

MARLER - JOHNSON PARK AGREEMENT
FLA 04-SF-280-03
SUMMARY OF LEASE PROVISIONS

LESSEE: City and County of San Francisco.

PREMISES: 04-SF-280-03 Located in the City and County of San Francisco, State of California, commonly known as the Selby and Palou Mini Park.

LEASE TERM: Ten (10) years; with three (3) five (5) year options (25-years total), options subject to District Airspace Review Committee (DARC), commencing **XXXX** 1, **XXXX** and first term expiring on **XXXX** 31, **XXXX**

ANNUAL LEASE RATE: \$2,000.

ADJUSTMENT TO LEASE RATE: 4%

REEVALUATION: none

SECURITY DEPOSIT: \$0.00.

PUBLIC USE: Park and Recreational Use Only.

LIABILITY INSURANCE: \$5,000,000.00 self-insured

ADDRESS FOR NOTICES:

LESSOR:

Department of Transportation
Right of Way, Airspace
P.O. Box 23440
Oakland, CA 94623
(510) 908-3005

LESSEE:

General Manager
Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117
(415) 831-2700

With a copy to:

Director of Property
San Francisco Real Estate Division
25 Van Ness Avenue, Suite 5200
San Francisco, CA 94102

Real Estate and Finance Team
San Francisco City Attorney's Office
1 Dr. Carlton B. Goodlet Pl, Suite 234
San Francisco, CA 94102

**STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
AIRSPACE LEASE – MARLER-JOHNSON PARK AGREEMENT**

Lease Area No. 04-SF-280-03
(Tenancy 04-SFX-280-0003-02)

THIS LEASE, dated _____, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "LESSOR", and CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, hereinafter called "LESSEE".

W I T N E S S E T H

It has been determined that the following described purpose is the proper use by a bonafide public agency pursuant to Section 14013 of the Government Code of the State of California; and

That the LESSOR, for and in consideration of the covenants, conditions, agreements, and stipulations of the LESSEE expressed, does hereby lease unto the said LESSEE, of those certain premises situated in the City and County of San Francisco, State of California, sometimes designated as Freeway Lease Area Number 04-SF-280-03, said demised area being described on the attached map or plat marked "Exhibit A", commonly known as Selby and Palou Mini Park.

EXCEPTING THEREFROM all those portions of the above-described property occupied by the supports and foundations of the existing structure. ALSO EXCEPTING THEREFROM all that portion of said property: above a horizontal plane 5 feet below the underside of the superstructure of the existing structure, which plane extends to a line 15 feet, measured horizontally, beyond the outermost protrusion of the superstructure of said existing structure, as shown on the diagram marked "Exhibit A," attached hereto and by this reference made a part hereof.

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to LESSEE or of which LESSEE has notice, constructive or otherwise including, without limitations, those shown on attached "Exhibit A".

The parties hereto covenant and agree as follows:

ARTICLE 1. TERM

The term of this Lease shall be for ten (10) years commencing on **XXXX 1, XXXX**, and expiring **XXXX 31, XXXX**. At LESSEE'S option, and with LESSOR'S concurrence, this lease may be renewed for three (3) additional five (5)-year options subject to a reevaluation of the lease rate in accordance with such terms as may be mutually agreed upon by the parties.

ARTICLE 2. LEASE RATE

2.1 Annual Lease Rate

LESSEE shall pay to LESSOR the sum of \$2,000.00, per year commencing on **XXXX 1, XXXX** and every year thereafter continuing during the term. The lease rate is for the property only; LESSEE must arrange to pay for all utility, maintenance and landscaping services.

All rent shall be paid to LESSOR at the following address: State of California, Department of Transportation, Attention: Cashier, P. O. Box 168019, Sacramento, CA 95816-8019.

Each payment shall state on the check the rental account number 04-SFX-280-0003-02.

2.2 Adjustment to Annual Lease Rate

The monthly rent provided for in Section 2.1 shall be subject to adjustment as of the first day of the second year of the lease term and every year thereafter via a fixed 4% increase (rounded to closest \$5). Table 2.2.1 below provides the LESSEE's minimum rent obligation for the 10 year initial term, plus the adjusted rent for the option periods if exercised. LESSOR shall not be required to provide any further notice to LESSEE regarding annual rent adjustments during the Lease term.

Table 4.2.1

<u>Lease Year</u>	<u>Period</u>	<u>Rent</u>
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
Year 8		
Year 9		
Year 10		
Year 11 (Option 1)		
Year 12		
Year 13		
Year 14		
Year 15		
Year 16 (Option 2)		
Year 17		
Year 18		
Year 19		
Year 20		
Year 21 (Option 3)		
Year 22		
Year 23		
Year 24		
Year 25		

ARTICLE 3. USE

3.1 Specified Use

The Premises shall be used and occupied by LESSEE only and exclusively for the purpose of a public park and/or recreational area. The Premises shall be maintained at the sole cost and expense of LESSEE in an orderly, clean, safe and sanitary condition. LESSOR will terminate this lease immediately if LESSEE uses the Premises for any purpose other than park or recreational uses.

LESSOR has not received any notice that the Premises is a significant park or recreation area pursuant to the provisions of 23 U.S.C. section 138 and 49 U.S.C. section 303 (commonly referred to as Section 4(f)). It is hereby understood and agreed by LESSOR and LESSEE that the park is not intended to convert the Premises into a significant park or recreation area pursuant to the provisions of 23 U.S.C. section 138 and 49 U.S.C. section 303 (commonly referred to as Section 4(f))

(collectively, "Section 4(f)"); and City shall not knowingly install, nor permit any of its sublessees to install, any improvements at the Premises that would cause the Premises to be a significant park or recreation area under Section 4(f). In the event that the Premises is declared a significant park or recreation area under Section 4(f) due to the park or any improvements installed at the Premises by City or its sublessee(s), the City shall assume all burden, monetary or otherwise, in securing any remedy required to minimize any harm that any of LESSOR's proposed projects would otherwise cause to the park or any such improvements.

The Premises shall at all times be subject to such uses by the LESSOR as are necessary for highway facilities without interference by LESSEE.

3.2 Condition of Premises

LESSEE hereby accepts the Premises "As-Is". LESSOR makes no representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of LESSEE's business, nor has LESSOR agreed to undertake any modification, alteration or improvement to the Premises.

If Premises are located on an Interstate designated highway, this Lease shall not be effective until the Federal Highways Administration (FHWA) approves: (a) the proposed use of the PREMISES, and (b) the specific terms of this Lease, and LESSOR has given LESSEE notice of such approvals ("Lease Effective Notice").

3.3 Prohibited Uses

LESSEE is to use the Premises for public park and recreational purposes only. The following are specifically prohibited:

- (a) Using the Premises in violation of any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements.
- (b) Operating or installing gasoline or petroleum supply station, transporting or storing gasoline or petroleum products under the structures, except those products stored within an operable vehicle for exclusive use by that vehicle.
- (c) Manufacturing or storage or use of flammable materials, explosives or other materials, deemed by LESSOR to be a potential fire or other hazard to the transportation facility.
- (d) Using, creating, storing or allowing any hazardous materials on the premises, except as otherwise expressly permitted in this Lease. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.
- (e) Constructing, erecting, maintaining or permitting any sign, banner or flag upon the premises, except as provided for in Section 4.2, without the prior written approval of LESSOR. LESSEE shall not place, construct or maintain upon the premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media.
- (f) Parking or storing wrecked or inoperable vehicles of any kind on the Premises. All parked or stored vehicles must be capable of being started and driven off the premises. Vehicles will not be permitted to remain overnight on the premises.
- (g) Conducting or permitting the vending or sale of any goods or services upon the premises.

3.4 Hazardous Materials

LESSEE shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.), Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), Safe Drinking Water Act (42 U.S.C. Section 300f, et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), Clean Air Act (42 U.S.C. Section 7401, et seq.), Comprehensive

Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), other applicable provisions of the California Health and Safety Code (Section 25100, et seq., and Section 39000, et seq.), California Water Code (Section 13000, et seq.), and other comparable state laws, regulations and local ordinances relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous materials” under any such laws, ordinances or regulations (collectively “Hazardous Materials Laws”). As used in the provisions of this Lease, “hazardous materials” include any “hazardous substance” as that term is defined in Section 25316 of the California Health and Safety Code and any other material or substance listed in or regulated by any Hazardous Materials Laws or posing a hazard to a person’s health or the environment. Except as otherwise expressly permitted in this Lease, LESSEE shall not use, create, store or allow any hazardous materials on the Premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. Household cleaning supplies limited to quantities that are reasonably necessary to support shelter/feeding program operations are excepted. LESSEE is prohibited from stockpiling large quantities of cleaning supplies. All cleaning supplies shall be properly stored under safe conditions. Cleaning supplies that are incompatible shall be stored separately. Except as otherwise expressly permitted in this Lease, LESSEE shall not use, create, store or allow any hazardous materials on the Premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall LESSEE cause or allow the deposit or disposal of any hazardous materials on the Premises. LESSOR, or its agents or contractors, shall at all times have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the premises.

Breach of any of these covenants, terms and conditions shall give LESSOR authority to immediately terminate this Lease. It is the intent of the parties hereto that LESSEE shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises during LESSEE'S period of use and possession as owner, operator or LESSEE of the premises. LESSEE shall also be responsible for any clean-up and decontamination on or off the Premises necessitated by the introduction of such hazardous materials on the Premises. LESSEE shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the premises by any party other than Lessee during any period prior to commencement of LESSEE'S period of use and possession of the Premises as owner, operator or Lessee.

LESSEE shall further hold LESSOR, and its officers and employees, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the premises during LESSEE'S period of use and possession of the Premises.

3.5 Stormwater

LESSEE shall comply with all applicable State and Federal water pollution control requirements regarding storm water and non-storm water discharges from the LESSEE'S leasehold area and will be responsible for compliance with all applicable provisions of the following permits including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit, and permits and ordinances issued to and promulgated by municipalities, counties, drainage districts, and other local agencies regarding discharges of storm

water and non-storm water to sewer systems, storm drain systems, or any watercourses under the jurisdiction of the above agencies. Copies of the current storm water related NPDES permits are available on the State Water Resources Control Board's website at www.swrcb.ca.gov under Stormwater.

LESSEE understands the discharge of non-storm water into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-storm water into the storm sewer system, vehicle or equipment washing, fueling, maintenance and repair on the PREMISES is prohibited.

In order to prevent the discharge of pollutants to storm water resulting from contact with hazardous material, the storage or stockpile of hazardous material on PREMISES is strictly prohibited. To the extent applicable to LESSEE's use of the PREMISES, LESSEE shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: Parks and Recreation, attached as "Exhibit B." LESSEE shall identify any other potential sources of storm water and non-storm water pollution resulting from Lessee's activities on the PREMISES, which are not addressed by the BMPs, contained in the attached Fact Sheet(s), and shall implement additional BMPs to prevent pollution from those sources. Additional BMPs may be obtained from 2 other manuals, (1) Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at the Lessor's District Right of Way office or online at www.dot.ca.gov/hq/row/rwstormwater and (2) Construction Site Best Management Practices (BMPs) Manual, which is available online at <https://dot.ca.gov/programs/construction/storm-water-and-water-pollution-control/manuals-and-handbooks>. In the event of conflict between the attached Fact Sheet(s), the manuals and this Lease, this Lease shall control.

LESSEE shall provide Lessor with the Standard Industrial Classification (SIC) code applicable to Lessee's facilities and activities on the lease PREMISES. A list of SIC codes regulated under the General Industrial Permit SIC codes may be found at the State Water Resources Control Board (SWRCB) website at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/gen_indus.shtml. Other SIC codes may be found at www.osha.gov/pls/imis/sicsearch.html.

LESSOR, or its agents or contractors, shall at all times have the right to enter and inspect the PREMISES and the operations thereon to assure compliance with the applicable permits, and ordinances listed above. Inspection may include taking samples of substances and materials present for testing PREMISES.

3.6 LESSOR's Rules and Regulations

LESSEE shall faithfully observe and comply with the rules and regulations that LESSOR shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public. LESSOR reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon LESSEE upon delivery of a copy of them to LESSEE.

ARTICLE 4. IMPROVEMENTS

4.1 Authorized Improvements

LESSEE shall not place any improvements in, on, or upon the Premises, nor shall LESSEE make any alterations to said premises except those specifically included in the development plans approved by the LESSOR, in writing, a copy of which is attached hereto. All additional improvements, including landscaping, are subject to the review and approval of the LESSOR and FHWA. In the event LESSEE violates any of the provisions of this Article, this Lease may be

terminated immediately by LESSOR. Removal of LESSEE's improvements shall be at no cost to FHWA.

LESSEE shall begin the development of the Premises, if any, within 30 days of the date of this lease and after obtaining an appropriate encroachment permit to construct from the LESSOR. All work shall be completed according to the development plan within 90 days of the issuance of the encroachment permit.

4.2 Required Sign

LESSEE shall post the Premises with a sign giving the following notice:

- (a) "This park has been developed for your enjoyment by City and County of San Francisco under a Lease with the California Department of Transportation. The Lease is subject to termination if the property is needed for State highway purposes."

4.3 Removal of Improvements

Upon termination of this Lease for any reason whatsoever, LESSEE agrees to remove all improvements, except landscaping, at LESSEE'S sole expense, within 120 days of termination. If LESSEE fails to remove all improvements, LESSOR may remove such improvements at the expense of LESSEE and bring an action for recovery of such costs, together with all expenses and attorneys' fees incurred by reason of said action.

ARTICLE 5. REMOVAL OF PERSONAL PROPERTY

LESSEE may remove any personal property from time to time within forty-five (45) days of the expiration of the term. LESSEE shall repair all damage (structural or otherwise) caused by any such removal.

Any personal property not removed by LESSEE within forty-five (45) days following expiration of the term shall be deemed to be abandoned by LESSEE and shall, without compensation to LESSEE, become the LESSOR's property, free and clear of all claims to or against them by LESSEE or any other person. Removal of LESSEE's personal property shall be at no cost to FHWA.

ARTICLE 6. MAINTENANCE AND REPAIRS

6.1 LESSEE'S Obligations

LESSEE, at its own cost and expense, shall maintain the Premises, improvements and landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in first class order, repair and condition and in compliance with all requirements of law, subject to ordinary wear and tear that does not reduce its attractiveness and utility. LESSEE shall also, at its own cost and expense, install or provide for the installation of all required lighting on the Premises and shall maintain the lighting in first class order, repair and condition.

LESSOR and LESSEE recognize that because of the length of the term of this Lease it may be necessary for LESSEE to perform certain substantial maintenance, repair, rehabilitation or reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the improvements in order to ensure that the premises are kept in first-class order, repair and condition.

LESSEE hereby expressly waives the right to make repairs at the expense of LESSOR and the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto.

LESSEE shall take all steps necessary to effectively protect the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to LESSEE's use of said premises and

improvements, all without expense to LESSOR. LESSEE shall, at its own cost and expense, repair in accordance with LESSOR's standards any damage to any property owned by LESSOR, including, but not limited to, all fences, guardrails, piers and columns, caused by LESSEE, invitees or other third parties. At LESSEE's request, LESSOR will repair the damage to its property and LESSEE agrees to reimburse LESSOR promptly after demand for the amount LESSOR has reasonably expended to complete the repair work.

LESSEE shall designate in writing to LESSOR a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

6.2 LESSOR'S Rights

In the event LESSEE fails to perform LESSEE's obligations under this Article, LESSOR shall give LESSEE notice to do such acts as are reasonably required to so maintain the premises. If within thirty (30) days after LESSOR sends written notice to repair or quit, LESSEE fails to do the work and diligently proceed in good faith to prosecute it to completion, this lease shall be deemed cancelled.

ARTICLE 7. INDEMNIFICATION AND INSURANCE

7.1 Indemnification

Neither LESSOR nor FHWA nor any of LESSOR'S and FHWA's officers or employees is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by LESSEE under or in connection with any work, authority, or jurisdiction conferred upon LESSEE or arising under this Lease.

It is understood and agreed LESSEE will fully defend, indemnify, and save harmless LESSOR and FHWA and all of its officers and employees from all claims, suits, or actions of every kind brought forth under any theory of liability occurring by reason of anything done or omitted to be done by LESSEE under this lease. LESSEE'S obligations to defend, indemnify, and save harmless LESSOR and FHWA extends to any and all claims, suits, or actions of every kind brought forth under any theory of liability occurring due to the use of the PREMISES and LESSEE'S operations under this Lease, any accompanying agreement with LESSOR, and any encroachment permit issued by Lessor.

LESSEE shall include in any contract it enters with any third party to conduct work in association with this Lease, including any contractors who design, construct, or maintain equipment, structures, fixtures or other property, a requirement the contractor will fully defend, indemnify and save harmless LESSOR and its officers and employees from any and all claims, suits or actions of every kind brought forth under any theory of liability occurring due to the work conducted in association with this Lease. If LESSEE has any additional insured endorsements executed by any third parties conducting work in association with this Lease naming LESSOR to comply with this provision, Lessee shall provide copies of the additional insured endorsements and a Certificate of Insurance to Lessor.

If the Lease is terminated for any reason, LESSEE also agrees to indemnify, defend, and save harmless LESSOR and FHWA from any third party claims for damages arising out of the termination of the Lease due to LESSOR'S failure to comply with the requirements of the Lease. Such third party claims include any claims from any contractors retained by LESSEE or its successors.

Furthermore, LESSEE agrees it controls the PREMISES. As such, LESSEE agrees to defend, indemnify and hold harmless LESSOR, its officers, agents, and employees for any and all claims arising out of any allegedly dangerous condition of public property based upon the condition of the PREMISES.

LESSEE agrees to defend, indemnify and save harmless LESSOR, its officers, employees, and agents from any and all claims, suits or actions of every kind brought forth under any theory of liability with respect to the PREMISES or the activities of LESSEE or its officers, employees, and agents at

the PREMISES, excluding those arising by reason of the sole or active negligence of LESSOR, its officers, employees, and agents.

LESSEE'S obligations to defend and indemnify LESSOR and FHWA is not excused because of LESSEE'S inability to evaluate liability or because LESSEE evaluates liability and determines LESSEE is not liable. LESSEE must respond within 30 days to the tender of any defense and indemnity by LESSOR or FHWA, unless this time has been extended by Lessor.

7.2 Liability Insurance

Nothing in this Lease is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

A. Workers' Compensation and Employer's Liability Insurance

LESSEE shall provide workers' compensation and employer's liability insurance or undertake self-insurance as required under the Labor Code.

LESSEE shall provide Employer's Liability Insurance in amounts not less than:

1. \$1,000,000 for each accident for bodily injury by accident
2. \$1,000,000 policy limit for bodily injury by disease
3. \$1,000,000 for each employee for bodily injury by disease

B. Comprehensive General Liability Insurance

LESSEE shall procure Comprehensive General Liability Insurance or utilize self-insurance, with \$5 million per occurrence and aggregate limits covering all operations by or on behalf of LESSEE, providing insurance for bodily injury liability and property damage liability, and including coverage for:

1. Premises, operations and mobile equipment
2. Products and completed operations
3. Broad form property damage (including completed operations)
4. Explosion, collapse, and underground hazards
5. Personal injury
6. Contractual liability

If LESSEE procures insurance coverage to meet its insurance obligations under this Lease in whole or in part, LESSEE shall provide proof of the Comprehensive General Liability insurance policy with all endorsements, riders, and amendments to LESSOR on or before the commencement of this Lease by a Certificate of Additional Insured.

The Comprehensive General Liability insurance procured by LESSEE shall also comply with the following:

1. Shall extend to all of LESSEE'S operations and remain in full force and effect during the term of this Lease.
2. Must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
3. Shall be on Commercial General Liability policy form no. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form no. CG0001.

4. Shall contain completed operations coverage with a carrier acceptable to LESSOR through the expiration of the latent and patent deficiency in construction statutes of repose set forth in Code of Civil Procedure section 337.15.
5. Shall name LESSOR, including its officers, directors, agents (excluding agents who are design professionals), and employees, as additional insureds under the General Liability Policy with respect to liability arising out of or connected with work or operations performed in connection with this Lease. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code section 11580.04.
6. Shall provide additional insured coverage by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by Lessor.
7. Shall state the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by Lessor is excess only and must not be called upon to contribute with this insurance.

C. Automobile Insurance

LESSEE shall carry automobile liability insurance or utilize self-insurance, including coverage for all owned, hired, and nonowned automobiles. The primary limits of liability must be not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage. The umbrella or excess liability coverage required under this Article shall also apply to automobile liability.

D. Deductible

LESSOR allows reasonable deductible clauses not overly broad, exceeding \$250,000, or harmful to LESSOR. LESSEE agrees by executing this Lease it shall defend, indemnify, and hold harmless LESSOR until such deductible is paid or applied to any claim arising out of this Lease, regardless of LESSEE'S evaluation of liability, as discussed in Section 9.1.

E. Continual Coverage

LESSOR may assure LESSEE'S compliance with LESSEE'S insurance obligations. Ten days before an insurance policy lapses or is canceled during the term of this Lease, LESSEE must submit evidence of renewal or replacement of the policy. LESSEE is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless LESSOR, its officers, agents, and employees by LESSOR'S acceptance of insurance policies and certificates. The minimum insurance coverage amounts do not relieve Lessee from liability in excess of such coverage.

F. Self-Insurance

Reasonable self-insurance programs and self-insured retentions in insurance policies are permitted by LESSOR. If LESSEE uses a self-insurance program or self-insured retention, LESSEE must provide LESSOR with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Further, execution of this Agreement is Lessee's acknowledgment LESSEE will be bound by all laws as if LESSEE were an insurer as defined under Insurance Code section 23 and Lessee's self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code section 22. LESSOR acknowledges that LESSEE is self-insured, as provided in "Exhibit C," which is approved by LESSOR. Notwithstanding anything to the contrary, LESSOR acknowledges that LESSEE's self-insurance program is not commercial and has no ability to name another entity as an additional insured.

7.3 Failure to Procure and Maintain Insurance

If LESSEE fails to procure or maintain the insurance or self-insurance required by this Article in full force and effect, this Lease may be terminated immediately by LESSOR. In addition, if LESSEE fails to procure or maintain the insurance or self-insurance required by this Article, LESSEE shall cease and desist from operating any business on the PREMISES and the improvements erected thereon and shall prevent members of the public from gaining access to the PREMISES during any period in which such insurance policies are not in full force and effect.

7.4 Waiver of Subrogation

LESSEE hereby waives any and all rights of recovery against LESSOR, or against the officers, employees, agents and representatives of LESSOR, for loss of or damage to LESSEE or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. LESSEE shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in the Lease.

ARTICLE 8. PAYMENT OF TAXES

LESSEE agrees to pay all taxes and assessments that may be legally assessed on LESSEE's possessory interest or income.

ARTICLE 9. RIGHT OF ENTRY

9.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

LESSOR, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the premises and any building or improvements situated thereon at any and all reasonable times during the term of this Lease for the purpose of inspecting the same without interference or hindrance by LESSEE, its agents or representatives.

LESSOR further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that LESSOR reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by LESSOR, and during said period LESSEE shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. LESSOR further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the LESSOR for the purpose of performing any maintenance activities upon the property which LESSEE has failed to perform.

9.2 Future Transportation Project

LESSEE specifically acknowledges LESSOR may cancel this lease upon 90 days notice for the construction of an "Approved or Funded Transportation Project" or an emergency highway repair. In that event, LESSEE will have no claim upon LESSOR and waives any and all claims for compensation, damages or relocation assistance.

9.3 Retrofitting of Freeway Structures

LESSEE acknowledges LESSOR may be required to perform retrofit work on all or a part of

the freeway structures that are situated on and above the premises. LESSOR shall have the right to impose such restrictions on LESSEE's right to enter, occupy, and use the premises and to construct improvements thereon as LESSOR deems are necessary to enable it to complete construction of all freeway structural retrofit work without interference from LESSEE.

In the event LESSOR determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on LESSEE's use of the premises, LESSOR shall, at least ninety (90) days prior to the effective date of the commencement of such possession or restrictions notify LESSEE in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, LESSEE shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. In that event, LESSEE will have no claim upon LESSOR and waives any and all claims for compensation, damages or relocation assistance.

LESSEE shall conduct its operations on the premises in such a manner so as not to interfere with LESSOR's or its contractor's performance of any structural retrofit work done on or above the premises. LESSEE acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by LESSEE on the Premises. LESSEE expressly agrees to hold LESSOR harmless from all such damage to its improvements, except that at the conclusion of the retrofit work, LESSOR shall, at no cost to LESSEE, restore the premises to their preexisting condition to the extent reasonably possible consistent with the retrofitting project.

If a portion of the premises is rendered unusable due to such work, LESSOR and LESSEE shall negotiate in good faith to determine an appropriate rental adjustment during such period. If the parties cannot agree, the matter shall be submitted to binding arbitration, with the arbitrator chosen by the Presiding Judge of the Superior Court in which the property is located if the parties cannot mutually agree on an arbitrator.

ARTICLE 10. DEFAULT

10.1 Default

The occurrence of any of the following shall constitute a material breach and default of this Lease by LESSEE:

- (a) Any failure by LESSEE to pay lease payment or any other monetary sums required to be paid hereunder, where such failure continues for thirty (30) days after written notice thereof has been given by LESSOR to LESSEE.
- (b) The abandonment or vacation of the premises by LESSEE. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from LESSOR to LESSEE calling attention to the abandonment shall be deemed an abandonment or vacation.
- (c) A failure by LESSEE to observe and perform any other provision of this Lease to be observed or performed by LESSEE, where such failure continues for thirty (30) days after written notice thereof by LESSOR to LESSEE; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, LESSEE shall not be deemed to be in default if LESSEE shall within such period commence such cure and thereafter diligently prosecute the same to completion.

10.2 LESSOR'S Remedies

In the event of any material default or breach by LESSEE, LESSOR may at any time after expiration of the applicable notice and cure period, without limiting LESSOR in the exercise of any right of remedy at law or in equity that LESSOR may have by reason of such default or breach

- (a) Terminate LESSEE'S right to possession by any lawful means, in which case this Lease

shall immediately terminate and LESSEE shall immediately surrender possession of the premises to LESSOR. In such event LESSOR shall be entitled to recover from LESSEE all damages incurred by LESSOR by reason of LESSEE's default including, but not limited to, the following:

- (i) the worth at the time of award of any unpaid lease payment which had been earned at the time of such termination; plus
- (ii) the worth at the time of award of the amount by which the unpaid lease payment which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus
- (iii) the worth at the time of award of the amount by which the unpaid lease payment for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus,
- (iv) any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus
- (v) at LESSOR's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry LESSOR shall have the right to make any reasonable repairs, alterations or modifications to the premises, which LESSOR in its sole discretion deems reasonable and necessary. As used in subparagraphs (i) and (ii), above, the "worth at the time of award" is computed by including interest on the principal sum at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of default. As used in subparagraph (iii), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "lease rate" as used in this Article shall be deemed to be and to mean lease rate to be paid pursuant to Article 4 and all other monetary sums required to be paid by LESSEE pursuant to the terms of this Lease.

ARTICLE 11. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES

The LESSEE shall not assign, sublease, or encumber this property in any matter whatsoever, nor shall this lease be recorded.

ARTICLE 12. NONDISCRIMINATION

LESSEE, for itself, its agents, contractors, employees, officers, and personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- (a) No person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities,
- (b) In connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first tier subcontractors, and by first tier subcontractors in the selection and retention of second

- tier subcontractors,
- (c) Such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the premises,
 - (d) LESSEE shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the LESSOR shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 13. SECURITY DEPOSIT

This section intentionally deleted per Right of Way Manual 15.05.05.02.

ARTICLE 14 ADDITIONAL PROVISIONS

14.1 Quiet Enjoyment

LESSOR covenants and agrees with LESSEE that upon LESSEE paying lease payment and other monetary sums due under the Lease and performing its covenants and conditions, LESSEE shall and may peaceably and quietly have, hold and enjoy the premises for the term, subject however, to the terms of the Lease and of any of the mortgages or deeds of trust described above.

14.2 Captions, Attachments, Defined Terms

The captions of the Articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

Any marginal or clause headings on this lease are not a part of this and shall have no effect upon the construction or interpretation of any part hereof.

14.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between LESSOR and LESSEE relative to the premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both LESSOR and LESSEE. LESSOR and LESSEE agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the premises are merged in or revoked by this agreement.

14.4 Severability

If any terms or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

14.5 Time is of the Essence

Time is of the essence of each and all of the terms and provisions of this Lease.

14.6 Binding Effect; Choice of Law

The terms and conditions of this lease shall extend and be binding upon and inure to the

benefits of the heirs, executors, administrators or to any approved successor of the LESSEE. The terms and conditions of this Lease shall be governed by the laws of the State of California, if any legal action is initiated, the venue shall be in the appropriate court of the State of California in the county in which the premises are located

14.7 Waiver

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by LESSOR of any performance by LESSEE after the time the same shall have become due shall not constitute a waiver by LESSOR of the breach or default of any covenant, term or condition. Acceptance by LESSOR of any performance by LESSEE after the time the same shall have become due shall not constitute a waiver by LESSOR of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by LESSOR in writing.

14.8 Holding Over

If LESSEE remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or implied consent of LESSOR, such lease shall be from month-to-month only and not a renewal hereof or an extension for any further term. In such case, rent and other monetary sums due hereunder shall be payable at the time specified in this Lease and such month-to-month lease shall be subject to every other term, covenant, condition and agreement contained herein.

14.9 Notices

All notices or demands of any kind required or desired to be given by LESSOR or LESSEE hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the LESSOR or LESSEE respectively at the addresses set forth on the signature pages of this lease.

14.10 No Reservation

Submission of this instrument for examination or signature by LESSEE does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both LESSOR and LESSEE.

14.12 Force Majeure

If either LESSOR or LESSEE shall be delayed or prevented from the performance of any act required hereunder by reason of acts of nature, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse LESSEE from prompt payment of any rent, taxes, insurance or any other charge required of LESSEE, except as may be expressly provided in this Lease.

14.13 Termination of Lease

This lease may be terminated at any time by either party upon ninety days written notice. LESSOR may also terminate this lease with a 30-day notice if:

- (a) Premises is required for State highway or other public transportation purposes as

determined by the LESSOR or other public transportation agency.

- (b) Premises are not maintained in such manner as to protect and enhance the highway improvement and its environments, and LESSEE has failed to take corrective action within 30 days of being notified.

14.14 City of San Francisco Contracting Provisions

The parties agree to comply with the provisions set forth on "Exhibit D" to this Lease.

In Witness Whereof LESSOR and LESSEE have executed this Lease as of the date first written above.

Lessor: STATE OF CALIFORNIA
DEPT OF TRANSPORTATION

Lessee: CITY AND COUNTY OF SAN
FRANCISCO

By: _____
Julie McDaniel
Office Chief
Right of Way Airspace

By: _____
Andrico Q. Penick
Director of Property

Recommended:
Recreation and Park Department

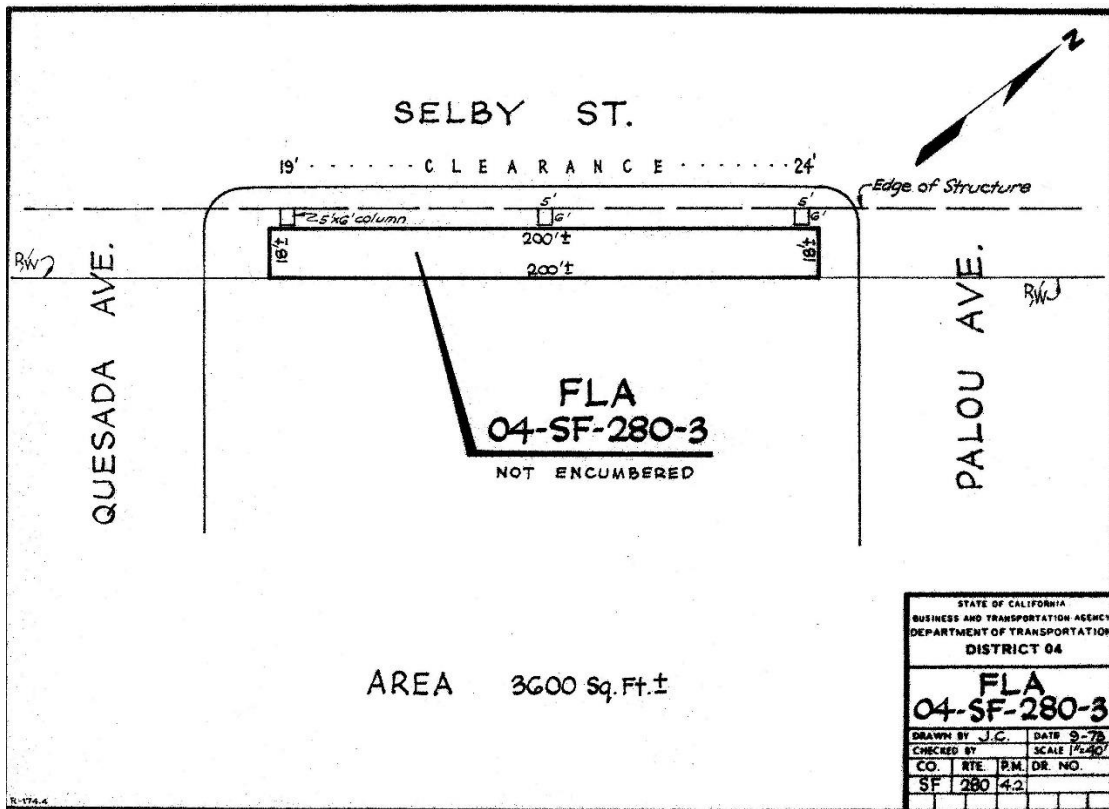
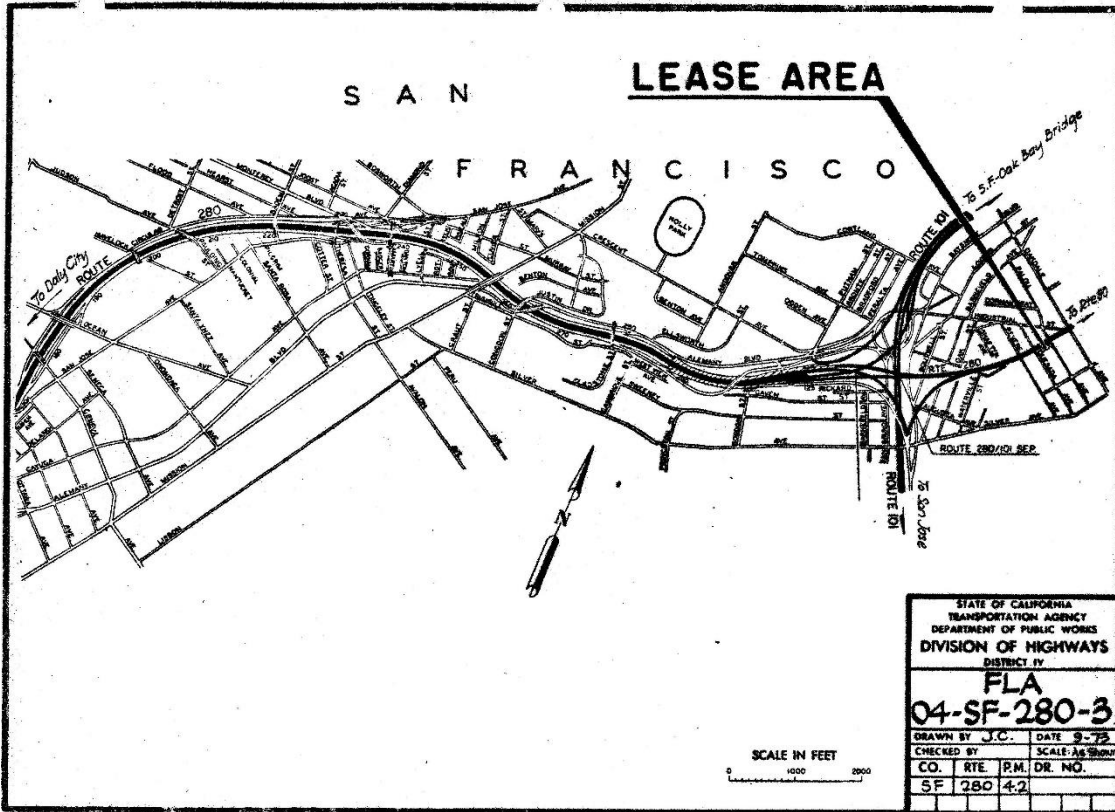
Philip Ginsburg
General Manager

Approved as to form:

DAVID CHIU
City Attorney

Shari Geller Diamant
Deputy City Attorney

Exhibit A: Map



Stormwater Pollution Prevention

Parks & Recreation

Landscaping /Yard Maintenance

- Where feasible, retain and/or plant native vegetation since it usually requires less maintenance than new vegetation. When planting or replanting consider using flowers, trees, shrubs, and groundcovers that have low water use. Consider alternative landscaping techniques such as naturoscaping and xeriscaping.
- Minimize the use of pesticides and fertilizers. Read the labels and follow directions to avoid improper use. When applicable, use less toxic pesticides that will do the job and avoid use of copper-based pesticides if possible. Try using organic or non-toxic fertilizer alternative. Do not apply chemicals if it is windy or about to rain. Avoid applying chemical fertilizers and pesticides near curbs, driveways, gutters, ditches, streams or waterbodies. Properly clean up and dispose of spills of chemicals, fertilizers, or soils. If possible, return the spilled material to the container for future use. Store fertilizers and chemicals in closed, waterproof, labeled containers, in a covered area, or off-ground and under protective tarps.
- If using pesticides, follow all federal, state, and local laws and regulations governing their use, storage, and disposal. Follow manufacturers' recommendations and label directions. Prepare the minimum amount of pesticide needed for the job and use the lowest rate that will effectively control the targeted pest. Do not apply any chemicals directly to surface waters and do not spray pesticides within 100 feet of open waters. Employ techniques to minimize off-target application (e.g. spray drift) of pesticides, including consideration of alternative application techniques. Purchase only the amount of pesticide that can reasonably be used in a given time period.
- Follow all federal, state, and local laws and regulations governing the use, storage, and disposal of fertilizers. Follow manufacturers' recommendations and label directions. Employ techniques to minimize off-target application (e.g. spray drift) of fertilizer, including consideration of alternative application techniques. Calibrate fertilizer distributors to avoid excessive application. Periodically test soils for determining proper fertilizer use. Fertilizers should be worked into the soil rather than dumped or broadcast onto the surface. Sweep pavement and sidewalk if fertilizer is spilled on these surfaces before applying irrigation water. Use slow release fertilizers whenever possible to minimize leaching.
- Group plants with similar water requirements in order to reduce excess irrigation runoff and promote surface filtration. Irrigate slowly or pulse irrigate so the infiltration rate of the soil is not exceeded. Design the irrigation system to each landscape area's specific water requirements. Adjust irrigation systems to reflect seasonal water needs. Implement landscape plans consistent with County or City water conservation resolutions, which may include water sensors, programmable irrigation times (for short cycles), rain-triggered shutoff devices to prevent irrigation after precipitation and flow reducers or shutoff valves triggered by a pressure drop to control water loss in the event of broken sprinkler heads or lines. Inspect irrigation system regularly for leaks and to ensure that excessive runoff is not occurring. Use popup sprinkler heads in high activity areas or where pipes may be broken. If re-claimed water is used for irrigation, ensure that there is no runoff from the landscaped area(s).
- Dispose of grass clippings, leaves, sticks, or other collected vegetation as garbage at a permitted landfill or by composting as soon as possible. Do not dispose of landscaping wastes in streets, waterways, or storm drainage systems. Place temporarily stockpiled material away from watercourses and storm drain inlets, and berm and/or cover. After landscaping activities, do not sweep or blow clippings and waste into the street or gutter. Avoid hosing down pavement.
- Schedule large landscaping projects for dry weather. Store stockpiles under plastic tarps to protect them from wind and rain. Cover non-vegetated surfaces to prevent erosion. Use mulches in planter areas without ground cover to minimize sediment in runoff. Leave a vegetative barrier along the property boundary and interior watercourses, to act as a pollutant filter, where appropriate and feasible. Develop healthy soil; choose a grass type that thrives in your climate; mow high, often, and with sharp blades; water deeply but not too often.
- Use mechanical methods of vegetation removal such as hand weeding rather than applying herbicides. When conducting mechanical or manual weed control, avoid loosening the soil, which could lead to erosion. Careful soil mixing and layering techniques using a topsoil mix or composted organic material can be used as an effective measure to reduce weeds and watering.
- When possible, use a lawn mower that has a mulcher so that the grass clippings remain on the lawn. Compost materials in a designated area, take clippings to a landfill for composting, or recycle lawn clippings and greenery waste through local programs when available.



Stormwater Pollution Prevention

- For activities involving the removal of vegetation, the limits of disturbance should be defined to minimize adverse effects on vegetation outside the working area. The protection of desirable vegetation provides erosion and sediment control. The following steps should be taken to preserve existing vegetation:
- Vegetation outside the limits of disturbance should be replaced if damaged
- Minimize the number of access and egress points and locate them to reduce damage to existing vegetation
- Maintenance materials and equipment storage and parking areas should be located where they will not cause root compaction
- Keep equipment away from trees to prevent trunk and root damage
- Avoid placing soil around trunks of trees.

Trash Bins

- Post "No Littering" signs and enforce anti-litter laws. Provide a sufficient number of litter receptacles for the facility. Clean out and cover litter receptacles frequently to prevent spillage.
- Keep dumpster areas clean. Recycle materials whenever possible. Ensure that only appropriate solid wastes are added to the solid waste container. Certain wastes such as hazardous wastes, pesticides, etc., may not be disposed of in solid waste containers. Take special care when loading or unloading wastes to minimize losses.
- Inspect dumpsters and trash bins weekly for leaks and to ensure that lids are on tightly. Replace any that are leaking, corroded, or otherwise deteriorating. Sweep and clean the storage area regularly and clean up spills immediately.
- If the dumpster area is paved, do not hose it down to a storm drain. Instead, collect the wash water and discharge it to the sewer if allowed by the local sewer authority. Use dry methods when possible (e.g., sweeping, use of absorbents). Prevent stormwater run-on from entering the dumpster area by enclosing it or building a berm around the area. Prevent waste materials from directly contacting rain. Cover dumpsters to prevent rain from washing waste out of holes or cracks in the bottom of the dumpster.



Restrooms

- Have restrooms connected to the sanitary sewer system where feasible. In areas where sanitary sewer connections are not possible, ensure the septic system adequacy and maintenance.
- Paper towels should be replaced with air dryers, where feasible. Post "No Littering" signs. Provide a sufficient number of litter receptacles and empty receptacles frequently to prevent spillage.
- Develop an educational program to promote visitor compliance with park regulations on facility use and waste disposal.



Stormwater Pollution Prevention

Patio, Walkway, Driveway

- Use dry clean-up methods, such as a broom, mop or absorbent material for surface cleaning whenever possible. Do not sweep or blow trash or debris into the street or gutter. Avoid graffiti abatement activities during rain events and use the least toxic materials available (e.g. water based paints, gels or sprays for graffiti removal). Avoid using cleaning products that contain hazardous substances that can create hazardous waste.
- If water must be used for surface cleaning, use it sparingly. Never discharge washwater into the street, a ditch, or storm drain. Determine how you are going to capture the water and where you are going to discharge it before starting the wash job. Capture and collect the washwater and properly dispose of it (i.e., landscaped areas, private sewer system, sanitary sewer system).
- Provide regular training to employees and/or contractors regarding surface cleaning.

Parking Area

Clean parking lots on a regular basis to prevent accumulated wastes and pollutants from being discharged into storm drain systems during rainy conditions. When cleaning heavy oily deposits, use absorbent materials on oily spots prior to sweeping or washing. Dispose of used absorbents appropriately.

Allow sheet runoff to flow into biofilters (vegetated strip and swale) and/or infiltration devices. Utilize sand filters or oleophilic collectors for oily waste in low concentrations. Clean out oil/water/sand separators regularly, especially after heavy storms.

Have designated personnel conduct inspections of the parking facilities and storm drain systems associated with them on a regular basis. Inspect cleaning equipment/sweepers for leaks on a regular basis.

Have spill cleanup materials readily available and in a known location. Cleanup spills immediately and use dry methods if possible. Properly dispose of spill cleanup material.



EXHIBIT C: Self-Insurance

EXHIBIT D

1. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of LESSEE shall be personally liable to LESSOR, its successors and assigns, in the event of any default or breach by LESSEE or for any amount which may become due to LESSOR, its successors and assigns, or for any obligation of LESSEE under this Lease.

2. CONTROLLER'S CERTIFICATION OF FUNDS

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City and County of San Francisco's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by LESSEE under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of LESSEE after the fiscal year in which the term of this Lease commences, sufficient funds for the payment of rent and any other payments required under this Lease are not appropriated, then LESSEE may terminate this Lease, without penalty, liability or expense of any kind to LESSEE, as of the last date on which sufficient funds are appropriated. LESSEE shall use its reasonable efforts to give LESSOR reasonable advance notice of such termination.