

**AMENDMENT NO. 3
TO THE AGREEMENT
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
PENINSULA CORRIDOR JOINT POWERS BOARD**

PREAMBLE

This agreement ("Amendment No. 3") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Peninsula Corridor Joint Powers Board, a Joint Powers Authority (Lessee). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Real Estate Lease Agreement by and between the City of Santa Clara and Peninsula Corridor Joint Powers Board", dated July 8, 2009 (the "Original Agreement"); and
- B. The Original Agreement was previously amended by Amendment No. 1, dated June 24, 2014, Amendment No. 2 dated June 14, 2017, and is again to be amended by this Amendment No. 3. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of having Lessee provide additional parking for Caltrain patrons at the Santa Clara Train Station, and the Parties now wish to amend the Original Agreement as Amended to extend the term of the agreement.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AMENDMENT TERMS AND CONDITIONS

- a. That Section 3 of the Original Agreement as Amended, entitled "Agreement Date and Term of the Agreement" is hereby amended to read as follows:

For purposes of all Leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For the purposes of the calculations of rent and fees and

their respective due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of the Agreement for the payment of rent shall commence on the Effective Date and shall terminate thirteen years thereafter on June 30, 2022 ("Lease Term") or on the date resulting from an earlier termination as herein after set forth.

Notwithstanding the forgoing, the City may terminate this Lease with a six month written notice if the Property is necessary for development purposes.

- b. That Section 28 of the Original Agreement as Amended, entitled "Notices" is hereby amended to read as follows:

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at rshikada@santaclaraca.gov, and
manager@santaclaraca.gov

And to Lessee addressed as follows:

Peninsula Corridor Joint Powers Board
Attention: Gary Cardona
1250 San Carlos Avenue
San Carlos, CA 94070
and by e-mail at cardonag@samtrans.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

- c. That Exhibit B of the Original Agreement as Amended, entitled "Rent Schedule" is hereby amended to read as follows:

Rent to be paid each month shall be as follows:

<u>Years</u>	<u>Annual Rent Amount</u>
1 through 3	\$3,600
4 through 5	\$4,200
6 through 8	\$4,800
9 through 10	\$5,400
11 through 12	\$6,000
13	\$6,600

d. That Section 16, part B, as follows, is hereby stricken and removed:

B. A certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk of the City of Santa Clara prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the City Clerk. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk. If such coverage is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City Clerk a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may without further notice and at its option either:

1. Notwithstanding any other provisions of this Lease Agreement, but subject to Section 9C, cause this Agreement to be forfeited and exercise such other rights as it may have in the event of Lessee's default, or,
2. Procure such insurance coverage at Lessee's expense and Lessee shall promptly reimburse the City for such expense. If Lessee fails or refuses to procure or maintain insurance as required by this Lease Agreement to be procured and maintained by Lessee, City shall have the right, at City's election, to procure and maintain such insurance for the benefit of Lessee and City. The premiums paid by City shall be treated as additional rent due from Lessee to be paid on the first business day of the month following the date on which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s) that shall include Lessee.

d. That Exhibit C of the Original Agreement as Amended, entitled "Insurance Requirements" is hereby amended to read as follows:

Without limiting the Lessee's indemnification of the City as set forth in this Lease, and prior to entry onto the Property which is the subject of this Lease and for the entire term of this Lease, Lessee shall provide and maintain in full force and effect, at its sole cost and expense, the following

insurance policies with at least the identified coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. A Commercial General Liability Insurance policy, which provides coverage at least as broad as Insurance Services Office ("ISO") "occurrence" form CG 00 01. (ed. 10/93) covering commercial general liability or its equivalent. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 combined single limit per occurrence for bodily injury, personal and property damage;

\$1,000,000 minimum general aggregate which shall apply separately to the Property which is the subject of this Lease; and

2. Exact structure and layering of this coverage shall be left to the discretion of Lessee; however, any excess or umbrella policies used to meet the required limits shall provide coverage at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella or excess liability policy maintained by the Lessee to comply with the insurance requirements of this Lease:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits.
 - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another.
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.
 - d. The policy must include a Waiver of Subrogation in favor of the City, as well as the City, its City Council, Commissions, officers, employees, volunteers and agents.
 - e. The policy shall include broad form contractual liability and indemnity coverage, which shall insure performance by Lessee of the indemnity and defense provisions set forth in this Lease. The limits of said insurance shall not, however, be construed to limit the liability of Lessee under this Lease.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. A Workers' Compensation Insurance Policy, as required by statute, and Employer's Liability, which provides the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Lessee included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Lessee or any subtenant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. The policy must include a Waiver of Subrogation in favor of the City, as well as the City, its City Council, commissions, officers, employees, volunteers and agents.
4. The workers' compensation insurance and the employer's liability coverage shall cover any person or entity employed directly or indirectly by Lessee, anyone whose acts Lessee may be liable for and/or any agent acting on behalf of Lessee.

D. COMMERCIAL ALL RISK FIRE AND EXTENDED PROPERTY INSURANCE

A Commercial all risk fire and extended property policy, which is applicable to all perils and all risk of physical loss, including loss due to flood or water damage and excluding damage due to earthquake, covering the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of the Property (i.e., replacement cost new, using materials of a like quality and kind as existed immediately prior to the damage or destruction and applying all currently applicable building codes and regulations). The insurance policy shall be primary and include endorsements for inflation, debris removal and demolition, building code and ordinance modification protection, and plate glass coverage with respect to the Property. City shall be shown as the "loss payee" on the insurance policy.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, are required to be part of the required commercial general liability policy, and any umbrella or excess policy(ies) which are intended to cover those risks:

1. Additional Insureds. The City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents as well as the Redevelopment Agency of the City of Santa Clara, where appropriate, are hereby added as additional insureds in respect to liability arising out of Lessee's maintenance and/or use of the Property using Insurance Services Office (ISO) Endorsement CG 20 26 11 85, CG 20 11 01 96 or an equivalent endorsement acceptable to the City.
2. Primary and non-contributing. Each insurance policy provided by Lessee in compliance with the requirements included in this Exhibit, shall either contain specific primary and non contributing language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Lessee's insurance.

F. CANCELLATION.

Each insurance policy required under this Lease shall contain language or be endorsed to reflect that no cancellation, non renewal or modification of the coverage provided shall be effective until written notice has been given to the City's insurance compliance representative by Lessee or its insurer at least thirty (30) days prior to the effective date of such non-renewal, modification or cancellation. Lessee shall, within thirty (30) days prior to the expiration of any policy, furnish City's insurance compliance representative with renewals or binders for such policy. Lessee's failure to do so will give the City the right to secure such insurance policy and charge the cost to Lessee, which amount shall be payable by Lessee upon demand.

G. POLICY APPLICATION.

As applicable, the insurance required pursuant to this Lease shall provide that the interests and protections of the additional insureds shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. All insurance proceeds payable from any policy of insurance (other than commercial general liability insurance) required by this Lease shall be paid to the City.

H. CITY'S RIGHT IN THE EVENT LESSEE FAILS TO COMPLY WITH THESE INSURANCE REQUIREMENTS.

The provision and maintenance of the required insurance policies and endorsements described in this Lease are of critical importance to the City as security for the protection of its assets. Therefore, if at any time during the term of this Lease, Lessee fails to provide or maintain in good standing, all of the required insurance policies, provides a policy from an insurance company which fails to maintain the required A.M. Best rating, or if Lessee fails to provide any of the required policy endorsements set forth in this Lease, Lessee shall be deemed to be in breach of this Lease and City shall have the right to immediately pursue all of its available rights and remedies under the law, including but not limited to, the right to either: 1) terminate this Lease for cause; or 2) secure the required insurance policies itself at Lessee's expense.

In the event Lessee fails to comply with the insurance requirements of this Lease, City shall provide notice to Lessee describing the material noncompliance with the insurance requirements set forth in this Lease. Lessee shall then have five (5) business days after the date of such notice to cure the identified non-compliance by providing City with adequate assurance that the insurance requirements have been fully met. If Lessee fails to provide City with such assurance within the specified cure period, City will have the immediate the right to pursue any of the above referenced remedies.

I. ADDITIONAL INSURANCE RELATED PROVISIONS

1. Lessee warrants that any sub-Lessees, contractors, or any other party involved with the Lease who is brought onto the Property, or who is otherwise involved in the Lease by Lessee, shall provide the same minimum commercial general liability insurance coverage and the related endorsements which are required of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Lease. Lessee agrees that it shall provide City with written copies of all agreements with, and insurance compliance documents provided by, such sub-Lessees, contractors and others involved in this Lease before such sub-Lessees, contractor or other person is allowed to enter onto the Property.
2. Lessee agrees to be responsible for ensuring that no contract used by any sub-lessee, contractor or party involved in any way with this Lease reserves the right to charge City for the cost of additional insurance coverage required by this Lease. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these insurance requirements. There

shall be no recourse against City for payment of premiums or other amounts with respect thereto.

J. EVIDENCE OF COVERAGE

Prior to commencement of this Lease, Lessee, and each and every subtenant and/or contractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum commercial general liability insurance coverage with the endorsements and deductibles indicated in this Lease and shall provide proof of such coverage as set forth in Section I, below. The amount of any deductibles shall be a business decision by Lessee. However, under no circumstances shall City be required to reimburse Lessee for the amount of any deductible incurred by Lessee in connection with any insured event, even if the event resulting in the claim was caused or contributed to by City or its agents, contractors, or employees.

Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and its insurance compliance representatives. Lessee shall file all insurance certificates and policy endorsements for the required insurance policies with the City's insurance compliance representatives for approval as to adequacy of the insurance protection. Lessee shall be fully responsible for similar compliance by each and every subtenant and contractor of every tier.

K. EVIDENCE OF COMPLIANCE

Prior to the Commencement Date of this Lease, Lessee, or its insurance broker, shall provide to the City's insurance compliance representatives with the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and an ACORD form certificate of insurance (or its equivalent), evidencing all required coverage. Prior to entry on the Property, Lessee shall deliver certificates of insurance evidencing the existence and amount of such insurance, and the required endorsements to City's insurance compliance representative showing City (and any other parties designated above) as an additional insured on all policies. In the event Lessee fails to procure and maintain such insurance policies or the required endorsements, City may exercise any of its rights and remedies for breach of this Lease as set forth above. Upon receipt of a request from City or its insurance compliance representative for more specific evidence, Lessee shall submit copies of the actual insurance policies or renewals or replacements.

L. NOTICE REQUIREMENTS

All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Lease shall be mailed to the directly to the City's insurance compliance representative as follows:

EBIX Inc.
City of Santa Clara City Manager's Office
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

M. QUALIFYING INSURERS

In addition to the compliance documentation required under this Lease, Lessee shall provide written evidence that all of the insurance companies providing insurance for Lessee, its sub-lessees or contractor(s), have an A. M. Best rating of at least B+ or shall be an insurance company of equal financial stability. Failure of any insurance carrier to maintain this minimum rating shall provide the City the rights set forth in Section F above.

2. TERMS

All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 3 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement as Amended and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

3. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

PENINSULA CORRIDOR JOINT POWERS BOARD
a Joint Powers Authority

Dated: _____

By (Signature): _____

Name: Michelle Bouchard

Title: Chief Operating Officer, Rail

Principal Place of 1250 San Carlos Avenue

Business Address: San Carlos, CA 94070

Email Address: bouchardm@samtrans.com

Telephone: (650) 508-6420

Fax: ()

"LESSEE"