

MARLER-JOHNSON HIGHWAY-PARK ACT OF 1969

04-SF-280
County & Route
Marler-Johnson
4000
Account Number

L E A S E

THIS LEASE, made and entered into this 9th day of December, 1970, by and between the STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC WORKS, hereinafter referred to as "DEPARTMENT", and the City and County of San Francisco a Municipal Corporation, hereinafter referred to as "LESSEE",

W I T N E S S E T H:

WHEREAS, it has been determined by the Director of the Department of Public Works that the following described real property is the proper subject of a Lease pursuant to Section 14012 of the Government Code of the State of California:

A portion of Lots 1 and 48 in Block 334, as said lots and block are shown upon that map entitled "Map of O'Neil and Haley Tract", filed January 31, 1867, in Book 2 "A" and "B" of Maps at page 27, in the office of the Recorder of the City and County of San Francisco, State of California, being more particularly described as follows:

A strip of land being the northwesterly 18.00 feet of Lots 1 and 48 in Block 334, as said lots and block are shown on the above said map.

Containing 3,600 square feet, more or less.

AND WHEREAS, DEPARTMENT and LESSEE desire to enter into a Lease of the above-described property under such terms and conditions as set forth hereinafter;

NOW, THEREFORE, in consideration of the premises and mutual agreements of the parties hereto, it is agreed as follows:

(1) This Lease shall be on a month-to-month basis at the rate of \$25.00 per annum, payable in advance to the DEPARTMENT at the office of the STATE OF CALIFORNIA, DIVISION OF HIGHWAYS, San Francisco office, commencing on the 1st day of January, 1971.

(2) The property herein leased shall be used exclusively for park purposes and shall at all times be maintained at the sole cost and expense of LESSEE in an orderly, clean, safe and sanitary condition. Said Lease may immediately be terminated by DEPARTMENT upon the happening of any of the following conditions:

(a) When subject property is used for any purpose other than park purposes;

(b) When any portion of the property herein leased is required for State highway or other public transportation purposes as determined by the governing body of the Division of Highways or other public transportation agency;

(c) When, in the opinion of the Director of the Department of Public Works, the leased property is not maintained in such manner as to protect and enhance the highway improvement and its environs, and LESSEE within ten (10) days after notice from DEPARTMENT fails to correct any deficiencies.

(3) In the event this Lease is terminated for any of the reasons stated in the preceding paragraph or at the expiration of the period of this Lease, LESSEE agrees to remove all improvements except landscaping within the right of way at its sole expense

within 120 days after the termination of this Lease. If LESSEE fails to remove all improvements, DEPARTMENT may remove such improvements at the expense of LESSEE and bring an action for recovery of such costs, together with all expenses and attorney's fees incurred by reason of said action.

(4) The leased area shall at all times be subject to such uses by DEPARTMENT as are necessary for highway purposes and DEPARTMENT shall have the right to maintain any highway facilities without interference by LESSEE.

(5) Upon termination of said Lease for any reason whatsoever, DEPARTMENT shall not be required to provide replacement lands or facilities or any compensation in any manner for land or improvements or for any damages of any kind caused by said termination.

(6) LESSEE shall place no improvements, including landscaping, on leased area except those included in the development plan approved by the DEPARTMENT in writing, a copy of which is attached hereto. Any additional improvements shall only be permitted with the written consent of the DEPARTMENT. All signs shall be subject to prior approval by the DEPARTMENT

(7) If it is determined by DEPARTMENT that any special facilities are necessary for the safe and proper operation of the leased area in conjunction with highway uses, such facilities shall be constructed in a manner determined by DEPARTMENT at the sole cost and expense of LESSEE.

(8) LESSEE shall begin the development of said property on or before July 1, 1971 and said work shall be completed according to the development plan as approved by the DEPARTMENT within a reasonable time.

(9) Prior to the award of any contract for the development of improvements on the leased area, the LESSEE shall cause to be obtained from the contractor performing the work separate performance and labor and material bonds executed by an admitted surety insurer. Said performance bond and the labor and material bond shall be in a sum equal to one-half of the contract price.

(10) DEPARTMENT, its assigns or successors in interest, shall not be liable for taxes or assessments of any nature whatsoever on the leased property.

(11) LESSEE shall not sublet or assign a Lease of the property without prior written consent of the DEPARTMENT.

(12) LESSEE shall indemnify and hold harmless DEPARTMENT and all officers and employees thereof from any and all claims, suits, or actions of every name, kind or description brought for or on account of injury to or death of any person or damage to any property resulting from the existence, operation and maintenance of the property.

(13) LESSEE shall be responsible for any liability imposed by law and for any injury or death to any person or damage to property or damage to the State highway facilities resulting from the maintenance of said leased property.

(14) Notwithstanding any other provision in this Lease, nothing shall be done on said leased property which in any way whatsoever would result in danger to the traveling public. The determination of whether any improvement or proposed activity shall endanger the safety of the traveling public shall be determined by

the DEPARTMENT, acting by and through its State Highway Engineer at his sole discretion. LESSEE shall make provisions necessary to protect users of its proposed facility from any hazards resulting from use and operation of the highway at the sole cost and expense of LESSEE.

(15) There shall be no access from the leased property to highway facilities from said property.

(16) The LESSEE, for himself, his 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 (1) 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, (2) that 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, (3) that such discrimination shall not be practiced against the public in their 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 space of the right of way, and (4) that the

LESSEE shall use the land in compliance with all other requirements imposed pursuant to Title 15, Code of Federal Regulations, Part 8 (15 C.F.R., Part 8) and as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the DEPARTMENT shall have the right of termination of 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.

(17) Any and all notices or demands by or from DEPARTMENT to LESSEE or LESSEE to DEPARTMENT shall be in writing. They shall be served either personally or by certified mail. If served by certified mail, service shall be deemed made forty-eight (48) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the party to whom such notice or demand is to be given and the issuance of a receipt thereof. Any notice or demand to DEPARTMENT may be given to DEPARTMENT at P.O. Box 3366 Rincon Annex, San Francisco, California 94119, or at such other place or places as shall be designated by DEPARTMENT from time to time. Any notice or demand to LESSEE shall be given to LESSEE at Real Estate Department, City and County of San Francisco, c/o Director of Properties, 450 McAllister Street, San Francisco, California 94102, or at such other place as may be subsequently designated by LESSEE in accordance with a written notice to DEPARTMENT.

(18) Time is expressly made the essence of this Lease.

(19) The terms of this Lease may be amended at any time upon such terms and conditions as shall be mutually agreed upon between DEPARTMENT and LESSEE.

IN WITNESS WHEREOF, the undersigned have executed this Lease on the date herein first above written.

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

By Sam Heilner
(Lessor)

NOV 10 1971

Deputy State Highway Engineer

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By Wallace Hartman
Director of Property

Per Administrative Code
Section 23.19 as amended

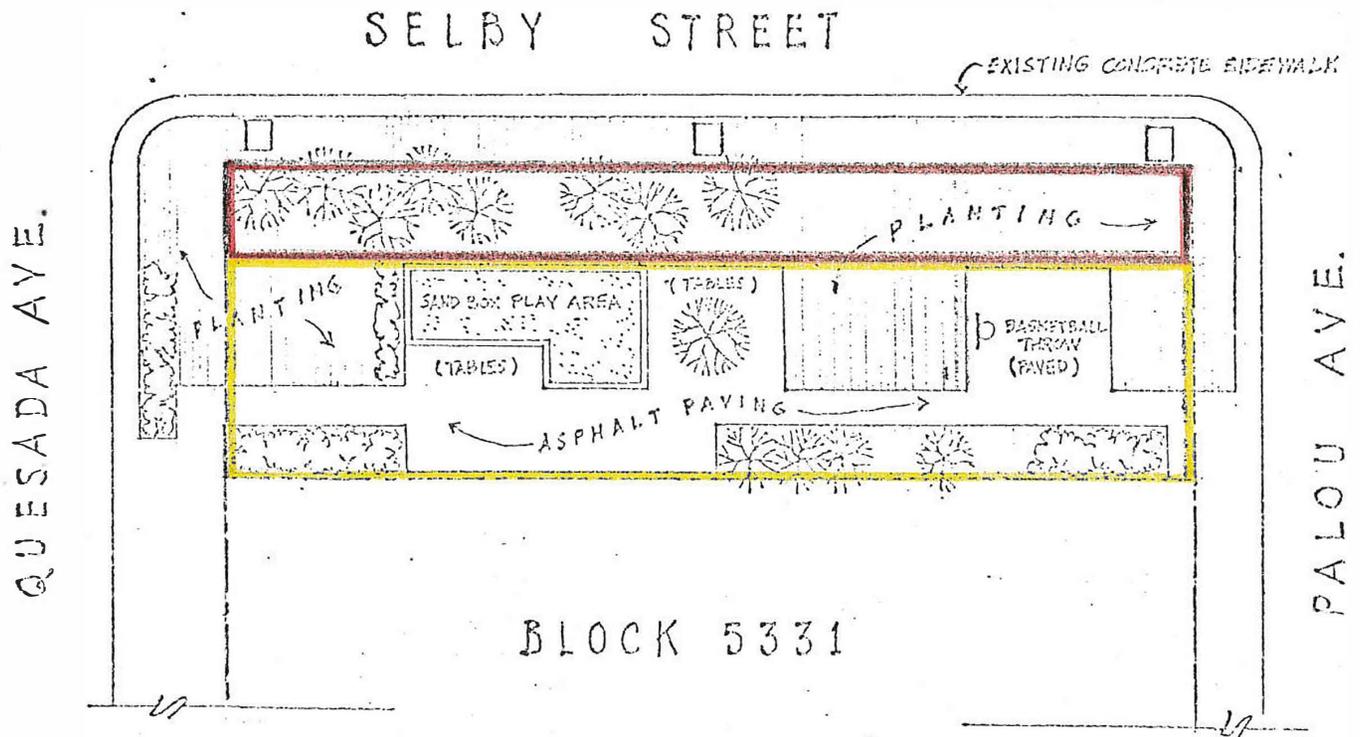
APPROVED:

RECREATION AND PARK COMMISSION

By Mary B. Connolly

APPROVED AS TO FORM:
THOMAS M. O'CONNOR, City Attorney

By Thomas M. O'Connor
Deputy City Attorney



- STATE PROPERTY
- CITY PROPERTY

DEVELOPMENT PLAN MAP
SELBY-PALOU MINI PARK

. NOV. 12, 1970