

FIRST AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT

FOR THE

PLEASANT HILL BART STATION
LEASING AUTHORITY

by and among

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,

AND

CONTRA COSTA COUNTY

FIRST AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT FOR THE
PLEASANT HILL BART STATION
LEASING AUTHORITY

This First Amended and Restated Joint Exercise of Powers Agreement (the “Agreement”) is entered into as of _____, 2012, by and between San Francisco Bay Area Rapid Transit District (“BART”), a rapid transit district established under Public Utilities Code Sections 28500 *et seq.*, and the County of Contra Costa (“County”), a subdivision of the State of California, with the consent of the Successor Agency to the former Contra Costa County Redevelopment Agency (the “Successor Agency”), with reference to the following:

A. BART is the owner of certain real property in unincorporated Contra Costa County, California, which property is delineated on the map attached hereto as Exhibit A (the “BART Station Property”). The BART Station Property is the location of BART’s Pleasant Hill station (the “Station”) and parking and access facilities that serve the Station.

B. The County adopted and the Contra Costa County Redevelopment Agency (the “Dissolved RDA”) implemented the Redevelopment Plan for the Pleasant Hill BART Station Redevelopment Project (the “Redevelopment Plan”) which was adopted pursuant to the authority of the Community Redevelopment Law (Health & Safety Code Sections 33000 *et seq.*). The BART Station Property and adjoining areas are in the area governed by the Redevelopment Plan. The County has also adopted and the County is implementing the Pleasant Hill BART Station Area Specific Plan (the “Specific Plan”) which was adopted pursuant to Article 8 of the Planning and Zoning Law (Government Code Sections 65450 *et seq.*). The BART Station Property and adjoining areas are also governed by the Specific Plan. The area governed by the Redevelopment Plan and Specific Plan are shown on the map attached to this Agreement as Exhibit C and is referred to in this Agreement as the “Specific Plan Area”.

C. In furtherance of the implementation of the Redevelopment Plan and Specific Plan as they pertain to the BART Station Property, County, the Dissolved RDA and BART have cooperated in a planning process for the BART Station Property which has resulted in the creation of and the County’s adoption of the Pleasant Hill BART Property Codes (including “Principles and Regulations for Redevelopment of the BART Station Property” and the “Architectural Standards”), amendments to the Specific Plan relating to setbacks for the BART Station Property (County File No. SP 2002-02) and rezoning and preliminary development plan approval for the BART Station Property (County File No. RZ 023116) (collectively the “Charrette Plan”) for the redevelopment of the BART Station Property.

D. The Redevelopment Plan, Specific Plan and Charrette Plan contemplate construction of parking structures to replace the surface BART patron parking currently on the BART Station Property and private development of new residential and commercial buildings and other improvements on the surface lots on the BART Station Property.

E. The parties originally contemplated that the private development on the BART Station Property would be carried out primarily by private parties pursuant to a ground lease with a small portion sold for the purposes of for-sale housing, as detailed in this Agreement.

F. The parties also contemplated that accomplishing the development of the BART Station Property in accordance with the Charrette Plan would require close cooperation and coordination among BART, the Dissolved RDA and the County for, among other things:

- Design and construction of the parking structures to replace the existing surface BART patron parking, which structures the Dissolved RDA will pay for and BART will own.
- Design and construction of other public infrastructure that is needed to serve the BART Station Property and that will be owned primarily by the County.
- County land use permits and approvals to assure that both public infrastructure and private improvements meet County requirements and conform to the Charrette Plan.
- BART oversight responsibility and approval for design, construction and operation issues that affect the operation, safety and security of and access to the station and the BART viaduct running across the BART Station Property.
- Negotiation and administration of the ground lease and other documents that will govern private development on the BART Station Property.

G. As allowed under Articles 1 through 4 of Chapter 5 of Title 1 of the Government Code (Government Code Sections 6500 *et seq.*) and Government Code Section 11256 (collectively the “JPA Law”), BART, the Former RDA and the County created a joint exercise of powers entity to jointly exercise any powers common to BART, the Dissolved RDA and the County and to exercise the powers granted under the JPA Law.

H. In furtherance of the implementation of the Redevelopment Plan, the Specific Plan and the Charrette Plan, and as a means of accomplishing the cooperation and coordination for the development of the BART Station Property, the County, the Dissolved RDA and BART created the Pleasant Hill BART Station Leasing Authority (the “Authority”), through the execution of that certain Joint Exercise of Powers Agreement for the Pleasant Hill BART Station Leasing Authority, dated as of July 2, 2004, amended by that certain First Amendment to Joint Powers Agreement, dated June 14, 2005 and further amended by that certain Second Amendment to Joint Powers Agreement, dated February 25, 2008 (collectively, the “Original Joint Powers Agreement”).

I. The California state legislature enacted Assembly Bill x1 26 (the “Dissolution Act”) to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*), and on February 1, 2012, the Dissolved RDA was dissolved pursuant to Health and Safety Code Section 34172.

J. Pursuant to Health and Safety Code Section 34173, the Board of Supervisors of the County declared that the County would act as successor agency (the “Successor Agency”) for the Dissolved RDA effective February 1, 2012. Pursuant to AB 1484 (“AB 1484”), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the County. The Dissolution Act and AB 1484 require the Successor Agency to wind down the affairs of the Dissolved RDA and Health and Safety Code Section 34171(d)(1)(E) authorizes the Successor Agency to terminate any existing contract and provide the necessary and required compensation for the such termination.

K. The Successor Agency acknowledges that, because the development of the BART Station Property has not been completed, the termination of the Original Joint Powers Agreement would not be beneficial to the Station and the BART Station Property; however, the status of development of the BART Station Property and the adoption and implementation of the Dissolution Act and AB 1484 make it such that the removal of the Dissolved RDA (through the Successor Agency) from the Authority is both necessary and desirable.

L. BART and the County continue to be empowered by law to undertake certain project and programs and possess the power and authorization to buy and sell, own and lease property, to construct, maintain and operate public improvements, to incur debts and other obligations, and to protect public health, safety and welfare and acknowledge that accomplishing the development of the BART Station Property requires continued close cooperation and coordination between BART and the County.

M. The parties desire to enter into this Agreement to amend and restate the Original Joint Powers Agreement as a means of complying with the Dissolution Act and AB 1484 by causing the removal of the Dissolved RDA and preserving a means of accomplishing the cooperation and coordination among the remaining members that is necessary to provide for the completion of the development of the BART Station Property.

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. For the purpose of this Agreement, the meaning of the capitalized terms used in the Agreement shall be the following:

(a) “Agreement” means this First Amended and Restated Joint Exercise of Powers Agreement, which amends and restates the Original Joint Powers Agreement.

(b) “Approvals” means the permits and approvals of the County and any other government agency with jurisdiction over the BART Station Property that are necessary to develop the Private Improvements, the Replacement Parking and Other Public Infrastructure.

(c) “Authority” means the Pleasant Hill BART Station Leasing Authority created under this Agreement.

(d) “Authority Lease” means that certain master ground lease dated as of May 15, 2006 entered into by and between BART and the Authority pursuant to which the Authority is leasing the Lease Property from BART.

(e) “BART” means the San Francisco Bay Area Rapid Transit District, a rapid transit district established under Public Utilities Code Sections 28500 *et seq.*

(f) “BART Station Property” means the real property in unincorporated Contra Costa County, California which property is shown on the map attached to this Agreement as Exhibit A.

(g) “Board” means the governing body of the Authority.

(h) “Budget” means the approved budget applicable to the expenses of the Authority.

(i) “Charrette Plan” means the Pleasant Hill BART Property Codes (including “Principles and Regulations for Redevelopment of the BART Station Property” and the “Architectural Standards”), amendments to the Specific Plan relating to setbacks on the BART Station Property (County File No. SP 2002-02), and rezoning and preliminary development plan approval for the BART Station Property (County File No. RZ- 023116).

(j) “County” means the County of Contra Costa, a subdivision of the State of California.

(k) “Developer” means the person or entity with whom the Authority is negotiating for the Development Lease and Disposition Agreement, or, if the Development Lease and Disposition Agreement have been executed by the parties thereto, the person or entity with whom the Authority contracts under those agreements.

(l) “Development Lease” means collectively that certain Apartment Ground Sublease (between the Authority and the Developer) dated July 31, 2008, and that certain Liner Building Ground Sublease (between the Authority and the Tenant) dated July 31, 2008, providing for the for conveyance of a subleasehold interest in the Lease Property to the Developer and the Developer’s development of the Lease Property.

(m) “Directors” means the members of the governing Board of the Authority.

(n) “Disposition Agreement” means that certain Disposition and Development Agreement (“DDA”) by and between the Authority and the Developer, dated December 19, 2005, as amended by the First Amendment to DDA dated February 5, 2008, the Second Amendment to DDA dated September 23, 2010, and partially assigned to Tenant on July 31, 2008, providing for sale of the Sale Property to Developer and the Developer’s development of the Sale Property.

(o) “Dissolved RDA” has the meaning set forth in Recital B.

(p) “Fiscal Year” means the period from July 1 in any calendar year, to and including June 30 in the succeeding calendar year.

(q) “JPA Law” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1, of the California Government Code and Government Code Section 11256, as such may be amended.

(r) “JPA Members” means BART and the County.

(s) “Lease Property” means that portion of the BART Station Property that BART has leased to the Authority and the Authority has in turn leased to the Developer; the precise location of the Lease Property are more particularly described in the Authority Lease.

(t) “Member” means an entity that is a party to this Agreement and a member of the Authority.

(u) “Other Public Improvements” means the public improvements and infrastructure necessary for development of the BART Station Property other than the Replacement Parking and the improvements to the Station contemplated under the Agency Assistance Agreement dated as of December 19, 2005; the Other Public Improvements may include improvements to the façade of the Station, streets, roads, plazas, pedestrian walkways and bridges, public parking, community facilities, and other improvements.

(v) “PHTVA” means Pleasant Hill Transit Village Associates, LLC, a Delaware limited liability company; PHTVA has been the Developer for purposes of the Original Joint Powers Agreement.

(w) “Private Improvements” means the privately-owned buildings, structures, facilities, and other improvements that Developer will or has constructed on the Lease Property pursuant to the Development Lease and the Disposition Agreement.

(x) “Redevelopment Plan” means the Redevelopment Plan for the Pleasant Hill BART Station Area Redevelopment Project, adopted by the Board of Supervisors of the County, which shall continue to be implemented by the County to the extent it reasonably deems is necessary.

(y) “Replacement Parking” means the parking structures for BART patrons constructed on the BART Station Property to replace on a one-for-one basis 1,477 surface parking spaces for BART patrons that existed on the BART Station Property that will be lost by the development contemplated by this Agreement.

(z) “Sale Agreement” means the agreement that BART entered into with the Authority pursuant to the Original Joint Powers Agreement providing for BART’s conveyance of the Sale Property to the Authority. As of the date of this Agreement, the Sale Agreement expired by its terms and is no longer in effect. The parties have no desire to amend or extend the Sale

Agreement because of down-turns in market conditions and lack of interest in for-sale residential developments.

(aa) “Sale Property” means that portion of the BART Station Property that BART was authorized to sell to the Authority pursuant to the terms of Section 5.5 of the Original DDA and the expired Sale Agreement.

(bb) “Specific Plan” means the Pleasant Hill BART Station Area Specific Plan, adopted by the Board of Supervisors of the County.

(cc) “Specific Plan Area” means the area governed by the Redevelopment Plan and the Specific Plan as shown on the map attached to this Agreement as Exhibit C.

(dd) “Station” means BART’s Pleasant Hill train station which is located on the BART Station Property; for the purposes of this Agreement, the Station consists of the Station platform, electrical substation, viaduct and passenger entry and service areas, as delineated on Exhibit B attached to this Agreement.

ARTICLE 2. PURPOSE AND POWERS

Section 2.1 Purpose of the Agreement. Each of the parties has in common the authority to study, plan for, acquire, maintain, operate, lease, sell, finance or construct facilities on the BART Station Property and to purchase, sell, own or lease property in the Specific Plan Area. The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth in this Agreement.

Section 2.2 Authority Created. There is hereby created a public entity known as the “Pleasant Hill BART Station Leasing Authority”. The Authority is formed pursuant to the JPA Law and shall be a public entity separate from any member.

Section 2.3 Effective Date. The “Effective Date” of this Agreement shall be the date first written above. The date on which the Authority was deemed formed and existing shall be July 2, 2004.

Section 2.4 Boundaries of the Authority. The geographic boundaries of the Authority shall be coextensive with the Specific Plan Area.

Section 2.5 Powers. The Authority shall have the power in its own name to do any of the following:

(a) To study, plan and implement ways and means to provide for private and public development of the BART Station Property, provided that such power shall not extend to the Station (except to the extent improvements to the façade of the Station are included in the Other Improvements).

- (b) To exercise the powers conferred upon it by the JPA Law and this Agreement necessary to the accomplishment of the purposes of this Agreement.
- (c) To participate in financing or refinancing of public and private facilities on or related to the BART Station Property in accordance with any terms and conditions imposed by the JPA Law and applicable law.
- (d) To make and enter into contracts necessary to the full exercise of its powers.
- (e) To contract for the services of engineers, attorneys, architects, planners, and financial consultants, and to employ such other persons as it deems necessary.
- (f) To acquire, construct, manage, maintain, operate and replace any facilities on or related to the BART Station Property, provided that said power shall not extend to the Station except to the extent necessary to provide for the Other Public Improvements.
- (g) To acquire, by the power of eminent domain or otherwise, and to hold and dispose, of real and personal property by sale, lease or other conveyance necessary to the full exercise of its powers.
- (h) To incur debts, liabilities and/or obligations subject to limitations herein set forth, provided, however, that the debts, liabilities and obligations of the Authority shall not constitute any debt, liability or obligation of any of the Members.
- (i) To sue and be sued in its own name.
- (j) To prescribe, revise and collect fees as a condition of development of land.
- (k) To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, or of the State of California necessary for the Authority's full exercise of its powers.
- (l) To perform all acts necessary or proper to carry out fully the purpose of this Agreement and not inconsistent with the JPA Law.
- (m) To invest any money in the treasury pursuant to Sections 6509.5 and 6505.5 of the JPA Law which is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State of California.
- (n) To apply for letters of credit or other form of financial guarantees in order to secure the repayment of its obligation and enter into agreements in connection therewith.
- (o) To accept security, collateral or other property interests to secure payment of loans or other obligations to the Authority.

(p) To carry out and enforce all the provisions of this Agreement.

(q) To finance or refinance indebtedness incurred by the Authority or third parties in connection with any of the purposes hereof.

(r) To the extent not herein specifically provided for, to exercise any powers in the manner and according to methods provided under the laws applicable to BART.

Section 2.6 Additional Powers to be Exercised. In addition to those powers common to each of the parties, the Authority shall have those powers conferred upon it by the JPA Law.

Section 2.7 Restrictions on Exercise of Powers. The Act and the powers of the Authority shall be exercised in the manner provided in the JPA Law, and, except for those powers set forth in Article 4 of the JPA Law, shall be subject (in accordance with Section 6509 of the JPA Law) to the restrictions upon the manner of exercising such powers that are imposed upon BART in the exercise of similar powers.

Section 2.8 Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the parties to this Agreement. The parties to this Agreement shall not be liable for the debts, liabilities or obligations of the Authority.

Section 2.9 Non-Liability for Obligations of Authority. No party, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal or of premium or interest on any obligations of the Authority or be subject to any personal liability or accountability by reason of any obligations of the Authority; but nothing herein contained shall relieve any such party, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Authority.

Section 2.10 Authority Facilities. All public facilities constructed or acquired by the Authority may be held in the name of the Authority for the benefit of the Authority in accordance with the terms of this Agreement unless conveyed to and accepted by the County, BART, State of California, or any other public entity.

ARTICLE 3. ORGANIZATION

Section 3.1 Membership. The Members of the Authority shall be BART and the County (the "JPA Members"). The JPA Members may agree to have additional members, in which case the JPA Members and the additional members shall execute an amendment or supplement to this Agreement providing and setting forth the terms of the additional membership.

Section 3.2 Governing Body of the Authority.

(a) The business of the Authority shall be conducted by a Board of Directors consisting of four (4) persons. All voting power of the Authority shall reside in the Board of Directors.

(b) The County shall appoint two Directors to the Board of Directors, and BART shall appoint two Directors to the Board of Directors. Initially, those Directors shall be: for BART; members of the governing board of BART appointed by the governing board of BART; for the County, members of the County Board of Supervisors of the County appointed by the Board of Supervisors. Any Director on the Board of Directors may designate a substitute representative to serve as a Director on the Board of Directors. Any such substitute shall be an employee of BART in the case of the BART representative, or an employee of the County in the case of the County representative.

(c) Members of the Board of Directors shall not receive any compensation for serving as such but a Director may be reimbursed for expenses incurred by such Director in the conduct of the Authority's business subject to any applicable policy of the Authority.

Section 3.3 Principal Office. The principal office of the Authority shall be established by the Board. The Board is hereby granted full power and authority to change said principal office from one location to another. Any change shall be noted by the secretary under this section, but shall not be considered an amendment to this Agreement.

Section 3.4 Meetings. The Board shall meet at the Authority's principal office or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board; a copy of such resolution shall be furnished to each party hereto. Regular, adjourned and special meetings shall be called, noticed, held, and conducted in the manner as provided in the Ralph M. Brown Act (Chapter 9, Division 2, Title 5, of the Government Code of the State of California (commencing at Section 54950)) or any successor legislation hereinafter enacted. The Board shall appoint a secretary who may be one of the Directors or an employee of one of the Members.

Section 3.5 Quorum. A simple majority of the Directors shall constitute a quorum for the purpose of transacting the Authority's general business. Except as otherwise provided by law, the unanimous vote of all the Directors shall be required for the Authority to take action. Each Director shall have one vote.

Section 3.6 Resolution of Disputes. If action of the Authority cannot be taken because the vote of all the Directors cannot be obtained, then any Member, by written notice to the other Members, may require that the Members meet in an effort to reach a resolution of the matter at issue that may obtain the vote of all Directors. If that meeting does not result in resolution of the matter at issue, then any Member, by written notice to the other members, may require that the parties engage in a mediation process with regard to the matter at issue. The initial notice of mediation shall contain a detailed explanation of the matter at issue and the position of the initiating Member concerning the matter at issue. If such mediation notice is given, the Members shall promptly consult with each other to select an independent mediator who shall be

knowledgeable regarding the matter at issue and who has no financial interest in the matter at issue or in any contract with any of the Members. For example, if the matter at issue involves engineering or architectural issues, the mediator may be an engineer or architect with knowledge of the kinds of issues that are in dispute. If the Members cannot agree to a mediator within forty-five (45) days following the date the mediation notice is given, any Member or the Members jointly may apply to the presiding judge of the Contra Costa County Superior Court for appointment of a mediator meeting the qualifications of this Section 3.6. Once the mediator is selected, the parties shall meet with the mediator and make good faith efforts to reach agreement on the matter at issue. The Members shall provide the mediator with written information regarding the matter at issue and an explanation of the positions of the various Members on the issues. The cost of the mediator shall be paid fifty percent (50%) by the County and fifty percent (50%) by BART.

Section 3.7 Powers and Limitations. All the power and authority of the Authority shall be exercised by the Board, subject, however, to the provisions of this Agreement, the JPA Law, and the rights reserved by the parties as herein set forth.

Section 3.8 Minutes. The secretary of the Authority shall cause to be kept minutes of regular, adjourned and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director and to each of the parties hereto.

Section 3.9 Bylaws; Rules. The Board may adopt from time to time such bylaws and rules and regulations for the conduct of its affairs as may be necessary or advisable for the purposes of this Agreement.

Section 3.10 Vote or Assent of Parties. The vote, assent, or approval of the parties in any matter requiring such vote, assent or approval hereunder, shall be evidenced by a certified copy of the resolution of the governing board of such party filed with the Authority.

Section 3.11 Officers. The chair shall be rotated from time to time among the Directors in accordance with procedures established by the Board. The Board shall have the power to appoint such additional officers as it deems necessary and appropriate.

Section 3.12 Treasurer and Auditor.

(a) The Auditor-Controller of the County shall be the Treasurer of the Authority. The Treasurer shall be the depository, shall have the custody of all the money of the Authority from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Sections 6505 and 6505.5 of the Act. The Treasurer shall be responsible for receiving quarterly reports and verifying the balance of this report with respect to the balance as maintained by the records of the Auditor.

(b) The auditor of the County shall be the Auditor of the Authority. The Auditor shall have the duties and obligations of the Auditor as set forth in Section 6505 and 6505.5 of the Act. The Auditor shall assure strict accountability of all receipts and disbursements of the Authority and shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

(c) The Treasurer and Auditor of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property or funds of the Authority, and each such officer shall be bonded as required by Government Code Section 6505.1, and the amount of their bond shall be fixed by resolution. From time to time the Board may designate other persons in addition to the Treasurer and Auditor who have charge of, handle, or have access to any property or funds of the Authority.

(d) Pursuant to Government Code Section 6513, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the parties when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the parties or by reason of their employment by the Board to be subject to any of the requirements of such parties.

(e) The Auditor and Treasurer of the Authority shall not be compensated for their work for the Authority but the Authority shall reimburse the Auditor and Treasurer for out-of-pocket expenses including those for outside accountants undertaking the annual audit of accounts and records of the Authority.

Section 3.13 Authority Staff. The Authority shall initially have Co-executive Directors who initially shall be the: (a) Director, Contra Costa County Department of Conservation and Development, or the Director's designee; and (b) the Department Manager of Real Estate and Property Development of BART. The Co-executive Directors shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Authority as is or hereafter may be placed in their charge, or under their jurisdiction or control pursuant to the provisions of this Agreement, or of any ordinance, resolution or order of the Board. In addition to other powers and duties herein provided, the Co-executive Directors shall have the power:

(a) Under policy direction of the Board, to plan, organize and direct all Authority activities.

(b) To appoint and to remove all Authority employees, if any, all of who shall serve at the pleasure of the Co-executive Directors, except as is otherwise provided by law or by sections 2.5(e) of this Agreement.

(c) To authorize expenditures within the designations and limitations of the approved Budget.

(d) To make recommendations to and requests of the Board concerning all of the matters and things which are to be performed, done or carried out by said Board.

(e) To call special meetings of the Board.

Section 3.14 Liability of Board. The Authority shall defend, indemnify and hold harmless any Member, Director, officer or employee for their actions taken within the scope of the authority of the Authority. Except as otherwise provided in this Agreement, the funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and any Member, Director, officer or employee for their actions taken within the scope of the authority of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is set forth below. The Authority's duty to indemnify each Member (and its Directors, officers, employees and agents) shall survive the Member's withdrawal from the Authority.

Section 3.15 Termination of Dissolved RDA's Membership. The Dissolved RDA, through the Successor Agency, is hereby removed as a member of the Authority and shall have no further rights or obligations under this Agreement, provided, however, that the Dissolved RDA and its successors and assigns shall not be released from any obligations under this Agreement that were incurred prior to termination of Dissolved RDA's membership, including without limitation the construction of the Other Public Improvements, to the extent those obligations remain outstanding.

ARTICLE 4. FINANCING

Section 4.1 Budget. Within 90 days after the first meeting of the Board, and thereafter prior to the commencement of each Fiscal Year, the Board shall adopt a Budget for the Authority for the ensuing Fiscal Year.

Section 4.2 Contributions for Operating Expenses.

(a) Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by BART and the County for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by BART and the County, as the case may be, and the Authority at the time of making such advance. It is mutually understood and agreed that, except as specifically provided in this Agreement, neither BART, nor the County has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any of them may do so. BART and the County may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

(b) It is understood that the Board may arrange for the payment of the expenses of the Authority through some other source, including but not limited to state or federal grants or loans.

(c) In accordance with Government Code Section 6512.1, repayment or return to the parties of all or part of any contributions made by the parties may be directed by the Board at such time, and upon such terms as may be consistent with the JPA Law, and/or any revenue

bond issue. The Authority shall hold title to all funds, property and facilities acquired by it during the term of this Agreement.

Section 4.3 State and Federal Grants and Loans. It is understood and acknowledged that some activities or facilities may qualify for grant or loan funding from the State of California or the federal government. The Board shall have the power, in its discretion, to contract for such funding of eligible activities or facilities. Funds received by the Authority from such sources may be used to pay for, reimburse or otherwise finance such eligible activities or facilities.

Section 4.4 Reimbursement of Funds. Funds received by the Authority from any federal, state or local agency to pay for budgeted expenditures for which the Authority has received all or a portion of said funds from its parties shall be proportionately paid to said parties to reimburse the parties for the funds advanced to the Authority for the acquisition, construction, operation and maintenance of the activities or facilities for which such funds have been received.

Section 4.5 General Bond Provisions. Upon approval of the Board, the Authority may, in any given year, issue bonds to finance activities or facilities in accordance with the provisions of any applicable law and the JPA Law.

Section 4.6 Revenue Bonds. The Authority, upon approval of the Board, shall have the power and authority to issue revenue bonds for the purposes and in accordance with the procedures and requirements set forth in the JPA Law.

Section 4.7 Disposition of Development Lease Revenue.

(a) The net rental income that the Authority receives from the Developer pursuant to the Development Lease (after deduction of amounts to pay for lease administration pursuant to Section 4.8 below) shall be distributed by the Authority promptly following receipt. That rental income shall be distributed to the County, BART and the Developer on the following basis:

(1) Under the terms of the Original Joint Powers Agreement (and prior to the execution of this Agreement) the Dissolved RDA had only the right to receive, and as of execution date of this Agreement has received, the sum of Six Hundred Fifty Thousand Dollars (\$650,000) to pay for the cost of constructing the temporary parking (the "Temporary Parking Amount"). As of the Effective Date, the Successor Agency, as the successor in interest to the Dissolved RDA, has received the Temporary Parking Amount and neither the Dissolved RDA nor the Successor Agency is entitled to any rental income or additional revenue from the Development Lease.

(2) Until the Developer has received the Developer Structure Amount (as defined below), the net rental income shall be divided between the County and the Developer with the County receiving seventy-five percent (75%) of the net rental income and the Developer receiving twenty-five percent (25%) of the net rental income.

(3) Once the Developer has received the Developer Structure Amount and continuing until the Parking Structure Amount (as defined below) has been paid, all the net rental income shall be paid to the County.

(4) Once the Parking Structure Amount has been paid, the net rental income shall be divided between BART and the County with the County receiving seventy-five percent (75%) of the net rental income and BART receiving twenty-five percent (25%) of the net rental income.

(b) For purposes of this Section, the Developer Structure Amount shall be the lesser of Four Hundred Thousand Dollars (\$400,000) or the BART Excess Amount as defined in that certain Construction Agreement by and among BART, the Dissolved RDA and the Developer, dated as of December 19, 2005 providing for the construction of the BART Parking Structure.

(c) For purposes of this section, the Parking Structure Amount shall be Seven Million Dollars (\$7,000,000) plus the sum of the Discount Factors as defined below for each calendar year. The Discount Factor for a calendar year shall be added to the Parking Structure Amount as of December 31 of the calendar year for which it is calculated.

The Discount Factor shall be an annual amount beginning with the 2008 calendar year equal to seven percent (7%) of the Remaining Balance (as defined below) at the end of each calendar year.

The Remaining Balance shall be equal to Seven Million Dollars (\$7,000,000) less all net rental income that has been paid to the County or Developer pursuant to subsections (a)(2) or (a)(3) above and has been applied to reduction of the Remaining Balance. All net rental income paid to the County or Developer pursuant to subsections (a)(2) or (a)(3) above shall be applied first to reduce the previously accrued Discount Factors and then shall be applied to reduce the Remaining Balance. The parties acknowledge and agree that the amounts paid to Developer pursuant to subsection (a)(2) shall be applied to reduce the Remaining Balance even though such amounts are not paid to the County.

Section 4.8 Lease Administration Expenses. The Authority shall retain a portion of the rental income it receives pursuant to the Development Lease for purposes of administration of the Authority and the Development Lease. The amount retained shall be the estimated amount needed for administrative purposes over the following year. The amount retained shall be the estimated amount needed for administrative purposes over the following year. The amount retained shall not exceed four percent (4%) of the annual rental income for the first two (2) years following the date the Developer has completed all of the improvements it is required to construct on the Lease Property pursuant to the Development Lease, and thereafter the retained amount shall not exceed two percent (2%) of the annual rental income during the remaining term of the Development Lease. The administrative functions may be carried out by an independent contractor, by one of the parties to this Agreement or a combination of the contractor and a party, as determined by the Board. If, in any year, the Authority retains more rental income from the Development Lease than it needs to cover administration of the Authority Lease and

Development Lease, the Authority shall, at or promptly following the end of the year, distribute the excess pursuant to Section 4.7 above, provided, however, that the Authority may retain such excess so long as the total amount retained does not exceed the average of the previous five years' lease administration costs.

Section 4.9 Allocation of Bonus Rent. The Development Lease requires PHTVA to pay annual "Bonus Rent" of fifty percent (50%) of the gross income from the property in excess of a target amount of between \$10 million and \$12 million dollars but in no event would this "Bonus Rent" exceed Four Hundred Fifty Thousand Dollars (\$450,000) per year (the "Bonus Rent"). The Bonus Rent is in addition to the minimum rent, percentage rent, and rent payable upon sale or refinancing of the development. Under the Original Joint Powers Agreement the parties agreed that, notwithstanding anything to the contrary, the Authority is required to pay to the County the Bonus Rent that the Authority receives under the Development Lease, if any.

Section 4.10 Sale Agreement. At the same time that BART and the Authority entered into the Authority Lease, BART and the Authority executed the Sale Agreement providing for conveyance of the Sale Property to the Authority. The Sale Agreement expired by its terms and is no longer in effect. BART no longer desires to convey fee simple ownership of the Sale Property to the Authority.

ARTICLE 5. OTHER OBLIGATIONS OF THE PARTIES.

Section 5.1 BART Station Capacity Improvements. BART shall make good faith efforts to obtain funding for and construct improvements that will enlarge the passenger capacity of the Station or improve the Station facilities. The parties understand that improvements that enlarge passenger capacity may be located outside of the Station and the BART Station Property. Capacity enlarging facilities shall not include the Replacement Parking or parking to replace the approximately 580 parking spaces on land previously owned by the Dissolved Agency adjacent to the BART Station Property.

Section 5.2 County Planning and Building Approvals. The development of the BART Station Property as contemplated by this Agreement will require the Developer to obtain various permits and approvals from the County. The County shall diligently process all Developer applications for permits and approvals for the BART Station Property including compliance with the California Environmental Quality Act and, if necessary, a development agreement with the Developer pursuant to Government Code Sections 65864 et seq. The parties agree that the County shall be the lead agency for purposes of environmental review under the California Environmental Quality Act of the private development proposed under the Development Lease, the Disposition Agreement, the Other Public Improvements, and other project related documents entered into to effectuate the terms of this Agreement.

Section 5.3 Police Services. The County and BART shall each provide police services for the BART Station Property to the fullest extent that their respective jurisdictional powers permit.

ARTICLE 6.
ACCOUNTING AND AUDITS

Section 6.1 Accounts and Reports. The Auditor shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Authority. The books and records of the County in the hands of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Treasurer, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said trust agreement as may be desirable to carry out this Agreement.

Subject to the applicable provisions of any trust agreement or indenture which the Authority may enter into, which may provide for a trustee to receive, have custody of, and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of, and disburse Authority funds on warrants drawn by the Auditor as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement, and shall take such other actions as are necessary to implement or to carry out any of the provisions or purposes of this Agreement.

Section 6.2 Audit. The records and the accounts of the Authority shall be audited annually by a certified public accountant designated by the Auditor, and copies of such audit reports shall be filed as public records with the county auditor of Contra Costa County and with each party within six months of the end of the Fiscal Year under examination, and shall be sent to any public agency or person in California that submits a written request to the Authority.

ARTICLE 7.
RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT.

Section 7.1 Term. The Authority shall continue to exercise the powers conferred upon it by this Agreement until this Agreement is rescinded or terminated as herein provided. If not earlier terminated or rescinded the term of this Agreement shall terminate upon the end of the term of the Authority Lease.

Section 7.2 Rescission or Termination. This Agreement may be rescinded and the Authority terminated by unanimous written consent of the Board; provided that no such termination or rescission shall occur so long as the Authority has any outstanding obligations including, but not limited to, outstanding revenue bonds, or so long as the Development Lease is in effect.

Section 7.3 Disposition of Property Upon Termination. Pursuant to Government Code Section 6512, upon termination of this Agreement, any surplus funds on hand shall be paid out to BART and the County in the manner specified in Section 4.7 above for lease revenue. The Board shall first offer any facilities, rights and interests of the Authority for sale to the Members for good and adequate consideration. If no such sale is consummated, the Board shall consider offering such facilities, rights and interests of the Authority for sale to any governmental agency, or other entity for good and adequate consideration. The net proceeds from any sale shall be paid out to BART and the County in the manner specified in Section 4.7 above for lease revenue. If no such sale is consummated, then the facilities, rights and interests of the Authority shall be allocated to the parties in the same manner as the allocation of the net proceeds from a sale, unless otherwise agreed to by all of the parties.

Section 7.4 Withdrawal. Except as provided in Section 3.15 of this Agreement, no party may withdraw from the Authority without the unanimous written consent of the other parties.

ARTICLE 8. GENERAL PROVISIONS.

Section 8.1 Amendments. This Agreement may be amended only by the unanimous vote of all Members. To be effective, all amendments and modifications must be in writing and signed by all Members.

Section 8.2 Assignment. The rights and duties of the parties may not be assigned or delegated without the written consent of all other parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect.

Section 8.3 Breach. If a party breaches any covenant contained in this Agreement, such default shall not excuse any other party from fulfilling its obligations under this Agreement and all parties shall continue to be liable for the payment of contributions and the performance of all conditions herein contained. The parties hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the parties hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

Section 8.4 Notice. Any notice or instrument required to be given shall be delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, by hand delivery or by overnight delivery service and shall be addressed to the addressee of the parties as follows:

BART:	San Francisco Bay Area Rapid Transit District PO Box 12688 Oakland, CA 94604-2688
-------	---

One Copy to: Department Manager of Real Estate and Property Development

One Copy to: Office of the General Counsel

County: County of Contra Costa
County Administrator
651 Pine Street, 11th Fl.
Martinez, CA 94533
Attn: County Administrator

Such notice shall be effective upon receipt or refusal to accept receipt.

Section 8.5 Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 8.6 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto, respectively.

Section 8.7 Regulatory Authority Over BART. Nothing in this Agreement is intended to subject BART to the regulatory authority of the County, except when BART is acting in a private development capacity.

Section 8.8 Liability of Authority, Members, Officers and Employees. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Members or any of their respective officers, directors, employees or agents. Any obligations incurred by any bonds issued by the Authority as set forth in Section 2.5 or 4.6 above shall not constitute general obligations of the Authority, but shall be payable solely from the moneys pledged to the repayment of such obligations or the repayment of principal or interest on such bonds under the terms of the resolution, indenture, trust agreement, contract or other instrument pursuant to which the obligation is incurred or the bonds are issued. No Member or its directors, officers, employees or agents shall be responsible for any action taken or omitted by any other Member or its directors, officers, employees or agents.

Section 8.9 Conflicts of Interest Code. To the extent required pursuant to Government Code Section 87300 or other provision of law, the Authority by resolution shall adopt a conflicts of interest code as required by law.

ATTEST:

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

Secretary

By: _____

APPROVED AS TO FORM:

Name: _____

General Counsel

Title: _____

ATTEST:

CONTRA COSTA COUNTY

County Clerk

By: _____

APPROVED AS TO FORM:

Name: _____

County Counsel

Title: _____

CONSENT:

The Successor Agency to the former Contra Costa County Redevelopment Agency hereby consents to the execution of this First Amended and Restated Joint Exercise of Powers Agreement for the Pleasant Hill BART Station Leasing Authority and agrees and acknowledges that as the result of the execution of this Agreement, the Dissolved RDA, through the Successor Agency, is hereby removed as a member of the Authority and shall have no further rights or obligations under this Agreement.

SUCCESSOR AGENCY TO THE FORMER
CONTRA COSTA COUNTY REDEVELOPMENT
AGENCY, a separate public entity

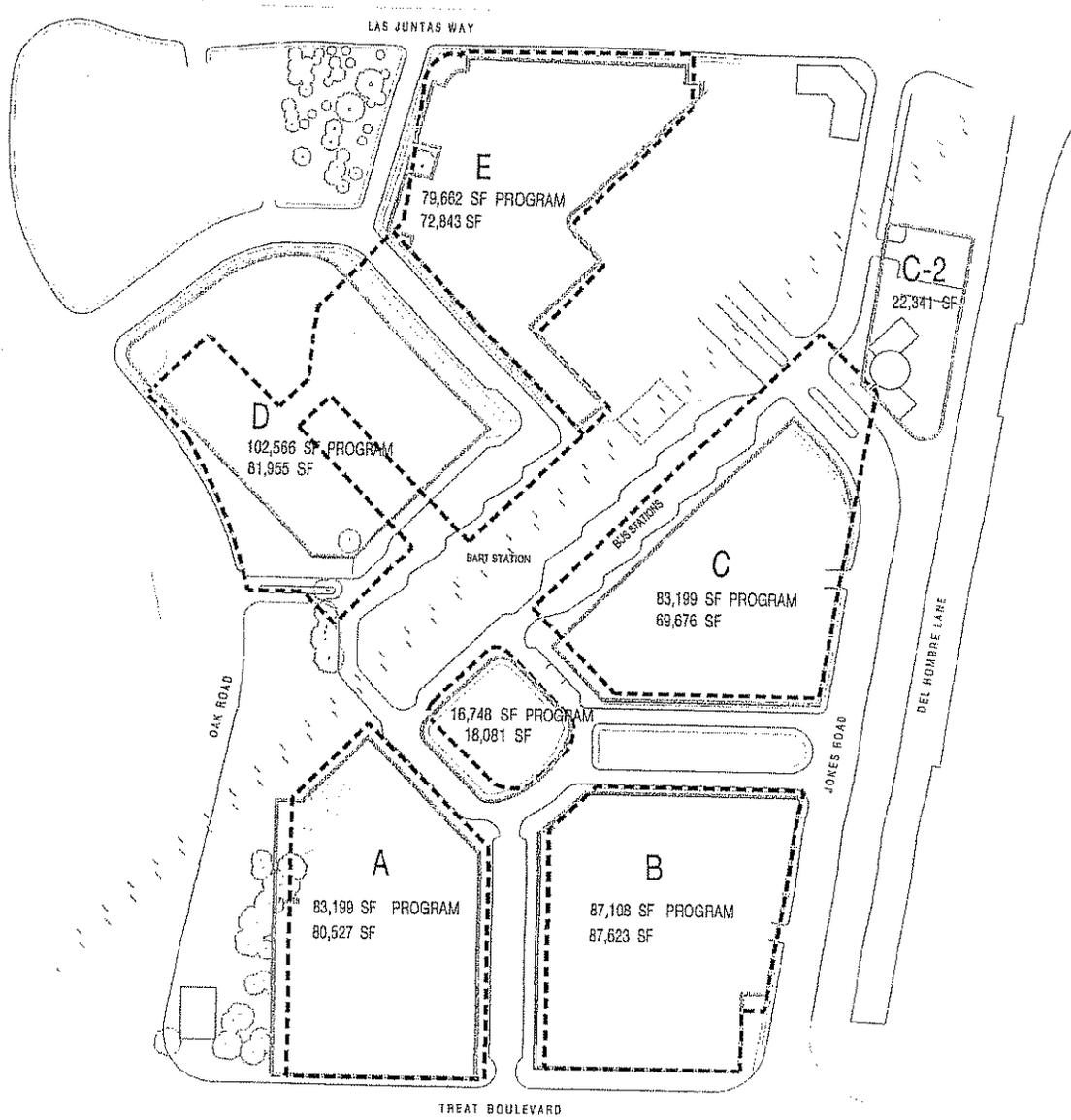
By: _____

Name: _____

Title: _____

EXHIBIT A

MAP SHOWING BART STATION PROPERTY



Program Area -----
 Design Area - - - - -

PROGRAM GUIDELINES & SITE DESIGN COMPARISON

	OFFICE	STOREFRONT	RESIDENTIAL	CIVIC
A		20,000 SF	172 UNITS	
B		20,000 SF	129 UNITS	
C			80 UNITS	7,000 SF
D	290,000 SF			
E			64 UNITS	
TOTAL	290,000 SF	40,000 SF	445 UNITS	7,000 SF

	OFFICE	STOREFRONT	RESIDENTIAL	CIVIC	CHILDCARE
A		15,715 SF	188 UNITS		
B		14,075 SF	188 UNITS		
C		2,175 SF	85 UNITS	2,200 SF	4,500 SF
D	290,000 SF	3,600 SF			
E			40 UNITS		
TOTAL	290,000 SF	33,390 SF	500 UNITS	2,200 SF	4,500 SF



DATE: 12/04
 PROJECT #: 2003.100
 SCALE: 1" = 60'-0"
 NORTH
 SHEET #:

Pleasant Hill BART Transit Village

Pleasant Hill Transit Village Associates, LLC

EXHIBIT B
Map Showing Station

EXHIBIT C
Map Showing Specific Plan Area

Figure 5

URBAN DESIGN POLICY DIAGRAM LAND USE AREAS

- COMMERCIAL / OFFICE ZONE
- MULTIPLE FAMILY RESIDENCE ZONE
- MIXED USE ZONE
- UTILITY / OPEN SPACE ZONE

DEVELOPMENT AREA 9
**PLEASANT HILL
BART STATION AREA**

URBAN DESIGN POLICY DIAGRAM Figure 5 LAND USE AREAS



ARTICLE 1. DEFINITIONS AND EXHIBITS.....	3
SECTION 1.1 DEFINITIONS.	3
ARTICLE 2. PURPOSE AND POWERS.....	6
SECTION 2.1 PURPOSE OF THE AGREEMENT.	6
SECTION 2.2 AUTHORITY CREATED.	6
SECTION 2.3 EFFECTIVE DATE.	6
SECTION 2.4 BOUNDARIES OF THE AUTHORITY.....	6
SECTION 2.5 POWERS.	6
SECTION 2.6 ADDITIONAL POWERS TO BE EXERCISED.....	8
SECTION 2.7 RESTRICTIONS ON EXERCISE OF POWERS.....	8
SECTION 2.8 OBLIGATIONS OF AUTHORITY.....	8
SECTION 2.9 NON-LIABILITY FOR OBLIGATIONS OF AUTHORITY.	8
SECTION 2.10 AUTHORITY FACILITIES.	8
ARTICLE 3. ORGANIZATION.....	8
SECTION 3.1 MEMBERSHIP.	8
SECTION 3.2 GOVERNING BODY OF THE AUTHORITY.	9
SECTION 3.3 PRINCIPAL OFFICE.	9
SECTION 3.4 MEETINGS.....	9
SECTION 3.5 QUORUM.....	9
SECTION 3.6 RESOLUTION OF DISPUTES.....	9
SECTION 3.7 POWERS AND LIMITATIONS.....	10
SECTION 3.8 MINUTES.....	10
SECTION 3.9 BYLAWS; RULES.....	10
SECTION 3.10 VOTE OR ASSENT OF PARTIES.....	10
SECTION 3.11 OFFICERS.....	10
SECTION 3.12 TREASURER AND AUDITOR.....	10
SECTION 3.13 AUTHORITY STAFF.....	11
SECTION 3.14 LIABILITY OF BOARD.....	12
SECTION 3.15 TERMINATION OF DISSOLVED RDA’S MEMBERSHIP.....	12
ARTICLE 4. FINANCING.....	12
SECTION 4.1 BUDGET.....	12
SECTION 4.2 CONTRIBUTIONS FOR OPERATING EXPENSES.....	12
SECTION 4.3 STATE AND FEDERAL GRANTS AND LOANS.....	13
SECTION 4.4 REIMBURSEMENT OF FUNDS.....	13
SECTION 4.5 GENERAL BOND PROVISIONS.....	13
SECTION 4.6 REVENUE BONDS.....	13
SECTION 4.7 DISPOSITION OF DEVELOPMENT LEASE REVENUE.....	13
SECTION 4.8 LEASE ADMINISTRATION EXPENSES.....	14
SECTION 4.9 ALLOCATION OF BONUS RENT.....	15
SECTION 4.10 SALE AGREEMENT.....	15
ARTICLE 5. OTHER OBLIGATIONS OF THE PARTIES.....	15
SECTION 5.1 BART STATION CAPACITY IMPROVEMENTS.....	15

SECTION 5.2	COUNTY PLANNING AND BUILDING APPROVALS	15
SECTION 5.3	POLICE SERVICES	15
ARTICLE 6. ACCOUNTING AND AUDITS.....		16
SECTION 6.1	ACCOUNTS AND REPORTS	16
SECTION 6.2	AUDIT.	16
ARTICLE 7. RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT.		16
SECTION 7.1	TERM.	16
SECTION 7.2	RESCISSION OR TERMINATION.	16
SECTION 7.3	DISPOSITION OF PROPERTY UPON TERMINATION.....	17
SECTION 7.4	WITHDRAWAL.....	17
ARTICLE 8. GENERAL PROVISIONS.....		17
SECTION 8.1	AMENDMENTS.....	17
SECTION 8.2	ASSIGNMENT.	17
SECTION 8.3	BREACH.	17
SECTION 8.4	NOTICE.	17
SECTION 8.5	SEVERABILITY.	18
SECTION 8.6	SUCCESSORS.	18
SECTION 8.7	REGULATORY AUTHORITY OVER BART.	18
SECTION 8.8	LIABILITY OF AUTHORITY, MEMBERS, OFFICERS AND EMPLOYEES.....	18
SECTION 8.9	CONFLICTS OF INTEREST CODE.....	18

- EXHIBIT A: Map Showing BART Station Property
- EXHIBIT B: Map Showing Station
- EXHIBIT C: Map Showing Specific Plan Area