

RESOLUTION NO. 21-09

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Sublease For Bus Bays Between The City Of Emeryville And The National Railroad Passenger Corporation ("Amtrak") For The Bus Bays Located In The Podium Of The EmeryStation West/Transit Center Project At 5959 Horton Street

WHEREAS, the City has worked since 1998 to redevelop the 1.58-acre property located at 59th Street and Horton Street north of the Amtrak Station (the "Site"); and

WHEREAS, on October 21, 2003 the Emeryville Redevelopment Agency (the "Former Agency") adopted Resolution No. RD56-03 designating the Site as a location for a proposed transit center and mixed-use project and solicited redevelopment proposals for redevelopment of the Site; and

WHEREAS, on September 6, 2005 the Former Agency adopted Resolution No. RD54-05 authorizing the execution of an Exclusive Right to Negotiate Agreement between the Former Agency and Wareham Development Corporation to establish terms and conditions and obtain environmental clearance and project approvals for a mixed use project including public parking spaces, bus bays, plaza, transit improvements, office and laboratory space, retail space and private parking spaces (the "Transit Center Project"); and

WHEREAS, on February 16, 2010 the City Council approved a Conditional Use Permit and Design Review for the EmeryStation West/Transit Center Project (Resolution 10-33); and

WHEREAS, on August 10, 2012 the City entered into that certain Intercity Rail Passenger Facility Contract between the City and the State of California (the "STIP Grant Agreement") whereby the State of California provided \$4,200,000 in State Transportation Improvement Program (STIP) funds for the construction of the bus bays and parking portion of the Transit Center Project (the "STIP Grant"); and

WHEREAS, on January 21, 2014 the City Council approved the Agreement for Public Improvements Funding, Amended and Restated Environmental Remediation and Escrow Agreement, and Development Agreement for implementation of the Transit Center Project (Resolution Nos. 14-014, -015; Ord. No. 14-002); and

WHEREAS, the Agreement for Public Improvements Funding provides that the City will provide certain grant and Former Agency funds for public improvement elements of the Transit Center Project, including the STIP Grant; and

WHEREAS, the Agreement for Public Improvements Funding also provides that the City will lease the public parking and bus bays from the developer for a period of twelve years pursuant to the Public Parking Lease and Option to Acquire Easement Agreement (the "City Parking Lease") which is included as an Exhibit to the Agreement for Public Improvements Funding; and

WHEREAS, the City Parking Lease Commencement Date was January 1, 2019; and

Resolution No. 21-09
Transit Center Bus Bay Sublease
City Council Meeting | February 16, 2021
Page 2 of 2

WHEREAS, pursuant to the STIP Grant Agreement, the City must make the bus bays at Transit Center Project podium available for use by State Funded Bus Services, as that term is defined by the STIP Grant Agreement, at no cost; and

WHEREAS, the City and National Railroad Passenger Corporation ("Amtrak") have negotiated and wish to enter into a sublease to provide for Amtrak's use of the bus bays at the Transit Center Project podium; now therefore be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Sublease for Bus Bays between the City of Emeryville and the National Railroad Passenger Corporation, in substantial form as attached hereto as Exhibit A; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute and enter into amendments to the Sublease for Bus Bays between the City of Emeryville and the National Railroad Passenger Corporation as may be agreed to by the City Manager and approved as to form by the City Attorney that do not materially increase the obligations of the City thereunder.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, February 16, 2021, by the following vote:

AYES:	5	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters, Medina, and Patz
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:

Dianne Martinez

BBAF287D25AB463...

MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

FB7B5D8EAB6A4BE...

CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY

SUBLEASE FOR BUS BAYS

This **Sublease for Bus Bays** ("**Sublease**") is entered into as of the Effective Date (defined herein), between the **City of Emeryville** ("**City**" or "**Sublessor**"), a California municipal corporation, and **National Railroad Passenger Corporation** ("**Sublessee**"), a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation, each a "**Party**," and collectively the "**Parties**."

Recitals

- A. The EmeryStation West property ("**Property**") is a parcel of approximately 1.58 acres located at 5959 Horton Street, Emeryville, CA, as more particularly described in **Exhibit A**, and depicted in **Exhibit B**. The Property consists of both public and private elements (the "**Project**") and includes, among other things, a two-level podium ("**Podium**").
- B. A portion of the Podium consists of a parking garage ("**Parking Garage**") that includes 125 parking spaces for public use ("**Public Parking Spaces**") and four (4) bus bays ("**Bus Bays**") for passenger buses that serve the adjacent Emeryville Amtrak Station located at 5885 Horton Street, Emeryville, CA (the "**Amtrak Station**"). The site plan of the Podium depicting the Parking Garage, including the Bus Bays, is shown on **Exhibit C** ("**Podium Site Plan**").
- C. The Property is owned by Emery Station West, LLC, a California limited liability company ("**Owner**"). Owner and City entered into that certain Public Parking Lease and Option to Acquire Easement agreement dated May 27, 2016, as well as that certain First Amendment to Public Parking Lease and Option to Acquire Easement dated August 15, 2018, (collectively the "**Lease**"), wherein Owner as "**Lessor**" leases to City as "**Lessee**" the Bus Bays and Public Parking Spaces.
- D. The Lease provides the right for Sublessor to sublease all or a portion of the Bus Bays to Amtrak, Capitol Corridor, or any other public or quasi-public transit agency.
- E. Sublessor wishes to exercise its rights under the Lease to sublease the Bus Bays to Sublessee to allow for use of the Bus Bays to serve passengers of the Amtrak Station, and Sublessee desires to sublease the Bus Bays from Sublessor pursuant to this Sublease.

- F. Sublessor has obtained a grant from the California Transportation Commission (the “**STIP Grant**”), in the amount of \$4,200,000, which grant funds were used to support construction of the Podium for the purpose of providing the Public Parking Spaces and the Bus Bays in the Parking Garage. The STIP Grant was disbursed in accordance with the terms of that certain Intercity Rail Passenger Facility Contract (the “**Intercity Rail Contract**”) dated February 23, 2012 between Sublessor and State of California Department of Transportation.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the sufficiency of which is acknowledged by Sublessor and Sublessee, the Parties agree as follows:

Sublease

1. Recitals Incorporated. The above Recitals are an integral part of this Sublease and incorporated in their entirety herein.
2. Premises.
 - 2.1. Subleased Premises. The following portions of the Parking Garage are collectively the “**Sublease Premises**” and as described in the Lease:
 - 2.1.1. Sublessee’s exclusive use of the four (4) Bus Bays, subject to Section 4.1, as such Bus Bays are shown and delineated in the Podium Site Plan.
 - 2.1.2. Sublessee’s nonexclusive use of those portions of the Podium that provide street access into and out of Podium, which portions consist of: (A) in the case of buses, the bus entry, drive aisle and bus exit as shown in the Podium Site Plan (provided, however, that the use of such entry, drive aisle, exit and the general area of the Bus Bays shall not be exclusive to Sublessee, but shall also be used by service trucks and vehicles serving other portions of the Podium and Project); and (B) in the case of pedestrians, the stairs, elevators, walkways, and other portions of the Podium designated by Lessor from time to time for use by the public.
 - 2.2. Public Parking Spaces Excluded. Pursuant to the Lease, the Public Parking Spaces are designated for use by the public generally, including patrons of the Amtrak station. The Public Parking Spaces are not included in the Sublease Premises.

3. Sublease of the Sublease Premises.

- 3.1. Sublease. Subject to the terms, conditions, covenants and promises herein, Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Sublease Premises. This Sublease is made and entered into and at all times shall be subject and subordinate to the Lease. Sublessor shall maintain the Lease in effect and shall observe and perform Sublessor's obligations as the Lessee thereunder throughout the Term (defined below). Notwithstanding any other provision of this Sublease, if for any reason whatsoever, other than a default by Lessor of any of its obligations to the Sublessor or Sublessee as Lessee under the Lease for which Sublessor has received notice of such default and has the right to cure as provided below, the Lease shall terminate prior to the Termination Date set forth in this Sublease, this Sublease shall immediately terminate upon any such termination of the Lease. Sublessor shall immediately notify Sublessee and shall deliver to Sublessee a copy of any notice of default given to Sublessor by Lessor under the Lease, or any notice from Lessor under the Lease relating to the possible termination of the Lease. Upon receipt or issuance of a notice of default under the Lease, Sublessor shall pursue all remedies available to Sublessor in the Lease. Furthermore, to the extent permitted by the Lease, Sublessor shall use best efforts to cure Lessor's default of the Lease.
- 3.2. Condition Precedent to Sublease. Pursuant to the Lease, this Sublease is subject to approval of Lessor, which approval is acknowledged and given by Lessor by Lessor's execution of a separate approval instrument.
- 3.3. As-Is Conveyance. Sublessee acknowledges and agrees that Sublessor is subleasing and Sublessee is accepting the Sublease Premises on an "As-Is With All Faults" condition. The Parties acknowledge Sublessor has made no representations or warranties of any kind whatsoever, either express or implied, concerning the Sublease Premises, including without limitation the quality, nature, adequacy, or physical condition of the Sublease Premises (including without limitation topography, climate, air, and utility services); or adequacy of the Sublease Premises for any particular purpose; or the presence or absence of hazardous materials on, under or about the Project; nor has Sublessee relied on any such representations or warranties, express or implied. Sublessee acknowledges it shall use its independent judgement and make its own determination as to the scope and breadth of its due diligence investigation of the Sublease Premises.

4. Use of Sublease Premises.

- 4.1. Bus Bays. Sublessee shall have the exclusive right to use the Bus Bays for the sole purpose of providing loading and unloading for passenger buses serving the Amtrak Station, the general public or future rail and/or transit operations in the vicinity of the Property, including but not limited to "State-Funded Bus Services," as that term is defined in Section 7 of Article VI of the Intercity Rail Contract, long distance bus services and any other passenger bus services. Upon the request of Sublessor, Sublessee shall provide written notice to Sublessor describing the passenger bus operator(s) providing services to the Bus Bays, which notice shall include the name of the operator(s) and all regulatory permits which allow for operation as a common carrier. In the event that any publicly funded bus services or State-Funded Bus Services in Emeryville are provided by any party other than Sublessee, the Sublessee and the Sublessor shall cooperate in good faith to amend this Sublease to address the shared use of the Bus Bays.
- 4.2. Access. Access to the Sublease Premises shall be available twenty-four (24) hours per day, seven (7) days per week. Notwithstanding the foregoing, access to the Sublease Premises is subject to closure of the Parking Garage by Lessor for temporary maintenance, or repairs; or if required by casualty, condemnation, act of God, *force majeure*, governmental law or requirement, or any other reason beyond Sublessor's control, provided that reasonable advance notice of such temporary closure is given to Sublessor in the event of maintenance or repairs not constituting emergency work, as provided in Section 4.6 herein.
- 4.3. Hazardous Materials. Neither Sublessee nor any of its agents, employees, invitees, contractors, or bus operators shall bring any Hazardous Materials into the Parking Garage, except those that are in general commercial use and are incidental to permitted uses, and only in quantities suitable for immediate use. For purposes herein, "**Hazardous Materials**" shall mean (i) any substance defined as a "hazardous substance" under CERCLA, and (ii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any of the Environmental Laws. For the purposes of this Sublease, the term "Environmental Laws" shall mean all laws governing the use, storage, disposal or generation of any Hazardous Material, including, without limitation, the Comprehensive Environmental Response Compensation and Liability act of 1980, as amended and explosives, radioactive material, asbestos, polychlorinated biphenyls, and petroleum products.
- 4.4. Maintenance. Sublessor shall cause the Parking Garage to be swept on a regular basis and keep it free from the accumulation of trash, rubbish and other debris, and will maintain the Parking Garage in good condition and repair, ordinary wear and tear excepted. The costs of such cleaning, maintenance and repairs will not

be the responsibility of Amtrak and shall be paid by Lessor at its expense. Notwithstanding the foregoing, any maintenance or repairs necessitated by the negligence or willful misconduct of Sublessee or persons affiliated with Sublessee's contractors or patrons shall be the responsibility of Sublessee and Sublessee shall pay for said expenses.

4.5. Security Cameras. Sublessor has caused security cameras to be installed in the Parking Garage stairwells, and Sublessee acknowledges the presence of said security cameras. The security cameras are operated and maintained at Sublessor's expense and with no cost to Sublessee. Sublessee may request security camera footage from Sublessor relating to claims or incidents related to Sublessee's use of the Parking Garage.

4.6. Rules and Regulations. Sublessee's use of the Sublease Premises shall be subject to such rules, regulations, and guidelines for the Parking Garage, including any amendments to existing rules, regulations and guidelines, that: (a) are established between Lessor and Sublessor from time to time; (b) are communicated to Sublessee at least thirty (30) days prior to the implementation of such rules, regulations and guidelines; and (c) provided that if any such rules, regulations and/or guidelines limit Sublessee's rights or expand Sublessee's obligations under this Sublease, Sublessee has consented to any such rules, regulations and/or guidelines.

4.7. Compliance with Laws. Sublessee shall, at its sole cost and expense, comply with all applicable governmental statutes, laws, rules, orders, regulations, and ordinances affecting its use of the Sublease Premises, except that nothing in this Sublease shall purport to make Sublessee responsible for accessibility requirements of the Sublease Premises or the Property under the American with Disabilities Act of 1990. Sublessee shall not use the Sublease Premises or any part thereof in violation of any applicable laws, statutes, regulations or requirements adopted by applicable governmental agencies now in force or hereafter adopted ("**Applicable Law**"), or permit anything to be done by persons under the control of Sublessee, including any bus operator(s), in or about the Sublease Premises which will violate or conflict with any Applicable Law.

5. Term. The initial term ("**Initial Term**") of this Sublease shall commence upon the Effective Date (the "**Commencement Date**"). The Initial Term shall expire at 5:00 p.m. on the five (5) year anniversary of the Commencement Date. Notwithstanding the foregoing, the Initial Term shall automatically renew for successive periods of one (1) year (each individual successive period, a "Renewal Term") (the Initial Term and any and all Renewal Terms shall collectively be referred to as the "Term"), unless either Party delivers a notice of termination to the other party no later than one hundred and eighty (180) days prior to the last day of the then-existing Term. The last day of

the Term shall be the “**Termination Date.**” After the Termination Date, the Parties shall have no rights or obligations under this Sublease. Upon termination of this Sublease, Sublessee shall vacate the Sublease Premises and shall deliver the Sublease Premises to Sublessor in the same condition as provided at the beginning of the Term, normal wear and tear excepted.

6. Rent. The rent for the Term is Zero Dollars (\$0).

7. Insurance.

7.1. Commercial General Liability. Throughout the Term, Sublessee shall procure and maintain in effect commercial general liability insurance on an “occurrence” basis, covering the activities conducted by Sublessee in or about the Parking Garage, and including without limitation, blanket contractual liability against claims for personal injury, bodily injury, death, and property damage, and with a combined single limit of not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate (inclusive of blanket, umbrella, and/or excess liability coverage).

7.2. Sublessee Self-Insurance. Sublessee shall meet the insurance requirements of this Section 7 through its corporate self-insurance program.

8. Indemnification. Sublessee shall indemnify, defend, protect and hold harmless Lessor, Sublessor, and Lessor’s and Sublessor’s members, partners, shareholders, directors, elected officials, officers, agents and employees, from and against any and all claims, causes of action, damages, losses, expenses, fees (including without limitation reasonable attorneys’ fees) and liabilities (collectively, “**Claims**”), of any nature whatsoever, in each case to the extent caused by or resulting from the negligence or willful misconduct of Sublessee, or a breach of this Sublease by Sublessee or Sublessee’s bus operator(s), but not to the extent any such Claims result from the negligence or willful misconduct of Lessor or Sublessor.

9. Damage and Destruction. In the event of substantial damage or destruction to the Podium and/or the Project such that Lessor determines it is infeasible to reconstruct the Podium and/or the Project, Lessor may elect to remove such improvements, in which case, the Sublease shall terminate and the Termination Date shall be the date of the Lessor’s election to remove such improvements.

10. Condemnation. In the event the Parking Garage is taken pursuant to the exercise of the power of condemnation or eminent domain, whether by legal proceedings or otherwise, by any public or quasi-public authority, private corporation or individual having the power of condemnation or eminent domain or is voluntarily sold or transferred to a condemning authority either under threat of condemnation or while legal proceedings for condemnation are pending, except as provided below, this

Sublease shall not terminate but shall remain in full force and effect. If the Parking Garage is totally taken by a permanent condemnation, this Sublease shall terminate and the Termination Date shall be the earlier of the date that title to the property taken in condemnation by the condemning authority is vested in the condemning authority, or the date the condemning authority has the right to possession of the property condemned. If the Parking Garage is not totally taken by a permanent condemnation, and if any of the Bus Bays are rendered temporarily unusable or inaccessible as a result of such condemnation, or if any of the Bus Bays are permanently taken as the result of such condemnation, Sublessee's right to use any such Bus Bays so taken shall be temporarily suspended or permanently terminated (as the case may be).

11. Assignment and Subletting. Sublessee shall not assign or sublet any of its interest in this Sublease or rights hereunder, without the express written consent of Sublessor and Lessor, which consent may be refused or withheld in Sublessor's and Lessor's sole discretion. Any attempted assignment or sublease made in violation of this Section shall be void and an Event of Default.

12. Default.

12.1. Event of Default. The occurrence of any of the following shall constitute an "**Event of Default**", and the Party shall be in "**Default**" if such occurrence has not been cured or corrected within 30 days after notice of default; or if such failure cannot be cured within such 30-day period, the Party fails with such 30-day period to commence and thereafter diligently proceed with all actions necessary to cure such failure as soon as reasonably possible:

12.1.1. Use of the Bus Bays by Sublessee in a manner other than otherwise explicitly permitted in this Sublease.

12.1.2. An attempted assignment or sublease by Sublessee in violation of Section 11.

12.1.3. Failure of either Party to perform any provision of this Sublease.

12.2. Remedies. Upon occurrence of an Event of Default, the Parties shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies allowed by law or equity:

12.2.1. Sublessor shall have the right, but not the obligation, to terminate this Sublease, with the Termination Date as specified in the notice of termination.

12.2.2. Sublessor shall have the right, but not the obligation, to cure the Event of Default at Sublessee's expense. If Sublessor pays any sum or incurs any

expense in curing the Event of Default, Sublessee shall reimburse Sublessor upon demand for the amount of such payment or expense with interest. Interest shall be calculated at a default rate equal to the Prime Rate plus six percent (6%) per annum from the date due until paid, as such Prime Rate is published in the Wall street Journal (or equivalent publication if the Wall Street journal no longer publishes the Prime Rate) and in effect from time to time; but the interest rate shall not in any event be in excess of the maximum rate that may be charged by law as the default rate of interest.

12.2.3. The Party not in Default shall have the right, but not the obligation, to institute any action at law or in equity to cure, correct, prevent or remedy any such Event of Default, or to obtain any other remedy consistent with the purposes of this Sublease.

13. Limitation of Liability.

13.1. Lessor and Sublessor. The members, partners shareholders, directors, elected and appointed officials, officers, agents and employees of Lessor and Sublessor shall have no liability whatsoever for: (a) any damage to any vehicle or property or any other items located in the Parking Garage; or (b) theft or vandalism to any vehicle or property or other items located in the Parking Garage, and Sublessee hereby waives any and all claims or liabilities against the members, partners shareholders, directors, elected and appointed officials, officers, agents and employees of Lessor and Sublessor arising out of any such loss or damage to property. In all events, Sublessee shall look to its insurance carrier and to require that Sublessee's employees and users and operators of the Bus Bays look to their respective insurance carriers for payment of any losses sustained with any use of the Parking Garage.

14. Miscellaneous.

14.1. Notices. Any notice or other communication required or permitted to be given under this Sublease shall be in writing and shall be personally served by messenger; or sent by a commercial overnight delivery service (such as Federal Express); or by certified mail, return receipt required, and shall be deemed given on the date actually received if served by messenger, or on the date of receipt if sent by overnight delivery service, or on the date of receipt as shown on the return receipt if sent by certified mail, to the addresses set forth below. Either Party may change its address for receiving notices by giving written notice of such change to the other Party in accordance with the provisions hereof.

To Sublessor: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Manager

With a copy to: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Attorney

To Sublessee: Real Estate Dept.
Attn: Director, Real Estate
2955 Market Street, 30th Street Station
5th Floor South
Philadelphia, PA 19104

14.2. No Consequential Damages. Neither Party shall be liable under any circumstances for consequential damages, including any injury or damage to, or interference with the other Party's business, loss of profits or other revenues, loss of business opportunity, or loss of goodwill, however occurring.

14.3. Entire Agreement. This Sublease constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Sublease and supersedes all prior discussions, agreements and understandings, express or implied, of the Parties with respect thereto. No amendment of this Sublease shall be effective unless the same shall be in writing and signed by both Parties and approved by Lessor. The Parties hereby agree to execute and deliver such further documents and agreements and do such further acts and things as may be reasonably necessary or expedient to carry out the purposes of this Sublease.

14.4. Successors and Assigns. Subject to the restrictions set forth herein regarding assignment or subletting, each of the terms, covenants, and conditions of this Sublease shall extend and be binding on and shall inure to the benefit of not only Sublessor and Sublessee, but to each of their respective heirs, administrators, successors and assigns.

14.5. Venue and Applicable Law; Attorney's Fees. This Sublease shall be governed and interpreted in accordance with California law, without regard to conflict of law principles. The Parties agree the exclusive venue for any legal action filed pursuant to this Sublease shall be the United States District Court for the Northern District of California. Except as provided in Section 8 herein, each

Party shall be responsible for its own attorney's fees and costs in connection with this Sublease.

- 14.6. Force Majeure. Performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Sublease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other Party; or acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of Sublessee, which shall not excuse performance by Sublessee). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within 30 days of the commencement of the cause.
- 14.7. Execution in Counterparts. This Sublease may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Sublease.
- 14.8. Memorandum of Sublease. Concurrently with the mutual execution of this Sublease, the Parties shall execute a Memorandum of Sublease, in the form of **Exhibit D**, attached hereto, and shall have their signatures acknowledged, and promptly thereafter shall cause such memorandum to be recorded in the Official Records of Alameda County, California.
- 14.9. Severability. The caption or headnote on sections and subsections of this Sublease are intended for convenience and reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Sublease. Should any section(s) of this Sublease, or any part thereof, is deemed unenforceable by a court of competent jurisdiction, the remainder of this Sublease shall remain in full force and effect to the extent possible.
- 14.10. No Waiver. Sublessor's failure to enforce any provision of this Sublease or the waiver in any particular instance shall not be construed as a general waiver of any future Default.
- 14.11. Effective Date. The **Effective Date** of this Sublease is the date upon which Sublessee has executed this Sublease.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Sublease has been entered into by and between Sublessor and Sublessee.

SUBLESSOR:

City of Emeryville, a municipal corporation

By: _____
Christine Daniel
City Manager

Date: _____

SUBLESSEE:

National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation

By: _____
Christopher Hartsfield
Assistant Vice President,
Properties

Date: _____

APPROVED AS TO FORM:

Michael Guina
City Attorney

Index of Exhibits

- A. Legal description of Property
- B. Depiction of Property
- C. Podium Site Plan
- D. Form of Memorandum of Sublease

Title No. 09-58202787-C-MG
Locate No. CACT17701-7701-5582-

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcels 2 and 3 of Parcel Map No. 7258, filed August 7, 1998, in Book 236 of Parcel Maps, at Pages 43 and 44, Alameda County Records.

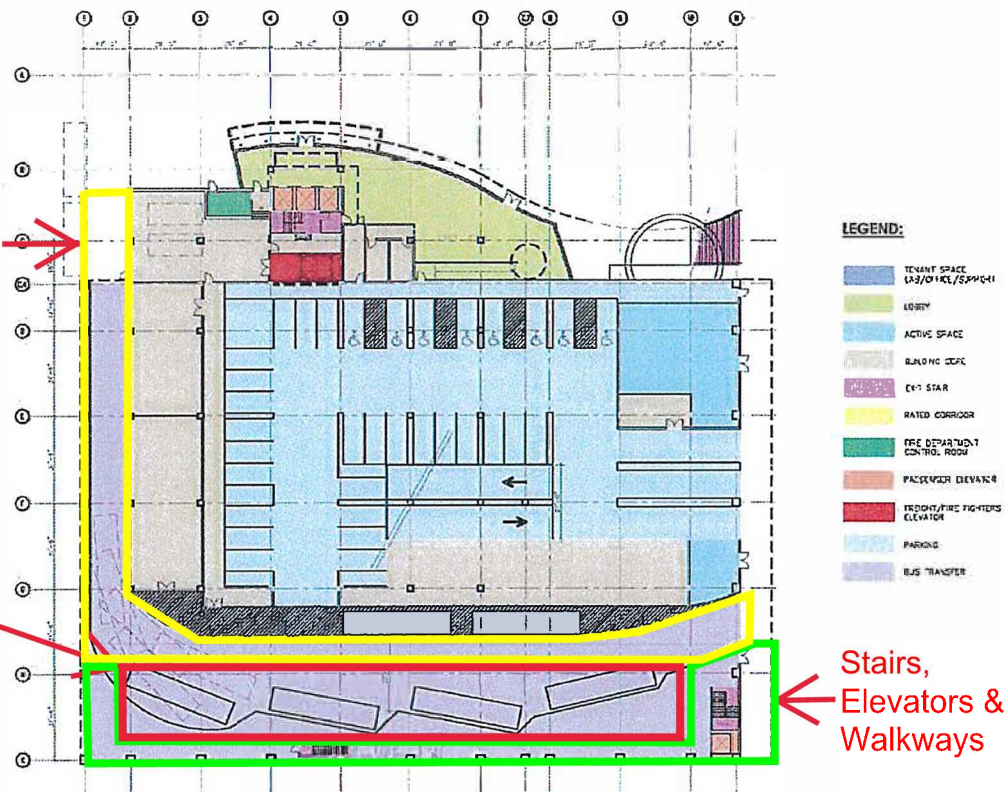
APN: 049-1489-015, 049-1489-016

EXHIBIT B
DEPICTION OF PROPERTY

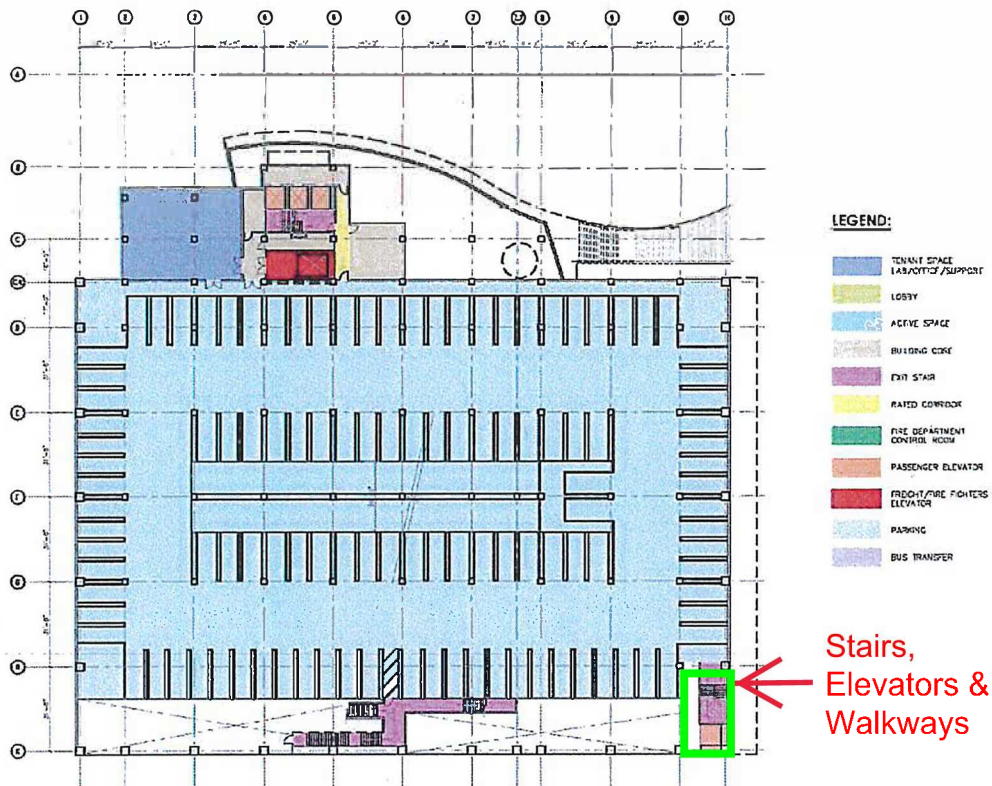


1. EmeryStation West (Main Building) (the **PROPERTY**)

EXHIBIT C
PODIUM SITE PLAN



Emery Station West Ground Floor Plan - 33 Stalls



Emerystation West Second Floor Plan — 115 Stalls

Exhibit D

Form of Memorandum of Sublease

**RECORDING REQUESTED BY
AND WHEN RECORDED
RETURN TO:**

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Attorney's Office

*This document is exempt from the payment of a
recording fee pursuant to California Government
Code § 27383*

MEMORANDUM OF SUBLEASE FOR BUS BAYS

This MEMORANDUM OF SUBLEASE FOR BUS BAYS (this "**Memorandum**") is made as of _____, 2020, by and between **City of Emeryville** ("**City**" or "**Sublessor**"), a California municipal corporation, and **National Passenger Corporation** ("**Amtrak**" or "**Sublessee**"), a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation, with reference to the following:

1. Sublessor and Sublessee are Parties to that certain unrecorded Sublease for Bus Bays dated _____, 2020 (the "**Sublease**"). Capitalized terms used but herein but not otherwise defined shall have the meanings assigned to them in the Sublease.
2. Sublessor and Sublessee have entered into the Sublease for the purpose of Sublessor subleasing to Sublessee, and Sublessee subleasing from Sublessor, the Sublease Premises on that certain Property more particularly described on **Attachment 1**, attached hereto and incorporated herein, all upon the terms and conditions of the Sublease, said terms and conditions being incorporated herein by reference.
3. Sublessor and Sublessee now desire to execute and record this Memorandum in order to put the public on notice of the existence of the Sublease.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first written above.

SUBLESSOR:

City of Emeryville, a municipal corporation

By: _____
Christine Daniel
City Manager

Date: _____

APPROVED AS TO FORM:

Michael Guina

Michael Guina
City Attorney

SUBLESSEE:

National Passenger Corporation, a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation,

By: _____
Name: _____
Its: _____

Date: _____

APPROVED AS TO FORM:

Title No. 09-58202787-C-MG
Locate No. CACT17701-7701-5582-

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcels 2 and 3 of Parcel Map No. 7258, filed August 7, 1998, in Book 236 of Parcel Maps, at Pages 43 and 44, Alameda County Records.

APN: 049-1489-015, 049-1489-016