be done immediately to prevent damage to any other portion of the Facility or injury to persons, in which event no notice is required. The Board shall levy a Special Assessment against such Unit Owner for the cost of any maintenance, repair, replacement or restoration under this subparagraph (2).

(g) Authority to Contract. In addition to the authority granted pursuant to the foregoing subparagraphs (a) through (f), the Facility Operator shall have the authority, but only to the extent such expenditures are provided for in the budget Approved by the Board or otherwise authorized by the Board or, if the cost is to be paid by BAHA, approved by BAHA.

(1) To contract for the labor or services of such personnel, including employees and independent contractors, as the Facility Operator determines shall be necessary or proper for the operation, maintenance and repair of the Common Area and the Jointly Shared Spaces.

(2) To purchase or contract for materials, supplies, furniture, or structural alterations as are necessary and proper for the operation of the Common Area and the Jointly Shared Spaces.

(h) Payment of Amounts which would Constitute liens. The Facility Operator shall have authority to pay premiums and other assessments which, in the Facility Operator's

commercially reasonable opinion, would be a lien upon the Agency Space or any portion thereof (other than an individual Unit) and to discharge any lien or encumbrance levied against the Agency Space or any portion thereof (other than an individual Unit), to pay taxes or liens levied against any Unit which, in the commercially reasonable opinion of the Facility Operator, may constitute a lien against the Common Area (unless such lien is being contested by the Unit Owner and the Unit Owner provides to the Board security reasonably acceptable to the Board for payment of the lien if the Unit Owner loses the challenge); provided, however, if the Facility Operator pays any lien or encumbrance levied against an individual Unit, the Board shall levy and the Facility Operator shall collect a Special Assessment against such Unit for the amount thereof, to the extent such amount is separately determinable, and provided further if such lien or assessment is attributable to work performed or taxes levied against the Commercial Space or any other space leased by BAHA to non-governmental tenants or otherwise payable by BAHA, the Board shall levy and the Facility Operator shall collect the amount so paid as a Special Assessment against BAHA.

(i) Other Duties. The Facility Operator shall:

(1) Operate all equipment and facilities located within the Common Area and the Jointly Shared Spaces and oversee the operation of the public meeting spaces, other meeting rooms, cafeteria, library and other Jointly Shared Spaces to ensure fair and equitable use by all Unit Owners and their tenants.

(2) Upon Approval of the Board delegate any of its duties hereunder to independent contractors hired by the Corporation.

(3) Receive complaints concerning violations of this Declaration or any rules and regulations applicable to the Agency Space, investigate such complaints and refer them to the Board for further action.

(4) Upon Approval of the Board bring or defend any court or administrative action or proceeding on behalf of the Corporation.

(j) Insurance. The Facility Operator shall obtain and maintain, as a Common Expense, the insurance required to be carried by the Corporation pursuant to Article VIII.

(k) Certification as Facility Operator. The Facility Operator shall record with the County Recorder of the City and County of San Francisco a certificate signed and acknowledged by the Facility Operator and a majority of the Board stating the name and address of the Facility Operator, such certificate shall be *prima facie* evidence that the person named therein is the incumbent Facility Operator and shall be conclusive evidence of the exercise of any authority thereby as to any bona fide purchaser or other third person who supplies labor or materials to the Facility Operator, or to any other person who relies thereon in good faith.

(l) Leasing of Units. The duties of the Facility Operator shall not include marketing activities related to leasing vacant Units or to finding lessees for Unit Owners or tenants of Unit Owners who are vacating Units. Each Unit Owner must conduct its own leasing activity or contract on its own for such services, provided that BAHA or any other Unit Owner may retain the Facility Operator, at such Unit Owner's cost, to act as the leasing agent for its Units.

(m) Business Directory. The Facility Operator may maintain a business directory in the Common Area at a location or locations Approved by the Board. The size, size of type, color and contents of each such directory shall be Approved by the Board.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF UNIT OWNER

Section 5.01. Exclusive Ownership and Possession. Each Unit Owner shall be entitled to the exclusive ownership and possession of its Unit. Each Unit Owner shall have equal access to the Jointly Shared Spaces, subject to such reservation systems as the Facility Operator may establish from time to time for use of the meeting rooms and such allocation of parking spaces in the Facility or at satellite locations as the Board may Approve from time to time. A Unit Owner shall have the exclusive right to paint, repaint, tile, wax, wallpaper, or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors of its Unit; provided, however that BAHA shall consult with the Board prior to making any material alterations to the Jointly Shared Spaces.

Section 5.02. Leasing.

(a) Right to Lease. Subject to the provisions of Sections 9.04 and 9.09, a Unit Owner, in its sole discretion, may lease its Unit or a portion thereof to one or more unrelated persons or entities, provided that any use other than that set forth in Section 5.11 must be Approved by the Board prior to the signing of any lease between the Unit Owner and its lessee, which approval shall not be unreasonably withheld or delayed. The Jointly Shared Spaces may be leased for the exclusive use of any Unit Owner or a third party only with the consent of all of the Unit Owners. Any lease of a Unit which confers exclusive possession upon the lessee shall require the written concurrence of all Unit Owners of the Unit to be leased, if applicable. Each Unit Owner may conduct its own leasing activity or may contract with an agent to lease on its behalf.

(b) Lease Terms. All leases shall be in writing. A lease agreement shall provide that the terms of the lease shall be subject to any and all limitations contained in the Governing Instruments; provided that the lessor shall have the right, at its sole discretion, to determine whether a violation of such provisions shall constitute a violation of the lease and whether to waive such violations; provided further, that no lessor may thereby avoid responsibility or liability for complying with the limitations contained in the Governing Instruments. Nothing contained herein shall preclude a lessor from pursuing its remedies under its lease for any violation of the Governing Instruments by the lessee.

(c) Notification of Lease of Condominium. Prior to the effective date of the lease of any Unit or portion thereof by a Unit Owner, the Unit Owner/lessor shall notify the Board and the Facility Operator in writing of such lease. Such notification shall set forth: (a) the name of the lessor and the lessee; (b) an identification of the Unit or portion thereof which has been

leased; (c) the lessee's mailing address; and (d) the commencement and termination dates of the lease.

Section 5.03. Maintenance of Unit. Each Unit Owner shall have the exclusive right and obligation, at its sole cost and expense, to maintain, repair and refinish its Unit in accordance with the plans and specifications for the Agency Space and in a diligent, good and workmanlike manner. Such maintenance, repair and refinishing shall include all painting, repainting, tiling, waxing, wallpapering or otherwise finishing and decorating the interior surfaces of the walls, floors, ceilings, windows, and doors bounding a Unit.

Section 5.04. Alterations to Common Areas. No Unit Owner, or its agents or employees, shall make any modifications or alterations to, or encroach upon, or occupy or obstruct any part of the Common Area or Common Area improvements without Approval of the Board, which approval shall not be unreasonably withheld. All work performed by or for the Unit Owner pursuant to this Section 5.04 shall be performed in a diligent, good and workmanlike manner, with the Unit Owners collectively bearing the costs of labor and materials in accordance with their Percentage Ownership Interests unless the work is required in connection with alterations to a Unit being made by the Unit Owner, in which case the cost shall be borne by the Unit Owner for whom the work is being performed. Each Unit Owner's interest in any such modification or alterations shall be the same as its interest in the Common Area where the modifications or alterations are located.

Section 5.05. Alterations to Unit. No Unit Owner, or its agents or employees, shall make any modifications or alterations to its Unit which affect the Common Area or other Units or the easements and restrictions of record without the Approval of the Board, which approval shall not be unreasonably withheld. Nothing shall be done in any Unit which will impair, interfere with, change or damage the structural integrity, functional operation, use or enjoyment of the Agency Space or any other portion of the Facility, except as provided herein. All work to be performed by or for a Unit Owner pursuant to this Section 5.05 shall be performed in a diligent, good and workmanlike manner, with the Unit Owner performing the work bearing all costs of such alterations or modifications.

Section 5.06. Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens. If a lien is filed by a supplier or contractor against any Unit for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Unit Owner at the request of a Unit Owner, said Unit Owner shall forthwith discharge such lien within two (2) weeks from the date of notice from the Board or the Facility Operator, unless the Unit Owner gives notice within such two (2) week period of its intent to contest the lien and furnishes to the Facility Operator a bond or other security satisfactory to the Board in form and amount and thereafter prosecutes such contest with diligence. If the Unit Owner fails to discharge or contest such lien within the two-week period described above and the Board reasonably determines that the lien could attach to any other portion of the Facility or otherwise adversely affect the other Unit Owners, then the Facility Operator may:

(a) discharge such lien by payment, bond or otherwise without investigation as to its validity or any offsets or defenses thereto; and

(b) specially assess such Unit Owner for the amounts so paid and all costs, and expenses paid or incurred in connection therewith, together with the interest thereon at the rate of ten percent (10%) per annum on the unpaid amount calculated from the date advanced by the Facility Operator to and including the date full payment is received by the Facility Operator.

Section 5.07. Taxes, Assessments, Utilities, etc. Each Unit Owner shall be solely responsible for the discharge of obligations which relate solely to use or ownership of its own Unit, including but not limited to taxes, assessments, and separately metered utilities, if any. Where an obligation for which one or more Unit Owners is individually responsible is discharged by the Corporation, such Unit Owners shall be jointly and severally liable to the Corporation by way of Special Assessment for the cost of discharging such obligation. Where an obligation arises because of a Unit Owner's interest in the Common Area, and such obligation does not relate solely to an individual Unit, each Unit Owner shall be liable by way of a Common Assessment or Special Assessment only for its proportional part of the obligation as determined in accordance with its Percentage Ownership Interest.

Section 5.08. Liability for Obligations Under the Declaration. Any expenses incurred by the Corporation in fulfilling any obligation of any Unit Owner under this Declaration shall be a debt of the Unit Owner responsible for such obligation and the Corporation may specially assess said Owner for the amount thereof, together with interest in the amount of ten percent (10%) per annum on the unpaid amount calculated from the due date to and including the date full payment is received by the Facility Operator.

Section 5.09. Use Affecting Insurance Premiums. Nothing shall be done or permitted in or about the Facility, or brought or kept therein, which shall in any way increase the rate of or cause a cancellation of or otherwise affect any fire or other insurance upon the Agency Space or the Facility as a whole or any property kept within, or conflict with:

- (a) any fire laws or regulations;
- (b) any insurance policy upon the Facility or the Agency Space or any part thereof, the cost of which is a Common Expense;
- (c) any statutes, rules or regulations enacted or established by any government or governmental authority with jurisdiction; or
- (d) the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted, to the extent necessary to assure full effectiveness of all insurance on the Agency Space or the Facility as a whole at all times and at rates appropriate to the size and character of the portion of the Facility insured and to supply proper and adequate security, safety, and loss prevention practices.

In the event any use or activity shall lead to an increase in fire or other insurance premiums payable on the insurance obtained by the Board pursuant to Article VIII, or insurance procured by an individual Unit Owner or occupant of the Agency Space, the party causing such increase shall be liable for payment of the same to the Corporation or such individual Unit Owner or occupant as the case may be. The party so charged with increasing premium costs shall have the right to contest the validity of such insurance premium increase.

Section 5.10. Compliance with Laws and Rules. Each Unit Owner shall comply with all of the requirements of all governmental authorities, and all laws, ordinances, and rules applicable to its Unit, including the rules and regulations adopted by the Board from time to time.

Section 5.11. General Restrictions on Use. Unless otherwise designated herein, each Unit shall be used for general office purposes and uses incidental or related thereto, and for no other use or purpose unless Approved by the Board. The Jointly Shared Spaces include, without limitation, the following uses:

(a) The space designated on Exhibit B as the cafeteria space may be used for the preparation, service and consumption of food and purposes and uses incidental thereto. No Unit Owner or the Corporation shall be liable for any debts or obligations incurred in the course of operating or by the operator of the cafeteria, except to the extent properly included in Common Expenses.

(b) The space designated on Exhibit B as the library space may be used for library purposes and uses incidental and related thereto.

(c) The space designated on Exhibit B as the public meeting space may be use for meeting room purposes and uses incidental and related thereto.

(d) The space designated on Exhibit B as the parking area may be used for parking and passageway purposes and uses incidental and related thereto.

(e) The space designated on Exhibit B as the print shop may be used for printing, copying and uses incidental and related thereto.

(f) The space designated on Exhibit B as the mail room shall serve as a central mail room for all Unit Owners and tenants within the Agency Space.

(g) The space designated on Exhibit B as the server room may be used for installation and maintenance of the servers for the telephone and data services supplied to each Unit, which servers shall be the property of the individual Unit Owners.

(h) The roof top open space may be used as outdoor passive and entertainment space by Unit Owners and their tenants.

Section 5.12. Special Equipment. Unless approved by the Board, no Unit Owner or occupant of the Agency Space shall use in general office space any apparatus or device within a Unit or the Jointly Shared Space, including without limitation, machines using current in excess of 220 volts which will in any way substantially increase the amount of electricity, water or compressed air usually furnished or supplied to such portion of the Agency Space or which connects with electric current, water or air, other than through existing electrical outlets, water pipes or air pipes, as applicable, or outlets or pipes hereafter installed in accordance with Section 5.05. The foregoing shall not prohibit, however, the installation of laboratory equipment in spaces specifically designed as a laboratory in compliance with all applicable laws and regulations.

ARTICLE VI

EASEMENTS

There are hereby specifically reserved for the benefit of the Unit Owners, in common and for each Unit Owner severally, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way and access particularly identified in this Article.

Section 6.01. Utilities. There is reserved for the benefit of each Unit, as dominant tenement, an easement for utility services over, under and through the Common Area (including any common areas in the Commercial Space), and each other Unit, jointly as the servient tenement, in the locations shown on the Condominium Plan.

Section 6.02. Encroachment. There is reserved for the benefit of each Unit, as dominant tenement, an easement for encroachment, occupancy, use and maintenance of such portion of the remainder of the Facility, including other Units, as the servient tenement, as shall be encroached upon, used and occupied by the owner of the dominant tenement as a result of any vertical or lateral displacement of any of the building structures or any portion thereof, deviation in construction or reconstruction plans or any reasonably necessary encroachments of one Unit or improvement onto another which does not interfere with the use of the encroached-upon Unit by the Unit Owner or occupant thereof. The easement of encroachment here reserved shall continue notwithstanding that the encroachment may be cured by repair and restoration of the structure.

Section 6.03. Maintenance and Repair. The Corporation and each Unit Owner shall have an easement which is appurtenant to the Common Area and all Units, through each Unit and the Common Area for the maintenance and repair of the Common Area and of the easements set forth in this Article, subject in the case of access to an individual Unit to the provisions of Section 6.05 below.

Section 6.04. Nonexclusive Easements. Each Unit Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and the Jointly Shared Space and for

ingress, egress and support over and through the Common Area. These easements shall be appurtenant to each Unit and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Board to regulate time and manner of use and to perform its obligations under this Declaration.

Section 6.05. Right of Access. The Board, the Facility Operator, or any person designated by either of them, shall have an irrevocable right of access to each Unit for the purpose of making inspections or for the purpose of correcting any condition originating in a Unit which threatens damage to another Unit, to the Common Area or to any other portion of the Facility, or for the purpose of performing any maintenance or repairs or making any improvements for which the Corporation or BAHA is responsible. A request for entry shall be made in advance to the Unit Owners or occupant of the Unit and such entry shall occur at a time reasonably convenient to them. The person or persons making such entry on behalf of the Board as provided herein shall be accompanied by an authorized representative of such Unit Owner or occupant. In an emergency, such right of entry shall be immediate, whether or not notice has been given or whether or not an authorized representative is present. Any entry hereunder shall be made with as little inconvenience to the Unit Owner or occupant as practicable, and any damage caused thereby shall be repaired by the Corporation and charged as a Common Expense, unless repair of the damage is the responsibility of the Facility Operator under the terms of its contract with BAHA.

Section 6.06. [Reserved].

Section 6.07. Restricted Easement. [NTD: To be discussed based on location of various Units and what emergency access is required.]

(a) Easement. In order to provide an emergency exit from the cafeteria, library, and public meeting spaces and Common Area on the first floor and for any emergency purposes, there is reserved a non-exclusive easement for emergency ingress and egress through the _____ and to the Common Area stairway at the _____ end of the _____ for the benefit of all Unit Owners (except the owner of the _____ Unit), the Board and the Facility Operator, referred to in this Section 6.07 as "grantees" and to the grantees' transferees, successors and assigns and for the benefit of their invitees and guests. Said easement is subject to the conditions set forth in SubSection (b).

(b) Conditions. This easement is a non-exclusive easement and the owner of the _____ Unit shall have the right to make use of the Unit, subject to the easement. Neither the owner of the _____ Unit nor the Grantees shall place any obstruction on the _____ which impairs the easement. This easement shall exist for as long as the _____ shall continue to exist, shall not be extinguished by non-use or abandonment.

Section 6.08. Reserved Exclusive Easement for BAHA Emergency Power System.

(a) Easement. BAHA hereby reserves for itself an exclusive appurtenant easement for installing, operating and maintaining BAHA's emergency power supply system, which is located principally in those portions of the BAHA Unit shown as Spaces ____ and ____ on the Condominium Plan. Said reservation of easement includes the following covenants and conditions, which covenants and conditions BAHA, the other Unit Owners, the Board and Facility Operator, and the successors and assigns of each of them specifically accept.

(b) Conditions.

(1) Scope. This easement shall include the right to place, remove, inspect and maintain all equipment, pipes, ducts, wires, cables and other components of BAHA's emergency power supply system within the easement area shown on the Condominium Plan (the "Emergency Power System Easement"). The easement includes the right of access by BAHA's authorized representatives to all portions of the Emergency Power System Easement at reasonable times and on reasonable notice to any affected Unit Owners or tenants for all the above purposes.

(2) Term. This easement shall exist for as long as the Facility continues to exist and shall not be extinguished by non-use or abandonment.

(3) BAHA's Use. This easement is an exclusive easement and BAHA shall have the exclusive right to make use of the portion of the Agency Space subject to the easement for the purposes stated in Section 6.08 (b) (1) above, notwithstanding the fact that the emergency power supply shall be available to power all of the Agency Space as may be required and shall benefit all of the Unit Owners and their tenants.

(4) Obstruction or Removal. No Unit Owner, nor the Board, the Facility Operator or their agents, successors or assigns shall place any obstruction in the easement area or perform any act which prevents the use of the easement for its intended purpose.

(5) Repair and Maintenance. BAHA shall be responsible, as a Common Expense, for repair and maintenance of the equipment, ducts, pipes, wires, cables and other devices associated with BAHA's emergency power supply system. Responsibility for repair and maintenance of other aspects of the easement area shall be as provided for in the Declaration.

(6) BAHA shall indemnify, defend and hold the other Unit Owners harmless from and against any and all losses, liabilities, claims and damages (including injury to persons or damage to property) attributable to or arising out of the installation, maintenance or operation of the emergency power system.

(7) Successors and Assigns. The Emergency Power System Easement and the agreements contained herein shall run with the BAHA Unit and shall inure to the benefit of and be binding upon all Unit Owners and their respective transferees, successors and assigns.

ARTICLE VII

ASSESSMENT AND COLLECTION PROCEDURES

Section 7.01. Covenant for Assessments, Creation of Lien, Personal Obligation.

Declarant, for each Unit owned by it within the Agency Space, hereby covenants and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Corporation its share of: (1) Common Assessments; (2) Extra Common Assessments; (3) Special Assessments and (4) any other costs required by this Declaration to be borne by such Owner; such assessments to be fixed, established and collected from time to time, as hereinafter provided. The Common, Extra Common and Special Assessments together with interest thereon and costs of collection, as hereinafter provided, shall be a lien upon the Condominium against which each such assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article VII. Each such assessment together with late charges, interest, costs, penalties and reasonable attorney's fees, as provided for herein, shall also be the joint and several personal obligation of each person or entity which was the Unit Owner at the time the assessment fell due.

Section 7.02. Common Assessments. Upon Approval or amendment of the budget, the Board shall separately assess each Unit Owner its share of the estimated Common Expenses for such budget year, according to its Percentage Ownership Interest (unless BAHA agrees in writing to a different allocation for any Unit), which assessment shall be due and payable in accordance with the provisions of Section 7.06. Such assessment is herein referred to as a "Common Assessment."

Section 7.03. Extra Common Assessment. Upon approval of an expenditure by the Board as a Common Expense not contained in the budget Approved by the Board, the Board shall separately assess each Unit Owner its share of the Extra Common Assessment according to its Percentage Ownership Interest, which shall be due and payable as provided in Section 7.06. Such assessment is herein referred to as an "Extra Common Assessment."

Section 7.04. Special Assessments. The Board shall also separately assess each Unit Owner when and as such costs are incurred, for any costs incurred or payments made on behalf of such Unit Owner or to cure conditions for which such Unit Owner is responsible as provided in this Declaration and for any Jointly Shared Space costs allocable to such Unit Owner based on usage of Jointly Shared Space facilities. All Special Assessments shall be due and payable as provided in Section 7.06.

Section 7.05. Proration of Common Assessments.

(a) The Board shall assess each Unit Owner for Common and Extra Common Assessments according to Sections 7.02 and 7.03; provided that the cost of all Capital

Improvements to any portion of the Agency Space or the remainder of the Facility shall be borne by BAHA and shall not be included in Common or Extra Common Expenses.

(b) Declarant shall be treated as Unit Owner of all unsold Units, if any, and shall be assessed for Common, Extra Common and Special Assessments allocable to such Units, provided that nothing herein shall preclude a prospective Unit Owner from prepaying its anticipated assessments.

Section 7.06. Date of Commencement of Assessments; Due Dates; Charges for Late Payments. A single written notice (the Schedule of Assessments) shall be given annually to each Unit Owner not later than thirty (30) days prior to the commencement of each fiscal year setting forth the Common Assessment payable by such Unit Owner for the succeeding fiscal year and any Extra Common Assessments and Special Assessments known at the time of such notice. Written notice of Extra Common Assessments and Special Assessments levied after the first of the fiscal year, and any adjustments to Common Assessments Approved by the Board, shall be given to each Unit Owner by the Facility Operator at least thirty (30) days prior to their due date. The Schedule of Assessments, or any amendment thereof, shall specify the amounts and due dates for installment payments of the Assessments by each Unit Owner. Common, Special and Extra Common Assessments which appear in the annual notice shall be paid by each Unit Owner to the Facility Operator in equal monthly installments, in advance, on the first day of each month, unless some other due date is established by the Board. Extra Common and Special Assessments not contained in the annual notice shall be paid to the Facility Operator within thirty (30) days of receipt of a notice to pay same. Each installment of Common, Extra Common and Special Assessments shall become delinquent if not paid within ten (10) days after due. Interest thereon shall accrue on each delinquent installment at the rate of ten percent (10%) per annum on the unpaid amount calculated from the date delinquent to and including the date full payment is received by the Facility Operator.

Section 7.07. Assessments Deposited in Maintenance Fund Bank Account; Disposition of Unexpended Funds.

(a) Condominium Maintenance Fund Account. Upon Approval by the Board, all assessments levied and collected in accordance with this Declaration, with the exception of those assessments set forth in SubSection (b) hereof, shall be deposited in an account(s) clearly designed as the Condominium Maintenance Fund Account(s). The Facility Operator shall have the control of said account and shall be responsible to the Board for the maintenance of accurate records thereof at all times. The Facility Operator shall act as a fiduciary for the Unit Owners collectively in handling of all accounts. The Facility Operator shall retain all unexpended or excess funds in trust to be applied to the expenses of operation for the next succeeding year, which funds shall be considered by the Facility Operator in calculating the estimated Common and Special Expenses and Assessments for the next succeeding year or refund the same to the Unit Owners entitled thereto.

(b) Condominium Reserve Fund Account. Upon Approval by the Board, there shall be established an account clearly designated as the Condominium Reserve Fund Account. Such

account will be established for the purpose of establishing reserves for, without limitation, repairs, replacements, improvements which are not Capital Improvements and uninsured damage to the Common Area, including the easement areas, and the Jointly Shared Space. Reserve amounts shall be included as separate line items in the annual budget, included in and collected as part of the Common Assessment and shall be deposited in the Condominium Reserve Fund Account and accounted for separately.

(c) Investment. Unexpended and excess reserve funds may be invested in the name of the Corporation in one or more interest-bearing accounts or short-term instruments as Approved by the Board.

(d) Commingling. All sums collected by the Corporation from any Common, Extra Common or Special Assessments, with the exception of funds assessed and collected for the Condominium Reserve Fund Account, may be commingled in a single account. The Facility Operator shall provide to the Board on a monthly basis or as otherwise requested an accounting, on a line item basis of all expenditures from the Condominium Maintenance Fund Account and the Condominium Reserve Fund Account, with a reconciliation against the budgeted amount for each line item on a year-to-date basis.

(e) Account Disbursements. Disbursements from accounts established under this Section shall be governed by rules and procedures Approved by the Board.

Section 7.08. Effect of Nonpayment of Assessment; Delinquency; Notice of Assessment.

The assessments which each Unit Owner is obligated to pay shall be a debt of such Unit Owner at the time such assessments become due and payable. In the event of default by any Unit Owner in making such payment, such amounts as may be in default, together with interest thereon at the rate of ten percent (10%) per annum from the date delinquent and all costs which may be incurred by the Board or its authorized representative in the collection of such charges, including reasonable attorney's fees, shall be and become a lien upon the Condominium of the defaulting Unit Owner(s) upon the recordation in the Office of the Recorder of the City and County of San Francisco of a Notice of Assessment; said Notice shall be filed by the Corporation as provided in California Civil Code Section 1367. The Notice of Assessment shall not be recorded unless and until the Facility Operator has delivered to the delinquent Unit Owner(s), not less than two (2) weeks before the recordation of the Notice of Assessment, a written notice of default and demand for payment and unless such delinquency has not been cured within two (2) weeks after delivery of such notice of default.

(a) Subordination to Mortgages. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of the Mortgagee under any First Mortgage made in good faith and for value, and no such lien shall, in any way, defeat, invalidate or impair the obligation or the priority of such Mortgage, unless the Mortgagee shall expressly subordinate its interest in writing to such lien.

(b) Priority Over Other Liens. Any assessment or other lien created pursuant to this Declaration shall be superior in lien priority to all other liens which are recorded subsequent to

the recordation of said Notice of Assessment but shall be junior in priority to the lien of those Mortgages described in (a) above.

Section 7.09. Acceleration. Upon a Unit Owner becoming three (3) months delinquent, the Board may declare the entire balance of all assessments then due, or to become due in the then current fiscal year, from such defaulting Unit Owner due and payable, which total sum may then be included in any suit, action or proceeding brought to collect said sum. If any action is filed by the Board to enforce the provisions of this Article, any judgment rendered against the defaulting Unit Owner shall include all costs and expenses and reasonable attorney's fees necessarily incurred in prosecuting such action. Notwithstanding acceleration under this section, only the amounts which would have come due under the monthly assessment payment schedule prior to the date the lien is recorded pursuant to Section 7.08 may be secured by said lien.

Section 7.10. Notice of Default; Foreclosure Sale. After recording of said Notice of Assessment, the Board or its authorized representative shall record a Notice of Default and thereafter shall cause the Condominium of said defaulting Unit Owner to be sold in the same manner as a sale as provided in the Civil Code Sections 2924, 2924(b) and 2924(c), or through judicial foreclosure. The Board or an authorized representative, acting on behalf of the Corporation, shall have the power to bid at the foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium which is subject to said default.

Section 7.11. Curing of Default. Upon the timely payment or other satisfaction of all delinquent assessments of a Unit Owner set forth in the Notice of Assessment filed and recorded in accordance with this Article and all other assessments which have become due and payable with respect to the Condominium as to which such Notice of Assessment was filed and recorded following the date of such recordation, together with all costs and interest at the rate of ten percent (10%) per annum which accrued thereon and reasonable attorney's fees, the Board shall cause to be recorded in the Office of the City and County of San Francisco Recorder a further notice, stating the satisfaction and release of the lien created by the Notice of Assessment. A fee in the amount of Twenty-five dollars (\$25) covering the cost of preparation and recordation of the Notice of Release and Satisfaction shall be paid to the Corporation prior to the execution, filing and recordation of such Notice of Release and Satisfaction. Such Notice of Release and Satisfaction of lien may be executed by a designee of the Board. For the purposes of this Section 7.11, the term "costs" shall include costs and expenses actually incurred or expended by the Corporation in connection with the preparation and recordation of the Notice of Assessment and in efforts to collect the delinquent assessments secured by the lien created by the Notice of Assessment.

Section 7.12. Rights of Board; Waiver of Owners. Each Unit Owner hereby vests in and delegates to the Board, or authorized representative(s) of the Board, the right and power to bring all actions at law or in equity or lien foreclosures, whether judicially or by power of sale, against, any Unit Owner(s) for the collection of delinquent assessments in accordance herewith, and the authority and power to sell the Condominium of such defaulting Unit Owner(s), subject to a First

Mortgage or any other superior lien, and hereby expressly waives any objection to the enforcement of the obligation to pay assessments in accordance with this Declaration.

Section 7.13. Remedies Cumulative. Any lien created or claimed under this Article and the right to foreclose the same shall be additional to and not in substitution for all other rights and remedies which the Unit Owner(s) and the Board may have to enforce the provisions of the Governing Instruments, and each and all legal or equitable remedies provided for in this Declaration shall be deemed to be cumulative, whether so expressly provided or not.

Section 7.14. Failure to Fix Assessments. The omission by the Board, before the expiration of any fiscal year, to fix the assessments hereunder for that fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Unit Owner or lessee from the obligation to pay the assessments, or any installment thereof, for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

Section 7.15. Liability for Assessments. A Unit Owner's liability may not be avoided by a waiver of the use or enjoyment of the Common Area, the Jointly Shared Space or any portion of either or by abandonment of the Condominium against which such assessments are made.

Section 7.16. Contributions.

(a) If all or a portion of the Agency Space is damaged, destroyed, or taken under the power of eminent domain and the Board elects or is required to repair or restore the Agency Space as provided in Section 8.06, and the condemnation or insurance proceeds are less than the actual cost of repair or restoration, then each Unit Owner shall contribute a *pro rata* share of the extra costs of restoring its own Unit, and BAHA shall pay all extra costs of repairing the Common Area and the Jointly Shared Space.

(b) Proration shall be determined by allocating insurance or condemnation proceeds among the affected Common Area, Jointly Shared Space and Units based on the percentage of the estimated cost to repair each Unit, the Common Area and the Jointly Shared Space bears to the estimated cost to repair the entire Agency Space.

ARTICLE VIII

INSURANCE; DAMAGE AND DESTRUCTION; EMINENT DOMAIN

Section 8.01. Authority to Purchase.

(a) Common Expenses. All insurance pertaining to the Agency Space or operations of the Corporation (except as hereinafter permitted in Section 8.04) which is acquired and maintained by the Corporation pursuant to this Article shall be a Common Expense.

(b) Independent Advice. To assist in the purchase and administration of its insurance, the Corporation may employ the services of independent appraisers and insurance analysts, consultants or brokers, the expense of which shall be a Common Expense.

Section 8.02. Manner of Purchase. Except as provided in Section 8.04, all insurance shall be purchased from insurance companies and in forms and amounts Approved by the Board and approved by each Mortgagee and shall include but not be limited to the coverages required by this Article. The cost of any insurance coverage which may be required by a Unit Mortgagee in excess of that which may otherwise be required by this Article or Approved by the Board, and which cannot be placed separately by the Unit Owner, shall be paid by the Unit Owner of the Condominium subject to such indebtedness as a Special Assessment.

Section 8.03. Insurance Specifications.

(a) All Risk Physical Loss Coverage. The Agency Space, the Unit Owners' interests in all improvements made by the Unit Owners and their lessees (unless, in the case of lessees, the lessee is required to carry separate insurance covering its improvements), and the Unit Owners' interests in all other insurable improvements within the Agency Space, including personal property used in the operation of the Common Areas and Jointly Shared Spaces or in the maintenance of the Agency Space, shall be insured for the mutual benefit of the Unit Owners under a blanket policy(ies) against loss from all risk of direct physical loss or damage, subject to the standard exclusions, for 100% of the full replacement cost thereof without deduction for physical depreciation and against such perils and in such manner as presently or at any time in the future may commonly be insured against by informed, prudent management of property of like size and character in the San Francisco area and as may from time to time be required by any Unit Mortgagee. The cost of any such insurance policy covering the entire Facility shall be allocated between the Agency Space and the Commercial Space based on the percentage of the total square footage of the Facility attributable to each Space.

(1) Full Replacement Cost.

(A) Definition. For purposes of this Article, "full replacement cost" shall mean the actual cost, without deduction for depreciation, of reconstructing the Agency Space, the Unit Owners' interests in all insurable improvements and betterments effected by the Unit Owners and their lessees, if any, whether part of individual Units, Common Area or Jointly

Shared Spaces and the Unit Owners' and the Corporation's interest in all furnishings, equipment and personal property used in operation and management of the Common Area and the Jointly Shared Spaces including architects' and engineers' supervisory fees.

(B) Determination. "Full replacement cost" shall be determined by a recognized appraisal firm every three (3) years beginning with completion of construction of the Project and installation of all improvements and betterments of the Unit Owners and their lessees, if any. Between each three (3) year appraisal, the replacement costs will be updated annually, using recognized inflation factors Approved by the Board. Each Unit Owner and its lessees, if any, shall promptly supply such data as may be required by the appraiser for the purposes hereof.

(b) Required Provisions. The provisions required by subparagraphs (1) through (7) below or equivalents thereof, in form Approved by the Board and approved by any Mortgagee, shall at all times be part of such blanket policy(ies) to the extent obtainable from the insurers.

(1) Cost of Replacement Endorsement. Such blanket policy(ies) shall provide for settlement of loss thereunder as to the Agency Space and all insured improvements and property in accordance with the Replacement Cost Endorsement, or its equivalent which shall be part of the policy(ies).

(2) Unit Mortgagee/Lender's Loss Payable Endorsement. Such blanket policy(ies) shall provide for insuring each Unit Mortgagee in accordance with the Lender's Loss Payable Endorsement, or equivalent, in form satisfactory to such Unit Mortgagee. The aforesaid Lender's Loss Payable Endorsement shall be modified by the following language to be added to such policy(ies) by endorsement:

"Named Mortgagee(s): Subject in all other respects to the provisions of the Mortgage Clause in this policy, or the Lender's Loss Payable Endorsement attached hereto, any loss to building(s), and all improvements thereto, including personal property used in connection therewith, covered under this policy, which normally would be payable to the named insured(s) and named Mortgagee(s) shall be payable only to the Insurance Trustee named by the insured(s) or such other payee as is elsewhere in this policy provided."

(3) Primary Insurance. Such blanket policy(ies) shall provide that coverage is primary insurance, subject to an occurrence deductible and shall not be affected or diminished by reason of any other insurance coverage maintained by any individual Unit Owner(s) or the Corporation.

(4) Waiver of Subrogation. Such blanket policy(ies) shall provide for a waiver of subrogation against individual Unit Owner(s) and the Corporation and their affiliated and subsidiary companies and all of their officers, agents and employees.

(5) Notice of Cancellation. Such blanket policy(ies) shall provide for written notice to each Unit Owner, each Unit Mortgagee, and the Corporation at least thirty (30) days prior to any effective date of cancellation or change affecting coverage whether initiated by the insurer or any insured thereunder;

(6) Conduct of Unit Owner. Such blanket policy(ies) shall provide that the conduct of any Unit Owner or the Corporation will not result in the avoidance of the insurer's liability; and

(7) Insurer's Agreement to Abide by Board Decision. Such blanket policy(ies) shall provide an agreement by the insurer to abide by a Board decision regarding restoration or a waiver of its option to restore the Agency Space, if the Board elects to dispose of the same.

(c) Comprehensive General and Automobile Liability Insurance.

(1) Required Insurance. Comprehensive General and Automobile Liability Insurance shall at all times be maintained for the mutual benefit of all Unit Owners, the Corporation and the officers, agents and employees of the Corporation as named insureds against liability for injuries to persons, including death, or damage to property of members of the public or tenants, agents, employees, licensees or invitees of the Unit Owner(s) or person(s) claiming under them, arising out of any "occurrence" incident to operation of the Agency Space or taking place in, on or about the Agency Space, individual Units, the Common Area, the Jointly Shared Space or any elevators or any escalators therein and the adjoining sidewalks, streets and passageways. Such insurance shall include but not be limited to coverage against liability: (1) under common law or applicable statute, ordinance or regulation relating to sale or distribution of alcoholic beverages within the Agency Space to the extent applicable; (2) for operations of independent contractors; (3) as may be assumed under contract, including without limitation the indemnification provisions hereof; and (4) for bodily injury, death or damage to property arising out of the use by or on behalf of any insured thereunder of owned, non-owned, hired or leased automotive equipment, if any, and not otherwise insured, in furthering the operation and maintenance of the Agency Space.

(2) Liability Limits. The amount of such insurance (including automobile bodily injury and property damage liability insurance) shall be maintained at a combined single limit of One million dollars (\$1,000,000) or at such lesser amount as when combined with the policy(ies) specified in Section 8.03(d) shall produce total liability coverage not less than a combined single limit of Ten million dollars (\$10,000,000). Said limit shall be reviewed annually by the Board and increased, if at all, in an amount Approved by the Board.

(3) Additional Policy Provisions. The insurance policies specified in Sections 8.03(c) and (d) shall contain the additional policy provisions specified in Sections 8.03(b)(3), (4), (5) and (6).

(d) Umbrella Policy. Excess (Umbrella) Liability Insurance for the mutual benefit of all Unit Owners and the Corporation and the Corporation's directors, officers, agents and employees as named insureds shall at all times be maintained under a policy(ies) (or policies issued in layers) which shall follow all terms and conditions of, and be no less comprehensive as to coverage than, the primary insurance specified in Section 8.03(c); such policy(ies) shall, when combined with the aforesaid primary policy, produce a total single limit of liability not less than Ten million dollars (\$10,000,000). The policy will schedule the primary liability policy, as well as the employer's liability section of the Workers' Compensation policy, as underlying insurance.

(e) Workers' Compensation. Workers' Compensation Insurance, including Employers Liability Insurance, shall be carried, if necessary, to provide for payment by the Unit Owner(s) or the Corporation of statutory obligations under the California Workers' Compensation Law and any other applicable laws to employees of the Corporation and employees, if any, of the Unit Owner(s) employed by the Corporation in on or about the Agency Space in the care, maintenance or operation thereof.

(f) Boiler and Machinery Insurance. Boiler and Machinery Insurance in the names of the Unit Owners and the Corporation as insureds shall be maintained in the amount of One million dollars (\$1,000,000), or such larger amount as Approved by the Board, to cover loss caused by sudden or accidental breakdown of boilers, pressure vessels, pressure piping and all major components of any central heating, air conditioning and cooling systems as may be Approved by the Board.

The interest of each Unit Mortgagee shall be protected thereunder by a loss payable clause acceptable to each Unit Mortgagee. Such insurance shall not cover liability for bodily injuries or property damage which is insured against under the policies specified in Sections 8.03(c) and (d). The policy and the loss payable clause shall, to the extent obtainable from the insurer, be subject to all additional provisions specified in Section 8.03(b).

(g) Fidelity and Crime Insurance. Crime Insurance in an amount not less than Five hundred thousand dollars (\$500,000) shall be carried for the benefit of the Unit Owners and Corporation as insureds against loss caused by criminal and dishonest acts both on and off premises and against infidelity of all officers, agents, independent contractors, and employees of the Corporation, if any. Said insurance shall be subject to change from time to time as to coverage and amounts as may be Approved by the Board.

This coverage, to the extent obtainable from the insurer, shall contain the additional provisions specified in Sections 8.03(b)(3), (4), and (5).

(h) Other Insurance. Such other insurance shall be carried for such amounts and coverage as may be Approved by the Board for preservation of the Space Agency and protection of the interests of the Unit Owners in connection therewith, or as may be required by any Unit Mortgagee (to the extent any coverage required by a Unit Mortgagee cannot be placed separately by that Unit Owner).

Section 8.04. Unit Owner Insurance. Each Unit Owner may obtain and keep in force such additional insurance as it may desire to cover its Unit and such improvements therein and thereto as it or any of its lessees may have made, and personal property, including without limitation liability coverages and such rental value or business interruption insurance as the Unit Owner may elect to carry. Such insurance shall contain the same waiver of subrogation as that referred to in Section 8.03(b)(4) and shall be carried for the sole protection and at the sole expense of such Unit Owner and shall not be contributory with any insurance maintained by the Corporation in accordance with Section 8.03.

Section 8.05. General Insurance Conditions.

(a) Copies of Policies. Each Unit Owner, each Unit Mortgagee, if any, and the Facility Operator shall be supplied with certified copies of all insurance policies maintained in accordance with Section 8.03.

(b) Loss Adjustment Provisions.

(1) Adjustment of Casualty losses. Subject to the rights of a Unit Mortgagee to require adjustment by and payment to an independent third party adjuster pursuant to Section 8.09, insurance policies specified in Section 8.03(a) and (f), and if applicable Section 8.03(h), shall name the Corporation as Insurance Trustee. All losses covered by such policies shall be adjusted with the insurers by the Corporation. All proceeds shall be paid to the Corporation to be held in trust for the named insureds and disbursed as provided in Section 8.06 and 8.07.

(2) Adjustment of Fidelity and Crime Insurance. The insurance policy specified in Section 8.03(g) shall name the Corporation as the Insurance Trustee. All losses covered by such policy shall be adjusted with the insurer by the Corporation. All proceeds shall be paid to the Corporation to be held in trust for the named insured and shall be applied by the Corporation to the account, or accounts, affected by the loss.

Section 8.06. Decision to Repair or Restore.

(a) Partial or Complete Destruction.

(1) Board Decision. In the event of any damage or destruction to any portion of the Agency Space by fire or other casualty, the cost of repair or restoration of which:

(A) is equal to two-thirds (2/3) or more of the then full replacement cost of the Agency Space, during the first thirty (30) years following the date of this Declaration;

(B) is equal to one-half (1/2) or more of the then full replacement cost of the Agency Space, during the thirty-first (31st) through fiftieth (50th) year following the date of this Declaration;

(C) is equal to one-third (1/3) or more of the then full replacement cost of the Agency Space if the damage or destruction occurs more than fifty (50) years following the date of this Declaration; and/or

(D) exceeds the applicable insurance proceeds by more than Two hundred thousand dollars (\$200,000), regardless of when the damage or destruction occurs; the Board shall decide by unanimous vote, and within ninety (90) days after the occurrence of such damage or destruction, whether or not the Agency Space shall be repaired or restored; provided that the Agency Space may be repaired or restored only if BAHA also elects to repair or restore the remainder of the Facility.

(2) No Board Decision. If the extent of damage or destruction is less than set forth in Section 8.06(a)(1) above, or the Board fails to make a decision within the 90-day period as provided for in said section, the Corporation shall forthwith cause the Agency Space to be repaired or restored unless BAHA has given notice of its election not to restore or repair the remainder of the Facility.

(b) Insurance Proceeds. If the Agency Space is to be repaired or restored in accordance with Sections 8.06(a) and, as appropriate, (j), the proceeds of insurance carried pursuant to Section 8.03 received as a result of such damage or destruction shall be used to pay the cost of such repair or restoration and shall be disbursed as provided in Section 8.07(b).

(c) Costs Exceeding Insurance Proceeds. If the Corporation repairs or restores the Agency Space and the cost thereof is more than the amount of such proceeds, the deficiency between such proceeds and such cost shall be paid by BAHA or the Unit Owners collectively as a Special Assessment as provided in Sections 7.16(a) and (b).

(d) Distribution of Excess Insurance Proceeds. If the Corporation repairs or restores the Agency Space and the cost thereof is less than the amount of such insurance proceeds, the balance of such proceeds remaining after payment of the costs of restoration and repair shall be distributed prorata to the Unit Owners in accordance with the formula set forth in Section 7.16(b), except that excess proceeds attributable to coverage(s) which exceed the coverage requirements established by the Board and which are paid for by one Unit Owner shall be paid to such Owner.

(e) Notice of Election Not to Repair; Recordation. If a decision of the Board not to repair or restore the Agency Space is made pursuant to Section 8.06(a), the Corporation shall cause to be recorded a Notice setting forth such decision.

(f) Tenants In Common. Upon the recording of such notice, the Unit Owners shall be deemed to be tenants in common in the Agency Space and the Board shall cause an appraisal to be made by a disinterested appraiser of recognized competence in the valuation of property of the nature and in the locality in which the Facility is situated, which appraisal shall set forth an opinion as to the value of the Agency Space as it then exists, together with an opinion of any incremental value, if any, which would accrue if the Agency Space were razed.

(g) Sale of Project. As soon as is reasonably possible after completion of said appraisal, the Unit Owners shall, in concert with BAHA, as the owner of the Commercial Space, sell the Agency Space as part of the overall Facility. If necessary to such sale, the Unit Owners may, but shall not be required to, cause any construction then standing to be razed; provided the costs thereof shall be paid out of any insurance or sales proceeds. The Unit Owners and BAHA shall prepare and file a corrected subdivision map, if required, converting the Facility into single unimproved parcel of land. Such sale shall be free from the effect of this Declaration, with the exception that any provisions hereof relating to distribution of sale and insurance proceeds to the Unit Owners and Unit Mortgagees, and liabilities of the Unit Owners *inter se* shall continue to have full force and effect until such distribution is completed. The Unit Owners are authorized to sell the Agency Space, but if the price is, or the terms of such sale have the effect of reducing such price by, more than fifteen percent (15%) below the appraised value previously obtained, the Unit Owners may not sell the Agency Space without the consent of each Unit Mortgagee.

(h) Proceeds of Sale. The net proceeds of such sale, together with any proceeds of insurance received as a result of such damage or destruction, shall be shared among the Unit Owners in accordance with their respective Percentage Ownership Interests; provided that, if there is an amount secured by a Unit Mortgage or a lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit, the amount payable to the Owner of the encumbered Unit shall first be paid to the First Mortgagee, then any balance shall be paid to the holder or holders of any other liens on such Unit, in their order of priority, before any distribution of proceeds to the Unit Owner whose Unit is so encumbered. If within one (1) year after the date of the recording of a notice pursuant to Section 8.06(e) setting forth the Board's and BAHA's joint decision not to repair or restore the Facility, the Facility has not been sold as provided in Section 8.06(g), then an action may be brought by any Unit Owner(s) for partition of the Agency Space by sale as provided in Civil Code Section 1359. Expiration of the one-year period constitutes compliance with Civil Code Section 1359(b)(4).

(i) Recordation of Notice of Damage. Within ninety (90) days after any such damage or destruction occurs, any Unit Owner, any insurer, or the Corporation, may record a notice stating that such damage or destruction has occurred, describing it, identifying the part of the Agency Space suffering such damage or destruction, the name of any insurer against whom claim is made, reciting that such notice is recorded pursuant to this Section 8.06(i) and that a copy of such notice has been served on the Corporation and all Unit Owners and Unit Mortgagees.

(j) Restoration of Individual Unit. Repair and restoration of damage to the interior of any Unit shall be made by and at the expense, including any insurance proceeds distributed to such Owner, of the Unit Owner(s) whose Unit is damaged as provided for in Section 7.16(b).

Section 8.07. Proceeds of Property Insurance - How Settled and Paid.

(a) Responsibility for Negotiations. Except as otherwise provided in Section 8.05(b), in the event of any insured casualty, the Corporation is charged with the duty and responsibility of negotiating settlement of property losses with insurance carrier(s). However, if the cost to repair or restore exceeds the best obtainable settlement by Two hundred thousand dollars (\$200,000), and if the Board determines in conjunction with BAHA not to repair or restore the Facility as hereinbefore provided, the Board shall, prior to the acceptance of any such award, obtain in writing the approval of all Unit Mortgagees as to any amount which may be accepted on account of the damage to or destruction of the Agency Space. If the Board and any Unit Mortgagees cannot reach an agreement within sixty (60) days following a request for such approval, the question of the amount of the settlement award shall be submitted to arbitration in accordance with the arbitration provisions of the policies involved.

(b) Distribution of Proceeds. The proceeds of any insurance carried pursuant to Sections 8.03(a) and (f) and, where applicable, Section 8.03(i), shall be disbursed in accordance with sound construction loan procedures and controls, which shall be unanimously Approved by the Board, for the purpose of repairing or restoring the Agency Space, or, if a decision of the Board not to repair or restore the Agency Space is made pursuant to Section 8.06, the Board shall disburse such funds to the Unit Owners in accordance with Section 8.06; provided that if there is

any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to provisions of Article VII on any Unit, the amount otherwise payable to the Unit Owner shall first be paid to the First Mortgagee, then to the holder or holders of such other lien(s) on such Unit before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 8.08. Eminent Domain.

(a) Definition; Notice; Representation; Participation in Proceedings.

(1) "Taking"; "Award". The term "taking" shall mean condemnation by eminent domain or sale under threat of condemnation. The term "award" shall include a settlement made in lieu of award.

(2) Notice. In the event of a threatened taking of all or a portion of the Agency Space, the Facility Operator shall immediately notify all Mortgagees and Unit Owners.

(3) Representation. The Board, or its designee, shall represent the Unit Owners in connection with a taking.

(4) Participation in Proceedings. Each Unit Mortgagee and each Unit Owner may, at its option, if permitted by the court, participate in the proceedings incident to a taking, but in any proceeding, the damages shall be determined for such taking as a whole and not for each Unit Owner's interest therein.

(b) Taking of the Entire Project. If the entire Agency Space is taken, any award shall be payable to and collected by the Corporation. Subject to Section 8.08(d), the net proceeds of award shall be divided among the Unit Owners in accordance with their Percentage Ownership Interests.

(c) Partial Taking. If any portion of the Agency Space is taken, the Board shall unanimously decide, in conjunction with BAHAs as the owner of the Commercial Space if the remainder of the Facility is impacted, whether (i) to restore the remainder of the Agency Space or (ii) to bring or permit an action for partition or to sell the remaining portion of the Agency Space in the manner provided in Sections 8.06(e), (f) and (g).

(1) No Board Decision; Partition. If the Board does not reach a unanimous decision pursuant to Section 8.08(c) within ninety (90) days after such taking becomes final, then the Board shall be deemed to permit an action for partition under the conditions of Civil Code Section 1359(b)(4), which conditions shall be deemed to have been met. At any time following the fifteenth (15th) day after said ninety (90) days, a Unit Owner may record a Notice of Decision. Upon the recording of such notice, the Unit Owners shall be deemed to be tenants in common in the Agency Space and an action for partition by sale may be brought by any Unit Owner(s) as provided in Civil Code Section 1359.

(2) Restoration. If the Board unanimously decides to restore the remainder of the Agency Space as provided in Section 8.08(c), then the proceeds of award shall be payable to

and collected by the Corporation and shall be disbursed first to compensate any Unit Owner whose Unit has been taken and then applied in accordance with sound construction loan procedures and controls approved by the Board and all Unit Mortgagees as reasonably necessary for the purpose of restoring the remainder of the Agency Space. Any deficiency between the award and costs of restoration shall be treated as a Capital Improvement payable by BAHA.

(3) Balance of Award; Sale Proceeds. If the proceeds of award exceed the compensation payable to any Unit Owner whose Unit is taken plus cost of restoration of the remaining Agency Space, the award, or the balance thereof remaining after deducting such costs, shall be divided among the Unit Owner(s) according to their Percentage Ownership Interests in the portions of the Agency Space taken, subject to the provisions of Section 8.08(d). Upon sale by partition or if sale is authorized under Sections 8.06(e),(f) and (g) by decision of the Board as provided in this Section 8.08(c), the net proceeds of sale shall be divided in accordance with each Unit Owner's Percentage Ownership Interest; provided that such distribution is subject to the provisions of Section 8.08(d).

(d) Lien. The Board shall disburse any such funds to the Unit Owners as determined under Section 8.08(c)(3) set forth above; provided that if there is any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit remaining, such amount shall first be paid to the First Mortgagee and then to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

(e) Waiver of Power of Eminent Domain. Declarant by execution hereof and each Unit Owner, upon acceptance of the conveyance of its Condominium and/or interest therein, agrees that, as to each or any of them which now or in the future possesses the power of eminent domain, the exercise of such power is hereby waived and shall not be exercised against or applied to any Condominium or interest in a Condominium within the Agency Space.

Section 8.09. Unit Mortgagee's Right to Require Independent Trustee. Notwithstanding any provision in this Article VIII to the contrary, any Unit Mortgagee, upon written request to the Corporation, shall have the absolute right to require that an independent insurance trustee approved by the Board and such Mortgagee be appointed forthwith to replace the Corporation to administer insurance proceeds. The replacement insurance trustee shall be a commercial bank or other financial institution with trust powers with a place of business in the City and County of San Francisco, California, which trustee agrees in writing to accept the trust. The costs of such trustee's service shall be paid by the Unit Owner whose Unit is encumbered and whose Unit Mortgagee makes the request.

ARTICLE IX

RESTRICTIONS ON TRANSFER; ACTIONS FOR PARTITION

Section 9.01. Unity of Interests. The Common Area shall remain undivided as set forth herein, and no Unit Owner shall be entitled to sever its interest in a Unit from the appurtenant undivided interest in the Common Area. No Unit may be dealt with, sold, conveyed, hypothecated or encumbered separately from its appurtenant interest in the Common Area. Any effort to do so shall be null and void. It is intended hereby to restrict severability in the manner provided in Civil Code Section 1359(a), or as subsequently amended; provided, however, that no restrictions upon severability contained herein shall extend beyond the period in which the right to partition is suspended under Civil Code Section 1359(b).

Section 9.02. Right to Partition. No Unit Owner shall have the right to bring any action for partition of the Agency Space, except as permitted by the provisions of this Declaration, the provisions of Civil Code Section 1359(b), or as may be unanimously approved by the Board and all Unit Mortgages.

Section 9.03. Proceeds of Sale Incident to Partition. In the event the Agency Space is sold incident to a partition thereof, the proceeds of such sale shall be shared among the Unit Owners in accordance with their Percentage Ownership Interests; provided that, if there is any amount secured by a First Mortgage or by any other lien on any Unit created in good faith and for value or created pursuant to the provisions of Article VII, such amount shall first be paid to the First Mortgagee, then any balance remaining which is otherwise payable to the Unit Owner of the encumbered Unit shall be paid first to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 9.04. Priority on Leases, Sales and Transfers.

(a) The right of a Unit Owner to sell, lease, assign or otherwise transfer any interest in and to its Unit to any person or entity which is not then a Unit Owner shall be subject to the requirement that such Unit Owner make reasonable attempts to transfer or lease to transferees or lessees in the following order of priority:

- (1) other governmental institutions or entities;
- (2) nonprofit entities; or
- (3) such other lessees or transferees as shall have been first Approved by the Board, which approval shall not be unreasonably withheld.

(b) The requirements of Section 9.04(a) apply only to voluntary leases and transfers. The following list of transactions is specifically exempted from said requirements:

(1) the leasing by BAHA of any space as is necessary to achieve full occupancy of the Agency Space at rates comparable to the rental rates being paid by other governmental tenants, provided that any proposed non-governmental tenant shall be subject to Approval by the Board;

(2) transfer of title pursuant to a deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings instituted against a Condominium and any subsequent sale or lease of such interest by the Mortgagee, the Mortgagee's assignee or the Mortgagee's successor in interest or their successors in interest.

Section 9.05. Interest in Maintenance and Reserve Fund. Upon sale or transfer of any interest in a Unit by any Unit Owner, said Unit Owner's interests in the Condominium Maintenance Fund Account and in the Condominium Reserve Fund Account shall thereupon automatically be transferred to said Unit Owner's successor or transferee.

Section 9.06. Conveyance of Condominiums. No Unit Owner may convey its undivided interest as a tenant in common in the Common Area, except as specifically permitted herein or as part of a conveyance of all its interest in its Unit.

Section 9.07. Transfer of Membership.

(a) The membership of each Unit Owner in the Corporation and its right to appoint a Director to the Board shall be as defined in this Declaration, the Articles and Bylaws and shall be appurtenant to the Condominium giving rise to such membership. Such membership shall not be assigned, transferred, pledged, conveyed or alienated in any way, except:

- (1) the giving of a proxy by a Unit Owner to a Unit Mortgagee;
- (2) assignment of membership by a Unit Owner to a Unit Mortgagee during foreclosure proceedings;
- (3) assignment of membership by a Unit Owner to a lessee who qualifies as a "Unit Owner" pursuant to Section 2.01(w); and
- (4) upon the transfer of title to said Condominium and then only to the transferee.

(b) Any attempt to make a prohibited transfer shall be void. Subject to Sections 2.01(w), 3.02 and 9.07(a) above, transfer of a Unit Owner's entire interest in a Condominium shall operate automatically to transfer the appurtenant membership in the Corporation to the new Owner thereof.

(c) If a Unit Owner's entire interest in the Agency Space is acquired by another Unit Owner(s), then the transferring Unit Owner's membership in the Corporation shall be merged for all purposes, including but not limited to voting rights, into the membership(s) of the acquiring

Unit Owner(s) for so long as such acquiring Unit Owner(s) hold such Condominium interest(s). For example, if one Unit Owner sells its entire interest in the Agency Space to another Unit Owner, the remaining Unit Owner would have the percentage vote attributable to the two Units it owns. If the acquiring Unit Owner later sold such interest to a third party, its percentage vote on the Board would be reduced to the percentage vote it held originally.

Section 9.08. Rights of First Refusal – Sale. The Declarant hereby reserves for itself and grants to any acquiring Unit Owner (hereinafter be referred to as an "offeree Unit Owner") non-assignable rights of first refusal, as set forth in this Section 9.08, upon the proposed sale of any Unit Owner's (hereinafter "selling Unit Owner") interest in the Agency Space.

(a) Covered Transactions. The offeree Unit Owner's rights of first refusal shall apply to the assignment, sale or exchange of all ownership interests in the Agency Space of the transferring Unit Owner (the "Offered Interest"). Upon the valid and timely exercise of its right of first refusal under this section, the offeree Unit Owner shall purchase the entire Offered Interest or none of it. The following transactions are exempted from this right of first refusal:

- (1) the placing of any encumbrance or security interest on a Condominium interest, including a Mortgage;
- (2) advances made on account of any obligation secured by an encumbrance upon a Unit Owner's Condominium interest;
- (3) transfer of title pursuant to deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings instituted against a Condominium interest; or any subsequent sale of such interest by the Mortgagee, the Mortgagee's assignee or the Mortgagee's successor in interest or their successors in interest.
- (4) except as provided in Section 9.08(f), any transfer or sale of any kind of any portion, or all, of a Unit Owner's condominium interest which was previously subject to a right of first refusal which was not exercised;
- (5) any transfer to a replacement entity (of any type) which among other things performs substantially the same or similar public functions as the transferring Unit Owner.

(b) Purchase Price. The offeree Unit Owner shall pay the purchase price set forth in the bona fide offer from a third party described in Section 9.07(1) below, unless the offeree Unit Owner and the selling Unit Owner agree to a lesser purchase price (the "Purchase Price").

(c) Procedure. If the offeree Unit Owner exercises the right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Sell. If a Unit Owner desires to sell or transfer the Offered Interest in a transaction not exempted pursuant to Section 9.08(a) above, then such selling Unit Owner shall, upon receipt of a bona fide written offer from a third party to purchase the Offered Interest, which offer the selling Unit Owner desires to accept (hereinafter "bona fide offer"), deliver notice ("Notice") to the offeree Unit Owner by registered or certified mail, return

receipt requested, or better service with evidence of delivery, of its intention to sell or otherwise transfer such Offered Interest. The Notice shall set forth the legal description of the Offered Interest, the terms and conditions of sale or transfer, and the amount secured by each and every Mortgage or lien on part or all of the Offered Interest (if the proposed purchase is to be subject to such existing Mortgage or lien); provided that, the bona fide offer may be inspected and/or copied by the offeree Unit Owners upon a reasonable advance request to the selling Unit Owner. Where the bona fide offer includes an exchange for some other property interest, the fair market value of such property interest shall be determined by an independent, professional real estate appraiser who shall be acceptable to the selling Unit Owner and the offeree Unit Owner; provided that the parties shall cooperate in good faith in the expeditious selection of such appraiser. If the parties are unable to agree on an appraiser, a list of names shall be agreed to by the parties. The parties, in an order determined by lot, shall alternately strike one (1) name from the list until the name of one (1) appraiser remains who shall serve as the appraiser for purposes of this paragraph. The cost of appraisal shall be divided equally among the participating Unit Owners.

(2) Response; Forty-Five (45) Day Time Limit. If the offeree Unit Owner desires to purchase the Offered Interest of the selling Unit Owner, then it shall deliver notice ("Purchase Notice") to the selling Unit Owner by registered or certified mail, return receipt requested, or better service with evidence of delivery, to its address set forth in Section 12.06. A Purchase Notice shall cover the entire Offered Interest or shall be deemed invalid.

To be valid, each such Purchase Notice must be executed by the offeree Unit Owner and shall contain or enclose the following:

(A) Certified copies of resolutions or motions duly adopted by the governing body of the offeree Unit Owner authorizing unconditional exercise of the right of first refusal and consummation of the purchase of the Offered Interest in accordance with the terms and conditions of this Section 9.08:

(B) A statement of the Purchase Price;

(C) The legal description of the Offered Interest;

(D) The agreement that the offeree Unit Owner shall accept title to the Offered Interest, with only those representations and warranties as are customary for an "AS IS/WHERE IS" sale of real estate. The sale may be conditioned upon a nationally recognized title insurance company being prepared to issue title insurance to the offeree Unit Owner upon recordation of the deed, subject only to such liens, encumbrances and other exceptions to title as shall be reasonably acceptable to the offeree Unit Owner. To validly exercise the right of first refusal granted in this section, the offeree Unit Owner must cause its Purchase Notice to be received by the selling Unit Owner not later than forty-five (45) calendar days after the date of receipt by the offeree Unit Owner of the Notice.

If the offeree Unit Owner fails to cause the selling Unit Owner to receive a timely, valid Purchase Notice, the offeree Unit Owner shall be deemed to have automatically waived its rights of first refusal in respect to such sale of the Offered Interest. If no valid Purchase Notice is

timely received by the selling Unit Owner, the selling Unit Owner shall have the absolute right to sell the Offered Interest as provided in Section 9.08(e). Upon request of the selling Unit Owner, the waiving offeree Unit Owner shall promptly furnish, without charge, to the selling Unit Owner an irrevocable written waiver of its right of first refusal with respect to such purchase of the Offered Interest. Such waiver shall be in form acceptable to the selling Unit Owner's title insurer.

(3) Time to Consummate Right of First Refusal Transaction. If a timely Purchase Notice is received by the selling Unit Owner, the offeree Unit Owner shall have sixty (60) calendar days from the date of receipt by the selling Unit Owner of such Purchase Notice within which to close escrow on the Offered Interest and to complete the purchase transaction. Said purchase shall be made on the same terms and conditions as the bona fide offer except that:

(A) Irrevocable escrow instructions, duly executed by the offeree Unit Owner, shall be submitted to the escrow agent (selected by the offeree Unit Owner) on such agent's standard form and setting forth instructions consistent with the provisions hereof and specifically instructing said agent to disburse the full Purchase Price first to the Mortgagee holding the first lien priority Mortgage against the Offered Interest to the extent of the obligation secured by such Mortgage (unless the offeree Unit Owner has agreed to take title subject to or to assume the First Mortgage), then to any other holders of liens against the Offered Interest, in their order of priority and any balance to the selling Unit Owner;

(B) The time for consummation of said transaction and consequences of failing to timely consummate said transaction shall be as set forth in this section.

(d) Withdrawal. After a selling Unit Owner has delivered a Notice as provided in Section 9.08(c)(1), it may not thereafter extinguish the rights herein granted or withdraw the Offered Interest from sale pursuant to the terms and conditions of the right of first refusal set forth herein, except with the express written consent of the offeree Unit Owner.

(e) Failure to Exercise Right of First Refusal. If the offeree Unit Owner fails to cause the selling Unit Owner to receive a timely Purchase Notice pursuant to Section 9.08(c)(2) of if the selling Unit Owner receives notice from the offeree Unit Owner waiving its rights of first refusal, then the selling Unit Owner shall have a period of two hundred seventy (270) days from the date of Notice under Section 9.08(c)(1) within which to consummate a sale or transfer of the Offered Interest to third parties; provided that such sale or transfer shall be on the same terms and conditions as contained in the bona fide offer; provided further that, any approvals required from the Board shall not be unreasonably withheld.

(f) Sale after Two Hundred Seventy (270) Day Period. If the sale described in the bona fide offer referred to in Section 9.08(e) is not consummated within such two hundred seventy (270) day period or if the terms of such proposed sale are modified in any material respect, the Offered Interest shall be subject once again to the offeree Unit Owner's right of first refusal upon delivery of a new Notice pursuant to Section 9.08(c)(1).

(g) Holding Period. The first refusal rights set forth in this Section 9.08 are intended to allow the remaining Unit Owners to acquire the selling Unit Owner's Offered Interest for their

use and not for speculation and resale at a profit. Therefore, in the event that any Offered Interest is acquired by a Unit Owner as provided in this Section 9.08, such Unit Owner shall not transfer fee title to such Offered Interest for a period of two (2) years from the date transfer of title is made. The holding period set forth in this paragraph shall not apply to the initial sale by BAHA of any of the Units in the Agency Space or to judicial and nonjudicial foreclosures or deeds given in lieu of foreclosure.

(h) Termination of Right of First Refusal. Upon transfer of any Unit Owner's interest in its Unit to a third party, other than a governmental entity, the right of first refusal appurtenant to the transferred Unit shall terminate.

Section 9.09. Right of First Refusal - Lease. BAHA hereby reserves for itself a nonassignable right of first refusal set forth in this Section 9.09 to lease all or any portion of any other Unit Owner's Unit which such Unit Owner elects, in its sole discretion, to offer for lease to third parties, subject to the limitations set forth in Section 9.09(a) below.

(a) Covered Transactions. BAHA's right of first refusal shall apply to the leasing by the initial purchaser from BAHA (the "Initial Purchaser") of any interest in the Initial Purchaser's Unit to a non-Unit Owner and to any assignment of or sublease under any such lease to a non-Unit Owner. The following transactions are exempted from this right of first refusal:

(1) leases by any successor owner of a Unit), whether its interest is acquired by purchase or by a deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings.

(2) any lease to a replacement or companion entity (of any type) which among other things performs substantially the same or similar public functions as the Initial Purchaser.

(b) Procedure. If BAHA exercises the right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Lease; Bona Fide Offer. Upon receipt of a bona fide written offer to lease or sublease all or a portion of the Initial Purchaser's Unit, which the Initial Purchaser is prepared to accept (hereinafter "bona fide offer"), the Initial Purchaser shall give Notice to BAHA of its intention to lease such Condominium interest on the terms and conditions contained in the bona fide offer. The Notice shall identify the interest to be leased (hereinafter "Offered Interest") and the terms and condition of lease. The third party bona fide offer to lease may be inspected and copied by BAHA upon reasonable notice to the Initial Purchaser.

(2) BAHA shall lease the Offered Interest in its "as is" condition or as otherwise provided in the bona fide offer, and the lease shall be subject to Mortgages and other liens of record;

(c) Agreement to Lease. BAHA shall have forty (40) days from the date of the Notice under Section 9.09(b)(1) within which to give Initial Purchaser a written Notice of Intention to lease the entire Offered Interest and fifty (50) days from the date of the Notice under

Section 9.09(b)(1) within which to execute a lease for the entire Offered Interest on the same terms and conditions as contained in the bona fide offer.

(d) Lease to Third Party. If a lease is not timely executed as provided herein by BAHA, then the Initial Purchaser may lease the offered space to third parties at the same or higher rates as those contained in the bona fide offer and otherwise on substantially the same terms and conditions contained in such offer, provided that, such lease shall be executed within one hundred eighty (180) days of the notice set forth in Section 9.09(b)(1). If such lease is not executed within such one hundred eighty (180) day period, BAHA's right of first refusal shall be reinstated as to any leases occurring after such time period.

Section 9.10. [Reserved]

Section 9.11. [Reserved]

Section 9.12. [Reserved]

Section 9.13. **Rights in the Event of Foreclosure.** Declarant hereby reserves for itself and grants to each Unit Owner the nonassignable rights in event of foreclosure described in this Section 9.13.

(a) Foreclosure. Each Unit Owner shall be deemed to have, and shall have, an interest entitling them to redeem any other Unit from the lien of any mortgage under Civil Code Section 2903 and that, upon redemption of the mortgaged property, such other Unit Owners shall have the rights against the mortgagor Unit Owner which are set forth in Civil Code Section 2903.

(b) Deed in Lieu of Foreclosure.

(1) Notice. If, in lieu of foreclosure, a mortgagor Unit Owner proposes to give a deed to the mortgaged property to a Mortgagee, the Unit Owner and Mortgagee shall reduce their agreement to writing and the mortgagor Unit Owner shall give notice in writing to the other Unit Owners advising them of the terms and conditions of the proposed transaction, providing each with copies of such written agreement.

(2) Right of Other Unit Owners. Upon receipt of a Notice under Section 9.13(b)(1) above, the other Unit Owners, acting in concert or otherwise, shall have the right to acquire the mortgaged property by making the following payments in cash within ninety (90) days of the Notice under Section 9.13(b)(1).

(A) To the Mortgagee: the full amount of the indebtedness secured by such mortgage, together with the Mortgagee's cost and expenses allowable under Civil Code Section 2924(d).

(B) To the mortgagor Unit Owner: the consideration, if any, that was agreed by the Mortgagee to be paid to such mortgagor Unit Owner in consideration of its giving such deed in lieu of foreclosure.

If the other Unit Owners oversubscribe the mortgaged interest and cannot reach timely agreement to divide such interest among themselves, then the Unit Owner which shall acquire the mortgaged interest shall be chosen by the mortgagor Unit Owner by lot.

(3) Waiver. If the other Unit Owner(s) fail to make timely payment for such mortgaged interest as required herein, then the right to purchase under Section 9.13(b) shall be waived and the mortgagor Unit Owner may give such deed in lieu of foreclosure to the Mortgagee pursuant to the terms of their agreement.

Section 9.14. Recomputation of Interest. Upon acquisition by an existing Unit Owner of any interest of another Unit Owner through outright purchase, purchase at foreclosure or otherwise, the acquiring Unit Owner's Percentage Ownership Interest shall be recomputed, as necessary, to reflect the acquiring Unit Owner's new holdings.

Section 9.15. Other Encumbrances. So long as BAHA or BAAQMD owns an interest in the Agency Space, neither of them shall voluntarily encumber its interests in the Agency Space, or any portion thereof, without the prior written consent of the other, which consent shall not be unreasonably withheld. At such time as BAHA no longer owns any interest in the Project, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAHA. At such time as BAAQMD no longer owns any interest in the Project, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAAQMD.

ARTICLE X

MORTGAGE PROTECTION

Section 10.01. Warranty. Declarant and each Unit Owner, by accepting a deed subject to this Declaration, each covenants and warrants that any Unit Mortgagees shall be entitled to the rights and guarantees set forth in this Article X.

Section 10.02. No Impairment. The following rights of a Unit Mortgagee shall not be impaired:

(a) Subject to compliance with Section 9.13(a), to foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage; or

(b) Subject to compliance with Section 9.13(b), to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or

- (c) To sell or lease a Unit so acquired by the Unit Mortgagee without interference.

Section 10.03. Reserve Fund. The Corporation's assessments shall provide an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis. The Condominium Reserve Fund Account shall be funded through Common Assessments.

Section 10.04. Subordination. Any lien created or claimed in the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage which encumbers all or any interest in a Condominium, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Condominium and/or interest therein is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium or interest therein free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium and/or interest therein, the foreclosure purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Corporation that become due or payable on or after the foreclosure purchaser acquired title to the Condominium and/or interest therein. The subsequently levied assessment or other charges may include previously unpaid assessments, provided all Unit Owners, including the foreclosure-purchaser and its successors and assigns, are required to pay their proportionate share of such assessment as provided in Section 7.05 relating to Common and Extra Common Assessments. As used herein, the term "foreclosure" shall include both judicial and nonjudicial (i.e., trustee's sales), and a deed (or assignment) in lieu of foreclosure.

Section 10.05. Amendment of Declaration. No amendment to this Declaration shall affect the rights of the holder of any First Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

Section 10.06. Additional Subordination Agreements. By subordination agreement Approved by the Board, the benefits of Sections 10.04 and 10.05 may be extended to Mortgagees not otherwise entitled thereto; provided, however, that nothing contained herein shall give the Board the power to affect the rights of the holders of a recorded Mortgage.

Section 10.07. Prior Written Approval of Mortgagees. The prior written approval of each Unit Mortgagee shall be required for the following:

- (a) The abandonment or termination of the Common Area or Jointly Shared Space, except for abandonment or termination in the case of substantial destruction by fire or other

casualty under Section 8.06, or in the case of a taking by condemnation or eminent domain under Section 8.08, unless the taking by condemnation violates the provisions of Section 8.08(e) regarding waiver of the power of eminent domain.

(b) Any change in the method of determining the obligations, assessments, dues or other charges that may be levied against a Unit Owner, or to change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of insurance proceeds or condemnation awards for determining the pro rata share of ownership of each Unit Owner in the Common Area.

(c) Any action or omission to act by the Corporation seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area for the benefit of the Unit Owners collectively shall not be deemed a transfer within the meaning of this Section 10.07(c).

(d) The use of hazard insurance proceeds from losses to any Unit or portion of Common Area for other than the repair, replacement or a restoration of the improvements thereon, except as provided in Section 6.06.

(e) The failure to maintain fire and extended coverage insurance on insurable Corporation property and on the Common Area and Units on a current replacement cost basis in an amount not less than required under Section 8.03(a).

Section 10.08. Written Notification Obligation. The Facility Operator shall notify in writing all Mortgagees holding a Mortgage on a particular Unit of any default by the Owner of such Unit in the performance of its obligations under the Governing Instruments and any other related documents, if such default is not cured within thirty (30) days. It shall be the responsibility of each Unit Owner to notify the Facility Operator within thirty (30) days after the Mortgage is given of the name and address of the holder of any Mortgage on its Unit.

Section 10.09. Right to Inspect. Upon reasonable request, a Unit Mortgagee shall be entitled to:

(a) Inspect the books and records kept by the Facility Operator during normal business hours.

(b) Receive an annual financial statement, preparation of which is required under Section 4.02(f).

Section 10.10. Notice of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, a Unit Mortgagee shall be entitled to timely notice of any such damage or destruction and no provisions of the Governing Instruments shall entitle the Unit Owner of the Unit subject to the mortgage to have priority over the Unit Mortgagee holding

the mortgage on such Unit with respect to the distribution to such Unit Owner of any insurance proceeds.

Section 10.11. Notice of Condemnation Proceeding. In the event of a threatened taking of all or a portion of the Agency Space, the Facility Operator shall give notice to Mortgagees as provided in Section 8.08(a)(2). No provision of the Governing Instruments shall entitle the Owner of a Unit subject to a Mortgage to priority over a Mortgagee holding the Mortgage on such Unit with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

Section 10.12. Authority of Unit Owners to Cure Default. Nothing herein contained shall be deemed to limit or restrict the right of the Corporation or any Unit Owner(s), pursuant to Civil Code Section 2924(c), to cure any defaults under Mortgages. Upon Approval by the Board, the Corporation is expressly authorized, but not required to, cure any and all such defaults by payment to the Mortgagee(s) of the defaulting Unit Owner(s). Without limitation on any remedy of the Unit Owners provided in Section 9.13, such payments shall be a debt of the defaulting Unit Owners and be made a Special Assessment against the defaulting Unit Owner(s) and, if so assessed, shall be secured by the lien created under Section 7.08, which lien shall be subject to this Article X. In no event shall any amounts advanced by the Corporation to cure defaults under a Mortgage secured by an individual Unit Owner's Unit become the responsibility of or be assessed against the other Unit Owners.

Section 10.13. Mortgagee Protection Clause. No breach of any of the covenants, conditions and restrictions in this Declaration, nor the enforcement of any of the lien provisions herein, shall defeat or render invalid the rights under any Mortgage on any Unit made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Unit Owner whose title is derived through foreclosure or otherwise. Any Mortgagee who acquires title to a Condominium and/or interest therein by foreclosure or by deed (or assignment) in lieu of foreclosure shall not be obligated to cure any breach of this Declaration occurring prior to its acquisition of title to the Condominium.

Section 10.14. Status of Loan to Facilitate Resale. Any Mortgage given to secure a loan to facilitate the resale of a Condominium or interest therein after acquisition by foreclosure or by deed (or assignment) in lieu of foreclosure shall be deemed to be a loan made in good faith and for a value and entitled to all the rights and protections of Mortgages under this Declaration.

Section 10.15. Right of First Refusal Inapplicable to Mortgagee. Except for the right of first refusal described in Section 9.08 as originally recorded, no right of first refusal or similar restriction on the right of a Unit Owner to sell, lease, transfer, or otherwise convey such Unit Owner's Condominium and/or interest therein shall be granted to the Corporation or other Unit Owners or persons without the written consent of each Mortgagee of the affected Condominium or interest therein. Any right of first refusal or option to purchase a Condominium or interest therein that may hereafter be granted to the Corporation (or other person, firm or entity,

including Unit Owners) shall not impair the rights of a First Mortgagee (i) to foreclose or take title to the Condominium or interest therein pursuant to the remedies provided in the Mortgage; or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or (iii) to sell or lease a Condominium acquired by the Mortgagee.

Section 10.16. Conflict with Other Provisions. In the event of any conflict between any of the provisions of this Article X and any other provisions of this Declaration or the Articles, or the Bylaws, the provisions of this Article X shall control.

ARTICLE XI

COMPLIANCE, LIABILITY, BREACH AND DEFAULT

Section 11.01. Compliance and Breach. Each Unit Owner shall comply with all provisions of the Governing Instruments.

Section 11.02. Liability. Each Unit Owner shall be liable for the expense of any maintenance, repair, restoration or replacement rendered necessary by, or any loss, cost, expense, damage or other liability, including attorney fees, caused or occasioned by, its negligence or misconduct or that of its tenants, agents, employees, licensees or invitees, or its failure to comply with the provisions of this Declaration, but only to the extent that such expense, loss, cost, damage or other liability is not covered by the proceeds of insurance carried by the Corporation.

Section 11.03. Right of Entry. Violation of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained shall give the Board, or the Facility Operator, with the Approval of the Board, the right to enter the property upon or as to which such violation exists and to summarily abate and remove at the expense of the Unit Owner thereof, any erection, thing or condition that exists thereon contrary to the intent and meaning of the provisions of this Declaration. The Facility Operator and the Board shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

Section 11.04. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Unit Owner or the Corporation. Such remedies shall be deemed cumulative and not exclusive.

Section 11.05. Breach of Duty to Maintain. In addition to the other rights hereunder, if any Unit Owner fails to maintain its Unit or make repairs thereto, in such manner as may be necessary to preserve and protect the attractive appearance and value of the Agency Space, the

Corporation shall cause to be performed the necessary work in accordance with Section 4.04(f)(3).

Section 11.06. Enforcement. The Unit Owners and/or the Board may bring a legal action for damages against any Unit Owner which defaults in the performance of any of the provisions, conditions, restrictions, easements, covenants or reservations of the Governing Instruments including, but not limited to, the covenant to pay assessments. Further, they shall be entitled to enjoin any violation of the Governing Instruments and shall further be entitled to prosecute any other legal or equitable action that may be necessary to protect the Agency Space. If they shall deem it necessary to initiate any legal or equitable action for the protection of the Agency Space against any Unit Owner, the prevailing party in such litigation shall be entitled to receive its reasonable attorney's fees and costs. Failure to enforce any provision of the Governing Instruments shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.07. Remedy at Law Inadequate. The respective rights and obligations of the Unit Owners shall be enforceable in equity as well as at law or otherwise. Each Unit Owner confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Declaration. Each Unit Owner agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing herein contained is intended to, nor shall limit or affect any rights at law or by statute or otherwise of any Unit Owner aggrieved as against another for a breach or threatened breach of any provision hereof.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provisions of this Declaration.

Section 12.02. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Agency Space.

Section 12.03. Waiver. No consent or waiver, express or implied, by any party hereto of any breach or default by any other party in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party under this Declaration. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any of the other parties in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

Section 12.04. Number and Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural, and vice versa.

Section 12.05. Headings; References. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration, and all references herein to Articles, Sections or subdivision thereof shall refer to the corresponding Article, Section or subdivision thereof of this Declaration, unless specific reference is made to the Articles, Sections or subdivisions of another document or instrument.

Section 12.06. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Declaration shall be in writing and shall be sent to the parties at the address of each such Unit Owner's Unit or at such other address as the Unit Owner may specify in writing to the Facility Operator from time to time and addressed to the chief executive officer or equivalent of such Unit Owner. Unless otherwise provided herein, all notices shall be given by personal delivery, by overnight courier or by U.S. mail, certified with return receipt requested. All notices shall be deemed received upon the earlier of actual receipt, one business day after deposit with a nationally or regionally recognized overnight courier or three (3) business days after deposit in the U.S. mail.

Section 12.07. Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto.

Section 12.08. Amendment of Declaration. Unless a greater vote is expressly required herein to amend any particular provision of this Declaration, and subject to the rights of Mortgagees described in Article X of this Declaration, the Board may amend this Declaration by a vote of a majority of its members or, if there are only two members, by unanimous vote. A copy of each amendment shall be certified by each Unit Owner as having been duly adopted and shall be effective when recorded in the Official Records of the Recorder of the City and County of San Francisco; provided that an amendment to the rules adopted by the Board pursuant to Section 4.02(j) need not be recorded.

Section 12.09. Term of Covenants, Conditions and Restrictions. Subject to the provisions of Article X relating to the rights of Mortgagees, these Covenants, Conditions and Restrictions shall continue and be effective until a majority of the Unit Owners or, if there are only two Unit Owners, both Unit Owners, deem that they shall terminate, in the event of which determination the Board shall place on record with the City and County of San Francisco Recorder a duly executed notice of such termination.

Section 12.10. Successors and Assigns. This Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, personal representatives, successors,

purchasers, lessees, sublessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

Section 12.11. Joint and Several Liability. In the case of joint ownership of a Condominium, if any, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

Section 12.12. Priority of Governing Instruments. In the event that there are any conflicts or inconsistencies in or between the Governing Instruments, such conflict or inconsistency shall be resolved by giving precedence to the Governing Instruments in the following order: this Declaration, the Articles and the Bylaws.

Section 12.13. Arbitration of Dispute. Any controversy arising among Unit Owners or between a Unit Owner and the Board concerning the rights and obligations of any party under the terms of this Declaration shall be determined by binding arbitration by and under the commercial rules of the American Arbitration Association ("Commercial Rules"). Arbitration hearings shall be held in the City and County of San Francisco. Any such controversy shall be arbitrated by a single arbitrator, who shall be an impartial real estate professional or lawyer having not less than ten years experience developing, managing or representing owners of commercial office properties in the San Francisco area. The arbitrator shall be appointed under the Commercial Rules and shall determine the controversy in accordance with applicable law, the intention of the parties as expressed in the Declaration and any amendments thereto and the evidence produced at the arbitration hearing. Pre-arbitration discovery shall be permitted in accordance with the Commercial Rules or California law applicable to arbitration proceedings. The arbitrator's determination shall be rendered within thirty days after the conclusion of the hearing and may include an award of attorneys' fees and costs to the prevailing party. By accepting title to a Unit, each Unit Owner agrees to be bound by the provisions of this Section 12.13.

[Signatures continued on next page.]

WHEREFORE, this Declaration has been executed in San Francisco, California as of the date first written above.

BAY AREA HEADQUARTERS AUTHORITY

By: _____
Executive Director

By: _____
Treasurer-Auditor

Approved as to form:

General Counsel

APPENDIX 2

[FORM OF PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS]

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the ____ day of _____, 2013 by and between BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("BAHA"), and ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("ABAG").

IN CONSIDERATION of the respective agreements hereinafter set forth, BAHA and ABAG hereby agree as follows:

1. Property. BAHA hereby agrees to sell and convey to ABAG, and ABAG hereby agrees to purchase from BAHA, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

1. that certain office condominium unit identified as [Unit/Suite] ____ located at 390 Main Street, San Francisco, California 94105, as more particularly described in Exhibit A attached hereto (the "Unit"), together with all rights, privileges, easements and appurtenances to or affecting the Unit, including without limitation membership in the Corporation, the right to use the Common Area and the Jointly Shared Spaces and the _____ (__) parking spaces appurtenant to the Unit, as more fully set forth in that certain Declaration of Covenants, Conditions and Restrictions (the "CC&R's") recorded in the Official Records of the City and County of San Francisco as Document No. _____ on _____ 20__ the (collectively, the "Real Property");

2. all of BAHA's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer systems and other equipment installed by BAHA in the Unit (the ("Personal Property"); and

3. all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the Unit (the ("Intangible Property").

All capitalized terms not otherwise defined herein shall have the meanings set forth in the CC&R's.

2. Purchase Price; Independent Consideration.

Purchase Price and Manner of Payment. The purchase price (the "Purchase Price") to be paid by ABAG to BAHA for the Property at closing shall be ABAG's condominium ownership interest in its condominium unit ("ABAG Unit") located in the MetroCenter, located at 101 Eighth Street, Oakland, California 94607 ("MetroCenter") together with all rights, privileges, easements and appurtenances to or affecting the ABAG Unit, together with (1) all of ABAG's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer cabling and other equipment installed by ABAG ("ABAG Personal Property") and (2) all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the ABAG Unit ("ABAG Intangible Property").

The Purchase Price shall be paid through recordation of deed and execution of other necessary documents through the escrow established pursuant to Section 7 below.

(b) Independent Consideration. Upon mutual execution of this Agreement, ABAG shall deliver to BAHA in cash the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "Independent Contract Consideration") which amount has been bargained for and agreed to as consideration for ABAG's exclusive option to purchase the Property provided hereunder and for BAHA's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events.

3. BAHA's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, BAHA shall, to the extent BAHA has not already done so, deliver or cause to be delivered to ABAG the following, to the extent in BAHA's actual possession (collectively, the "Due Diligence Materials") at BAHA's sole cost and expense: (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the Property, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the Property (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the Property which BAHA desires ABAG to assume; and (f) copies of all building occupancy permits, including certificates of occupancy, for the Unit. The Due Diligence Materials are for ABAG's use in connection with ABAG's investigation of the Property. ABAG acknowledges that, except as otherwise provided in Section 9 below, BAHA is not making any representation or warranty of any kind with respect to the Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by ABAG.

4. ABAG's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, ABAG shall, to the extent ABAG has not already done so, deliver or cause to be delivered to BAHA the following, to the extent in ABAG's actual possession (collectively, the "ABAG Due Diligence Materials"): (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "ABAG Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "ABAG Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the ABAG Unit and the MetroCenter, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the ABAG Unit and the MetroCenter (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the ABAG Unit and the MetroCenter which ABAG desires BAHA to assume; and (f) copies of all building occupancy permits, including certificates of occupancy, for the ABAG Unit and the MetroCenter. The ABAG Due Diligence Materials are for BAHA's use in connection with BAHA's investigation of the ABAG Unit and the MetroCenter. BAHA acknowledges that, except as otherwise provided in Section __ below, ABAG is not making any

representation or warranty of any kind with respect to the ABAG Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by BAHA.

5. ABAG's Review and BAHA's Disclaimer.

1. Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by ABAG and BAHA or (ii) the date on which BAHA has delivered the Due Diligence Materials to ABAG.

2. Physical Inspection. ABAG hereby covenants that it will observe and inspect the physical condition of the Unit, the building of which it is a part, including without limitation the Common Area and the Jointly Shared Spaces. Further, the ABAG agrees to the selection and the installation of the Personal Property in the Unit.

3. Title. ABAG shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by ABAG in writing within the applicable review period shall be deemed approved and shall be referred to as "Permitted Exceptions." In the event that ABAG notifies BAHA in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("Objections"), BAHA shall have the right, but not the obligation, to cure any of the Objections by removing or causing the Title Company to insure over such Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed if necessary. If BAHA is unable to cure any Objections within said thirty (30) day period, or if BAHA gives ABAG written notice at anytime during said thirty (30) day period stating that BAHA declines to attempt to cure any of the Objections, then ABAG will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from BAHA, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the Objections (and the ABAG's Condition Precedent described in Section 5.2 of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, BAHA shall be obligated to remove from title on or before Closing any monetary liens affecting the Property (other than monetary liens resulting from ABAG's acts).

4. As-Is Sale. Except as otherwise expressly set forth in Section 9 and Section 15 of this Agreement and any of the documents delivered by BAHA at Closing, neither BAHA nor its directors, officers, employees, agents, representatives or attorneys (collectively, the "BAHA Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to ABAG including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the Property for ABAG's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the Due Diligence Materials, or as to any other past, present or future matter whatsoever. ABAG acknowledges and agrees that it has satisfied itself regarding the condition of the Property and the foregoing matters, and, except as otherwise provided in this Section 4.4,

that the Property will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that ABAG assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

5. ABAG's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by BAHA at Closing, ABAG, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges BAHA, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which ABAG has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. ABAG hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

ABAG hereby specifically acknowledges that ABAG has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

ABAG Initials

6. BAHA's Review and ABAG's Disclaimer.

1. Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by BAHA and ABAG or (ii) the date on which ABAG has delivered the Due Diligence Materials to BAHA.

2. Physical Inspection. BAHA hereby covenants that it will observe and inspect the physical condition of the ABAG Unit, the MetroCenter of which it is a part, including without limitation the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit. Further, BAHA agrees to the selection and the installation of the ABAG Personal Property in the ABAG Unit.

3. Title. BAHA shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by BAHA in writing within the applicable review period shall be deemed approved and shall be referred to as "ABAG Permitted Exceptions." In the event that BAHA notifies ABAG in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("ABAG Objections"), ABAG shall have the right, but not the obligation, to cure any of the ABAG Objections by removing or causing the Title Company to insure over such ABAG Objections within thirty (30) days after receipt of the ABAG Objections,

during which period the Closing will be postponed if necessary. If ABAG is unable to cure any ABAG Objections within said thirty (30) day period, or if ABAG gives BAHA written notice at anytime during said thirty (30) day period stating that ABAG declines to attempt to cure any of the ABAG Objections, then BAHA will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from ABAG, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the ABAG Objections (and the BAHA's Condition Precedent described in Section ____ of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, ABAG shall be obligated to remove from title on or before Closing any monetary liens affecting the ABAG Unit (other than monetary liens resulting from BAHA's acts).

4. As-Is Sale. Except as otherwise expressly set forth in Section ____ and Section ____ of this Agreement and any of the documents delivered by ABAG at Closing, neither ABAG nor its members, directors, officers, employees, agents, representatives or attorneys (collectively, the "ABAG Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to BAHA including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the ABAG Unit for BAHA's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the ABAG Due Diligence Materials, or as to any other past, present or future matter whatsoever. BAHA acknowledges and agrees that it has satisfied itself regarding the condition of the ABAG Unit and the foregoing matters, and, except as otherwise provided in this Section ____, that the ABAG Unit will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that BAHA assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

5. BAHA's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by ABAG at Closing, BAHA, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges ABAG, its members, agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which BAHA has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. BAHA hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

BAHA hereby specifically acknowledges that BAHA has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

BAHA Initials

7. ABAG's Conditions Precedent to Closing. The following are conditions precedent to ABAG's obligation to purchase the Property (the "ABAG's Conditions Precedent"). ABAG's Conditions Precedent are intended solely for the benefit of ABAG and may be waived only by ABAG in writing. In the event any ABAG's Condition Precedent is not satisfied, ABAG may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

1. Property Condition. ABAG's inspection, review and approval, prior to expiration of the Inspection Period, of the Due Diligence Materials, including, without limitation, the Preliminary Report and the Environmental Documents, which approval shall be deemed given unless ABAG shall give written notice of disapproval prior to the expiration of the Inspection Period;

2. Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to ABAG upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined to equal the fair market value of the ABAG Unit, as reflected in an independent appraisal of a certified commercial real property appraiser jointly selected by BAHA and Purchaser), insuring fee simple title to the Property in ABAG, subject only to the Permitted Exceptions and such other exceptions as ABAG shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "Title Policy").

3. Performance by BAHA. BAHA shall have complied, in all material respects, with all of BAHA's duties and obligations contained in this Agreement and all of BAHA's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

8. BAHA's Conditions Precedent to Closing. The following are conditions precedent to BAHA's obligation to sell the Property (the "BAHA's Conditions Precedent"). BAHA's Conditions Precedent are intended solely for the benefit of BAHA and may be waived only by BAHA in writing. In the event any BAHA's Condition Precedent is not satisfied, BAHA may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

1. Property Condition. BAHA's inspection, review and approval, prior to expiration of the Inspection Period, of the ABAG Due Diligence Materials, including, without limitation, the ABAG Preliminary Report and the ABAG Environmental Documents, which approval shall be deemed given unless BAHA shall give written notice of disapproval prior to the expiration of the Inspection Period;

2. Recordation of Condominium Map for 390 Main Street. A condominium map establishing the Unit as a separate legal parcel shall have been recorded.

3. Recordation of Grant Deed(s) for ABAG Unit and ABAG's Interest in the Library Unit, Meeting Room Unit, Parking Unit and Cafeteria Unit. One or more grant deeds showing the ownership of the ABAG Unit and of ABAG's Interest in the Library Unit, Meeting Room Unit, Parking Unit and Cafeteria Unit as transferred to the BAHA.

4. Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to BAHA upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined as set forth above in paragraph 5.2.), insuring fee simple title to the ABAG Unit in BAHA, subject only to the Permitted Exceptions and such other exceptions as BAHA shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "ABAG Unit Title Policy")

5. Performance by ABAG. ABAG shall have complied, in all material respects, with all of ABAG's duties and obligations contained in this Agreement and all of ABAG's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

9. Escrow; Closing.

1. Escrow. Upon mutual execution of this Agreement, the parties hereto shall deposit a fully executed copy of this Agreement with First American Title Insurance Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, California 94596; Escrow Officer: Kitty Schlesinger) (hereinafter "Title Company" or "Escrow Holder") and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase contemplated hereby. BAHA and ABAG shall execute such supplemental escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by ABAG and/or BAHA, the terms of this Agreement shall control.

2. Closing. The parties intend for the consummation of the sale of the Property as provided hereunder (the "Closing") to take place through escrow on the date that is ten (10) business days after the expiration of the Inspection Period, or on such earlier date as may be agreed to by BAHA and ABAG (the "Closing Date").

3. BAHA's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, BAHA shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-1 (the "390 Main Street Deed");

(ii) Bill of Sale. Two (2) duly executed counterpart originals of two separate bills of sale with respect to the Personal Property and the ABAG Personal Property, respectively, in the form attached to this Agreement as Exhibit C (the "Bills of Sale");

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of two separate assignments and assumption of intangible property in the form attached to this Agreement as Exhibit D (the "Assignments"); and

(iv) BAHA's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 9, except as otherwise may be set forth in the Certificate.

4. ABAG's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, ABAG shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-2 (the "MetroCenter Deed")

(ii) Bill of Sale. Two (2) duly executed counterpart originals of each of the separate Bills of Sale;

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of each of the separate Assignments;

(iv) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required); and

(v) Closing Costs. Immediately available funds in the amount of the ABAG's share of Closing Costs.

5. Additional Closing Documents. BAHA and ABAG shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

10. Closing Costs and Prorations. BAHA and ABAG agree to the following prorations and allocation of costs ("Closing Costs") regarding this Agreement:

1. Real Estate Taxes Assessments. ABAG and BAHA are each governmental entities and are not subject to real property taxes. In the event there are any assessments which attach to governmentally owned real property, such assessments shall be prorated and adjusted between BAHA and ABAG as of the Closing Date so that (1) with respect to the Unit, BAHA shall pay, or give ABAG credit for, any such assessments that accrued on or prior to the Closing Date and ABAG shall pay, or assume, any such assessments that accrue after the Closing Date, and (2) with respect to the ABAG Unit, ABAG shall pay, or give BAHA credit for, any such assessments that accrued on or prior to the Closing Date and BAHA shall pay, or assume, any such assessments that accrue after the Closing Date. The obligations of ABAG and BAHA set forth in this Section 8.1 shall survive the Closing.

2. Property Expenses. There shall be no proration at Closing of utilities and Common Area assessments for the Unit or the ABAG Unit. These expenses shall be paid by ABAG and the BAHA, respectively, after Closing.

3. Title Insurance and Escrow Fee. BAHA shall pay the premium attributable to the Title Policy and the ABAG Title Policy and any reasonable and customary escrow fee or charge imposed by Escrow Holder.

4. Recording Costs. BAHA shall pay the cost of recording the Deeds and all other documents, if any, recorded pursuant to the terms of this Agreement.

5. Transfer Taxes. No governmental documentary transfer or transaction taxes or fees shall be payable in connection with this transaction because both ABAG and BAHA are exempt governmental entities.

The provisions of this Section 8 shall survive the Closing.

11. Representations and Warranties of BAHA. BAHA hereby represents and warrants to ABAG as follows:

1. Power and Authority. BAHA has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (iii) to complete the transactions contemplated by this Agreement. BAHA has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (B) the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (C) the completion of the transactions contemplated by this Agreement.

2. Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing have been duly executed and delivered by BAHA and constitute valid and binding obligations of BAHA.

3. No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing and the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and the completion of the transactions contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which BAHA is party or by which BAHA is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to BAHA or any judgment, order or decree of any court or governmental authority that is binding on BAHA.

4. Ownership. BAHA has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the Property.

5. Actions. To BAHA's knowledge, except for the on-going discussions with the San Francisco Planning Department concerning the current zoning of the Real Property, (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or

value of the Property, (ii) there are no special assessment proceedings affecting the Property, (iii) there is no litigation pending or threatened in writing against BAHA arising out of the ownership or operation of the Property or that might detrimentally affect the Property or the ability of BAHA to perform its obligations under this Agreement. BAHA shall notify ABAG promptly of any such proceedings or litigation of which BAHA becomes aware, and (iv) BAHA has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

6. Contracts for Improvements and Other Encumbrances. To BAHA's knowledge, other than possible construction contract retentions for which funds have been reserved by BAHA, at the time of Closing there will be no outstanding written or oral contracts made by BAHA for any improvements to the Property which have not been fully paid for and, except as set forth in the Preliminary Report, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which were not disclosed in writing to ABAG prior to the date of this Agreement.

7. Hazardous Materials. To BAHA's knowledge and except as set forth in the Due Diligence Materials, there has been no release, storage, treatment, generation or disposal of Hazardous Materials by BAHA, or any other party during BAHA's ownership of the Property, on, under or from the Property in violation of any applicable laws, ordinances or regulations. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

12. Representations and Warranties of ABAG. ABAG hereby represents and warrants to BAHA as follows:

1. Power and Authority. ABAG has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and (iii) to complete the transaction contemplated by this Agreement. ABAG has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and the documents to be executed and delivered by ABAG to BAHA at the Closing, (B) the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and (C) the completion of the transaction contemplated by this Agreement.

2. Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing have been duly executed and delivered by ABAG and constitute valid and binding obligations of ABAG.

3. No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing and the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which ABAG is party or by which ABAG is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to ABAG or any judgment, order or decree of any court or governmental authority that is binding on ABAG.

4. ABAG's Investigation. ABAG has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in ABAG's judgment bear upon the value and suitability of the Property for ABAG's purposes. ABAG acknowledges that, except as otherwise provided herein, BAHA has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the Property, and ABAG is relying solely on ABAG's own inspection and examination of such items and not on any representation of BAHA.

5. Ownership. ABAG has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the ABAG Unit.

6. Actions. To ABAG's knowledge (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the ABAG Unit, (ii) there are no special assessment proceedings affecting the ABAG Unit, (iii) there is no litigation pending or threatened in writing against ABAG arising out of the ownership or operation of the ABAG Unit or that might detrimentally affect the ABAG Unit or the ability of ABAG to perform its obligations under this Agreement. ABAG shall notify BAHA promptly of any such proceedings or litigation of which ABAG becomes aware, and (iv) ABAG has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

7. Contracts for Improvements and Other Encumbrances. To ABAG's knowledge, at the time of Closing there will be no outstanding written or oral contracts made by ABAG for any improvements to the ABAG Unit which have not been fully paid for and, except as set forth in the preliminary title report pertaining to the ABAG Unit, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the ABAG Unit and which were not disclosed in writing to BAHA prior to the date of this Agreement.

8. Hazardous Materials. To ABAG's knowledge there has been no release, storage, treatment, generation or disposal of Hazardous Materials by ABAG, or any other party during ABAG's ownership of the ABAG Unit, on, under or from the ABAG Unit in violation of any applicable laws, ordinances or regulations.

13. Survival. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and shall survive the execution and delivery of this Agreement, the 390 Main Street Deed, the MetroCenter Deed and the Closing, provided that the representations and warranties set forth in Sections 9.4 through 9.8 and 10.4 through 10.8 shall survive the Closing only for a period of nine (9) months following the Closing Date and, if no claim is made in writing within such period, shall expire and be of no further force and effect.

14. Casualty or Condemnation.

1. In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000), then ABAG shall have the right to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

2. In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing where (i) the cost to repair and/or restore such damage and/or destruction does not exceed Fifty Million Dollars (\$50,000,000), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars (\$50,000,000) but this Agreement is not terminated pursuant to Section 12.1 above as a result thereof, then the Closing shall occur as scheduled notwithstanding such damage; provided, however, that BAHA shall be obligated, at its cost, to restore or repair the Unit to its prior condition and shall retain its interest in all insurance proceeds payable in connection with such damage or destruction. BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

3. In the event a governmental entity commences eminent domain proceedings (or threatens in writing to commence such proceedings) to take any portion of the Unit, or the ABAG Unit, or any other portion of the building in which either is located which would impair ABAG's use of the Unit, or the BAHA's use of the ABAG Unit, respectively, after the date hereof and prior to the Closing, then (1) with respect to the Unit, ABAG shall have the option to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such commencement or threatened commencement, and (2) with respect to the ABAG Unit, BAHA shall have the option to terminate this Agreement by written notice to ABAG within five (5) business days after BAHA has received written notice from ABAG of the occurrence of such commencement or threatened commencement. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

4. In the event a governmental entity commences any such eminent domain proceedings after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 13.3 above as a result thereof, then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that (1) with respect to the Unit, BAHA's

interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the Unit shall be assigned to ABAG as of the Closing or credited to ABAG if previously received by BAHA and (2) with respect to the ABAG Unit, ABAG's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the ABAG Unit shall be assigned to BAHA as of the Closing or credited to BAHA if previously received by ABAG. ABAG's and BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

15. Covenants.

(a) BAHA Covenants.

1. Continued Operation of the Property. Between BAHA's execution of this Agreement and the Closing, BAHA shall cause the Property to be operated and maintained in substantially the condition existing upon the date of this Agreement. Prior to the Closing, BAHA may not materially alter the Property in any way without ABAG's prior written authorization.

2. Condominium Map. BAHA shall, at BAHA's cost, file all applications and take all other actions necessary to obtain all required approvals of (1) with respect to the Unit, a condominium map establishing the Unit as a separate legal parcel and shall cause the condominium map to be recorded in the Official Records of the City and County of San Francisco as expeditiously as is commercially reasonable and (2) with respect to the ABAG Unit, a condominium map establishing the ABAG Unit as a legal parcel owned by BAHA and shall cause the condominium map to be recorded in the Official Records of the County of Alameda as expeditiously as is commercially reasonable.

(b) ABAG Covenant. Between ABAG's execution of this Agreement and the Closing, ABAG shall cause the ABAG Unit to be operated and maintained in substantially the condition existing upon the date of this Agreement. Prior to the Closing, ABAG may not materially alter the ABAG Unit in any way without BAHA's prior written authorization.

16. Brokers. Each party hereby agrees to indemnify, protect and defend the other (by counsel reasonably acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a real estate commission, finders fee or other real estate brokerage-type compensation by any person or entity based upon the acts of that party with respect to the transaction contemplated by this Agreement. The obligations of ABAG and BAHA under this Section 14 shall survive the Closing.

17. Hazardous Materials Indemnity.

(a) BAHA Indemnity. BAHA shall indemnify, defend and hold harmless ABAG from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by BAHA or any of its employees, agents or contractors of Hazardous Materials on, under or from the Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the Unit, any cost of

repair of the Unit necessitated by the remediation or removal of Hazardous Materials from the Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the Unit. The indemnification obligations set forth in this Section 15 shall survive the Closing. BAHA expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

(b) ABAG Indemnity. ABAG shall indemnify, defend and hold harmless BAHA from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by ABAG or any of its employees, agents or contractors of Hazardous Materials on, under or from the ABAG Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the ABAG Unit, any cost of repair of the ABAG Unit necessitated by the remediation or removal of Hazardous Materials from the ABAG Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the ABAG Unit. The indemnification obligations set forth in this Section 15 shall survive the Closing. ABAG expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

18. Miscellaneous.

1. Notices. Any and all notices, elections, approvals, consents, demands, requests and responses ("Notice") permitted or required to be given under this Agreement shall be given in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section 16.1. Any Notice shall be effective upon receipt but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Notices sent by telecopy shall be effective only if also sent by nationally recognized express overnight courier service for delivery within two (2) business days.

If to ABAG:

Association of Bay Area Governments
390 Main Street, Suite _____
San Francisco, CA 94105
Attn: _____
Tel: _____
Fax: _____

With a copy to:

Attn: _____
Tel: _____
Fax: _____

If to BAHA:

Bay Area Headquarters Authority
390 Main Street, Suite _____
San Francisco, CA 94105
Attn: Executive Director
Tel: _____
Fax: _____

with a copy to:

Attn: _____
Tel: _____
Fax: _____

If to Escrow Holder:

First American Title Insurance Company
1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, California 94596
Attn: Kitty Schlesinger
Tel: 925-927-2154
Fax: 925-927-2180

2. Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon the successors and assigns of BAHA and ABAG. The parties acknowledge that the right to purchase the Property pursuant to the terms of this Agreement is personal to the Association of Bay Area Governments or any successor governmental agency performing the same functions, and neither ABAG's nor BAHA's rights hereunder may be otherwise assigned without the prior written consent of BAHA or ABAG, respectively, which may be withheld in BAHA's or ABAG's, respectively, sole discretion. Any assignment in violation of this Section 18.2 shall be void.

3. Attorneys' Fees. In the event of any litigation or other proceeding to enforce the provisions of this Agreement or to resolve any dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other proceeding shall be entitled to, in addition to any other damages assessed, its or his reasonable attorneys' fees and all other costs and expenses incurred in connection with such litigation or other proceeding.

4. Amendments. This Agreement may be amended or modified only by a written instrument executed by BAHA and ABAG.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6. Schedules and Exhibits. Each of the schedules and exhibits attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

7. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including, without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

8. Captions. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

9. Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

10. Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: Executive Director

Approved as to form:

Legal Counsel

By: _____
Name: _____
Its: Treasurer-Auditor

Approved as to form:

General Counsel

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

The real property referred to herein below is situated in the City and County of San Francisco, State of California, and is described as follows:

APN:

EXHIBIT B-1

FORM OF 390 MAIN STREET DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantor"), hereby grants, transfers and assigns to ASSOCIATION OF BAY AREA GOVERNMENTS, a regional planning agency ("Grantee"), that certain real property located in the City and County of San Francisco, State of California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

BAY AREA HEADQUARTERS AUTHORITY, a
joint powers authority established pursuant to the
California Joint Exercise of Powers Act

By: _____

Name: _____

Its: _____

STATE OF _____)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

Exhibit B

EXHIBIT B-2

FORM OF METROCENTER DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, ASSOCIATION OF BAY AREA GOVERNMENTS, a regional planning agency ("Grantor"), hereby grants, transfers and assigns to BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantee"), that certain real property located in the City and County of Alameda, California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

ASSOCIATION OF BAY AREA
GOVERNMENTS, a regional planning agency

By: _____
Name: _____
Its: _____

STATE OF _____)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

Exhibit B

EXHIBIT C

FORM OF BILL OF SALE

[to be conformed to sale of each of the Unit and the ABAG Unit]

This BILL OF SALE is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Seller") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Buyer").

WHEREAS, Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller an office condominium unit located at 390 Main Street, Suite ____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement.

WHEREAS, pursuant to the Agreement, Seller is to convey to Buyer certain office furnishings, equipment and other personal property (collectively, the "Personal Property").

NOW, THEREFORE, in consideration of Buyer entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, transfers, conveys and assigns all of Seller's right, title and interest in and to the Personal Property, to have and to hold the Personal Property unto the Buyer and its successors and assigns forever.

EXCEPT FOR ANY EXPRESS REPRESENTATIONS OR WARRANTIES SET FORTH IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE ABOVE-DESCRIBED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ENVIRONMENTAL CONDITION, AND BUYER ACCEPTS THE ABOVE-DESCRIBED PROPERTY IN AN "AS IS - WHERE IS" CONDITION, WITH ALL FAULTS.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first written above.

BUYER:

SELLER:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT D

FORM OF ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY [AND CONTRACTS]

[to be conformed to sale of each of the Unit and the ABAG Unit]

This ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PERSONAL PROPERTY [AND CONTRACTS] (this "Assignment") is made and entered into to be effective as of the ____ day of _____, 20____, by and between BAY AREA HEADQUARTERS AUTHORITY ("Assignor") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20____ (the "Agreement"), pursuant to which Assignor agreed to sell to Assignee and Assignee agreed to purchase from Assignor an office condominium unit located at 390 Main Street, Suite _____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement (the "Real Property"). Capitalized terms used but not defined herein shall have the meaning given such terms in the Agreement.

WHEREAS, pursuant to the Agreement, Assignor is to convey to Assignee certain Intangible Property relating to the Real Property.

[WHEREAS, pursuant to the Agreement, Assignor is to assign its interest in certain service agreements, maintenance agreements and other contracts relating to the Real Property which agreements and contracts are listed in Schedule 1 attached hereto (collectively, the "Contracts").]

NOW, THEREFORE, in consideration of Assignee entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee and Assignor hereby agree as follows:

1. Intangible Property. Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Intangible Property.

2. Contracts. **[TO BE DELETED IF NO CONTRACTS]**

(a) Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Contracts. Assignor agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Contracts to be performed prior to the date hereof.

(b) Assignee shall perform or cause to be performed Assignors' obligations, if any, under the Contracts from and after the date of this Assignment, and agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignor relating to obligations with respect to the Contracts to be performed after the date hereof. Assignors agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Leases and Contracts to be performed before the date hereof.

3. Further Actions. Each of Assignor and Assignee hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to the other, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which the other, its successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its successors and/or assigns, to realize upon or otherwise enjoy any such assets, or to effect the allocation of responsibility for performance under the Contracts.

4. Miscellaneous. The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and assigns. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Intangible Property [and Contracts] as of the date first written above.

ASSIGNEE:

ASSIGNOR:

ASSOCIATION OF BAY AREA
GOVERNMENTS

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Schedule 1 to Assignment

List of Contracts

[to be attached]

APPENDIX 3

Office Functionality at 390 Main List of Functional Requirements

Offices for 3 executive staff and 1 legal counsel
Offices for 5 department directors with adjacent conference room for meetings of 3-4 people)
Offices for 9 program managers/supervisors (P5-level)

Workstations for 50 staff members
Workspace for 3 office support staff
Workspace for 5 interns

General file storage for Planning, Communications, Exec, etc.
Dedicated storage for active files in Finance, POWER, FAN, and PLAN
Space for 3-4 multi-purpose copiers/scanners/printers and 1 production copier

Executive conference room
Conference room or similar area for auditors

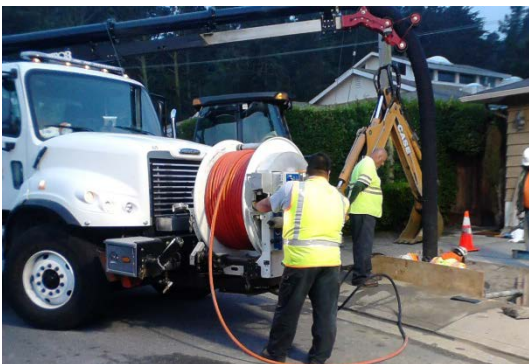
The following shall be provided for in the joint agency shared space which is separate from the ABAG Space:

Conference Rooms and training room
Computer data center/server room
Computer storage and work area
Reception area
Mail area
Kitchen/break room

Blank Page



A local collaboration program brought to you by the Association of Bay Area Governments (ABAG)



About ABAG PLAN

ABAG PLAN was formed in 1986 to meet the needs of small and medium-sized cities and towns across the Bay Area who were otherwise unable to obtain liability insurance. Formed as a non-profit corporation, ABAG PLAN provides general liability and property insurance by establishing stable, cost-effective self-insurance and risk management programs to help protect Bay Area cities from the damages and costs accrued during accidents or other incidents.

ABAG PLAN services include:

- Insurance Program
- Claims Management
- Risk Management

Who Does ABAG PLAN Serve?

ABAG PLAN is currently made up of 28 member communities—all small and medium-sized cities and towns—from six of the Bay Area counties.

PLAN >><< ABAG

While ABAG PLAN is administered and staffed by ABAG, it functions under the oversight of a separate ABAG PLAN Board of Directors made up of representatives from each of the member communities. ABAG PLAN is a stellar example of how ABAG works proactively and collaboratively to meet the needs of local cities and counties—by offering services that might not otherwise be available.

What Sets Us Apart

ABAG PLAN is an integral part of the success of Bay Area municipal governments. For small and medium sized cities across the Bay Area who may not have an in-house risk management department, ABAG PLAN staff serve as an extension of city staff, offering services, training, and strategic support.

ABAG PLAN Delivers Success

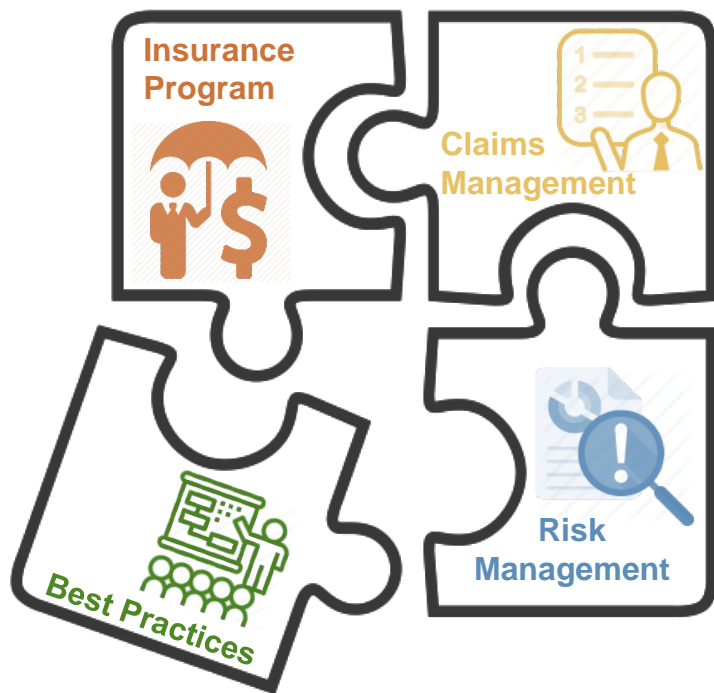
- **\$6 million** in grant funding since 2011 to member communities for local risk mitigation programs and staff trainings
- **700+ city staffers** trained in risk management best practices by attending ABAG PLAN trainings since 2011

ABAG PLAN Leadership

- Governed by a Board of Directors made up of representatives from each of the 28 member communities
- 6 ABAG PLAN staff positions

ABAG PLAN By The Numbers

- **\$2.3 million** annual administrative budget
- **\$6.9 million** in premium contributions annually



ABAG PLAN is an essential resource for municipalities across the Bay Area, insulating cities and towns from losses and returning millions of dollars in tax payer savings back to our communities to help mitigate risk.

ABAG PLAN offers liability insurance coverage, claims management and risk management services to each member community. In return, each member pays premium contributions.

Driven by its member communities, ABAG PLAN goes beyond the basics of liability insurance—members opt into a long-term partnership with ABAG PLAN and with one another.

The following is a brief summary of current ABAG PLAN programs and services.

Liability Insurance

Members enjoy the benefits of a self-insurance pool with broad coverage, interest on reserves, and a return of assets.

Risk Management

ABAG PLAN offers member communities strategic advice and support around best practices for risk management and mitigation.

Claims Management

ABAG PLAN provides member communities with a claims examiner who provides investigative services, advice and strategy, and serves as the member's representative throughout the claims process.

Grant Funding

ABAG PLAN amplifies its services by reallocating member surplus funding to its participants in the form of risk management grants. Grants ranging from \$2,500 to over \$48,000 are awarded to member communities for short-term programs and trainings that will ultimately help to mitigate risks in the long term. Between 2010 and 2015, ABAG PLAN awarded almost \$6 million dollars in grant funding back to its members.

Collaboration

ABAG PLAN works closely with other ABAG programs—including ABAG's Resilience Program staff—to provide holistic risk management support to its members.

ABAG PLAN Trainings

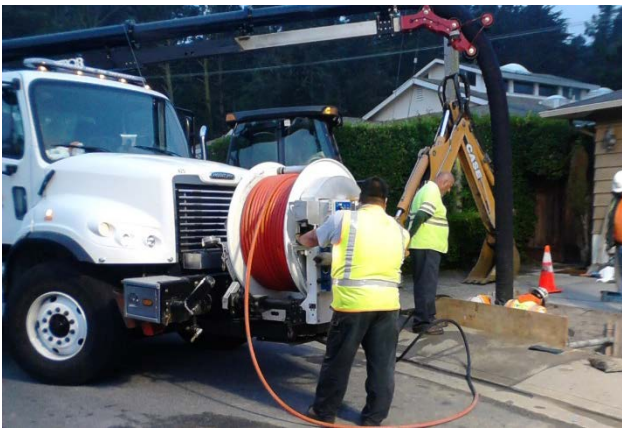
ABAG PLAN offers member communities best practices in the form of online training programs, access to a library of information and resources, as well as classes and events for members and nonmembers. These include Defensive Driving Workshops and Sidewalk Trainings.

Sewer Summit

Each year, ABAG and PLAN host an annual "Be Sewer Smart!" Summit where over 200 attendees come together to learn from ABAG PLAN staffers and take home valuable tips to prevent sewer challenges. Last year's Summit featured a session on the impacts of climate change on sanitary sewers and emergency response tactics.

Urban Forest Summit

Similar to the Sewer Summit, ABAG PLAN sponsors an annual Urban Forest Summit with the Urban Forest Council that gives members information and best practices for mitigating and managing the potential risks associated with trees and landscaping.



Introducing ABAG PLAN

December 15, 2016

Jim Hill - Risk Manager, ABAG PLAN
Jill Stallman - Claims Manager, ABAG PLAN
Marc Zafferano - San Bruno City Attorney,
& ABAG PLAN Board Chair



Item 7, Presentation

Serving Cities.



- ABAG PLAN's formation story epitomizes ABAG's unique mission: we were formed in 1986 to **meet the needs of members** who were otherwise unable to obtain liability insurance.
- While ABAG PLAN is administered by ABAG, we're run under the **direction of our members**.

ABAG PLAN Details.

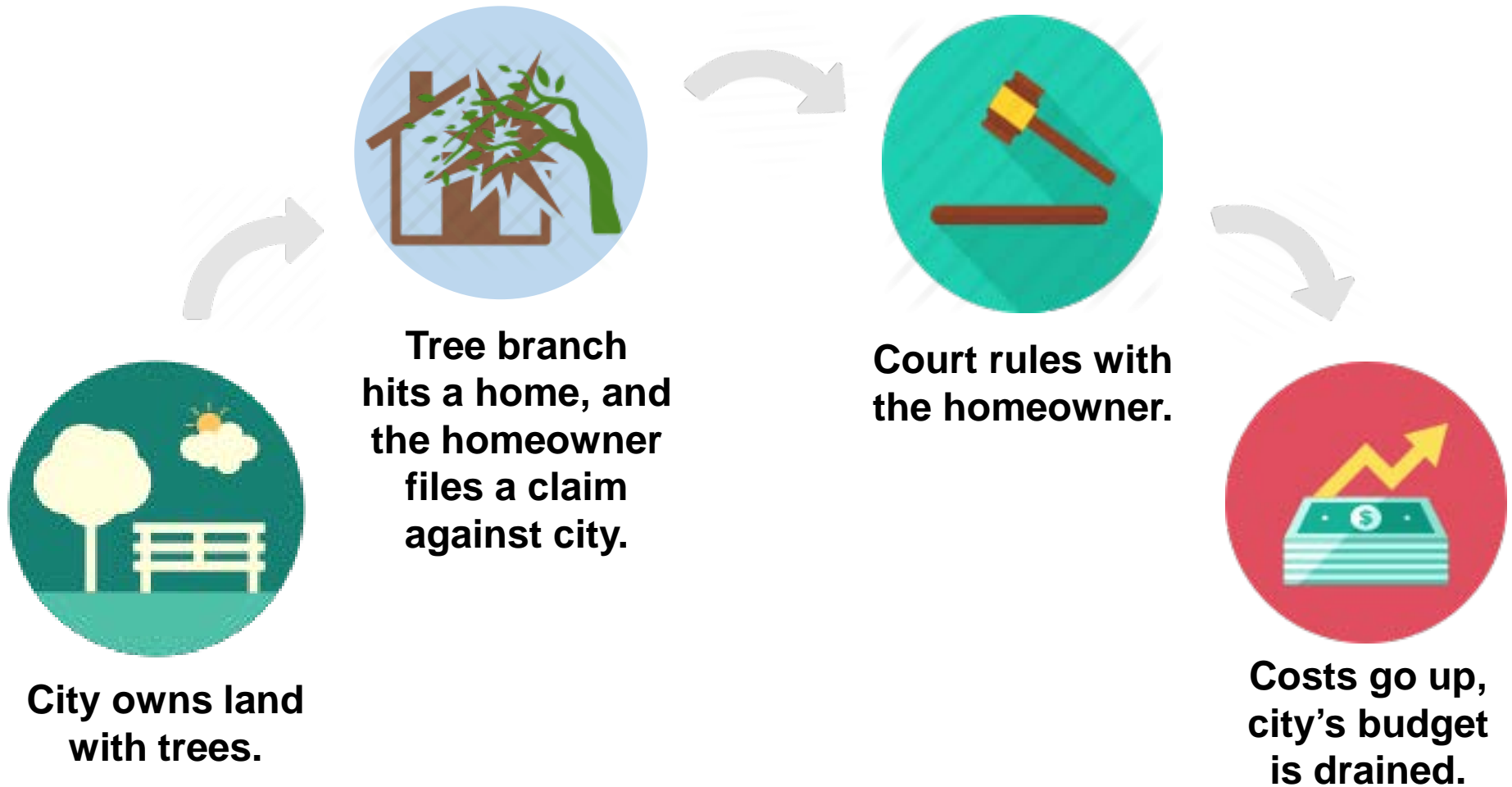


- ABAG PLAN has an annual operating **budget of more than \$2.3 million.**
- ABAG PLAN has returned **millions of dollars in tax payer savings** back to our communities, while providing broad coverage and maintaining the financial stability of the pool.

How It Works.



Why ABAG PLAN?



What Sets Us Apart.



- ABAG PLAN responds to the needs of its members by offering a toolkit of resources and **best practices to help mitigate risk** and manage the potential impacts of risk.
- More than **700 city staff** have **attended ABAG PLAN trainings**, benefiting from the resources provided.

What Sets Us Apart.

**Municipalities Make
Premium Contributions**



Claims Paid



**Member
Equity/Surplus**



**Risk Management
Trainings and Support**



**Risk Management
Grants**



PLAN <>> ABAG.



- ABAG PLAN is a stellar example of how ABAG works **proactively and collaboratively** to meet the needs of local cities—by offering services that might not otherwise be available.
- ABAG PLAN staffers work closely with other ABAG programs and department staff to **offer additional services.**

ABAG PLAN Matters.

- ABAG PLAN is **there for communities** in both major and minor incidences.



Benefits for Your Community.



- ABAG PLAN programs touch **6 of the Bay Area counties** with over **28 member communities**.
- For **more information**, contact:

Jill Stallman
ABAG PLAN Claims Manager
jills@abag.ca.gov
(415) 820-7946

Thank You.



- Your leadership of ABAG has allowed ABAG PLAN to foster **collaborative partnerships** between local governments in planning for our shared future.
- ABAG PLAN makes a difference in people's lives—and offers **valuable service to Bay Area cities and towns.**

Questions?





TO: MTC Planning Committee and the
ABAG Administrative Committee

DATE: December 2, 2016

FR: MTC Deputy Executive Director, Policy and the
ABAG Acting Executive Director

RE: Plan Bay Area 2040: Environmental Impact Report (EIR) Scoping Feedback and Alternatives

Background

The purpose of the Environmental Impact Report (EIR) for Plan Bay Area 2040 is to comply with the requirements of the California Environmental Quality Act (CEQA), as well as applicable provisions in the FAST Act (Title 23 CFR Parts 450 and 500), SB 375 and other relevant state and federal environmental laws. The EIR will inform decision-makers, responsible and trustee agencies, and the general public of the potential environmental impacts of implementing the transportation and land-use strategies proposed in the Preferred Scenario (herein referred to as the “proposed plan”) adopted on November 17, 2016. The EIR will also identify feasible mitigation measures and evaluate a range of alternatives to the proposed plan to minimize the significant adverse impacts that are identified.

As a programmatic document, the EIR will be prepared at a level of detail necessary to facilitate tiering by lead agencies for future transportation and development projects, particularly those development projects that can benefit from the SB 375 CEQA streamlining provisions. The EIR will not evaluate project-specific or site-specific impacts of individual development or transportation projects, although it will provide environmental analysis and mitigation intended to address the range of impacts and mitigation that may be associated with individual projects. Individual projects are required to separately comply with CEQA and/or National Environmental Policy Act (NEPA), as applicable.

Scoping Feedback

On May 15, 2016, in accordance with the CEQA Guidelines, MTC filed the Notice of Preparation (NOP) of the EIR for Plan Bay Area 2040. The purpose of the NOP was to seek comments about the scope and content of the EIR. The NOP identified that three planning scenarios (Main Streets, Connected Neighborhoods, and Big Cities) had been developed and that one or some combination of the planning scenarios would be identified as the proposed plan. The NOP indicated that some or all of the planning scenarios would be carried forward in the CEQA analysis as project alternatives.

During the months of May and June, staff conducted three public scoping meetings across the region. In total, staff received 69 written and oral comments. While there were no comments received on the proposed CEQA alternatives, three additional CEQA alternatives were proposed by commenters. The proposed alternatives included:

- Environment, Equity and Jobs Alternative proposed by 6 Wins;
- Smart Growth Alternative proposed by TRANSDEF; and,
- Modified No-Project Alternative proposed by the City of Livermore.

For a summary of all EIR scoping comments, please see Attachment A and for more information on the proposed alternatives see Attachment B. For additional information on the EIR development, visit <http://www.planbayarea.org/the-plan/environmental-impact-report.html>.

EIR Alternatives

CEQA requires that a reasonable range of alternatives to the proposed plan be studied in the EIR. It is up to the lead agency to determine an appropriate range of alternatives in compliance with CEQA. There are generally three factors for consideration of any given alternative from a CEQA perspective:

- *Will the alternative avoid or lessen significant impacts of the project?*

The required CEQA environmental issue areas include: aesthetics and visual resources; agriculture and forestry resources; air quality; biological resources; cultural resources; geology, seismicity, soils, and mineral resources; energy consumption; climate change and greenhouse gases; hazards and hazardous materials; hydrology and water quality; land use; noise and vibration; population and housing; public services and recreation; transportation; utilities and other service systems.

In the 2013 EIR impacts in the following areas were identified as significant and unavoidable: transportation; air quality; land use (agricultural and forest resources); climate change and greenhouse gases (sea level rise); noise; biological resources; and visual resources. In identifying alternatives for the 2017 EIR, consideration was given to alternatives that would result in less impact in these areas.

- *Does the alternative meet the project objectives?*

In September and November 2015, the Commission and the Executive Board jointly adopted thirteen performance targets to guide the proposed plan's development. These targets will be used in the EIR as the project objectives, in satisfaction of CEQA Guidelines Section 15124(b). They are included in Attachment C.

- *Is the alternative potentially feasible?*

Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.

Recommendation

Staff is proposing to study and analyze four alternatives in addition to the proposed plan in the EIR as summarized below:

- No Project Alternative
- Main Streets Alternative
- Big Cities Alternative
- Equity, Environment and Jobs (EEJ) Alternative

These alternatives are defined by unique land use development patterns and transportation investment strategies. Each of the alternatives will maintain the same growth forecast, and forecast of reasonably available transportation revenues. This is important to ensure the alternatives analysis provides an "apples to apples" comparison with the proposed plan.

MTC and ABAG staff believe these recommended alternatives represent a reasonable range of alternatives to the proposed plan, anticipates there will be numerous tradeoffs in impacts associated with the various alternatives, and that the alternatives will result in varying degrees of achieving the Plan objectives and performance targets.

Four other alternatives have been considered, but are not recommended for further analysis. These alternatives and the reason for not recommending further analysis include:

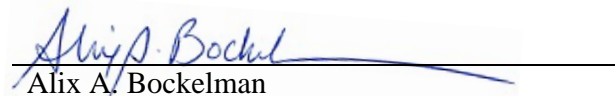
- Connected Neighborhoods Alternative – Expected to perform similar to proposed plan.
- Smart Growth Alternative – Expected to perform similar to recommended alternative.
- Modified No Project Alternative – Inconsistent with legal requirements.
- Plan Bay Area (2013 RTP/SCS) Alternative – Inconsistent with legal requirements

Additional details on all recommended and considered alternatives can be found in Attachment D.

Next Steps

All considered alternatives will be briefly described and discussed in the EIR. The four alternatives proposed for more detailed analysis will be compared to the project in all CEQA topic areas. The selected alternatives will undergo a comparative analysis to the proposed plan to determine whether implementing an alternative could lessen any identified significant unavoidable impacts of the proposed plan, while also meeting the project objectives. The findings of this analysis will be summarized in the Draft EIR anticipated to be released in Spring 2017.

Staff recommends referring the selection of the alternatives to be evaluated as part of the Plan Bay Area 2040 EIR, as described in the memo above, to the Commission and Executive Board for approval.


Brad Paul
Alix A. Bockelman

Attachments:

- Presentation Slides
- Attachment A: EIR NOP Scoping Summary of All Comments
- Attachment B: EIR Scoping Letters Proposing EIR Alternatives
- Attachment C: Adopted Performance Targets
- Attachment D: Recommended and Considered Alternatives

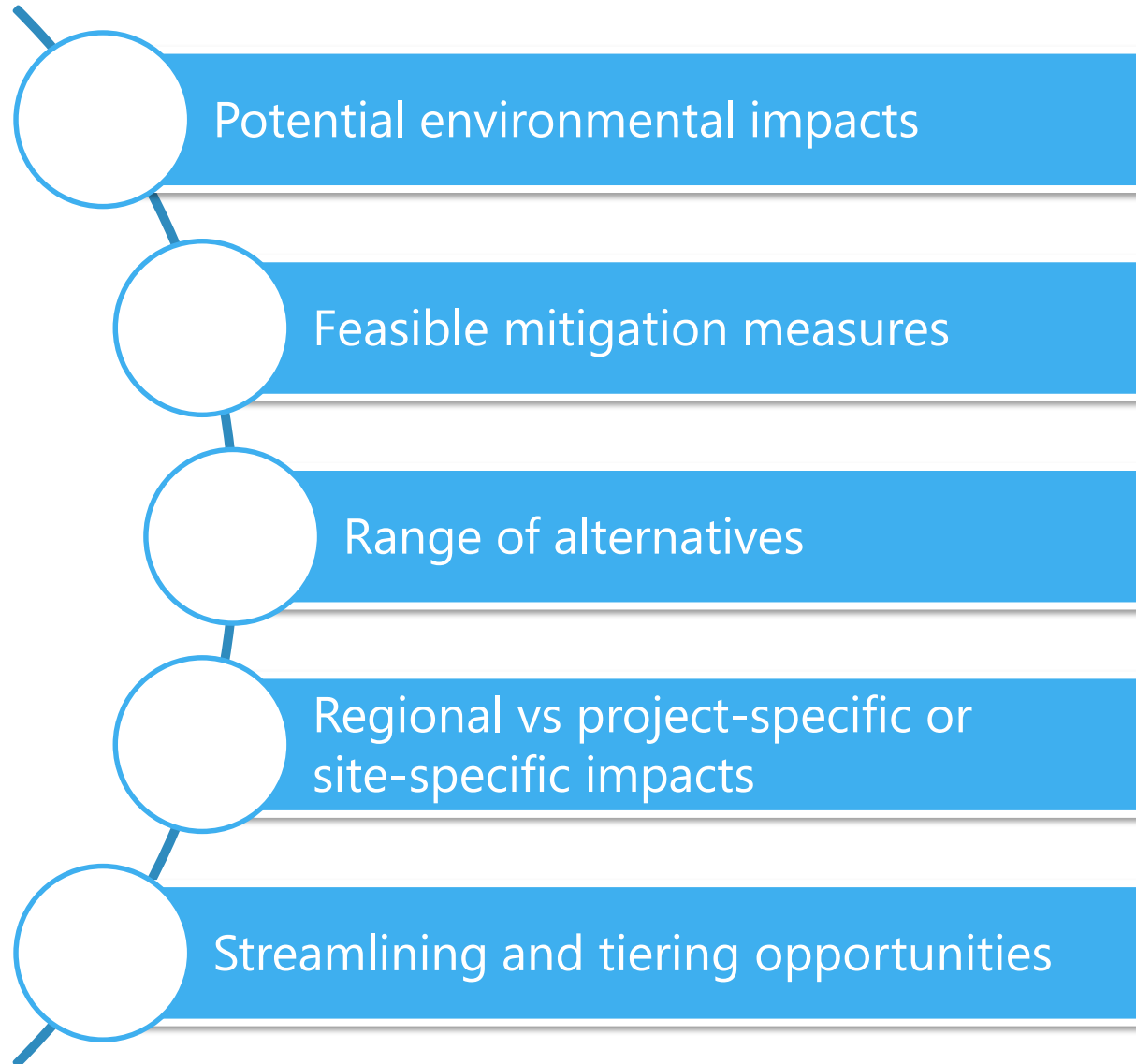
AAB:MM

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Plan Bay Area 2040: Environmental Impact Report (EIR) Scoping Feedback and Alternatives

MTC Planning Committee and the ABAG Administrative Committee
December 9, 2016
Ken Kirkey, MTC

The purpose of CEQA is to assess and disclose impacts of implementing the proposed plan.



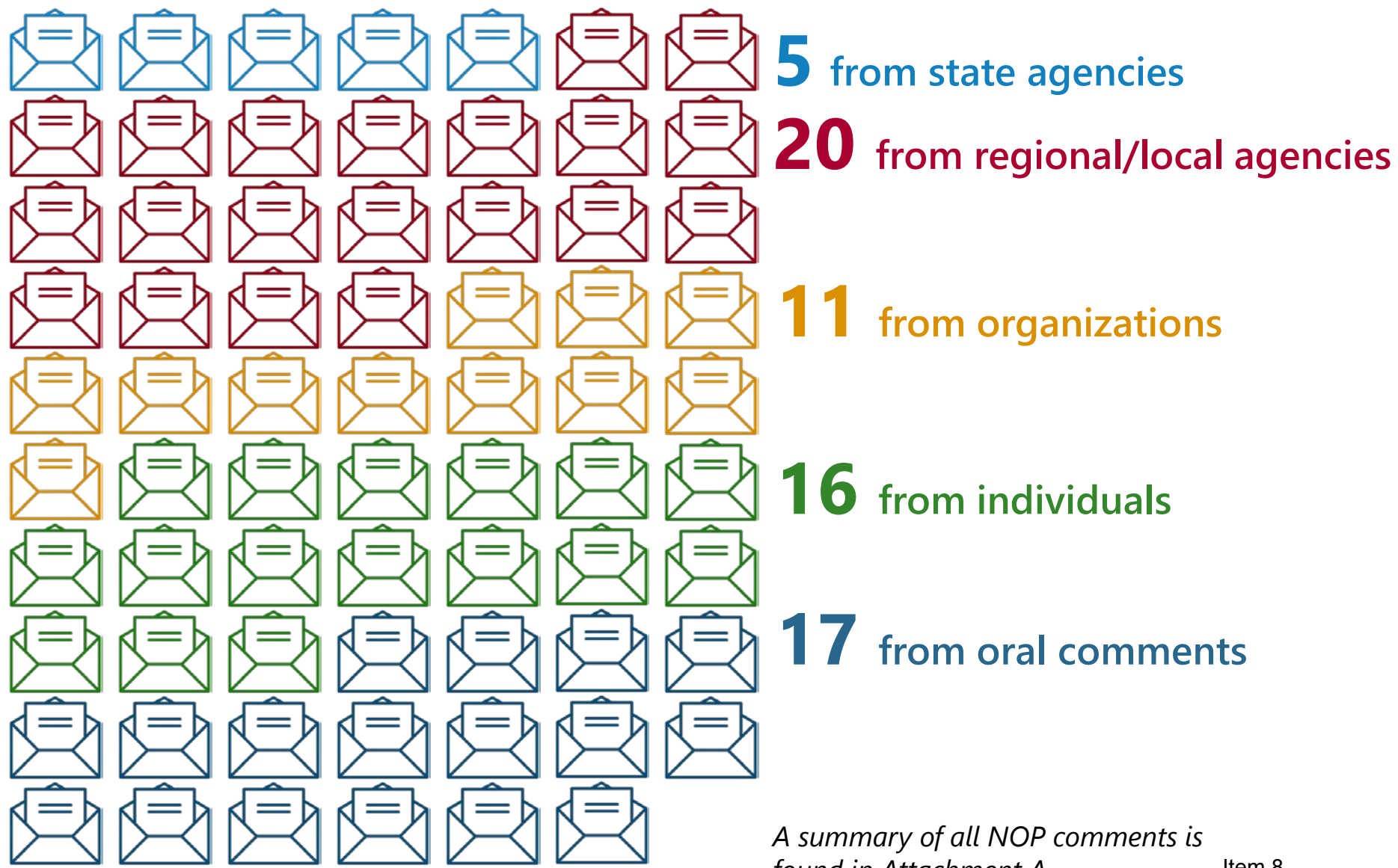
CEQA Covers 16 issue areas:

- aesthetics and visual resources;
- agriculture and forestry resources;
- air quality;
- biological resources;
- cultural resources;
- geology, seismicity, soils, and mineral resources;
- energy consumption;
- climate change and greenhouse gases;
- hazards and hazardous materials;
- hydrology and water quality;
- land use;
- noise and vibration;
- population and housing;
- public services and recreation;
- transportation;
- utilities and other service systems.

The Notice of Preparation (NOP) was released on May 15th and 69 written and oral comments were submitted.

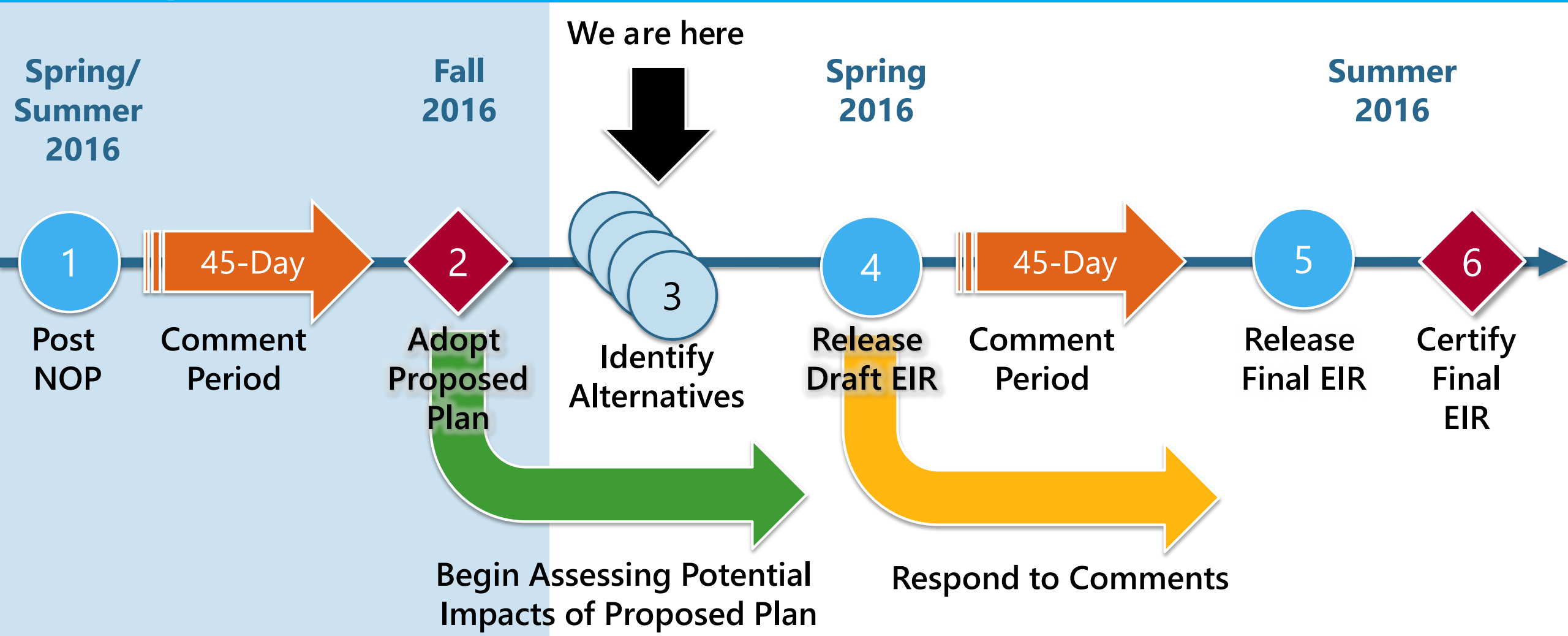
3 Scoping meetings:

- San Jose
- Oakland
- Santa Rosa



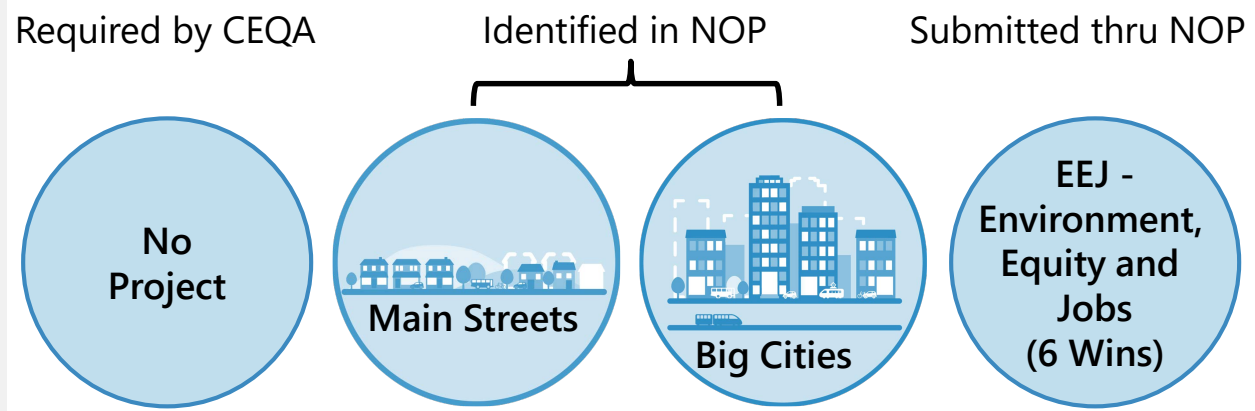
A summary of all NOP comments is found in Attachment A.

The identification of CEQA alternatives is another step in the development of the EIR.

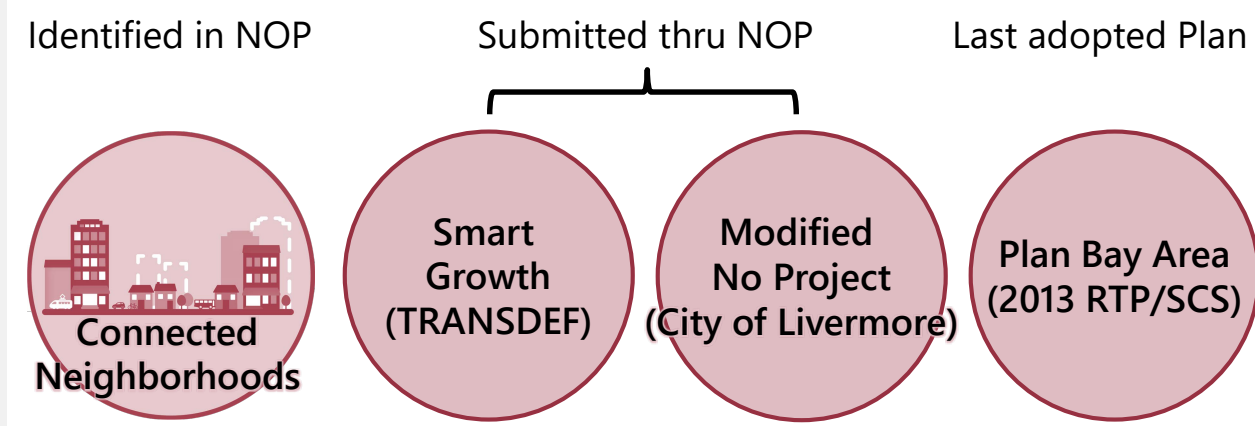


CEQA requires that a reasonable range of alternatives be analyzed in the EIR.

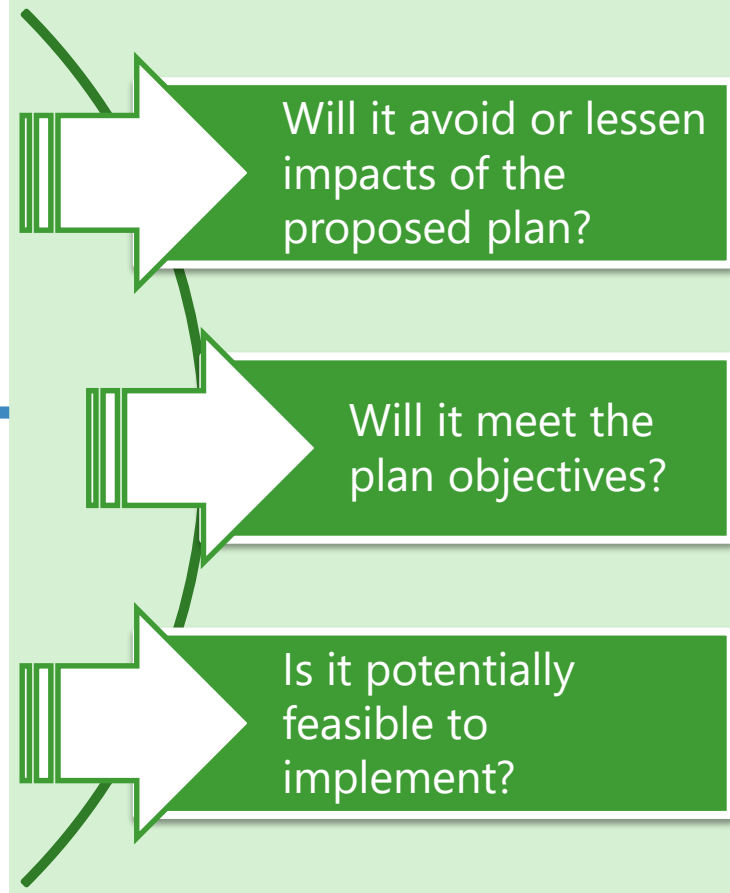
Alternatives
recommended
for further analysis



Alternatives
considered,
but are **not**
recommended
for further analysis



Assessing CEQA alternatives:



A summary of all recommended and considered CEQA alternatives is found in Attachment D.

APPENDIX B

SCOPING SUMMARY

A Notice of Preparation (NOP) informs the public of the lead agency's intent to prepare an environmental impact report (EIR) pursuant to the California Environmental Quality Act (CEQA). An NOP for an EIR was issued by the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) on May 16, 2016 for the Draft Environmental Impact Report for Plan Bay Area 2040 – the Regional Transportation Plan (RTP) / Sustainable Communities Strategy (SCS) (Plan). The NOP was sent to the California State Clearinghouse, federal, state, and local agencies, and members of the public. As a connected action, three public scoping meetings were held to provide the public and public agencies with the opportunity to learn more about the Plan Bay Area 2040 and to provide another venue to submit comments regarding the issues that should be addressed in the EIR. The scoping meetings were held as follows:

Thursday, May 26, 2016 11:00 a.m. to 1 p.m.	Tuesday, May 31, 2016 6:30 p.m. to 8:30 p.m.	Thursday, June 2, 2016 11:00 a.m. to 1 p.m.
Dr. Martin Luther King Jr. Library One Washington Square, Room 225 San Jose, California	MetroCenter Auditorium 101 8th Street Oakland, California	Finley Community Center 2060 W. College Avenue Santa Rosa, California

At each of these meetings, MTC and EIR consultant staff were available to describe the Plan Bay Area update and EIR processes and to disclose and discuss key environmental issues identified in the NOP. Appendix A of this EIR contains the NOP.

Table B-1, below, lists the scoping comments (both written and oral) received during the NOP comment period (May 16, 2015 through June 15, 2016). The table lists the commenter, the County from which the commenter is located (if applicable), the date the comment was received, and a summary of the relevant EIR section/s in which the comments are addressed. All written NOP comment letters in their entirety are provided in this Appendix. Oral comments at the public scoping meetings were provided to court reporters in attendance at each meeting; the transcripts in their entirety can be accessed by using this link: <http://planbayarea.org/file10327.html>

COMMENTS RELATED TO THE SCOPE OF THE PROJECT

Some of the comments include questions about aspects of the Plan or request information that are not related to the potential physical environmental impacts of the project. Some comments are related to the description and scope of the Plan, rather than the content of the environmental document for the project. Comments regarding the Plan that do not pertain to potential physical environmental effects of the project were forwarded to the appropriate MTC and ABAG staff, but are not evaluated in this Draft EIR because they do not pertain to the project's physical environmental effects. The following table includes a list of the NOP comments, including oral comments received during the scoping meetings. The table includes a summary of the topics addressed in the NOP comments, indicating in which EIR section the comments are addressed.

Table B-1 Comments Received on the Notice of Preparation

Letter Number	Name of Author	Agency / Organization	County of comment origin ¹ (if applicable)	Date Received	Relevant EIR Section(s)	Written / Oral
AGENCIES						
State						
1	Erik Vink	Delta Protection Commission	Multiple	June 7, 2016	Land Use and Physical Development Public Services and Recreation Cultural Resources Visual Resources	Written
2	Gayle Totton	Native American Heritage Commission	N/A	June 14, 2016	Cultural Resources	Written
3	Kelsey Ducklow	California Coastal Commission	Multiple	June 15, 2016	Land Use and Physical Development Climate Change and Greenhouse Gases Transportation	Written
4	Patricia Maurice	Caltrans District 4	Multiple	June 15, 2015	Transportation Land Use and Physical Development Air Quality	Written
5	Ben Tripousis	California High Speed Rail Authority	Multiple	June 15, 2016	Transportation Land Use and Physical Development	Written
6	Regional / Local					
7	Cindy Horvath	Alameda County	Alameda	May 26, 2016	Non-CEQA (information request) Project Description/Plan Non-CEQA (equity) Transportation Project Description (funding)	Written
8	Matt Rodriguez	City of San Pablo	Contra Costa	June 6, 2016	Land Use and Physical Development	
9	Gerry Beaudin	City of Pleasanton, Community Development Planning	Alameda	June 8, 2016	Land Use and Physical Development Alternatives Air Quality Climate Change and Greenhouse Gases Public Utilities and Facilities Growth-inducement	Written
10	Mona Palacios	Alameda LAFCo	Alameda	June 10, 2016	Land Use and Physical Development Public Services and Recreation	Written
11	Patrick Cavanah	Stanislaus County	Stanislaus	June 10, 2016	No Comments	Written
12	Chris Augenstein	Santa Clara Valley Transportation Authority	Santa Clara	June 14, 2016	Project Description (growth assumptions) Alternatives Transportation Land Use and Physical Development	Written
13	Sandra Hamlat	East Bay Regional Park District	Contra Costa Alameda	June 14, 2016	Public Services and Recreation Land Use and Physical Development	Written
14	Jennifer Barrett	Sonoma County Permit and Resource Management Department	Sonoma	June 14, 2016	Land Use and Physical Development	Written

Table B-1 Comments Received on the Notice of Preparation

Letter Number	Name of Author	Agency / Organization	County of comment origin ¹ (if applicable)	Date Received	Relevant EIR Section(s)	Written / Oral
15	Christie Thomason	Delta Stewardship Council	Sacramento-San Joaquin Delta and Suisun Marsh	June 15, 2016	Land Use and Planning Biological Resources Hazards Public Utilities and Facilities Water Resources	Written
16	Lou Ann Texeira	Contra Costa LAFCo	Contra Costa	June 15, 2016	Land Use and Physical Development Public Utilities and Facilities	Written
17	Elizabeth Scanlon	Caltrain	SF, San Mateo, Santa Clara	June 15, 2016	Transportation Air Quality	Written
18	Harry Freitas Jim Ortbal	City of San Jose	Santa Clara	June 15, 2016	Land Use and Physical Development Alternatives Transportation	Written
19	Edward D. Reiskin	San Francisco Municipal Transportation Agency	San Francisco	June 15, 2016	Transportation	Written
20	Annie Thomson	County of Santa Clara Parks and Recreation Department	Santa Clara	June 15, 2016	Non-CEQA (planning process) Land Use and Physical Development Transportation Public Services and Recreation	Written
21	Diane Nguyen	San Joaquin Council of Governments	San Joaquin	June 15, 2016	Land Use and Physical Development Transportation Climate Change and Greenhouse Gases	Written
22	Dawn S. Cameron	County of Santa Clara Roads and Airports Department	Santa Clara	June 15, 2016	Land Use and Physical Development Transportation	Written
23	Denis Mulligan	Golden Gate Bridge Highway & Transportation District	Multiple	June 15, 2016	Transportation	Written
24	Marc Roberts	City of Livermore	Alameda	June 15, 2016	Alternatives Transportation Land Use and Physical Development Land Use and Physical Development Cumulative Impacts	Written
25	Keene Simons	Marin LAFCo	Marin	June 21, 2016	Non-CEQA (Marin agency coordination) Non-CEQA (MTC/LAFCo coordination)	Written

ORGANIZATIONS AND INDIVIDUALS**Organizations**

26	Colin Heyne	Silicon Valley Bicycle Coalition	Santa Clara	May 26, 2016	Non-CEQA (planning process/preferred scenario)	Written
27	David Schonbrunn	Transportation Solutions Defense and Education Fund	Multiple	June 5, 2016	Non-CEQA (planning process) Climate Change and Greenhouse Gases	Written

Table B-1 Comments Received on the Notice of Preparation

Letter Number	Name of Author	Agency / Organization	County of comment origin ¹ (if applicable)	Date Received	Relevant EIR Section(s)	Written / Oral
28	Irene Gutierrez and Will Rostov	Earthjustice Counsel for Sierra Club and CBE	N/A	June 7, 2016	Project Description Background (Settlement Agreements)	Written
29	Sherman Lewis	Hayward Area Planning Association	Alameda	June 14, 2016	Transportation Alternatives	Written
30	Melissa Jones Chuck McKetney Michael Stacey	Bay Area Regional Health Inequities Initiative	Multiple	June 15, 2016	Climate Change and Greenhouse Gases Alternative Transportation Displacement Impacts Air Quality Noise and Vibration Alternatives	Written
31	Jonathan Scharfman	Universal Paragon Corporation	San Mateo	June 15, 2016	Non-CEQA (planning process/preferred scenario)	Written
32	Matt Vander Sluis	Greenbelt Alliance	San Francisco, Sonoma, Contra Costa, Santa Clara	June 15, 2016	Biological Resources Public Utilities and Facilities Public Services and Recreation Water Resources Land Use and Physical Development Transportation Climate Change and Greenhouse Gases Alternatives Non-CEQA (social equity)	Written
33	Jack Swearingen	Friends of SMART	Sonoma, Marin	June 15, 2016	Non-CEQA (transportation planning)	Written
34	David Schonbrunn	Transportation Solutions Defense and Education Fund	Multiple	June 15, 2016	Alternatives Transportation Air Quality Climate Change and Greenhouse Gases Land Use and Physical Development	Written
35	David Zisser	6 Wins for Social Equity Network	Multiple	June 15, 2016	Alternatives Air Quality Climate Change and Greenhouse Gases Land Use and Physical Development Non-CEQA (housing affordability, social equity)	Written
36	Michael J. Ferreira	Sierra Club	Multiple	June 15, 2016	Transportation Climate Change and Greenhouse Gases Non-CEQA (process/plan) Non-CEQA (scoping meeting) Alternative Scenarios Non-CEQA (Settlement Agreements)	Written
Individuals						
37	Jake Brenneise	N/A	Unknown	May 19, 2016	Land Use and Planning (zoning)	Written
38	Mary Collins	N/A	Santa Clara	May 26, 2016	Non-CEQA (preferred scenario) Land Use and Physical Development Transportation	Written

Table B-1 Comments Received on the Notice of Preparation

Letter Number	Name of Author	Agency / Organization	County of comment origin ¹ (if applicable)	Date Received	Relevant EIR Section(s)	Written / Oral
39	Karen Schlessner	N/A	Santa Clara	May 26, 2016	Land Use and Physical Development Transportation	Written
40	Roma Dawson	N/A	Santa Clara	May 26, 2016	Land Use and Physical Development Project Description Non-CEQA (housing affordability, social equity)	Written
41	Gloria Chun Hoo	N/A	Santa Clara	May 26, 2016	Non-CEQA (alternative preference) Climate Change and Greenhouse Gases Water Resources Public Utilities and Facilities Transportation	Written
42	Edward C. Moore	N/A	Alameda	May 26, 2016	Non-CEQA (planning process/preferred scenario) Land Use and Physical Development Transportation (project description)	Written
43	Ferenc Kovac	N/A	Alameda	May 26, 2016	Land Use and Physical Development Non-CEQA (process comment)	Written
44	Jennie Schultz	N/A	Sonoma	May 26, 2016	Project Description/Plan	Written
45	Ferenc Kovac	N/A	Alameda	May 27, 2016	Land Use and Physical Development Transportation	Written
46	Alan Burnham	N/A	Alameda	May 28, 2016	Transportation	Written
47	Charles Cameron	N/A	Alameda	June 6, 2016	Transportation Climate Change and Greenhouse Gases Public Utilities and Facilities Water Resources Biological Resources	Written
48	Marina Carlson Wendy Jung	N/A	Alameda	June 14, 2016	Land Use and Physical Development Transportation	Written
49	Jill Borders	N/A	Santa Clara	June 15, 2016	Non-CEQA (gentrification)	Written
50	Sara Greenwald	N/A	San Francisco	June 15, 2015	Transportation Climate Change and Greenhouse Gases	Written
51	Gladwyn D'Souza	N/A	San Mateo	June 15, 2016	Transportation	Written
52	Howard Strassner	N/A	San Francisco	June 17, 2016	Transportation (parking)	Written

SCOPING MEETING TRANSCRIPTS**May 26, 2016 – San Jose**

53	Anonymous	N/A	Santa Clara	May 26, 2016	Transportation Public Services and Recreation	Oral
54	Shaunn Cartwright	N/A	Santa Clara	May 26, 2016	Non-CEQA (gentrification/environmental justice) Climate Change and Greenhouse Gases Land Use and Physical Development	Oral

Table B-1 Comments Received on the Notice of Preparation

Letter Number	Name of Author	Agency / Organization	County of comment origin ¹ (if applicable)	Date Received	Relevant EIR Section(s)	Written / Oral
55	Doug Muirhead	N/A	Santa Clara	May 26, 2016	Air Quality (modeling) Biological Resources Transportation/trail preferences	Oral
56	Anonymous	N/A	Santa Clara	May 26, 2016	Land Use and Physical Development	Oral
57	Jill Borders	N/A	Santa Clara	May 26, 2016	Non-CEQA (gentrification/environmental justice)	Oral
58	Peggy Cabrera	N/A	Santa Clara	May 26, 2016	Non-CEQA (plan preference) Land Use and Physical Development Transportation	Oral
59	Mark Roest	N/A	Santa Clara	May 26, 2016	Alternatives	Oral
May 31, 2016 – Oakland						
60	David Zisser	N/A	Alameda	May 31, 2016	Alternatives Non-CEQA (environmental justice) Transportation Climate Change and Greenhouse Gases	Oral
61	James Peterson	N/A	Alameda	May 31, 2016	Non-CEQA (MTC/ABAG staff location) Non-CEQA (market/housing plan)	Oral
62	Anonymous	N/A	Alameda	May 31, 2016	Non-CEQA (process)	Oral
63	June 2, 2016 – Santa Rosa					
64	Steve Birdlebough	N/A	Sonoma	June 2, 2016	Non-CEQA (regional vs local planning)	Oral
65	Myron R. Siegel	N/A	Sonoma	June 2, 2016	Alternative Transportation Land Use and Physical Development	Oral
66	Chris Knerr	N/A	Sonoma	June 2, 2016	Non-CEQA (planning process)	Oral
67	Anonymous	N/A	Sonoma	June 2, 2016	Non-CEQA (support for the project)	Oral
68	Anonymous	N/A	Sonoma	June 2, 2016	Land Use and Physical Development Alternatives	Oral
69	Steve Birdlebough	N/A	Sonoma	June 2, 2016	Non-CEQA (parking)	Oral

¹ The county of commenter origin indicates the country from which the commenter is located or the county (or counties) represented by the commenter, if applicable.
The Land Use and Physical Development chapter contains: land use and planning, agriculture and forest resources, and population, employment and housing.



June 15, 2016

BY EMAIL: eircomments@mtc.ca.gov

MTC Public Information
375 Beale Street, Suite 800
San Francisco, CA 94105

**Re: 6 Wins Comments on Notice of Preparation of Draft Environmental Impact Report
for Plan Bay Area 2040**

To Whom It May Concern:

Public Advocates offers these comments on the Notice of Preparation for the Draft Environmental Impact Report (DEIR) for Plan Bay Area 2040 on behalf of the **6 Wins for Social Equity Network**.¹ The 6 Wins is a coalition of more than 20 grassroots, faith, public health, environmental, labor and policy organizations across the Bay Area that work to improve the lives of low-income people of color through affordable housing, reliable and affordable local transit service, investment without displacement, healthy and safe communities, quality jobs and economic opportunity, and community power.

In order to fulfill the legal requirements of the California Environmental Quality Act (CEQA), the EIR should, among other things, (a) identify a reasonable range of alternatives that includes an Equity, Environment and Jobs (EEJ) alternative; (b) analyze the environmental impacts caused by economic displacement and lack of jobs-housing fit; and (c) include measures to mitigate economic displacement and improve jobs-housing fit, as described below.

A. Include an Equity, Environment and Jobs Alternative in the Alternatives Analysis

An EIR must analyze a “reasonable range of alternatives to the project,” with an emphasis on alternatives which “offer substantial environmental advantages over the project proposal.”² The purpose of analyzing alternatives is to assess options for attaining the basic objectives of the project while avoiding or substantially lessening environmental impacts and to evaluate the

¹ The 6 Wins Network includes the following member organizations: Alliance of Californians for Community Empowerment (ACCE), Asian Pacific Environmental Network (APEN), Breakthrough Communities, California WALKS, Causa Justa :: Just Cause, Center for Sustainable Neighborhoods, Community Legal Services in East Palo Alto, SF Council of Community Housing Organizations (CCHO), Ditching Dirty Diesel Collaborative, East Bay Alliance for a Sustainable Economy (EBASE), East Bay Housing Organizations (EBHO), Faith in Action Bay Area, Genesis, Housing Leadership Council of San Mateo County, North Bay Organizing Project (NBOP), Public Advocates, Regional Asthma Management and Prevention (RAMP), Rose Foundation and New Voices Are Rising, San Mateo County Union Community Alliance, Sunflower Alliance, TransForm, Urban Habitat, and Working Partnerships USA.

² *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 566 (1990); *California Native Plant Society v. City of Santa Cruz*, 177 Cal. App. 4th 957, 982-83 (2009).

comparative merits of each alternative.³ Specifically, “[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects” in order to “permit a reasoned choice”⁴ and “foster informed decisionmaking and public participation.”⁵

To accomplish these requirements, the EIR must include an updated version of the “environmentally superior alternative”⁶ identified in the CEQA process for the first Plan Bay Area: the Equity, Environment and Jobs Alternative. The three scenarios for Plan Bay Area currently being considered are inadequate to meet CEQA requirements. They all have substantial environmental impacts likely to be reduced by an updated EEJ scenario. We highlight this fact because the Metropolitan Transportation Commission (MTC) has made it clear that only the three scenarios they have developed for Plan Bay Area “will be the basis for the initial CEQA alternatives,”⁷ even though MTC acknowledges that all fall short on a number of important metrics.

Specifically, the preliminary evaluation by MTC and the Association of Bay Area Governments (ABAG) concluded that the scenarios perform poorly on a number of targets, including reducing adverse health impacts, not increasing the share of households at risk of displacement (which has foreseeable environmental impacts), and increasing non-auto mode share.⁸ Because an updated EEJ alternative is likely to improve performance on environmental metrics and meet the overall project objectives of Plan Bay Area, it must be included in the EIR.

For example, compared to the preferred alternative adopted in the last round, the EEJ alternative would have resulted in:

- 1,900 fewer tons of CO₂ emissions per day and 568,000 fewer tons of GHG emissions per year;
- 6.4 fewer tons of Toxic Air Contaminants (TACs) per year;
- 1,290 fewer tons of CO emissions per year; and
- Daily energy savings of 68 billion BTUs, the equivalent of burning 600,000 fewer gallons of gasoline each day.⁹

Despite these strong results, MTC and ABAG have refused to include the EEJ among the scenarios they evaluate against the performance targets or among the alternatives studied in the EIR. A “reasonable range of alternatives” should include the environmentally superior

³ 14 CCR § 15126.6

⁴ 14 CCR § 15126.6(c), (f).

⁵ 14 CCR § 15126.6(a). *See also Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 406-07 (1988).

⁶ MTC and ABAG, Plan Bay Area Final Environmental Impact Report – Final Certification (July 5, 2013), p.A-128.

⁷ MTC, Plan Bay Area 2040: Scenario Evaluation, Planning Committee Agenda Item 4a (May 6, 2016), p.3.

⁸ *Id.* at Attachment 5, pp.23-25 (slides 8-10).

⁹ Sustainable Systems Research, LLC, Summary Comparison of Plan Bay Area Performance Metrics for EEJ and Proposed Plan Scenarios (April 29, 2013), available at http://www.publicadvocates.org/sites/default/files/library/uc_davis_comparison_of_draft_pba_with_eej_alternative_summary.pdf.

alternative – as well as the one that performed best on a range of benefits. To this end, the EEJ should be updated and analyzed in this round’s EIR.

As detailed in our comments on the DEIR last round (attached), MTC and ABAG should update the EEJ alternative so that it matches more closely the scenario that was proposed by the community. Changes from the EEJ studied in the last EIR process should include:

- forcing housing into the desired infill zones in the EEJ alternative (as was done in the preferred alternative),¹⁰
- assuming there would be CEQA streamlining under the EEJ alternative (as was done in the preferred alternative),¹¹ and
- capturing in the model the benefits the EEJ alternative would achieve through deed-restricted affordable housing and anti-displacement protections.

Building upon the EEJ in these ways would likely yield even stronger environmental benefits.¹²

Moreover, the EIR alternatives will also become the basis for MTC’s federally-required equity analysis of Plan Bay Area. Last time, the EEJ was not only environmentally superior, but also provided the greatest benefits to low-income and minority residents, including the lowest H+T cost burden and the lowest risk of displacement. Failing to include an EEJ Alternative in the EIR will therefore also remove from consideration the alternative most likely to provide a full and fair share of the benefits of the regional plan to low-income and minority populations.

B. Analyze the Environmental Effects of Economic Displacement and Improper Jobs-Housing Fit

CEQA requires an analysis of direct and indirect impacts,¹³ including impacts resulting from social and economic consequences of the project.¹⁴ In addition, an EIR is required where “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.”¹⁵ To fulfill its fundamental purpose, an EIR must “identify and focus on

¹⁰ Sustainable Systems Research, LLC, Technical Memorandum: Review of the Draft Environmental Impact Report for Plan Bay Area (May 15, 2013) pp. 2-6, 13-14, available at http://www.publicadvocates.org/sites/default/files/library/ssr_technical_memorandum_5_16_13.pdf. In any event, the EIR alternatives must be modeled in a consistent manner. That was not the case in PBA 2013, when the UrbanSim land-use model was used to forecast the housing distribution for several EIR alternatives, but not for the preferred alternative. In the preferred alternative, instead of allowing UrbanSim to forecast how much of the housing distribution would fall within “Priority Development Areas” (PDAs) and “transit priority project zones,” MTC and ABAG manually assigned a significant share of the housing growth to these areas; UrbanSim was only used to model the distribution of those units within each PDA. Had the preferred alternative been modeled properly (and consistently with the alternatives), the resulting housing distribution would have been far less compact, raising serious questions about whether the region’s greenhouse gas (GHG) targets would be met.

¹¹ *Id.* at 14.

¹² *Id.*

¹³ 14 CCR § 15358(a).

¹⁴ 14 CCR § 15064(e); see *El Dorado Union High Sch. Dist. v. City of Placerville* (1983) 144 Cal. App. 3d 123, 132 (social effects of increased student enrollment and potential for overcrowding could lead to construction of new facilities and were thus relevant under CEQA); see also *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1215 (EIR improperly dismissed the possibility that a large shopping center could drive other retailers out of business as an economic effect when urban decay and other blightlike conditions could result).

¹⁵ 14 CCR § 15065(a)(4).

the significant environmental effects of the proposed project,” including “changes induced in population distribution, population concentration, [and] the human use of the land (including commercial and residential development)...”¹⁶ Furthermore, “[a]n EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.”¹⁷

Low-income households living in areas of focused growth and investment, such as Plan Bay Area’s Priority Development Areas and Transit Priority Areas, are likely to experience increased displacement resulting from increased property values¹⁸ and subsequent rent hikes and evictions. As noted above, MTC and ABAG’s own evaluation of the scenarios indicates that the risk of displacement is likely to increase significantly in all three scenarios.

When low-income people in the Bay Area are displaced, they tend to move far from their jobs and to places with poor public transit,¹⁹ robbing the transit system of its highest propensity riders and adding high-polluting vehicles to the roads. As a result, displacement has significant adverse effects, including harming human health,²⁰ decreasing public transit utilization, increasing congestion and VMT, causing poorer air quality, increasing greenhouse gas emissions, and causing other environmental impacts.²¹ Similarly, an increase in road and highway usage may result in a significant environmental impact as roads and highways fall into disrepair and traffic congestion increases.²²

The DEIR must therefore evaluate the environmental and health consequences associated with economic displacement. Among other steps, the DEIR should model displacement and identify likely trends in displacement, including:

- areas likely to face displacement pressure,
- the number of households affected,
- the communities expected to absorb these households,
- the number of households with increased commutes resulting from displacement,

¹⁶ 14 CCR § 15126.2(a); *see also* Pub. Res. Code § 21002.1(a).

¹⁷ 14 CCR § 15151.

¹⁸ University of California, Berkeley and Los Angeles, Gentrification, Displacement and the Role of Public Investment: A Literature Review (Mar. 3, 2015), pp.17-20, available at http://iurd.berkeley.edu/uploads/Displacement_Lit_Review_Final.pdf.

¹⁹ *See* Federal Reserve Bank of San Francisco, Suburbanization of Poverty in the Bay Area (Jan 2012), available at <http://www.frbsf.org/community-development/files/Suburbanization-of-Poverty-in-the-Bay-Area2.pdf>; *see also* Brookings Institution, The Growing Distance Between People and Jobs in Metropolitan America (Mar. 2015), available at http://www.brookings.edu/~media/research/files/reports/2015/03/24-job-proximity/srvy_jobsproximity.pdf.

²⁰ Bay Area Regional Health Inequities Initiative, Displacement Brief (Feb. 2016), available at <http://barhii.org/wp-content/uploads/2016/02/BARHII-displacement-brief.pdf>.

²¹ TransForm and California Housing Partnership Corporation, Why Creating and Preserving Affordable Homes Near Transit Is a Highly Effective Climate Protection Strategy (May 2014), available at <http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>. *See* 14 CCR § 15064.4(b).

²² *See, e.g., Save our Peninsula Comm. V. Monterey Cty. Bd. Of Supervisors*, 87 Cal. App. 4th 99, 118, 139 (2001) (discussing traffic impact as a significant environmental effect).

- the impact on access to middle-wage jobs²³ for low-income households, and
- the location and quantity of resulting demand for additional housing construction.

In addition, academic research has found that many parts of the Bay Area have a poor match between housing costs and local wages – a poor “jobs-housing fit,” causing new workers, particularly low-wage workers, to travel further distances than those in existing jobs.²⁴ The DEIR must evaluate the environmental and health effects resulting from this mismatch.

C. Describe Measures to Mitigate the Effects of Economic Displacement and Improve Jobs-Housing Fit

Public agencies are also required to describe and discuss mitigation measures that could minimize *each* significant environmental effect identified in an EIR.²⁵ Mitigation measures are “the teeth of the EIR” because “[a] gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.”²⁶ Such measures must be at least “roughly proportional” to the impacts of the project, and must not be remote or speculative.²⁷ They must be “fully enforceable through permit conditions, agreements, or other legally binding instruments.”²⁸

Indeed, a project should not be approved “as proposed if there are feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.”²⁹ Measures or alternatives that mitigate the risk of displacement and therefore reduce the identified environmental impacts of displacement are feasible and should be incorporated into the EIR.³⁰ Such measures include:

- leveraging the One Bay Area Grant (OBAG) program to encourage local anti-displacement protections and affordable housing production,³¹ as proposed by the 6 Wins,³²

²³ “Middle-wage” jobs are defined as those that pay \$18 to \$30 per hour. SPUR, CCSCE, SMCUCA, Working Partnerships USA, Economic Prosperity Strategy: Improving Economic Opportunity for the Bay Area’s low- and moderate-wage workers (Oct. 2014), p. 8, available at http://www.spur.org/sites/default/files/publications_pdfs/Economic_Prosperty_Strategy.pdf.

²⁴ Alex Karner and Chris Benner, Job Growth, Housing Affordability, and Commuting in the Bay Area (May 29, 2015), pp. 40-41, available at http://planbayarea.org/pdf/prosperity/research/Jobs-Housing_Report.pdf; see also Chris Benner with Alex Karner, Why is Housing So Expensive? Beyond Balance to Jobs Housing *Fit*, presentation available at <http://calbudgetcenter.org/wp-content/uploads/Policy-Insights-2016-Benner.pdf>.

²⁵ See Pub. Res. Code §§ 21002.1(a)-b and 21081.6(b); see also 14 CCR § 15126.4.

²⁶ *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal. App. 4th 1018, 1039.

²⁷ 14 CCR § 15126.4(a)(2)(B) (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994)); see also *Fed’n of Hillside & Canyon Ass’n v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261.

²⁸ 14 CCR § 15126.4(a)(2).

²⁹ Cal. Pub. Res. Code § 21002; see also 14 CCR § 15002(a)(3) (an agency must prevent avoidable damage “when [it] finds [mitigation measures] to be feasible”).

³⁰ See 14 CCR § 15131(c) (“Economic, social and particularly housing factors shall be considered by public agencies ... in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR”).

³¹ Such local policies have been adopted throughout the Bay Area and have a proven track record of reducing displacement. See UC Berkeley, Urban Displacement Project, Policy Tools, available at <http://www.urbandisplacement.org/policy-tools-2>.

³² 6 Wins Network, Recommended Modifications to the One Bay Area Grant Program to Advance Investment Without Displacement, Affordable Housing, and Economic Opportunity (Sept. 30, 2015), available at <https://drive.google.com/file/d/0B9IjCmacmnhWYWRyQXBtNDFJR0U/view?pref=2&pli=1>.


- funding for the development and preservation of affordable housing,
- more equitable distribution of development throughout both affluent and low-income neighborhoods, and
- reducing transit costs to low-income households to reduce the pressure of rising housing costs.

Policies to improve jobs-housing fit should also be considered as mitigation measures, including:

- increasing affordable housing near entry-level jobs,
- supporting investment and development patterns that prioritize the growth and retention of living-wage and middle-wage jobs near housing, and
- raising wages for low-income workers so that they are better able to afford housing.

To ensure a robust environmental analysis, a transparent process, and a Plan Bay Area that results in the greatest number of benefits and the least number of harms to the region's residents, it is critical that the DEIR include an EEJ Alternative, analyze the environmental effects of displacement and lack of jobs-housing fit, and explore measures to mitigate displacement and its effects and to improve jobs-housing fit.

Sincerely,



David Zisser
Staff Attorney

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Attachment: Comments on the draft Environmental Impact Report for Plan Bay Area (May 16, 2013)

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Re: Comments on the draft Environmental Impact Report for Plan Bay Area

Introduction

When the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) issued their draft Plan Bay Area (draft Plan), thousands of pages of documents and appendices went up on their website. Most of those pages are parts of the Environmental Impact Report (EIR) prepared to comply with the requirements of the California Environmental Quality Act (CEQA). These comments address concerns in each of the core components of the EIR:

- The basic function to fully inform the public.
- The project description.
- The analysis of alternatives.
- The analysis of project impacts.
- The mitigation measures.

A number of these concerns stem in part from the fact that there are key differences in how the land-use model, UrbanSim, was used to determine the housing distribution in the draft Plan, on the one hand, and in the Equity, Environment and Jobs (EEJ) alternative, and other alternatives on the other hand. Specifically, the EIR adjusted the modeling results for the draft Plan by using unspecified “calibration techniques,” but did not make the same adjustments in the modeling results for the other alternatives. The use of different methods obscures the comparison among Plan alternatives, and departs from the California Transportation Commission’s modeling guidelines for regional transportation plans.

The EIR is Inadequate as an Informational Document

The basic function of an EIR is to fully inform the public and decision makers about the environmental impacts of a project so that the public can provide informed input and the decision makers can make an informed decision. However, this EIR is so complex and confusing – so dependent upon unexplained assumptions embedded in computer models – that it is impossible for the public to fully understand its methodology and clearly evaluate its conclusions. To even attempt to decipher the methodology of the key land use models, the public has to plow through a technical appendix to the draft Plan document, which itself is an appendix to the EIR. Even academic modeling experts who have reviewed the technical appendices and asked for clarification from modeling staff at MTC and ABAG have been unable to determine the exact steps used to create the housing distribution for the draft Plan.

The EIR also falls short of its information function in even more basic ways. It does not inform decision-makers or the public of the health effects on disproportionately-impacted populations of the

increased emissions the EIR identifies as potentially significant. It also does not inform them of the disproportionate impacts on low-income populations that will result from economic displacement.

The Project Description in the EIR is Inadequate

It is impossible for an EIR to adequately inform the public and decision makers about the impacts of a project unless the EIR clearly and consistently describes the project in the first place. This EIR does not pass that test. Unlike every other EIR that has been prepared for SB 375 plans, and for that matter almost every other EIR that is prepared for any purpose, this EIR does not have a separate chapter, or section, entitled “Project Description.” Instead, Chapter 1.2 of the EIR is called “Overview of the Proposed Plan Bay Area.” As its title suggests, it provides an overview of certain features of the plan, but not a complete project description. The description of the core land use component required by SB 375, the Sustainable Community Strategy (SCS), is woefully incomplete. The description of the SCS basically amounts to the statement that it “calls for focused housing and job growth around high-quality transit corridors, particularly within areas identified by local jurisdictions as Priority Development Areas” (DEIR, p. 1.2-24), without providing any specifics about how this focused growth will be achieved, and without even providing a list of the PDAs where the growth will be focused.

For “details” about the SCS, EIR readers are directed to the draft Plan document, which in turn directs readers to the “Jobs-Housing Connection Strategy” (JHCS) published a year before the EIR. The JHCS states that there are 198 PDAs, and the EIR and the draft Plan document both state that there are “nearly 200” PDAs. However, the PDA Readiness Assessment, one of the many support documents published at the same time as the EIR and draft Plan document, states that “a number of changes or modifications have been made since” the JHCS was published, so “the current number of PDAs is 169.” Even though the core feature of the draft Plan is to encourage growth around PDAs, neither the EIR nor any of the documents it references provide a list of PDAs (only maps that are not at a scale to allow one to distinguish individual PDAs in proximity to each other, or to count them individually). There is also an inconsistency in the description of how much housing and jobs will go into the PDAs under the Plan. Among the EIR, SCS and JHCS, the housing number is variously described as “77 percent,” “79 percent,” “over 80 percent,” “80 percent” and “about 80 percent.” The jobs numbers are expressed as 63 percent sometimes and 66 percent other times – a discrepancy of more than 40,000 jobs. The unspecified “calibration techniques” discussed above, which were used to generate the description of how many housing units will be in PDAs as a result of the draft Plan, suggest that the EIR uses an elastic project description that changes shape as necessary to produce various outcomes. That is not a recipe for a useful EIR.

The EIR’s Identification and Analysis of Alternatives Falls Short

The EIR deserves praise for its inclusion of an Equity, Environment and Jobs (EEJ) Alternative, and for acknowledging that the EEJ alternative is the environmentally superior alternative. However, there are important differences between the robust EEJ alternative proposed to ABAG and MTC and the alternative analyzed in the EIR. These differences include: forcing housing into the desired infill zones in the preferred alternative, but not the EEJ alternative; failing to capture in the model the benefits the EEJ alternative would achieve through deed-restricted affordable housing and of OBAG anti-displacement protections; and assuming there would be no CEQA streamlining under the EEJ alternative. As result, the EIR has not in fact analyzed a fully-developed EEJ alternative.

The analysis of the impacts of the EEJ alternative inappropriately masks how much better the EEJ alternative performs compared to the preferred alternative by representing those differences as seemingly-small percentage point differences and then repeating the misleading statement that its benefits are only “marginal.” In fact, when one focuses on absolute numbers rather than misleading percentages, the analysis in the EIR shows substantially better performance by the EEJ alternative. Compared to the proposed plan, the EEJ scenario would result in:

- 1,900 fewer tons of CO2 emissions per day and 568,000 fewer tons of GHG emissions per year
- 6.4 fewer tons of Toxic Air Contaminants (TACs) per year
- 1,290 fewer tons of carbon monoxide emissions per year
- Daily energy savings of 68 billion BTUs, the equivalent of burning 600,000 fewer gallons of gasoline each day.

Furthermore, Sustainable Systems Research LLC concluded that if the modeling had been applied consistently, the EEJ alternative would show improved performance even beyond the performance that caused the EIR to select it as the environmentally superior alternative.

In addition, while the discussion of the EEJ alternative as the environmentally superior alternative drops hints that the alternative may be infeasible, it does not evaluate its feasibility at a level of detail that would be necessary for ABAG and MTC to make a finding of infeasibility. Any such analysis would need to individually evaluate the feasibility of the different major components, and not simply assume that one component can make an entire alternative infeasible. In fact, the VMT fee is not an essential part of the EEJ alternative. While it provides a useful tool for analyzing the benefits that a big boost in transit service would bring to the region, the bulk of those benefits can be achieved without a VMT fee through making \$3 billion in additional transit operating funds available in the final Plan, as recommended below. Because the issue here is only financial feasibility, a feasibility analysis would need to fairly apply the same feasibility standards to the preferred alternative, by, for example, acknowledging that it may not be feasible to assume that the same revenues that existed before redevelopment agencies were eliminated will be available now that they have been eliminated.

The EIR’s Analysis of Project Impacts is Inadequate.

The failure to base the impact analysis on a fixed, consistent project description permeates all of the individual sections of the impact analysis. The “calibration techniques” used in the land use analysis of the draft Plan are one extreme example of the fact that the impact analysis conducted through complex computer modeling appears to be result-oriented rather than a fair effort to characterize the actual impacts of the actual policy decisions that are supposed drive the analysis. As noted above, Sustainable Systems Research, LLC evaluated the inconsistencies in the modeling approaches and determined that EEJ would show even greater performance benefits relative to the draft Plan had the two been analyzed using comparable methods.

As discussed above, the impact analysis does not analyze the localized health effects on disproportionately-impacted populations of the increased emissions the EIR identifies as potentially significant. It also does not analyze the disproportionate health effects on low-income populations that will experience economic displacement, despite the fact that ABAG acknowledged in its 2007 to

2014 Housing Needs Plan that displacement caused by urban housing demand results in “negative impacts on health, equity, air quality, the environment and overall quality of life in the Bay Area.”

One important shortcoming in the impact analysis relates to the impact of economic displacement. The draft EIR notes correctly that CEQA does not require analysis of pure social or economic impacts. CEQA does, however, require analysis of the physical changes to the environment that are caused by the economic or social effects of a project. And yet the draft EIR does not analyze the social and economic effects of displacement, even though it acknowledges that “Changing development types and higher prices resulting from increased demand could disrupt business patterns and displace existing residents to other parts of the region or outside the region altogether.” Instead, these issues are given inadequate consideration in the Equity Analysis, which is not part of the CEQA analysis. There is no attempt in the draft EIR or in the Equity Analysis to model displacement and identify likely trends in displacement, including areas likely to face pressure, number of households affected, and the impacts on the communities expected to absorb these households, and no attempt to mitigate the impacts of the significant displacement risks that the Equity Analysis found.

The EIR’s Mitigation Measures Fall Short.

To the extent the draft EIR does identify certain localized displacement impacts as significant, it does not propose sufficient mitigation measures even in the context of the artificially-constrained impacts it does address. The displacement mitigation measures focus on enhancing pedestrian and bike access, and general planning. No mitigation is proposed that adds any actual protection against displacement pressures.

Many of the mitigation measures (particularly for air impacts) set forth in the draft EIR are already required by applicable state or local regulations, and thus already required by law to be in the project. For example, (a) use of Tier 2 off-road equipment, (b) anti-idling requirements, and (c) controlling fugitive dust. As the Attorney General pointed out in her lawsuit challenging SANDAG’s SB 375 plan, measures that are already legally required should have been assumed to be part of the baseline of the project. By inappropriately calling them out as mitigation measures, the draft EIR side-steps the consideration of other mitigation measures that could reduce pollution, improve public health, and save lives.

The draft EIR correctly points out in many places that mitigation of a number of the identified impacts is outside the jurisdiction of ABAG and MTC. Nevertheless, ABAG and MTC have not adequately leveraged the mitigation potential of programs that are within their jurisdiction, namely the One Bay Area Grant program (OBAG) and the Regional Housing Needs Allocation (RHNA). The EEJ alternative does a much better job of targeting those programs to achieve the objectives of SB 375 and state and federal transportation and housing laws than the preferred alternative.

We recommend adding the following specific mitigation measures:

- **Transit operations:** Provide \$3 billion in additional operating revenue for local transit service in the final Plan, and commit to adopt a long-range, high-priority “Regional Transit Operating Program” to boost transit operating subsidies by another \$9 billion over the coming years, as new operating-eligible sources of funds become available.

- **SCS and RHNA housing distribution:** Shift 25,000 RHNA units from PDAs to “PDA-like places,” with a corresponding shift in the SCS.
- **Displacement protections:** Develop and incorporate into the draft EIR strong anti-displacement policies that future OBAG grant recipients will be required to adopt and implement, and provide substantial regional funding for community stabilization measures, such as land banking and preservation of affordable housing in at-risk neighborhoods.

Sincerely,

ACCE Riders for Transit Justice

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Kirsten Schwind, Program Director
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June 15, 2016
By E-Mail to:
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Re: 2017 RTP/SCS Scoping Comments

Dear Mr. Heminger:

The Transportation Solutions Defense and Education Fund, TRANSDEF, is an environmental non-profit advocating the regional planning of transportation, land use and air quality. Our focus in recent years has been on reducing the impacts of transportation on climate change. This marks the seventh Regional Transportation Plan process in which we have participated.

These comments are intended to test a coherent set of the latest policies from Caltrans:

California's goal for all sectors and economic activities is to reduce GHG emissions while we go about our daily business. For transportation, this means making significant changes in how we travel. We must provide access and mobility for people and businesses, yet reduce our single occupant miles travelled and advance cleaner vehicles and fuels. (California Transportation Plan 2040, Final Draft version ("CTP"), p. 87.)

TRANSDEF recognizes that the environmental review process was set into law for the purpose of improving projects. It was not intended to merely generate stacks of unread paper documenting foregone conclusions. As a result, we believe that the appropriate testing of different conceptual approaches to the solution of regional problems is both warranted and desirable.

An ongoing controversy exists as to the long-held MTC conclusion that "transportation investments do not move the needle," referring to the ability of an RTP to produce significant shifts in travel patterns, mode split and GHG emissions. TRANSDEF, on the

other hand, strongly believes that well-designed cost-effective projects, selected to advance specific strategic objectives, will produce better outcomes.

This was demonstrated in the 2005 RTP FEIR, in which the TRANSDEF Smart Growth Alternative outperformed¹ the adopted staff alternative. We believe that MTC's practice of selecting politically popular costly transportation projects for the RTP over better-performing ones is the core reason that total transit ridership in the Bay Area is now lower² than it was in 1982³--and far lower per capita, due to population growth.

To resolve this important policy question, we propose that MTC/ABAG study the following transportation sub-alternatives, based on the land use assumptions of the Big Cities Scenario, as defined by MTC/ABAG staff. We believe that comparing the outcomes of these sub-alternatives with the outcomes of the Big Cities Scenario will provide MTC/ABAG with invaluable data for policy making. In addition, utilizing inputs from CTP 2040 Scenario 2 will perform a comparison between MTC's model and the State's.

Cost-Effectiveness Sub-Alternative

This Alternative is guided by the chief conclusion of our strategic analysis: The Bay Area has far too many personal vehicles for the Single Occupant Vehicle (SOV) mode to be viable for commuting. We recognize that when a large percentage of the population insists on commuting at the same time, a mass transportation solution, rather than reliance on individual transportation, is required. The Alternative does not waste funds attempting the hopeless task of maintaining SOV mobility. It builds no additional SOV capacity.

Consistent with CTP 2040 Scenario 2, this Alternative tests building convenient transit options, hopefully resulting in a significant drop in the SOV mode share and GHG emissions.

This Alternative uses the transportation project definitions⁴ of the 2005 TRANSDEF Smart Growth Alternative.⁵ The input files of transit headways that were developed for the 2005 EIR should still be stored at MTC. If not, we can provide them to avoid unnecessary duplication of work.

Obviously some things have changed since we created the Alternative back in 2004. SMART and eBART will soon be operational, so their trips need to be input to the model. BART built the central section of our Delta DMU proposal, so that project should

¹ http://transdef.org/RTP/RTP_Analysis_assets/Technical_Report.pdf

² See graph at http://transdef.org/Bay_Area/Bay_Area.html

³ TRANSDEF had sought to enforce TCM 2, MTC's commitment in the State Implementation air quality Plan to increase regional transit ridership in 1987 by 15% over the baseline year of 1982.

⁴ http://mtcwatch.com/2004_RAFT_RTP/2004_RTP_Main.html

⁵ <http://transdef.org/RTP/RTP.html>

be omitted. Please contact us to resolve questions about handling other changes to the regional network.

Altamont Corridor Rail Project: Since we designed the Bay Area High-Speed Rail Service in 2004, the Altamont Corridor Rail Project was developed as a collaboration of ACE and CHSRA, among others. For our Alternative, we have replaced the Bay Area High-Speed Rail Service with the Altamont Corridor Rail Project, as the latter is better defined. An EIR for the project was scoped in 2009 but never completed. The 2011 Preliminary Alternatives Analysis⁶ has a list of preferred alternatives on p. 5-1. (Some of these alternatives bear a striking similarity to the Altamont HSR alternative⁷ TRANSDEF proposed to CHSRA in 2010.) For this project, we propose the following specifications/enhancements:

- 20 minute headways for the peak period and 30 minute off-peak.
- Service to Downtown San Francisco via the Dumbarton Rail Bridge and DTX.
- A new ROW from Stockton to Sacramento, allowing one-seat rides from Sacramento to San Jose and San Francisco.
- San Joaquin trains westbound from Stockton are rerouted to San Jose via this new line, greatly increasing the ridership.
- Travel time from Stockton to San Jose is 1:00.
- California HSR is assumed to not be functional during the Plan period.

Altamont Funding: This Alternative does not provide any regional contribution to BART extensions, making funding available for this project. As the transit solution for one of the top ten congested highway corridors in the region, this project should compete very well for cap and trade funding. For RTP purposes, assume a project cost of \$4 billion.

Highway Funding: Please note that, in striving for policy coherence, this Alternative provides no funding for so-called Express lanes or other highway capacity-increasing projects. Instead, like CTP 2040 Scenario 2, HOV networks are made continuous by converting mixed-flow lanes. (Appendix 7, p. 11.) Highway construction funding is used to meet the needs of SHOPP, and highly visible enforcement of HOV lane occupancy limits. HOV lanes will be presumed to operate at at least FHWA minimum speeds. Available funding not needed for basic maintenance is swapped with sales tax counties for money eligible to spend on transit operations.

Transit Speeds: Like CTP 2040 Scenario 2, significantly higher transit speeds are key to productivity and carrying large passenger loads at reasonable operating costs. In this Alternative, we propose these methods of achieving the 50% higher speeds assumed by Scenario 2:

- Widespread use of traffic signal priority for buses

⁶ [http://transdef.org/2017_SCS/Altamont Corridor Rail Project Preliminary AA Report.pdf](http://transdef.org/2017_SCS/Altamont%20Corridor%20Rail%20Project%20Preliminary%20AA%20Report.pdf)

⁷ http://transdef.org/HSR/Altamont_assets/Exhibit_C.pdf

- Arterial HOV lanes where needed to bypass congestion
- Automated enforcement of transit lanes, with all fines going directly to the transit operator.⁸
- Unlike CTP 2040 Scenario 2, HOV minimum occupancies are not changed, as TRANSDEF believes that would result in limiting the HOV mode share.

Land Use: We note with approval that the description of the Big Cities Scenario includes elements that have no basis in current law or policy, including changing parking minimums and the office development cap. MTC had raised serious feasibility concerns about our 2005 RTP Alternative because we proposed innovations like these. It is only by testing proposed policies that decision-makers can determine whether to support legislation to make the innovation possible.

In addition to incorporating all of the Scenario's land use assumptions, the Alternative includes:

- No public subsidies for the operation or construction of parking within PDAs.
- The conditioning of funding for PDAs on enactment of the parking and other policy reforms proposed by the Big Cities Scenario.
- Required unbundling of the parking from leases and residential purchase agreements.
- Encouragement for the permitting of micro-apartments and Junior Second Units.

This Alternative's focus on increasing the availability of convenient transit should meet a critical need of PDAs, and the Big City Alternative in particular. We would be pleased to discuss the proposed headways with staff, and adjust these specifications to find an optimal balance of ridership and cost, as well as adjust the dollar inputs to meet the financial realities of today.

Pricing Sub-Alternative

CTP 2040 Scenario 2 is described in Appendix 7 (pp. 11-12) as increasing the out-of-pocket cost of urban driving by 133% (from \$0.23 to \$0.55 per mile). We propose to achieve this by implementing some of the following pricing programs:

- Mixed-flow lane freeway tolling during congested periods.
- A parking charge on all commercial parking spaces, including privately owned ones. This could conceivably be achieved through public funding of the installation of parking management hardware: gates and access controls. This would enable excellent administration of employee commuter benefit programs.
- Impose a regional transportation mitigation fee on new development, based on additional auto trips and VMT added to the regional network. If the fee is high enough, it will increase the desirability of developing close to transit and decrease interest in greenfield sites. This could come in the form of an Indirect Source Mitigation Fee, which has been under consideration by BAAQMD.

⁸ <http://arch21.org/BusLanes/BusOnlyPaper.html>

While the Big Cities Scenario contains cordon pricing and incentive programs, the Notice of Preparation does not specify the degree of cost increase proposed. This Sub-Alternative therefore prescribes the increase in the cost of driving, and some of the potential ways to achieve it.

Back in 2004, the travel demand model was limited in its ability to study pricing. We were forced to use a daily parking charge as a surrogate for the road user charges we wanted studied. Please contact us to discuss what is possible with the current model.

A key part of this Sub-Alternative is drawn from the experience of LACMTA. After it entered into a consent decree with the Bus Riders Union, bus fares were very substantially reduced. Bus ridership went up dramatically. Conversely, after the consent decree expired, fares rose and ridership dropped. TRANSDEF proposes this Sub-Alternative model a fare reduction here in the Bay Area, to test whether price sensitivity is different up here. We propose cross-subsidizing fares from the revenues received through pricing, with a target of reducing fares by 80%.

For simplicity and directness of comparison, this Alternative uses the exact same transportation and land use assumptions as the Cost-Effectiveness Sub-Alternative.

Conclusion

TRANSDEF is committed to achieving GHG emissions reductions and VMT reductions at the regional level. These Alternatives represent our best thinking as to what can be done, and what needs to be done. Studying the Alternatives proposed here will place concrete choices before the agencies. We think it is far healthier for the agencies to either accept or reject the choices in public than avoid altogether the discomfort of "pushing the envelope." We stand ready to provide whatever further inputs might be needed or useful. We look forward to collaborating on the best RTP yet.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

CC:

Steve Kinsey, MTC

Ezra Rapport, ABAG

Jack Broadbent, BAAQMD

Larry Goldzband, BCDC

Stacey Mortensen, ACE & SJJPB



June 13, 2016

Ken Kirkey, MTC Planning Director
Miriam Chion, ABAG
Bay Area Metro Center
375 Beale Street
San Francisco, CA 94105

Dear Mr. Kirkey and Ms. Chion,

The City of Livermore has reviewed the Alternative Scenarios for the Plan Bay Area update, sent to the Planning Division on May 18, 2016. The City offers the following comments on the Alternative Scenarios, the growth projections for Livermore, and the scope of the Environmental Impact Report (EIR). We intend this input to help guide selection of a Preferred Alternative. The City's comments are based upon the following principles that were included in the letter from Tri-Valley officials sent to ABAG and MTC on September 28, 2015:

- Recognize and plan for interregional travel.
- Invest in transportation improvements that increase connectivity to existing activity nodes and job centers.
- Support Bay Area communities at the policy level that are experiencing growth and are working to be more sustainable.
- Provide policies for "geographic equity" within counties.

Alternative Scenarios

1. Scenario #2 (Connected Neighborhoods) builds upon the established Priority Development Area (PDA) framework. Scenarios #1 (Main Streets) and #3 (Big Cities) are major deviations from the adopted Plan Bay Area. PDAs are useful tools as they provide predictability to local governments, property owners, residents, and the regional agencies regarding the direction of transportation and infrastructure investments. PDAs are voluntarily designated and are more aligned with local plans, increasing the chances of achieving the regional vision.

In addition to retaining a focus on PDAs, Scenario #2 takes a balanced approach between investing in state-of-good repair on roads and transit, while supporting strategic expansions to the transit system to serve growing areas. Scenario #2 also performs best against the new targets and would have the largest regional benefits. Furthermore, the growth projections for Livermore under Scenario #2 generally align with the existing Plan Bay Area and forecasts based on the City's General Plan (although we identified some key issues with the projections, as discussed further below). A drastic move away from PDAs and the original growth assumptions would undermine planning efforts completed over the last five years. The City understands the rationale of providing three different

scenarios. However, the next update should provide a more focused range of policy adjustments – continuing to build consensus around the adopted vision rather than introducing uncertainty.

2. The affordable housing policies under Scenarios #1 and #3 would be very problematic. Labeling areas as “high VMT” or “low VMT” over simplifies the complex relationship between jobs, housing, and services that exist from the neighborhood level up to the regional scale. A direct and complete transfer of funds from some jurisdictions to others would have many unintended consequences. For example, many places considered as high VMT are also high opportunity areas, and imposing fees on development while providing no subsidies for affordable housing in these locations would conflict with equity goals.

Providing sufficient affordable housing is a challenge in every community in the Bay Area. Accordingly, all scenarios (including Scenario #2) should include a fair and effective policy for generating additional funds for affordable housing in PDAs throughout the region. Policies that discourage housing construction in certain communities in the face of a regional housing crisis would be counterproductive to the regional vision.

3. In addition to strengthening the affordable housing policies, Scenario #2 should emphasize transit extensions. The region should invest in regional rail improvements that increase connectivity between growing job centers and residential communities (the Tri-Valley is experiencing both). The regional rail network plays a key role in connecting people to jobs, and the urgency to provide viable transit options where they are lacking will only increase. Regional rail also catalyzes transit-oriented, infill, and higher density development – increasing opportunities for people to live and work with less dependence on vehicles. Plan Bay Area should support communities wanting and needing regional rail service to improve sustainability, quality of life, and community health. The plan should also consider how land use changes can take advantage of under-utilized infrastructure in the reverse commute direction.

For these reasons, City staff strongly supports moving forward with Scenario #2, but with adjustments to the affordable housing policies and emphasis on transit. These two changes to Scenario #2 would improve performance on equity targets and further support congestion- and emissions-related goals.

Forecasted Household and Job Growth for Livermore

4. *Projections 2013* shows the city of Livermore as having 29,134 households in 2010. Why does Attachment 2 (Growth Forecasts by Alternative Scenario) show Livermore as having 28,600 households in 2010?
5. The household forecasts for Livermore vary widely across the scenarios and do not align with our expectations based on approved development and adopted land use plans. For

example, there are projects completed since 2010 or currently under construction that are not reflected in the table, including Shea Sage and Shea Montage in the Isabel PDA and the Brisa project in the Eastside PDA. In addition, the approved Downtown Specific Plan allows up to 1,400 units in the first phase of implementation, and up to 3,600 units in subsequent phases. The “No Project” scenario should reflect projects approved since 2010 and minimum anticipated growth under approved land use plans (as described further in comments #11 and #12 below). This table shows a more accurate distribution of Livermore households under the No Project Scenario:

Geography	2010 Baseline	2040 No Project	#2 Connected Neighborhoods
Livermore total	28,600	32,800	37,600
Downtown	600	1,500	2,100
East Side	0	500	2,500
Isabel Neighborhood	300	1,250	4,000
Outside PDAs	27,700	29,550	29,000

6. Forecasted growth under Scenario #3 should be at least as much as under the “No Project” scenario, as Livermore will continue to grow regardless if regional investments are directed towards the Big Cities. The number of households assumed for each PDA under Scenario #3 should reflect the distribution under the No Project scenario.
7. New housing in the Isabel PDA is dependent upon a BART extension to Isabel Avenue (see [PDA application](#), attached). Under existing regulations, no new housing is allowed in this area. The City is preparing the Isabel Neighborhood Plan (INP), which will include amendments to allow residential uses. The INP will ultimately serve as a PDA plan (for Plan Bay Area purposes), Station Area Plan (MTC’s TOD policy), and Ridership Development Plan (BART policy). The Draft INP plans for about 4,225 new housing units, which should be reflected in at least Scenario #2.
8. Under Scenario #2, Livermore is forecasted to grow by 9,000 households; however, household growth in the three PDAs adds up to 10,800. This distribution should be corrected so that household growth in the PDAs does not exceed citywide household growth. The scenario should also assume some development outside of the PDAs. A suggested distribution of households for Scenario #2 is provided in the table above.

9. *Projections 2013* shows the city of Livermore as having 38,450 jobs in 2010 (and 46,650 in the SSA). Livermore annexed the Lawrence Livermore and Sandia National Labs sites in 2011. Together, these Labs are the City's largest employer and provide approximately 9,400 jobs. Please ensure that the Labs are included in the job forecasts for Livermore.
10. All of the scenarios show Livermore adding 7,100-7,900 jobs over 2010 baseline conditions. This is drastically lower than job estimates under the current Plan Bay Area, which estimates over 14,000 new jobs in Livermore. Please explain this difference. For reference, we estimated that General Plan build-out would result in about 87,000 jobs within the city. According to US Census Bureau data (On the Map), the number of jobs in Livermore increased by 2,800 between 2010 and 2014, which would represent 36-40% of the total projected job growth under the No Project and alternative scenarios. Based on ABAG data, Livermore has grown by an average of 400 jobs per year since 1990. We expect to experience a similar growth rate moving forward, especially considering the recently approved industrial and commercial projects (e.g., Gillig, Phase II of the Outlets, The Shoppes, Trammel Crow distribution facility, etc.).

Scope of the Environmental Impact Report (EIR)

The EIR for the Preferred Alternative will analyze the cumulative impacts of implementing major transportation projects in the region (over which MTC has some control). As part of the analysis, assumptions will be made about the land use pattern in 2040 (over which regional agencies have very little control, as local agencies have land use authority). Plan Bay Area will continue to include incentives to influence the land use pattern, with the largest catalysts being the transportation investments themselves.

Implementing this visionary plan requires voluntary actions and coordination among numerous stakeholders. While this is a worthy effort, we recognize that it will be very difficult to fully achieve the vision. This makes it difficult to rely on the land use inputs, transportation model, and EIR to represent "reasonably foreseeable conditions" for tiering purposes under CEQA. It also creates challenges with evaluating the true costs and benefits of specific transportation projects. Given these concerns, we make the following suggestions and requests:

11. The land use inputs for the EIR analysis should generally align with local land use regulations and planning efforts. If the gap between the region's forecasts and the city's forecasts is too wide, it will be difficult for cities to rely on Plan Bay Area for planning and on the EIR for tiering. Therefore, please validate the land use inputs with local jurisdictions prior to running the transportation model for the Preferred Alternative.
12. The No Project scenario should reflect business-as-usual conditions. We recognize the need to assume 100% of housing needs will be met within the region's boundaries for the *project* scenarios, in response to the lawsuit and to meet the intent of SB 375. This is an

important goal for cities and the region to strive towards. However, this is not a reasonable assumption for the No Project scenario as housing construction has never kept up with job growth within the Bay Area, and people continue to move to adjacent regions in search of affordable housing options. Therefore, the No Project scenario should assume continuation of housing patterns in the Bay Area and Central Valley.

13. Relying on one set of long-term land use projections gives a false sense of precision. The projections completed in 2007 for Central Valley and Bay Area growth are very different than those completed in 2013. Furthermore, assuming there will be less inter-regional commuting and less congestion on highways, based on a visionary land use pattern, distorts the estimated performance of projects. Transportation investments based on these assumptions will be inadequate and less effective if congestion continues to grow, which it will likely do.

Given the sensitivity of projections to fluctuating market conditions and the sensitivity of the model to land use inputs, the planning process should consider the range of land use patterns that may play out in the long-term. Specifically, the EIR and future updates should evaluate transportation projects against the more realistic No Project land use scenario described above *and* the Preferred Alternative. This approach would provide a more realistic range of potential outcomes, as the actual land use pattern will likely end up somewhere in between. This comparison should be an important part of the decision making process and disclosed to the public.

Thank you for the opportunity to provide feedback on the Plan Bay Area update. Please let us know if you have any questions.

Sincerely,



Marc Roberts, City Manager
City of Livermore

Goals and Performance Targets for Plan Bay Area 2040

Goal	#	Performance Target
Climate Protection	1	Reduce per-capita CO ₂ emissions from cars and light-duty trucks by 15%
Adequate Housing	2	House 100% of the region's projected growth by income level without displacing current low-income residents and with no increase in in-commuters over the Plan baseline year*
Healthy and Safe Communities	3	Reduce adverse health impacts associated with air quality, road safety, and physical inactivity by 10%
Open Space and Agricultural Preservation	4	Direct all non-agricultural development within the urban footprint (existing urban development and UGBs)
Equitable Access	5	Decrease the share of lower-income residents' household income consumed by transportation and housing by 10%
	6	Increase the share of affordable housing in PDAs, TPAs, or high-opportunity areas by 15%
	7	Do not increase the share of low- and moderate-income renter households in PDAs, TPAs, or high-opportunity areas that are at risk of displacement
Economic Vitality	8	Increase by 20% the share of jobs accessible within 30 minutes by auto or within 45 minutes by transit in congested conditions
	9	Increase by 35%** the number of jobs in predominantly middle-wage industries
	10	Reduce per-capita delay on the Regional Freight Network by 20%
Transportation System Effectiveness	11	Increase non-auto mode share by 10%
	12	Reduce vehicle operating and maintenance costs due to pavement conditions by 100%
	13	Reduce per-rider transit delay due to aged infrastructure by 100%

* = The Adequate Housing target relates to the Regional Housing Control Total per the settlement agreement signed with the Building Industry Association (BIA), which increases the housing forecast by the housing equivalent to in-commute growth.

** = The numeric target for #9 will be revised later based on the final ABAG forecast for overall job growth.

Recommended and Considered Alternatives for Plan Bay Area 2040 EIR

Table 1. Alternatives Recommended for Analysis

Alternative Name	Description	CEQA Adequacy
1. No Project	The purpose of the No Project alternative is to allow a comparison of the environmental impacts of approving the proposed plan with the effects of not approving it. The No Project alternative discusses the existing conditions, “as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” (CEQA Guidelines, § 15126.6(e).)	An EIR must analyze the “no project alternative.” (CEQA Guidelines, § 15126.6(e).)
2. Main Streets	<p>This alternative includes a different land use growth pattern and a different mix of transportation project and program investments, relative to the proposed plan and other alternatives.</p> <p>Compared to the proposed plan, this alternative has a more dispersed land use pattern (suburban-focus), less investments in transit, and more investments in highways and roads, including a buildout of the express lane system.</p>	<p>This alternative was developed and analyzed as part of the planning scenarios leading to the identification and adoption of the proposed plan, and was identified as a possible CEQA alternative in the NOP.</p> <p>No scoping comments were received suggesting this alternative would not be a viable alternative in the EIR. Therefore, this alternative will be further analyzed in the EIR.</p>
3. Big Cities	<p>This alternative includes a different land use growth pattern and a different mix of transportation project and program investments, relative to the proposed plan and other alternatives.</p> <p>Compared to the proposed plan, this alternative has a more compact land use pattern (Big 3 Cities and Transit Priority Areas (TPA)-focus), less investments in roads, and more investments in transit.</p>	<p>This alternative was developed and analyzed as part of the planning scenarios leading to the identification and adoption of the proposed plan, and was identified as a possible CEQA alternative in the NOP.</p> <p>No scoping comments were received suggesting this alternative would not be a viable alternative in the EIR. Therefore, this alternative will be further analyzed in the EIR.</p>
4. Environment, Equity and Jobs Alternative (EEJ)	This alternative includes a different land use growth pattern and a different mix of transportation project and program investments, relative to the proposed plan and other alternatives.	This alternative was submitted through scoping feedback. A version of the EEJ alternative was analyzed in the 2013 EIR and was identified as environmentally superior to the proposed plan, meaning it had the lowest level of significant unavoidable impacts. In its Findings

	Compared to the proposed plan, this alternative has a less compact land use pattern (some PDAs, TPAs and EEJ-designated city-focus) and less investments in highways and more investments in transit.	adopting the 2013 EIR, the EEJ alternative was deemed to be less capable of achieving the project objectives and infeasible for economic and policy reasons by the Metropolitan Transportation Commission and ABAG Executive Board.
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Table 2. Alternatives Considered but not Recommended for Analysis

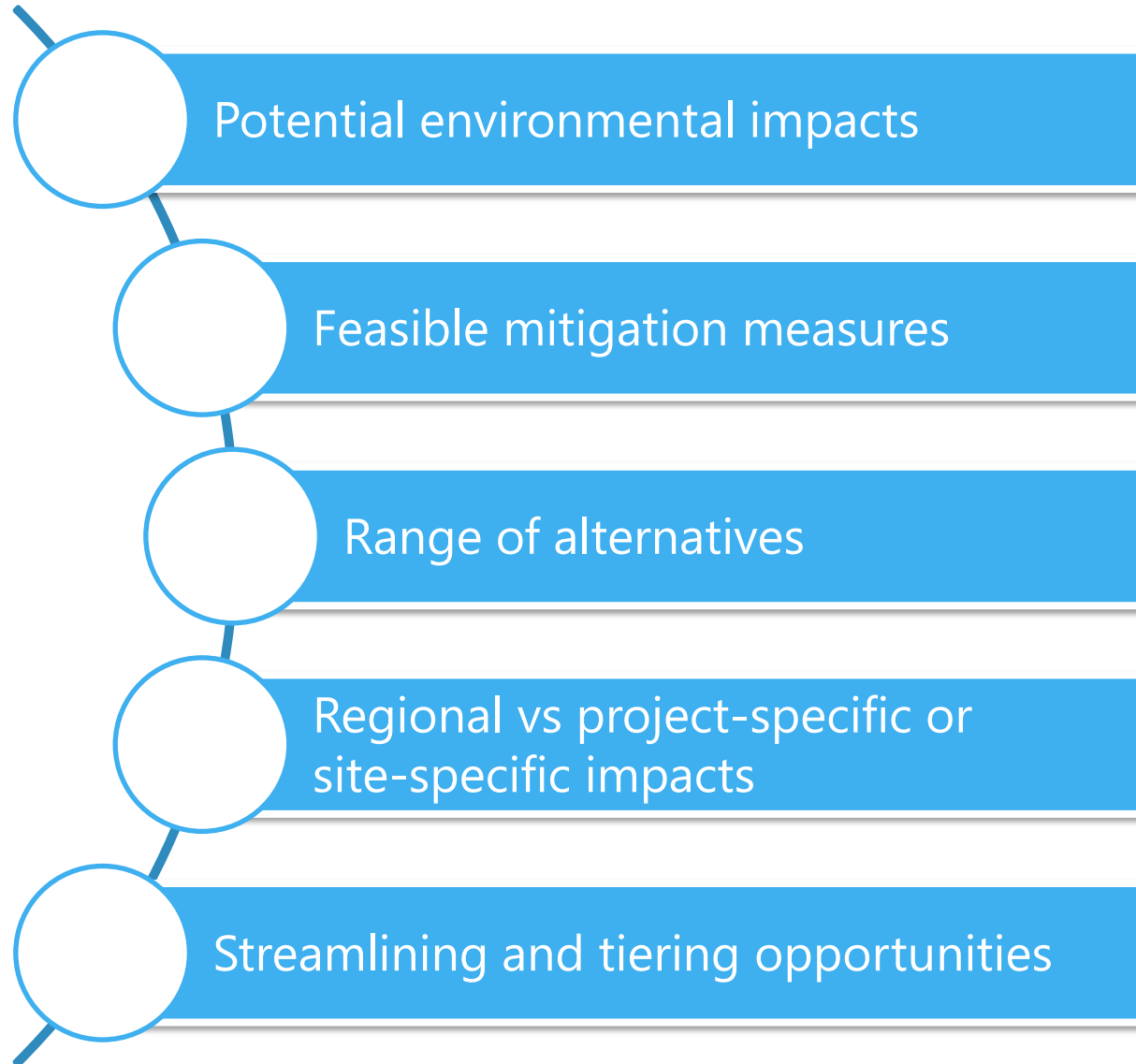
Alternative Name	Description	CEQA Adequacy
5. Connected Neighborhoods	This alternative includes a similar land use distribution and a similar mix of transportation projects and programs, relative to the proposed plan.	This alternative was developed and analyzed as part of the planning scenarios leading to the identification and adoption of the proposed plan, and was identified as a possible CEQA alternative in the NOP. Because of its similarities to the proposed plan, this alternative is expected to perform very similarly to the proposed plan across the CEQA topic areas, and therefore does not contribute to a reasonable range of alternatives in the EIR.
6. Smart Growth (TRANSDEF)	<p>This alternative includes the same land use growth pattern as the Big Cities alternative, but includes two transportation sub alternatives resulting in a different mix of transportation project and program investments, relative to the proposed plan and other alternatives.</p> <p>Compared to the proposed plan, this alternative emphasizes implementing strategies to make driving more expensive and transit more attractive, including less investments in roads, and more investments in transit.</p>	<p>This alternative was submitted through scoping feedback. Due to its consistency with and reliance on the Big Cities land use pattern, this alternative is expected to perform very similarly to the Big Cities alternative across the CEQA topic areas. As a result, this proposed alternative does not contribute to a reasonable range of alternatives.</p> <p>A version of the Smart Growth alternative was analyzed in the 2005 EIR and was identified as environmentally superior to the proposed plan, meaning it had the lowest level of significant unavoidable impacts. In its Findings adopting the 2005 EIR, the Metropolitan Transportation Commission noted significant reservations about the feasibility of this alternative and therefore its ability to meet the project objectives.</p>
7. Modified No Project (City of Livermore)	Compared to the proposed plan, this alternative has a lower amount of anticipated growth in households.	This alternative was submitted through scoping feedback. This alternative is expected to perform better than the proposed plan across some of the CEQA topic areas due to the lower amount of housing development assumed. However, this alternative is inconsistent with Performance Target #2, “House 100

		<p>percent of the region's projected growth by income level without displacing current low-income residents and with no increase in in-commuters over the Plan baseline year." The requirement to house 100 percent of the region's projected growth is a regulatory requirement under SB 375 and therefore a legal mandate. As a result, this proposed alternative is not identified for further study in the EIR because it would not contribute to a reasonable range of alternatives and because it would be legally infeasible.</p>
<p>8. Plan Bay Area (2013 RTP/SCS)</p>	<p>This alternative includes a similar land use distribution and a similar mix of transportation projects and programs, relative to the proposed plan.</p> <p>However, compared to all the other alternatives, this alternative has a lower amount of anticipated growth of households and employment, as well as a lower amount of transportation revenues for investments in highways and transit.</p>	<p>This alternative is expected to perform similar to the proposed plan across the CEQA topic areas because it is the Plan on which the proposed plan is based.</p> <p>However, due to the lower amount of assumed development and infrastructure investment, this alternative is not consistent with the requirement of SB 375 that the plan be updated every four years, nor does it meet the requirement to house 100 percent of the region's projected growth. As a result, this alternative is not identified for further study in the EIR because it would not contribute to a reasonable range of alternatives and because it would be legally infeasible.</p>

Plan Bay Area 2040: Environmental Impact Report (EIR) Scoping Feedback and Alternatives

MTC Planning Committee and the ABAG Administrative Committee
December 9, 2016
Ken Kirkey, MTC

The purpose of CEQA is to assess and disclose impacts of implementing the proposed plan.



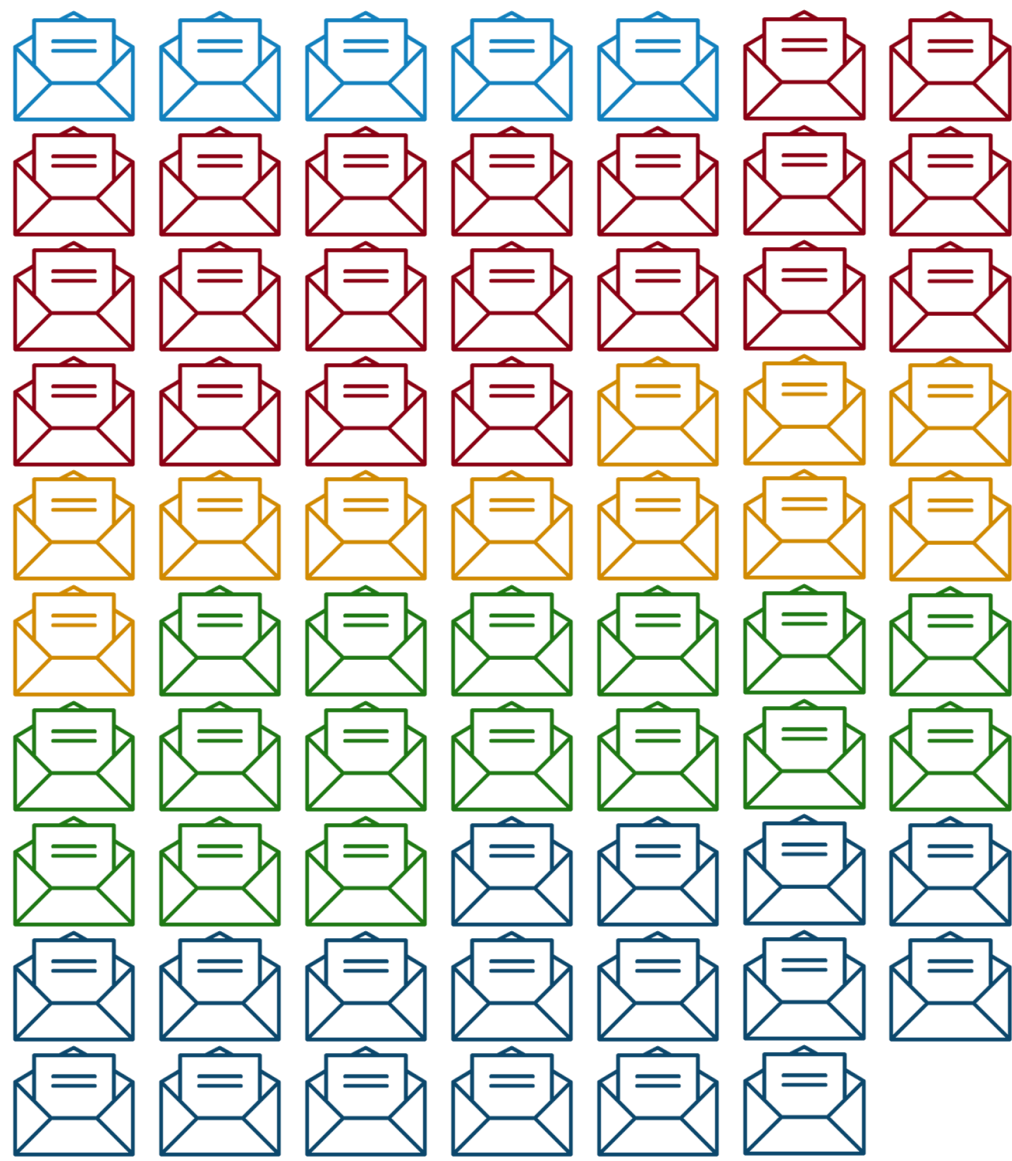
CEQA Covers **16** issue areas:

- aesthetics and visual resources;
- agriculture and forestry resources;
- air quality;
- biological resources;
- cultural resources;
- geology, seismicity, soils, and mineral resources;
- energy consumption;
- climate change and greenhouse gases;
- hazards and hazardous materials;
- hydrology and water quality;
- land use;
- noise and vibration;
- population and housing;
- public services and recreation;
- transportation;
- utilities and other service systems.

The Notice of Preparation (NOP) was released on May 15th and 69 written and oral comments were submitted.

3 Scoping meetings:

- San Jose
- Oakland
- Santa Rosa



5 from state agencies

20 from regional/local agencies

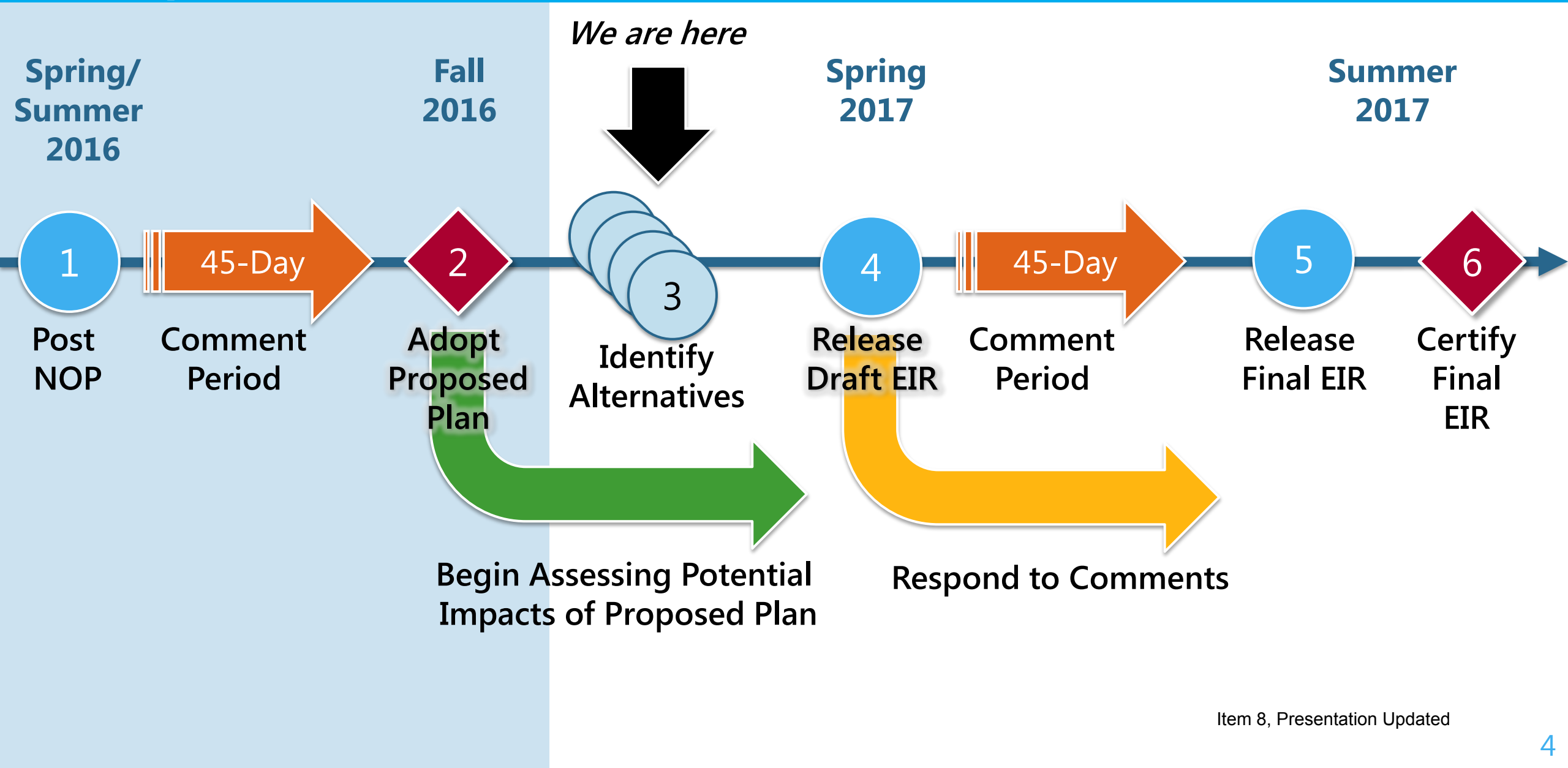
11 from organizations

16 from individuals

17 from oral comments

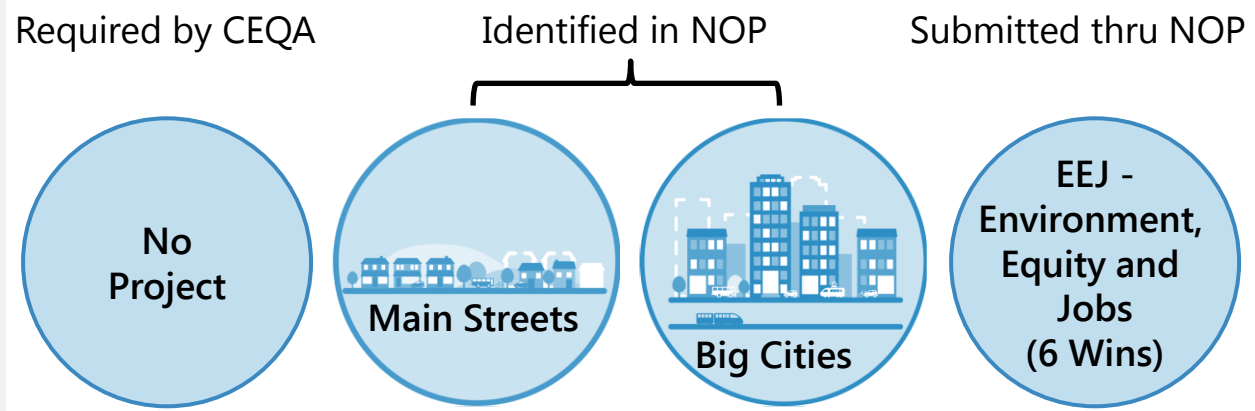
A summary of all NOP comments is found in Attachment A, Item 8, Presentation Updated

The identification of CEQA alternatives is another step in the development of the EIR.

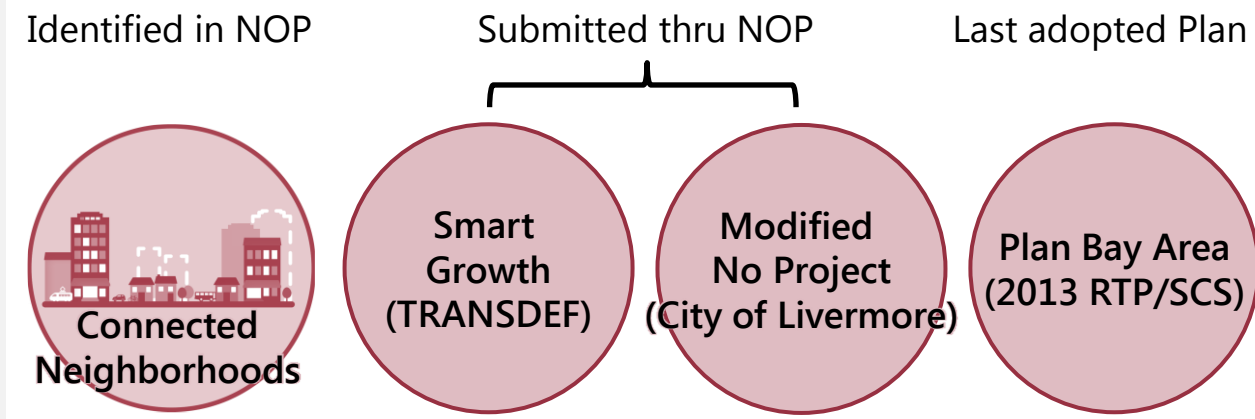


CEQA requires that a reasonable range of alternatives be analyzed in the EIR.

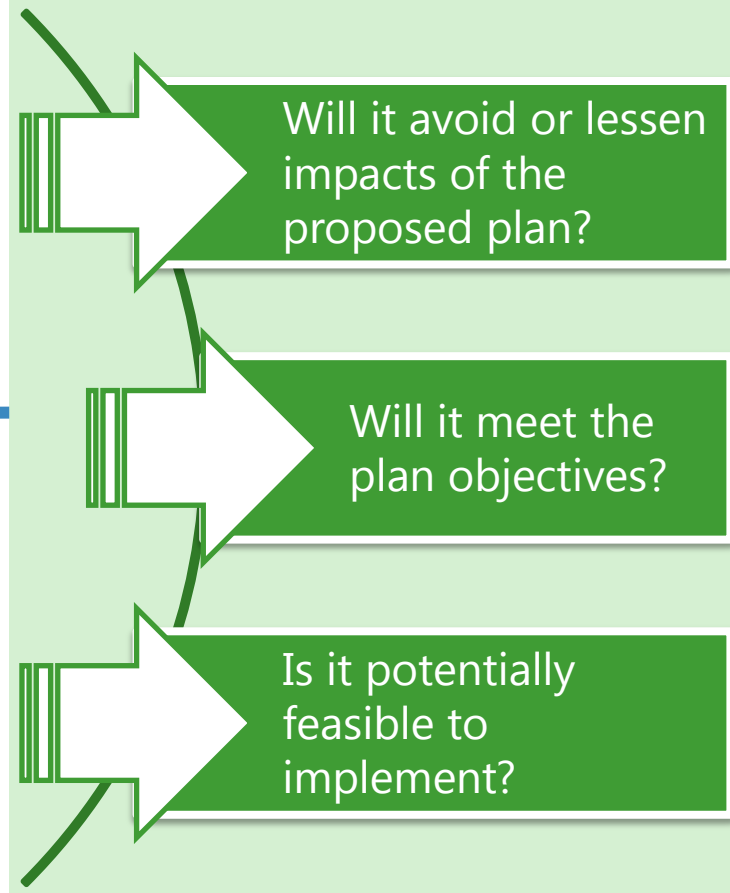
Alternatives
recommended
for further analysis



Alternatives
considered,
but are **not recommended**
for further analysis



Assessing CEQA alternatives:



A summary of all recommended and considered CEQA alternatives is found in Attachment D.
Item 8, Presentation Updated

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ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



Executive Board

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Karen Mitchoff, Supervisor, County of Contra Costa
Mary Ann Nihart, Councilmember, City of Pacifica
Raul Peralez, Councilmember, City of San Jose
Greg Scharff, Vice Mayor, City of Palo Alto
Linda Seifert, Supervisor, County of Solano
Warren Slocum, Supervisor, County of San Mateo
Annie Campbell Washington, Councilmember, City of Oakland

William Kissinger, Board Member, San Francisco Bay Regional Water Quality Control Board—
Advisory Member

Alternates

Brandt Andersson, Councilmember, City of Lafayette
Mary-Lynne Bernald, Councilmember, City of Saratoga
Jeff Buckley, Special Advisor, Office of the Mayor, City and County of San Francisco
Catherine Carlton, Councilmember, City of Menlo Park
Keith Carson, Supervisor, County of Alameda
Chris Clark, Councilmember, City of Mountain View
Julie Combs, Councilmember, City of Santa Rosa
Andrew Dayton, Deputy Director of Legislative and Governmental Affairs, City and County of San Francisco
Diane Dillon, Supervisor, County of Napa
John Dunbar, Mayor, Town of Yountville
John Gioia, Supervisor, County of Contra Costa
Susan Gorin, Supervisor, County of Sonoma
Erin Hannigan, Supervisor, County of Solano
Rose Herrera, Vice Mayor, City of San Jose
Dan Kalb, Councilmember, City of Oakland
Ash Kalra, Councilmember, City of San Jose

Wayne Lee, Councilmember, City of Millbrae

Tam Nguyen, Councilmember, City of San Jose

Mary Piepho, Supervisor, County of Contra Costa

Katie Rice, Supervisor, County of Marin

Pedro (Pete) Sanchez, Mayor, City of Suisun City

Joseph Simitian, Supervisor, County of Santa Clara

Jessica Sloan, Mayor, City of Mill Valley

Trish Spencer, Mayor, City of Alameda

Roy Swearingen, Mayor, City of Pinole

Richard Valle, Supervisor, County of Alameda

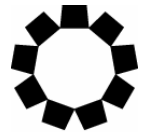
Mike Wasserman, Supervisor, County of Santa Clara

Terry Young, Chair, San Francisco Bay Regional Water Quality Control Board—*Advisory Member*

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ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

MEETING SCHEDULE 2017

Approved by the Executive Board: November 17, 2016

For meeting date and time and location, see meeting notice, agenda and attachments available at <http://www.abag.ca.gov/>

For information, contact Fred Castro, Clerk of the Board, at (415) 820 7913.

General Assembly

Date: Monday, January 30
10:00 a.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

General Assembly and Business Meeting

Date: Thursday, May 11
Time: 10:00 a.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

Executive Board

Dates: Thursday, January 19
Thursday, February 16
Thursday, March 16
Thursday, May 18
Thursday, July 20
Thursday, September 21
Thursday, November 16

Time: 7:00 p.m. to 10:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Legislation and Governmental Organization Committee

Dates: *See Executive Board Schedule*

Time: 3:30 p.m. to 5:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Finance and Personnel Committee

Dates: *See Executive Board Schedule*

Time: 5:00 p.m. to 6:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Administrative Committee

Dates: *Special meetings scheduled as needed.*

Regional Planning Committee

Dates: Wednesday, February 1
Wednesday, April 5
Wednesday, June 7
Wednesday, August 2
Wednesday, October 4
Wednesday, December 6

Time: 12:00 p.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

Contact: Wally Charles, Administrative Secretary, Planning, (415) 820 7993,
wallyc@abag.ca.gov