



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

AGENDA

Board of Directors Meeting
Bay Street Conference Room
5616 Bay Street
Emeryville, CA 94608
March 15, 2018 at 9:00AM

Chair

Tim Bacon,
City Center Realty Partners

Vice Chair

Geoff Sears, Wareham
Development

Secretary

Betsy Cooley,
At-Large Residential

Treasurer

Andrew Allen
At-Large Business

Directors

Nathaniel Centeno,
Bay Street

Peter Schreiber,
Pixar

Genevieve Hancock,
2100 Powell

Colin Osborne
At-Large Employer
Member

Ron Silberman,
At-Large Business Member

Bobby Lee,
At-Large Residential
Member

1. Call to Order
2. Public Comment
3. Approval of the Minutes of the January 18th Board of Directors Meeting (Attachment)
4. Executive Directors Report
 - A. Status Update on Relocation of Emery Go-Round Operations Facility
 - B. Status Update on Caltrans Mandela site
5. Business Items
 - A. Vehicle Acquisition
 1. Review and Consider Approval of the Buyers Order Contract for the Acquisition of four (4) 40' Starcraft AllStar Cutaway Shuttles. (Attachment)
 2. Review and selection of Fleet Financing option.
 - B. Review and Consider Approval of Office Sublease (Attachment Forthcoming)
 - C. Review and Consider Approval of License Agreement with Novartis Vaccines and Diagnostics, Inc. (Attachment)
 - D. Review and Consider Approval of Amendment #4 to Professional Services Agreement with BKF Engineers to increase compensation limits for additional scope of work to finalize design plans and to participate in the contract bid process for the proposed improvements at the Novartis lot. (Attachment)
6. Suggestions/Requests from Board Members
7. Confirm date of Next Meeting - April 19th, 2018
8. Adjournment

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Meeting of the Board of Directors

January 18th, 2017

1. Call to Order

The meeting was called to order at 9:07am by Vice Chair, Geoff Sears

Directors Present: Geoff Sears, Colin Osborne, Bobby Lee, Betsy Cooley, Ron Silberman

Staff present: Roni Hatstrup, Mary Grinbergs, (Gray-Bowen-Scott)

Others: Ken Bukowski

Vice Chair, Geoff Sears requested to have the Executive Directors Report moved to the bottom of the agenda and move items 6F, 6G and 6H to follow 6B.

2. Closed Session

A. Summary of Executive Director Performance Review by Ad-hoc Committee Chair.

B. Review and Discuss Proposal from Gray-Bowen-Scott for 2018

Closed session ended at 9:15AM

3. Public Comments

None

4. Approval of the Minutes of the September 21st, 2017 Board of Directors Meeting

This item was skipped

5. Executive Directors Report

A. Status Update on Current Site Lease & Potential Short Term Site Option.

This item was discussed in section 6, item H.

B. Status Update on Caltrans Mandela site.

Management obtained the necessary permit from Caltrans to begin surveying the Mandela site.

The goal is to complete the site survey by February when Caltrans plans to bring the site to auction.

C. 2018 Calendar of Actions.

Roni directed the Board to the Calendar of Actions attachment. Some items are subject to change.

6. Business Items

A. Review and consider approval of Shuttle Operations & Maintenance Agreement with MV Transportation, Inc. to extend the term of services three years to December 31st, 2020.

Roni reviewed the proposed 2018 MV Shuttle Operations and Maintenance Agreement. Roni noted the increase in both fixed and variable costs as a result of driver compensation and benefit increases, per the collective bargaining agreement currently under negotiation with the operators union.

Roni further noted that the Bayer Mid-Day shuttle scope of work and operating hours were added to the West Berkeley Shuttle price pages.

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Meeting of the Board of Directors

January 18th, 2017

The cost form changes are highlighted in the attached Staff Report. The purpose of changes include more staff time, road supervisors and Syncromatics time.

Lastly, Roni noted that an Amendment to the Professional Services Agreement with the City for the 8 to Go service was anticipated to cover the increase in operating costs.

Betsy Cooley motioned for approval, Bobby Lee seconded.

This item was approved by a unanimous vote.

AYE: 5

NAY: 0

ABSTAIN: 0

B. Consider Approval of Professional Services Agreement Gray Bowen Scott for continued Executive Director & Agency Administration Services.

Roni presented the proposed service plan for 2018, noting the anticipated efforts to secure a both a short-term and long-term operations facility. Roni further noted that her team would continue coordination efforts with Syncromatics to further refine real-time tracking system predictions and reporting. Lastly, Roni noted the additional efforts would result in a total contract increase of 5% from 2017 services, which was included in the 2018 Budget adopted by the Board

Bobby Lee motioned for approval, Vice Chair, Geoff Sears seconded.

This item was approved by a unanimous vote.

AYE: 5

NAY: 0

ABSTAIN: 0

C. Review and Consider Approval of Amendment #1 to Professional Services Agreement with John S. Tounger, Jr. for continued Bookkeeping and Accounting Services.

Bobby Lee motioned for approval, Colin Osborne seconded. Geoff Sears was absent for the vote, therefore abstained.

This item was approved by a vote of 4 with 1 abstention.

AYE: 4

NAY: 0

ABSTAIN: 1

D. Review and Consider Approval of Amendment #3 to Professional Services Agreement with BFK Engineering Services.

Roni requested an extension of the BKF term ending date to December 31st, 2018.

Colin Osborne motioned for approval, Ron Silberman seconded. Geoff Sears was absent for the vote, therefore abstained.

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Meeting of the Board of Directors

January 18th, 2017

This item was approved by a vote of 4 with 1 abstention.

AYE: 4

NAY: 0

ABSTAIN: 1

- E. Review and Consider Approval of Engagement Letter with Low Accountancy for Audit Services. (Attachment)

Colin Osborne motioned for approval, Betsy Cooley seconded. Geoff Sears was absent for the vote, therefore abstained.

This item was approved by a vote of 4 with 1 abstention.

AYE: 4

NAY: 0

ABSTAIN: 1

- F. Review and Consider Approval of Transportation Agreement with the Berkeley Gateway Transportation Management Association for Continued Shuttle Operation Services for the West Berkeley and Bayer Mid-Day Shuttle. (Attachment)

Roni presented the changes to the Transportation Agreement, noting the addition of the Bayer Mid-day Shuttle, as well as the proposed transition to quarterly invoicing to reduce administrative time for invoice processing and to ensure funds are received in a timely manner.

Ron Silberman motioned for approval, Bobby Lee seconded.

This item was approved by a unanimous vote.

AYE: 5

NAY: 0

ABSTAIN: 0

- G. Vehicle Acquisition (Attachment)

1. Review and Consider Approval of the Buyers Order Contract for the Acquisition of four (4) 40' StarCraft AllStar Cutaway Shuttles.
2. Authorize Executive Director to execute lease agreements for a 60 month term at 7.14% interest.

The Board Directed staff to shop around for better interest rates and come back to the Board at the next meeting with a comparison table of rates.

No action was taken on this item.

- H. Authorize Executive Director to Execute Lease Agreements for Office Space and Bus Parking Facilities at the Direction and Approval of the Bus Yard Committee.

Geoff recommended staff schedule a special meeting of the Board when the lease agreement becomes available for Board consideration.

No action was taken on this item.

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Meeting of the Board of Directors

January 18th, 2017

- I. Adopt Resolution 18-01 to Establish the Date, Time and Location of the 2018 Annual Membership Meeting. (Attachment)

Bobby Lee motioned for approval, Betsy Sears seconded.

This item was approved by a unanimous vote.

AYE: 5

NAY: 0

ABSTAIN: 0

- J. Appoint Audit Review Committee. (Attachment)

Roni asked Board members to volunteer to serve on Audit Review Committee.

Given that only 4 Directors were present, the Board directed Management to reach out to all Directors with a request for volunteers.

No action was taken on this item.

- K. Fourth Quarter Financial & Performance Reports. (Attachment)

Roni reported that the ETMA fell well below budget due to a higher fleet budget than purchased. Fuel costs also remain low resulting in significant saving.

December performance was affected due to heavy construction throughout the City and Holiday traffic issues. Roni will work with City Engineer, to coordinate options and refine measures for next year.

Roni noted that Ridership was down significantly from prior years. Roni agreed that automated passenger counters would be beneficial to track ridership, however, noted that the manual counts are trending consistently from month to month. Roni noted her assumption for the reduced ridership being a factor of both the availability of Uber and Lyft as well as the increase in traffic congestion and travel time.

7. Suggestions/Requests from Board Members

No suggestions

8. Confirm Date of Next Meeting

The meeting date of March 15^h, 2018 9:00AM was confirmed.

9. Adjournment

The meeting was adjourned at 10:57AM

FOR SUBLEASE

OFFICE SPACE

1144

65TH STREET

Emeryville, CA 94608



PROPERTY HIGHLIGHTS

- + ±1,650 RSF
- + Exclusive Entrance
- + High Exposed Wood Ceilings
- + Creative Feel
- + Desirable Emeryville Location
- + Second Floor Mezzanine



EXPOSED WOOD CEILINGS



OPEN AREA



ENTRY WAY



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CBRE

FOR SUBLEASE OFFICE SPACE

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Emeryville, CA 94608

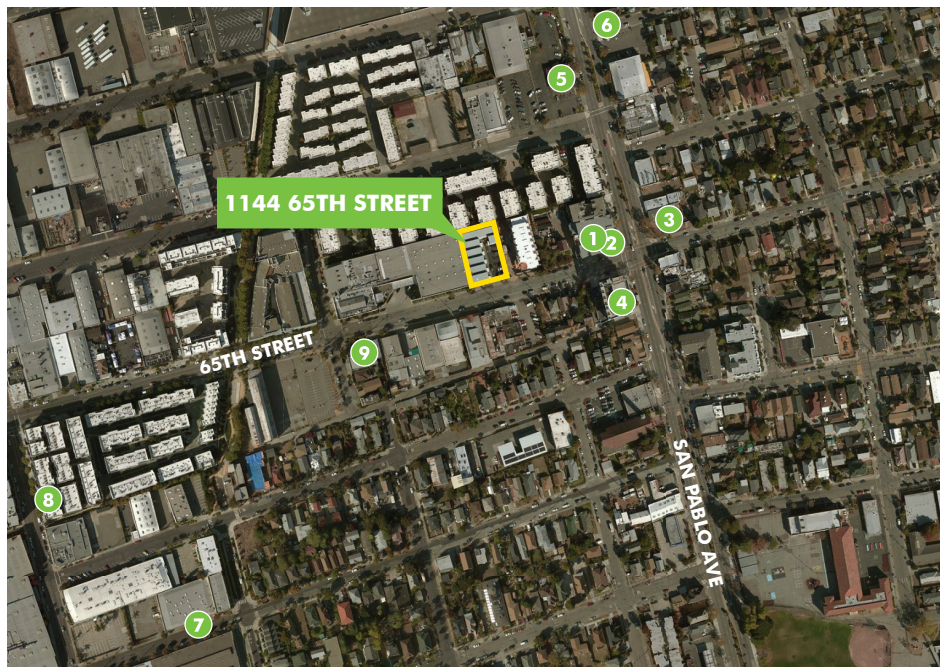


SUBLEASE TERMS

PREMISES	± 1,650 RSF
AVAILABILITY	Immediate
TERM	Through April 30, 2020
NET RENTAL RATE	Negotiable
PARKING	One dedicated space
COMMISSION	\$1.50 PSF/YR



AERIAL MAP



AREA AMENITIES

- 1 Home Grown Oakland
- 2 Tribu Cafe
- 3 Novel Brewing Company
- 4 Oakland Fitness Company
- 5 McDonald's
- 6 Chile Jalapenos
- 7 Counter Culture Coffee
- 8 Subway
- 9 Dee Spot

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LICENSE AGREEMENT

LICENSE AGREEMENT (this "Agreement") made this ____ day of February, 2018 (the "Effective Date"), by and between **NOVARTIS VACCINES AND DIAGNOSTICS, INC.**, a Delaware corporation, having an address at Novartis Services, Inc., One Health Plaza, East Hanover, New Jersey 07936 Attention: Kathy Winkler ("Licensor") and **EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION** a [LICENSEE TO PROVIDE] _____ having an office at c/o Gray-Bowen Scott, 1211 Newell Avenue, Suite 200, Walnut Creek, California 94596 ("Licensee").

W I T N E S S E T H:

WHEREAS, Licensee desires to operate a surface bus storage parking lot for busses being operated by Licensee in the Emeryville, California area known as the "Emery Go-Round" on that certain property commonly known as 4555 Horton Street, Emeryville California, as more particularly shown on Exhibit A attached hereto (the "Space"); and

WHEREAS, Licensor is willing to permit Licensee to use the Space as a surface storage parking lot for busses being operated by Licensee in the Emeryville, California area known as the "Emery Go-Round" on the terms and conditions set forth herein; NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. (a) Subject to terms of this Agreement, Licensor hereby grants unto Licensee a revocable license to operate a surface bus storage parking lot for busses being operated by Licensee in the Emeryville, California area known as the "Emery Go-Round", a parking lot for Licensee's employee parking and the performance of "Light Maintenance" (as hereafter defined) on the busses, and for no other purpose (the "Permitted Use"). Licensee shall not allow any motor vehicle (including, without limitation, busses, trucks or passenger automobiles) that are leaking any type of fluid (including, without limitation, oil anti-freeze, transmission and brake fluids) to be stored at the Space at any time during the term of this Agreement. If Licensee discovers any motor vehicle leaking any type of fluid, Licensee shall promptly remove such motor vehicle from the Space, and said motor vehicle shall not be permitted to be stored at the Space until the leak has been properly repaired. For purposes of this Agreement "Light Maintenance" shall mean

the performance of minor repairs to the Licensee's busses including exterior and interior lighting, door mechanics, tires, and windshield wipers. Notwithstanding anything to the contrary contained herein, Licensee agrees that "Light Maintenance" shall not include any repairs or maintenance (including, without limitation the changing of any petroleum based or other motor vehicle fluids in Licensee's buses or any motor vehicles brought into the Space, any repairs or to the engines, coolant systems), power trains, transmissions, heating and air-conditioning systems, braking or any other major mechanical systems in Licensee's buses or any motor vehicles brought into the Space, (but does include the addition ("topping-off") of fluids for the motor vehicles used by Licensee) ~~the exterior cleaning of Licensee's buses or any motor vehicles brought into the Space,~~ which activities are expressly prohibited under this Agreement **[TO DISCUSS ADDITIONAL SPECIFIC INCLUSIONS AND EXCLUSIONS APPLICABLE TO LIGHT MAINTENANCE WITH THE LICENSEE]**. In addition, Licensee may perform the exterior cleaning of Licensee's buses or motor vehicles brought into the Space, provided that Licensee follows the protocols attached as Exhibit — C. As a material inducement for Licensors to enter into this Agreement, Licensee shall not; (i) generate, store, transport, treat, dispose of or use hazardous or toxic substances or wastes as defined under any applicable federal, state, county or local law or regulation ("Hazardous Substances") at the Space, or (ii) construct any structure at the Space, without Licensors' prior written consent, which consent may be withheld in Licensors' sole discretion.

2. Licensee agrees to accept the Space in its AS IS condition as of the date of this Agreement.

3. (a) The term of this Agreement shall commence on April 1, 2018 (the "Commencement Date") and expire on the earlier to occur of (i) the termination of this Agreement by Licensors (1) following a default by Licensee under this Agreement, and/or (2) in accordance with the provisions of Paragraph 9 of this Agreement or (ii) March 31, 2020 (the "Expiration Date").

(b) On or before the Expiration Date, Licensee shall peacefully yield up to Licensors the Space in the "Surrender Condition" (as hereafter defined). On or before the Expiration Date, Licensee shall, at Licensee's sole cost and expense, remove all "Licensee Work" (as hereafter defined), repair any damage caused by such removal, re-stripe the parking areas within the Space to match the layout and design on the

Commented [RH1]: We would like to be permitted to "top off" vehicle fluids on site. Such fluids (engine oil and coolant) would be stored off site in a maintenance vehicle. The maintenance vehicle would be brought on site, only during the period in which light maintenance is conducted. We would also like permission to wash vehicles on site, per the bus washing protocols attached.

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Commencement Date as more particularly shown on Exhibit A and surrender the Space to Licenser in substantially the same condition as the Space was on the Commencement Date, reasonable wear and tear excepted (collectively, the "Surrender Condition") **[LICENSEE TO PROVIDE A COMPLETE DESCRIPTION OF WORK IT INTENDS TO PERFORM. LICENSOR MAY REQUIRE ADDITIONAL RESTORATION WORK BEFORE THE EXPIRATION DATE]**. If Licensee fails to vacate the Space on the earlier to occur of (i) the termination date set forth in Licenser's notice given to Licensee following a default by Licensee, or in accordance with the provisions of Paragraph 9 of this Agreement, as the case may be, or (ii) March 31, 2020, as the case may be, Licensee shall pay to Licenser a sum equal to \$14,000.00 per month for month or partial month that Licensee fails to vacate the Space.

4. (a) Beginning on the Commencement Date, Licensee shall pay to Licenser for the use of the Space the sum of \$6,000.00 per month for the term of this Agreement (the "Fee"). The monthly installments of the Fee shall be paid in advance, without set-offs or deductions of any kind, on the 1st day of each calendar month, commencing on the Commencement Date. The Fee for any partial month during the term of this Agreement shall be pro-rated on a per diem basis.

(b) Beginning on the Commencement Date, the costs of electricity consumed by Licensee in the Space shall be measured by a separate meter maintained by Licenser and billed to Licensee. Licensee shall pay Licenser for all electricity consumed Licensee at the Space during the term of this Agreement, as measured by the meter, within thirty (30) days after Licenser gives a statement to Licensee. During the term of this Agreement, Licensee shall, at Licensee's sole cost and expense, repair all parking lot lighting poles and equipment at the Space and maintain same in good working order and repair.

(c) Notwithstanding anything to the contrary contained herein, if the City of Emeryville or any governmental entity in the State of California shall enact any tax, imposition or assessment of any kind levied against commercial parking lots during the term of this Agreement, then Licensee shall pay Licenser all amounts required to be paid by Licenser as a result of such tax, imposition or assessment in connection with the Licensee's use of the Space within thirty (30) days after Licenser gives a statement to Licensee.

(d) All payments due Licenser under this Agreement shall be payable to "Novartis Services, Inc." and shall be sent

to Novartis Services, Inc., One Health Plaza, East Hanover, New Jersey 07936 Attention: Kathy Winkler, or to such other address as shall be provided by Licensor to Licensee in writing during the term of this Agreement.

5. (a) As a material inducement for Licensor to enter into this Agreement, Licensee shall not; (1) generate, store, transport, treat, dispose of or use hazardous or toxic substances or wastes as defined under any applicable federal, state, county or local law or regulation ("Hazardous Substances") in, at or upon the Space, or (2) construct any structure at the Space, without Licensor's prior written consent, which consent may be withheld in Licensor's sole discretion. In addition, Licensee covenants and agrees that (i) the Space shall be used for only the Permitted Use, (ii) the Space shall not be used for any unlawful purpose, (iii) Licensee shall conduct its business in a good and orderly manner, (iv) Licensee shall maintain the fencing, gates, parking lot lighting poles and equipment and asphalt in good condition at all times during the term of this Agreement and keep the Space in a clean and sanitary condition, and (v) Licensee shall not do or permit to be done anything upon the Space which may subject Licensor to any liability for injury or damage to person or property, or result in a violation of any law, ordinance or regulation of any governmental authority, agency or department. Licensee shall maintain and perform all required repairs to the Space (including, without limitation, the fencing, gates, parking lot lighting poles and equipment and asphalt) during the term of this Agreement, at its sole cost and expense. Provided, however, if any such maintenance or repair is required as a result of the acts or negligence of Licensor or its employees, servants, agents, contractors, guests, visitors or invitees, then Licensor shall reimburse Licensee for the cost of such maintenance or repair within thirty (30) days after Licensor's receipt of a statement setting forth the cost of such maintenance or repair. Licensee shall keep the sidewalk in front of the Space and the Space in a clean condition free of snow, ice and debris.

(b) In order to prepare the Space for Licensee's use in accordance with the provisions of this Agreement, Licensee desires to perform certain alterations to the Space including the removal and replacement of portions of the parking lot striping that are in place on the Effective Date, the installation of protection for the parking lot lighting poles and equipment and the utility vault and such other work that is

Commented [RH2]: Please confirm ETMA will be required to maintain electronic access gate. The local Novartis representative mentioned Novartis would provide access cards to use the electronic gate, so I assumed Novartis would be responsible for the gate.

more particularly described on Exhibit B attached hereto (collectively, the "Licensee's Work"). Licensors hereby consents to the Licensee performing the Licensee's Work, as more particularly described on Exhibit B attached hereto **[LICENSEE TO PROVIDE A COMPLETE DESCRIPTION OF WORK IT INTENDS TO PERFORM TO BE ATTACHED AS EXHIBIT B, AND THE NAMES OF PROPOSED CONTRACTORS FOR LICENSOR'S PRIOR APPROVAL.]**, at Licensee's sole cost and expense, using contractors approved in writing by Licensors, and in accordance with all "Legal Requirements" (as hereafter defined). The Licensee shall perform and complete the Licensee's Work in a good and workmanlike manner using all reasonable diligence.

Commented [RH3]: Final design and specs are pending from BKF Engineers. Bidding to follow.

(c) Except as expressly provided in Paragraph 3(b), Licensee shall not make any alterations, additions or improvements to the Space, without the prior written consent of Licensors, which consent shall be in Licensors's sole discretion. If Licensors elects to consent to any alteration, addition or improvement to the Space, Licensors shall have the right to require Licensee to remove said alteration, addition or improvement upon the expiration of this Agreement, to repair all damage to the Space caused by said removal and to restore the Space to its condition immediately before said alteration, addition or improvement, reasonable wear and tear excepted.

(d) Licensee shall comply with all applicable federal, state and local laws, rules and regulations (including, without limitation, environmental laws, rules and regulations) (collectively, the "Legal Requirements") insofar as they pertain to the Licensee's use of the Space for the Permitted Use and the performance of any alterations, additions, improvements, maintenance and/or repairs to the Space (including, without limitation, the Licensee's Work).

(e) Licensee shall be responsible to Licensors for any leak, spill, release, discharge, emission or disposal of Hazardous Substances which occurred at the Space during the term of this Agreement, unless same shall be caused by the negligence or acts of Licensors, or its employees, servants, agents, contractors, guests, visitors or invitees.

6. No landlord-tenant relationship and no tenancy, leasehold or estate rights on the part of Licensee in the Space shall at any time be construed to arise, exist or to have been created by the execution and delivery of this Agreement. Licensee hereby expressly acknowledges (i) that it has no interest or estate in the Space, (ii) that this is a revocable

license which can be terminated or revoked at any time following a default by Licensee, or otherwise in accordance with the provisions of Paragraph 9 below.

7. Licensee expressly covenants that it shall not assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement, or sublicense the whole or any part of the Space, or permit, or suffer to permit, the Space to be used by anyone other than those persons authorized hereunder without the express written consent of Licensor in each instance, which consent may be withheld in Licensor's sole discretion.

8. (a) Licensee hereby agrees to indemnify and hold Licensor harmless from and against any and all liabilities, obligations, damages, penalties, claims, demands, fines, suits, actions, proceedings, orders, decrees, judgments, costs and expenses (including reasonable attorney's fees and disbursements) of any kind or nature arising out of (i) any act or negligence of Licensee or its employees, servants, agents, contractors, guests, visitors or invitees, (ii) any personal injury or property damage occurring in or about the Space caused by the negligence or acts of Licensee or its employees, servants, agents, contractors, guests, visitors or invitees, (iii) any breach by Licensee or its employees, servants, agents, contractors, guests, visitors or invitees of the terms, representations, obligations, agreements and/or warranties contained in this Agreement, or (iv) the presence of Hazardous Materials at the Space arising from the Licensee's and/or Licensee's employees, servants, agents, contractors, guests, visitors or invitees, use of the Space during the term of this Agreement. The provisions of this Paragraph 6(a) shall expressly survive the Expiration Date of this Agreement.

(b) Licensee hereby expressly agrees and acknowledges that Licensor shall not be liable to Licensee or its employees, servants, agents, contractors, guests, visitors or invitees, or any other person on or about the Space for any injury to any person or damage to any property, or for any loss incurred on or about the Space regardless of the cause thereof, and Licensee hereby releases Licensor from all such liability.

9. Licensee shall obtain, and shall keep in full force and effect during the term of this Agreement, the following applicable insurance coverages on a primary and non-contributory basis, with insurers which are eligible to do business in the State of California and which are rated at least A- VIII in Best's Key Rating Guide. Any deductibles associated with the

required insurance coverage set forth below will be assumed by Licensee at its sole cost:

(i) commercial general liability insurance on an occurrence form (including, during any period when Licensee is making alterations or improvements to the Space, coverage for any construction on or about the Space), against claims for bodily injury, personal injury, death or property damage occurring on, in or about the Space, or as a result of ownership of facilities located on the Space, in a per occurrence amount of not less than Five Million Dollars (\$5,000,000) and Five Million Dollars (\$5,000,000) in the policy aggregate. The limit required may be achieved by the combination of general liability and umbrella / excess liability. Any umbrella / excess liability will provide coverage excess of the underlying CGL, Auto liability and employer's liability insurance;

(ii) workers' compensation insurance coverage, including occupational disease, for the full statutory liability limit where workers of Licensee are located;

(iii) employers liability insurance coverage in the amount of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease for each employee, and \$1,000,000 bodily injury and bodily injury by disease in the policy aggregate;

~~(iv) business interruption insurance in such amounts as will reimburse Licensee for direct and indirect loss of earnings attributable to those events commonly insured against by reasonable prudent Licensees and/or attributable to Licensee's inability to access or to occupy (all or part of) the Space; and~~

~~(v) Special Form Property coverage, including, but not limited to, standard fire and extended coverage insurance with theft, vandalism and malicious mischief endorsements, on all personal property of Licensee and on all improvements and alterations made by, on behalf of and/or at the expense of Licensee in or about the Space to the extent of their full replacement value.~~

~~(vi)~~ (iv) comprehensive automobile liability insurance coverage, including hired, owned, and non-owned vehicles with a combined single limit of not less than \$1,000,000;

Commented [RH4]: Emeryville TMA does not have employees. Workers compensation coverage is provided by the contractor.

Commented [RH5]: Emeryville TMA does not have employees. Contractor provides employers liability coverage.

Commented [RH6]: Could this be removed as an insurance requirement? Not necessarily applicable to our non-profit service.

Commented [RH7]: Could this be removed as an insurance requirement?

Commented [RH8]: Emeryville TMA does not have employees, therefore, does not carry auto liability insurance. Coverage for fleet vehicles and operators is provided by contractor.

~~(vii)~~(v) such other insurance with respect to the Space in such amounts and against such insurable exposures as may reasonably and customarily be required of any Licensee utilizing Space for the designated purpose.

(a) Licensee shall cause, via a written agreement, any contractor working for or on behalf of Licensee in or about the Space to maintain the same levels of insurance as required of Licensee in this Paragraph 9 as to coverage types, limits and terms. Such requirements shall include contractor adding Licensor, Landlord and Landlord's managing agent as additional insured per Paragraph 9 (b), and contractor's insurance being primary and non-contributory as respects those additional insureds. Licensee and or contractor shall provide evidence of such insurance to Licensor prior to entering the Space, prior to each renewal, and otherwise upon such reasonable request by Licensor.

(b) The policies of insurance required to be maintained by Licensee pursuant to Paragraph 9 shall name Licensee as named insured and shall name Licensor as additional insured parties (except for workers' compensation insurance, employer's liability, property insurance and business interruption insurance) and shall be reasonably satisfactory to Licensor. In addition, said policies of insurance (except for worker's compensation insurance) shall not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Space against the peril involved, whether collectible or not; and the policies of insurance required to be maintained by Licensee pursuant to subsection (i) shall also include contractual liability. In addition to the foregoing, Licensor may, to the extent permitted by law, require that Licensee name as additional insureds such other persons or entities as Licensor may designate in writing, and original or duplicate policies evidencing the addition of such parties as additional insureds shall be delivered to Licensor not later than ten (10) days following Licensor's written notice designating such additional insureds.

(c) On or prior to the Effective Date, Licensee shall deliver to Licensor certificates of insurance evidencing all the insurance which is required to be maintained hereunder by Licensee, and, within ten (10) days prior to the expiration of any such insurance, other certificates evidencing the renewal of such insurance.

(d) Licensee shall have included in each of its insurance policies (insuring the Licensee's personal property, trade fixtures, equipment and improvements against loss, damage or destruction) a waiver of the insurer's right of subrogation against the Licensors.

(e) Except in the case of negligence or willful acts of misconduct, and notwithstanding any provision contained herein to the contrary, Licensors and Licensee each hereby waives any and all rights of recovery, claims, actions or causes of action against the other, its agents, servants, partners, shareholders, officers, or employees, for any loss or damage that may occur to the Space, or any improvements thereto, or any personal property of such party therein, caused or occasioned by any peril to the extent which it is or could be insured under the special form coverage insurance policies required to be carried by any party under this Agreement, or which is otherwise insured, regardless of cause or origin.

(f) limits of insurance coverage will not affect or limit the liability or indemnity obligations of Licensee stated elsewhere in this Agreement or as required by law. By requiring Licensee to maintain insurance, Licensors does not represent that coverage and limits required will be adequate to fund all losses for which Licensors may be liable.

10. Licensors shall have the right to terminate this Agreement for any reason at any time during the term upon six (6) months prior written notice to Licensee (the "Termination Notice"). On or before the early termination date set forth in the Termination Notice, Licensee shall otherwise comply with all obligations of Licensee under this Agreement up to and including the Expiration Date, remove all of its personal property and equipment, and vacate and deliver the Space to Licensors in the Surrender Condition.

11. Notwithstanding anything contained in this Agreement to the contrary, it is specifically understood and agreed that Licensee shall look solely to the equity of Licensors in the Space for the satisfaction of Licensee's and such person's remedies and claims for damages or otherwise arising out of or in connection with the terms, covenants, conditions and provisions of this Agreement, and that Licensors's liability shall be limited to such equity interest. Further, nothing herein shall permit Licensee or any other person or entity to bring any proceeding or cause of action at law or in equity against any partner (disclosed or undisclosed) in Licensors, or

any officer, director or shareholder, beneficiary, employee, agent or representative in any of the foregoing, nor shall any of them be liable or accountable for any damages, costs, expenses or liabilities arising, directly or indirectly, out of this Agreement, and Licensee hereby waives the right to bring any such proceeding or cause of action against any partner (disclosed or undisclosed) in Licensor, or any officer, director or shareholder, beneficiary, employee, agent or representative of Licensor.

12. Licensor has advised Licensee, and Licensee hereby confirms that; (i) the southerly portion of the Space is subject to that certain Amended and Restated Reciprocal Access Agreement between Chiron (now Novartis) and Sherwin Williams dated effective December 1, 2010 (the "Access Agreement"), pursuant to which Sherwin Williams's agents have the right to enter onto the southerly portion of the Space periodically to access ten (10) flush mounted ground water monitoring wells located at the Space for purposes of conducting monitoring testing for groundwater contamination in connection with Sherwin Williams ongoing obligation to monitor and remediate the groundwater under the Space, and Licensee hereby waives any claim against Licensor for damage or inconvenience caused by any such access or work, and (ii) Licensor hereby retains the right to allow Licensor's employees, invitees, contractors, contract vendees, successors and assignees collectively, the "Licensor Parties") to access the Space from time to time during the term of this Agreement for purposes of inspection, maintenance, the performance of repairs, conducting certain environmental sampling and testing of both the soil and groundwater under the Space and for showing the Space to prospective tenants, purchasers and lenders, and Licensee hereby waives any claim against Landlord for damage or inconvenience caused by any such access or work. Except in the case of an emergency (in which case no prior notice shall be required), Licensor shall give Licensee not less than twenty four (24) advance notice (which notice may be given by electronic mail) of Licensor's agents and/or Sherwin Williams's agents intent to enter the Space. Notwithstanding anything to the contrary contained herein, Licensee acknowledges and agrees that Licensee may be required to temporarily remove all busses and motor vehicles from the Space during any period that Licensor, Licensor's agents and/or Sherwin Williams's agents are accessing the Space in accordance with the provisions of this Paragraph, which removal may be required for a period of up to twenty four (24) hours at a time **[NOVARTIS CURRENTLY REVIEWING THE RESERVATION OF RIGHTS UNDER THIS PARAGRAPH 12, ADDITIONAL REVISIONS MAY BE REQUIRED]**.

13. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when received if delivered by messenger or sent by overnight courier (providing evidence of receipt) or by certified mail, return receipt requested, postage prepaid, to the address specified below for Licensor or Licensee, as the case may be, or at such other address as either party shall furnish in writing to the other party from time to time during the term of this Agreement. If to Licensor, as follows:

Novartis Services, Inc.
One Health Plaza
East Hanover, NJ 07936
Attention: Kathy Winkler
Email: kathy.winkler@novartis.com

with a copy to:

Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
6th Floor
New Brunswick, NJ 08901
Attention: Karl Piirimae, Esq.
Email: kpiirimae@windelsmarx.com

and if to Licensee, as follows:

Emeryville Transportation Management Association
c/o Gray-Bowen Scott
1211 Newell Avenue, Suite 200
Walnut Creek, CA 94105
Attention: Executive Director
Email: roni@graybowenscott.com

with a copy to:

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attention: Michael Conneran

14. In the event that the Space shall be closed due to an earthquake, fire or other casualty, or the Space is taken by appropriation by eminent domain, and the Space becomes unsuitable for the Permitted Use, then this Agreement shall

terminate and be of no further force and effect, as of the date the Space becomes unsuitable for the Permitted Use.

15. Licensors and Licensee each represents to the other that it has not dealt with any brokers or agents other than Newmark Knight Frank (the "Licensor's Broker") with respect to this Agreement and each shall indemnify and hold harmless the other from and against any and all liabilities, claims, suits, demands, judgments, costs and expenses to which it may be subject or suffer by reason of any claim made by any person, firm or corporation other than the Licensor's Broker for any commission, expense or other compensation as a result of the execution and delivery of this Agreement and based on alleged conversations or negotiations by said person, firm or corporation with either Licensor or Licensee, as the case may be.

16. If Licensee shall default in the performance or observance of any agreement or condition on its part to be performed or observed under this Agreement and if Licensee shall fail to cure said default within five (5) days after written notice of said default from Licensor (or such longer period (not to exceed twenty (20) days) if said default is not of a nature that can be cured within said five (5) day period provided Licensee has commenced the cure of such default within said five (5) day period and thereafter prosecutes the curing of said default with due diligence), then Licensor may immediately, or at any time thereafter, and without further notice, terminate this Agreement, and Licensee shall forthwith quit the Space but Licensee shall remain liable to Licensor for all money and other damages arising directly from said default, including, without limitation, all costs and expenses incurred by Licensor to restore the Space to the Surrender Condition.

17. (a) Concurrently with the execution of this Agreement, Licensee shall deposit with Licensor the sum of \$(11,000.00), the same to be held by Licensor as security for the full and faithful performance by Licensee of the terms and conditions by it to be observed and performed hereunder. If any Fee or other sum payable by Licensee to Licensor becomes overdue and remains unpaid after any required notice and the expiration of any applicable cure period, or should Licensor make any payments on behalf of Licensee, or should Licensee fail to perform any of the terms and conditions of this Agreement, then Licensor, at its option, and without prejudice to any other remedy which Licensor may have on account thereof, shall appropriate and apply said deposit, or so much thereof as may be required to compensate or reimburse

Licensor, as the case may be, toward the payment of any Fee or other such sum payable hereunder, or actual loss or actual damage sustained by Licensor due to the breach or failure to perform on the part of Licensee, and upon demand, Licensee shall restore such security to the original sum deposited.

(b) Conditioned upon the full compliance by Licensee of all of the terms of this Agreement, and the prompt payment of all sums due hereunder, as and when they fall due, said deposit shall be returned in full to Licensee within thirty (30) days after the Expiration Date.

(c) In the event of any transfer of title to the Space, or any assignment of Licensor interest under this Agreement, Licensor shall have the right to transfer the security deposit to said transferee or assignee, and Licensor shall thereupon be released by Licensee from all liability for the return of such security deposit. In such event, Licensee agrees to look to the new licensor for the return of the security deposit. It is hereby agreed that the provisions of this Paragraph shall apply to every transfer or assignment made of the security deposit to a new licensor.

18. This Agreement shall constitute the entire contract between the parties and shall supersede any and all prior agreements between the parties hereto with respect to the granting of a license to Licensee to use the Space.

19. No modification, waiver or amendment of this Agreement or any provision hereof shall be valid unless the same is in writing, and signed by both parties hereto.

20. If any provision of this Agreement shall be deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

21. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

22. This Agreement may be executed in counterparts each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement. Facsimile and/or electronic signatures may be relied upon as if the same were original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

LICENSOR:

NOVARTIS VACCINES AND DIAGNOSTICS,
INC.,
A Delaware corporation

By: _____
Name: Robert Ackerman
Title: Vice President & Officer

LICENSEE:

EMERYVILLE TRANSPORTATION
MANAGEMENT ASSOCIATION

BY: _____
Name:
Title:

EXHIBIT A

(separate attachment)

SPACE

EXHIBIT "B"

LICENSEE'S WORK

~~[LICENSEE TO PROVIDE]~~

Slurry Seal - overlay of a slurry seal on the designated portion of the site, shown in Exhibit A.

Restriping - restriping of parking lot, per layout shown in Exhibit A.

Slurry seal and restriping work to be provided by a third party licensed and insured contractor. Contractor selection to commence upon completion of design package.

Signage Installation - Attach one address label sign (not to exceed 2 square feet) and one Emery Go-Round sign (not to exceed 6 square feet) on the exterior of the chain link fence, near the entrance of the site, as required per the City of Emeryville Conditions of Approval. Signage to be installed by Licensee.

Storage Shed - Installation of the following 10'x 10' storage shed, by Tuff Shed installation crew. Storage shed shall be placed in the designated area shown in Exhibit A.



Standard Specifications:

<u>FEATURE</u>	<u>SPECIFICATIONS</u>
<u>Warranty</u>	<u>5-year</u>
<u>Floor Joist System</u>	<u>6" tall galvanized steel</u>
<u>Floor Decking</u>	<u>3/4" interlocking sturdy-floor premium OSB floor decking</u>
<u>Aluminum threshold at door</u>	<u>Included</u>
<u>Door Hardware</u>	<u>Patented 6" locking handle and 3 ultra-heavy-duty hinges</u>
<u>Steel-Reinforced Door Size</u>	<u>4' x 6' placed on end wall</u>
<u>Interior Clear Sidewall Height</u>	<u>5' 8"</u>
<u>Wall Framing</u>	<u>2 x 4 studs spaced 16" on-center</u>
<u>2 x 4 Wall Top Plates</u>	<u>2 plates on sidewalls only</u>
<u>Siding Type</u>	<u>LP® Smart Side w/50-Year warranty</u>
<u>Trim Type</u>	<u>LP® Smart Trim w/50-Year warranty</u>
<u>Roof Decking</u>	<u>7/16" premium OSB roof decking</u>
<u>Rafters and Trusses</u>	<u>2 x 4 rafters joined w/ steel plates</u>
<u>Colored, Baked Enamel Drip Edge</u>	<u>Included on perimeter of roof</u>
<u>Roofing Felt Paper</u>	<u>15# felt included</u>
<u>Owens Corning Shingles</u>	<u>25-year 3-tab composition shingle</u>
<u>Eave Type</u>	<u>4" block eave on sidewall</u>
<u>Roof pitch at peak</u>	<u>(4/12)</u>
<u>On-Site Installation Included*</u>	<u>Yes</u>

[illegible]

EXHIBIT "C"

FLEET WASHING PROTOCOL

1. Water to be provided by Licensee, via a mobile vehicle.
2. Licensee will use absorbent mats, pig socks or appropriate materials to comply with California's environmental regulations to prevent water entering storm drains on site.
3. Licensee will set up portable dam to capture water.
4. Shuttle will be placed onto the portable dam. Washers will then wash the vehicle.
5. Water will be captured inside of the portable dam, the water will then be recovered by Licensee to prevent any waste water from entering storm drains.
6. Once contained the waste water will then be removed from the portable dam using a vacuum system mounted inside the mobile vehicle.
7. Licensee will collect and properly dispose of any water used during each washing service.
8. Vehicles will be kept clean using environmental friendly products.

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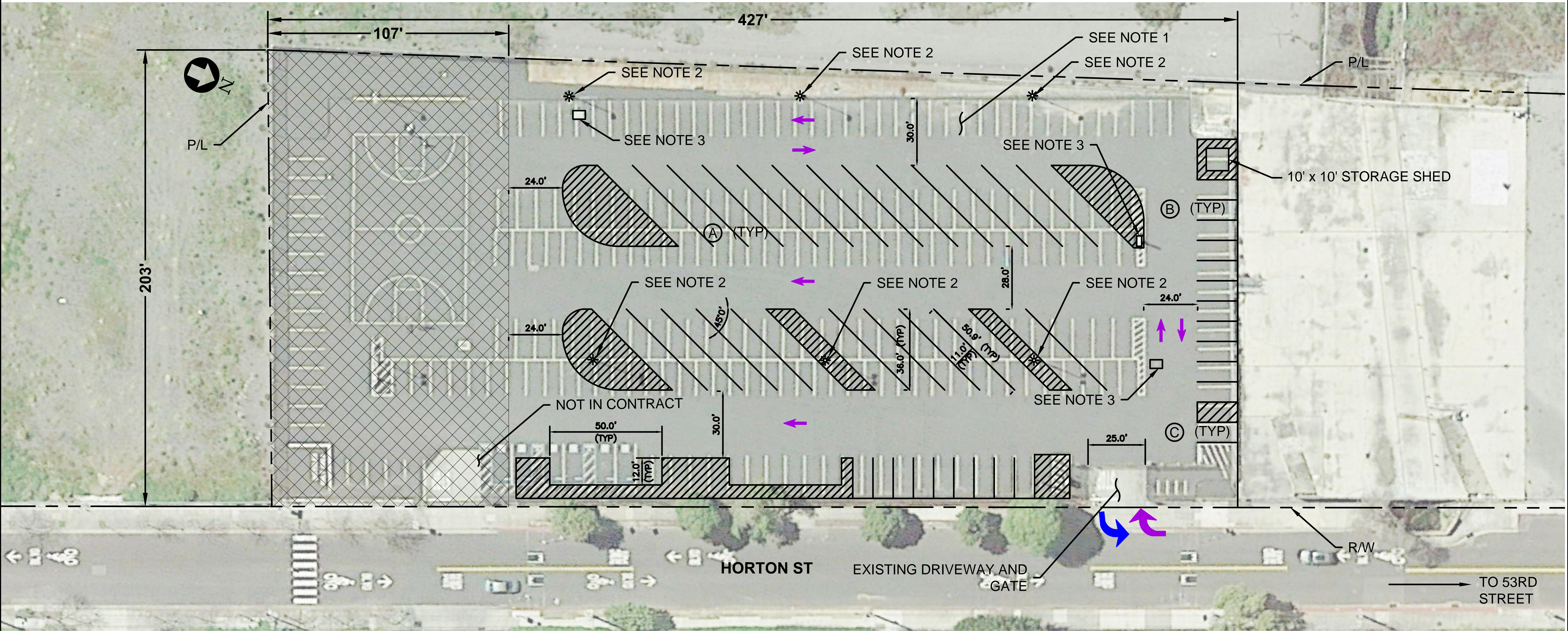
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EMERY GO-ROUND

HORTON STREET YARD, EMERYVILLE

ANGLED
PARKING



NOTES

1. REMOVE (E) STRIPING THAT CONFLICTS WITH WORK.
2. PROTECT IN PLACE STREET LIGHTS.
3. PROTECT IN PLACE UTILITY.

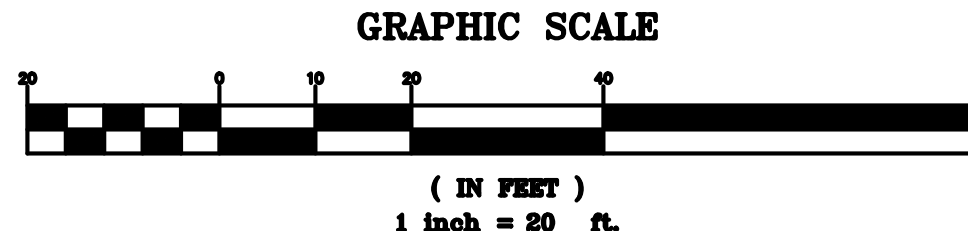
LEGEND:

- STRIPING
- DIRECTIONAL ARROW
- RIGHT OF WAY / PROPERTY LINE
- INGRESS MOVEMENT
- EGRESS MOVEMENT

PLAN

PARKING CRITERIA

VEHICLE	MIN #	STALL DIMENSIONS
(A) 40' VEHICLE	26	11' x 50.9'
(B) EMPLOYEE PARKING	19	9' x 18'
(C) ADA	2	9' x 18'



FEBRUARY 23, 2018
SCALE: 1" = 20'

**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND BKF ENGINEERS**

THIS AMENDMENT NO. 4 to agreement dated July 19, 2017 between the Emeryville Transportation Management Association, a California non-profit corporation, herein called the "Association," and BKF Engineers, a California Corporation, herein called the "Consultant."

RECITALS

WHEREAS, Association retained Consultant to provide preliminary engineering services to conduct a feasibility analysis on accessibility to a potential bus yard site from Mandela Parkway for an amount not to exceed \$5,000; and

WHEREAS, Association amended the agreement to increase the compensation limit by \$38,436 and expand the scope of work to include surveying, conceptual site design and landscaping design services for a potential bus yard on Mandela Parkway in the City of Oakland; and

WHEREAS, Association amended the agreement further to increase the compensation limit by \$8,900 and expand the scope of work to include a circulation study and conceptual site design for a potential short term parking lease on Horton Street in the City of Emeryville; and

WHEREAS, Association amend the agreement further to extend the term of services one (1) year to December 31st, 2018; and

WHEREAS, Association now wishes to further amend the agreement to increase the compensation limit by \$16,320 and to expand the scope of services to finalize the site plan and construction documents for the proposed improvements at the short term parking site on Horton Street, as described in Exhibit A, attached.

NOW, THEREFORE, BE IT MUTUALLY AGREED that Section 3A of the agreement be amended to increase the total compensation by \$16,230 for a total not to exceed limit of \$68,556.

IN WITNESS WHEREOF, the Association approved Amendment No. 4 to this Agreement on the ____ of _____, 2018.

EMERYVILLE TRANSPORTATION
MANAGEMENT ASSOCIATION

CONSULTANT

By: _____
Chair

By: _____



March 5th, 2018
BKF No. 20176196

Roni Hattrup
Emeryville Transportation Management Association
Gray-Bowen-Scott
1676 N. California Blvd., Suite 400
Walnut Creek, California 94596

**Subject: Proposed Emery Go-Round, Horton Street Interim Bus Yard
Planning Commission Preparation and Construction Documents,**

Dear Ms. Hattrup,

In response to your email dated 2/15/18, requesting that BKF provide support for the Horton Street Interim Bus Yard project, BKF Engineers (BKF) has prepared the following scope of work and fee estimate:

<i>TASK 1 – Planning Commission Preparation</i>	<i>\$3,500</i>
<i>TASK 2 – Horton Yard Construction Documents</i>	<i>\$10,000</i>
<i>TASK 3 – Construction Support</i>	<i>\$2,500</i>
<i>Reimbursables</i>	<i>\$320</i>
<i>TOTAL</i>	<i>\$16,320</i>

BKF Engineers (BKF) is submitting this scope of work as summarized below:

TASK 1 – Planning Commission Preparation

BKF will perform a field walk with Emery-Go-Round Staff and Novartis to confirm layout of the bus yard. BKF will prepare exhibits and documentation to support efforts in Planning Commission Approval.

TASK 1 – DELIVERABLES:

- » Site Photos/Field Notes
- » Exhibits for Planning Commission

TASK 2 – Horton Yard Construction Documents

Based on input from the site visit and planning commission comments, BKF will prepare bid-ready documents for the bus yard restriping. BKF will prepare a title sheet, existing conditions plan, a signing and striping plan, and a construction details plan. All project specification items will be placed on the sheets, and standalone technical specifications will not be provided. BKF will also prepare an Engineer's Estimate and a work description for use in the Planning Commission permits. This task assumes one round of comment and review.

TASK 2 – DELIVERABLES:

- » Draft Construction Documents (Plans and Estimate)
- » Final Construction Documents (Plans and Estimate)

TASK 3 – Construction Support

BKF is prepared to provide construction support services for the bus yard striping to include attendance at one construction meeting, submittal review and responding to contractor request for information (RFI).

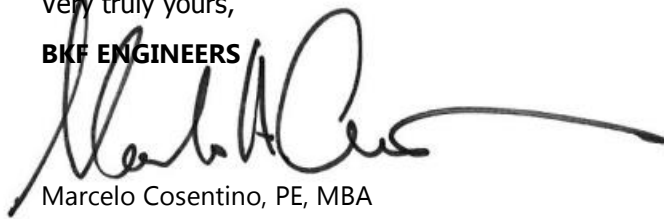
TASK 1 – DELIVERABLES:

- » Submittal Review
- » Response to RFIs

BKF looks forward to providing the Emeryville Transportation Management Association and Gray-Bowen-Scott with professional service and quality in preparation of the Horton Street Yard Construction Documents. We appreciate the opportunity to submit this proposal and look forward to working with you.

Very truly yours,

BKF ENGINEERS



Marcelo Cosentino, PE, MBA
Project Manager

Attachments:

1. Email from Roni Hattrup

Blake Silkwood

From: Roni Hattrup <Roni@graybowenscott.com>
Sent: Thursday, February 15, 2018 2:03 PM
To: Marcelo Cosentino; Blake Silkwood
Subject: Urgent: Horton site
Attachments: 20171120 EGR Site Plan_Horton_1-Layout1.pdf; 20171120 EGR Site Plan_Horton_2-Layout1.pdf

Hi Marcelo,

I've just learned that I will need to complete a Conditional Use Permit application for the Horton Street site and I was hoping to talk through what is needed so we can finalize the materials required for the application. Could either of you give me a call to discuss?

Thanks.

Veronica'Roni' Hattrup
Emeryville Transportation Management Association
Gray-Bowen-Scott
1676 N. California Blvd., Suite 400
T: (925)937-0980 ext. 212
C: (925) 899-4246

www.emerygoround.com

