

THIS PRINT COVERS CALENDAR ITEM NO. : 10.11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorize the Director of Transportation of the San Francisco Municipal Transportation Agency (SFMTA) to execute a new Memorandum of Understanding (MOU) No. 15747 between the SFMTA and the Port of San Francisco (Port) for certain premises (Premises) located at 1399 Marin Street, Port Seawall Lot 354, for seven years. The Premises are currently occupied by the SFMTA's Transit Services for its general office, vehicle storage, fueling and related operations and maintenance functions and uses.

SUMMARY:

- In 1998 the SFMTA entered into a MOU with the Port to lease 25,145 square feet of warehouse space, 1,319 square feet of office space, and 111,949 square feet of paved yard open space, at 1399 Marin Street as a vehicle storage, fueling and maintenance facility.
- The current MOU No. M-13046 expired on May 31, 2006, and the SFMTA continued occupying the space on a month-to-month basis.
- The SFMTA needs to continue its current use at 1399 Marin Street until the completion of both the Islais Creek Project and the Woods Renovations Project.
- The SFMTA and the Port have reached a new seven-year agreement.
- The initial monthly rent rate is \$62,336.05 with an annual adjustment of 3%.
- The Port Commission approved the new MOU on May 27, 2014.

ENCLOSURES:

1. SFMTAB Resolution
2. MOU No. M-15747 and Exhibits

APPROVALS:

DATE

DIRECTOR _____

July 8, 2014

SECRETARY _____

July 8, 2014

ASSIGNED SFMTAB CALENDAR DATE: July 15, 2014

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PURPOSE

Authorize the Director of Transportation of the San Francisco Municipal Transportation Agency (SFMTA) to execute a new Memorandum of Understanding (MOU) No. 15747 between the SFMTA and the Port of San Francisco (Port) for use of the Premises located at 1399 Marin Street, Port Seawall Lot 354, for seven years. The Premises are currently occupied by the SFMTA's Transit Services for its general office, vehicle storage, fueling and related operations and maintenance functions and uses.

GOAL

Extending the lease of 1399 Marin Street would allow the SFMTA to continue its current uses at the location until the completion of both the Islais Creek Project and the Woods Renovations Project.

DESCRIPTION

Since December 1998, the SFMTA has leased 1399 Marin Street from the Port under an MOU for a temporary operating and maintenance facility for motor coaches during the rehabilitation of Woods Division. The SFMTA has made a number of improvements to the site including pavement of the yard, warehouse upgrades, office facilities improvements, building of a covered fuel and bus-washing facility, and exterior lighting and other utilities upgrades. The Premises currently also houses the SFMTA's Video Surveillance and Infrastructure Maintenance functions. The reserve bus fleet may also be stationed at this site to support special events and uses.

1399 Marin Street, known by the Port as Seawall Lot 354, consists of 111,949 square feet of paved yard and 25,145 square feet of warehouse space. The warehouse includes 1,319 square feet of office space. The existing MOU No. M-13046 with the Port expired on May 31, 2006, and the SFMTA continued occupying the space on a month-to-month basis. There have been ongoing discussions and negotiations with the Port of San Francisco since the MOU expired. One of the options discussed was to purchase the site; however, the Port cannot sell the property due to State Trust land restrictions. Both agencies have reached a new agreement including a new Landscaping Plan and it is the desire of both agencies to enter into a new MOU allowing the SFMTA to continue its operations at the Premises for seven years.

Under the expired MOU lease term, SFMTA has been paying a monthly rental of \$39,130 for the site, with no annual increase. Due to current high demand and market conditions, the Port commissioned a consultant to evaluate its leases. The Port has adopted a new rental schedule for all of its properties. The proposed monthly rental for 1399 Marin will have an initial monthly rate of \$62,336.05 with annual increase of 3%. The proposed change represents a 59.31% increase in rent, equivalent to an average of \$0.45/square foot per month. The new monthly rental rate is in line with current fair market rent. According to data provided by Caltrans, LoopNet, and CoStar, the rental rates for similar properties in San Francisco, range from \$0.25 per square foot per month on raw, unimproved land to \$4.00 per square foot per month on improved industrial buildings.

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The Port also requires the SFMTA to remit a one-time \$10,000 Environment Deposit and \$50,000 Environmental Risk Deposit under the new MOU. The Environmental Risk Deposit will be refunded when the environmental risk mitigating measures are completed. This environmental risk mitigating measures include building a containment berm around the above-ground storage fuel tanks pursuant to the Operations Plan. The Port normally requires tenants to remit a security deposit equal to two months' rent in the last year of the lease which equals to \$146,308.97; however, the Port Commission has approved a waiver of this requirement, given that SFMTA is another City Department.

Proposed MOU monthly rent rate:

Year 1:	\$62,336.05
Year 2:	\$64,011.20
Year 3:	\$65,937.80
Year 4:	\$67,612.95
Year 5:	\$69,539.55
Year 6:	\$71,466.15
Year 7:	\$73,154.49

ALTERNATIVES CONSIDERED

Other options considered included SFMTA purchasing the site from the Port. However, due to State Trust land restrictions, this option cannot be executed. An alternative option is to negotiate a new lease on another property. This option would significantly increase operating expenses due to higher rents and additional expenditures on facility and improvements.

FUNDING IMPACT

The negotiated monthly rental of \$62,336.05 plus 3% annual increase over the seven-year term will minimize the risk of paying a much higher rental rate in later years and provide SFMTA the stability to accurately budget its operating expenses for this site for the term period. Funding for the rental payments is included in the Fiscal Year 15 and FY16 Operating budgets.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this Calendar Item.

The Port Commission approved MOU No. 15747 through Resolution No. 14-36 on May 27, 2014.

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RECOMMENDATION

Authorize the Director of Transportation of the San Francisco Municipal Transportation Agency (SFMTA) to execute a Memorandum of Understanding (MOU) M-15747 between the SFMTA and the Port of San Francisco for the lease of 1399 Marin Street, Port Seawall Lot 354, for seven years for SFMTA Transit Services' operations and maintenance functions and uses.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA has leased the property located at 1399 Marin Street from the Port of San Francisco since December 1998 for its operation and maintenance uses; and

WHEREAS, The existing Memorandum of Understanding (MOU) Port MOU No. 13046 expired on May 31, 2006, and the SFMTA continued occupying the space on a month-to-month basis; and

WHEREAS, The SFMTA needs to continue its current uses at 1399 Marin Street until the completion of both the Islais Creek Project and the Woods Renovations Project; and

WHEREAS, After intensive and lengthy negotiations to establish the terms and conditions of a new MOU, both agencies have finally reached a new agreement; and

WHEREAS, The new MOU includes a seven-year term commencing on the effective date agreed to by both agencies, and requires the SFMTA to pay the Port fair market rent at \$62,336.05 per month with annual increases of 3% as set forth in the MOU; and

WHEREAS, The Port Commission approved the new MOU No. 15747 in Resolution No.14-36 at its Commission meeting on May 27, 2014; and

WHEREAS, Funding for the rental payments is included in the Fiscal Year 2014-15 and 2015-16 operating budgets; and now, therefore be it

RESOLVED, That the Board of Directors authorizes the Director of Transportation of the San Francisco Municipal Transportation Agency (SFMTA) to execute a new Memorandum of Understanding No. 15747 between SFMTA and the Port of San Francisco leasing property located at 1399 Marin Street for the SFMTA Transit Services' uses at a monthly payment of \$62,336.05 or annual payment of \$749,033 with annual increases of 3% as set forth in the MOU.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 15, 2014.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE, MAYOR
MEMORANDUM OF UNDERSTANDING (“MOU”)

M-15747

BY AND BETWEEN

THE SAN FRANCISCO PORT COMMISSION

and

THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

MONIQUE MOYER
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

LESLIE KATZ, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
KIMBERLY BRANDON, COMMISSIONER
MEL MURPHY, COMMISSIONER
DOREEN WOO HO, COMMISSIONER

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EXHIBIT A: DESCRIPTION OF PREMISES
SCHEDULE 1: ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2: SUBSTRUCTURE REPORT(S)
SCHEDULE 3: FEMA DISCLOSURE NOTICE

**MEMORANDUM OF UNDERSTANDING
NO. M-15747**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("SFMTA"), an agency of the City and County of San Francisco, and the SAN FRANCISCO PORT COMMISSION, an agency of the City and County of San Francisco ("Port").

RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended), and San Francisco Charter of Section B3.581, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. SFMTA and Port entered MOU No. M-13046 for use of portions of Seawall Lot 354 effective March 26, 2001. MOU No. M-13046 expired on May 31, 2006 and has been operating in a holdover status. SFMTA wishes to continue to use the property consistent with the Port's current parameter leasing policy and in accordance with the terms and conditions set forth in this MOU which will replace MOU No. M-13046 ("prior MOU").

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by this reference.

2. EFFECTIVE DATE

The Port and SFMTA hereby mutually agree that the Effective Date shall be _____ ("Effective Date"). The prior MOU will terminate on the Effective Date.

3. PREMISES

a. For the Rent and subject to the terms and conditions of this MOU, Port hereby authorizes SFMTA to use the area located at Seawall Lot 354 (SWL 354) also known as 1399 Marin Street in the City and County of San Francisco, California, shown on Exhibit A, attached hereto and made a part hereof, consisting of approximately 138,413 square feet, consisting of Parcel A: 111,949 of yard area; Parcel B: 25,145 square feet of warehouse space; and Parcel C 1,319 square feet of office area (the "Premises" or the "Facility").

b. As Is Condition. SFMTA ACKNOWLEDGES AND AGREES THAT SFMTA IS FAMILIAR WITH THE PREMISES, THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT ANY IMPROVEMENTS OR ALTERATIONS BY PORT, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. SFMTA REPRESENTS AND WARRANTS TO PORT THAT SFMTA HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF SFMTA'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR SFMTA'S BUSINESS AND INTENDED USE. SFMTA FURTHER ACKNOWLEDGES THAT IT HAS RECEIVED AND REVIEWED THE FEMA DISCLOSURE NOTICE ATTACHED AS SCHEDULE 1 AND THE STRUCTURAL REPORTS ATTACHED AS SCHEDULE 2. SFMTA ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF ITS AGENTS HAVE MADE, AND PORT HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE FACILITY (INCLUDING, BUT LIMITED TO THE SUBSTRUCTURE), THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR SFMTA'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. TERM

Term: Eighty four (84) months

Any holding over after the Expiration Date shall not constitute a renewal of this MOU, but be deemed a month-to-month holdover agreement upon the terms, conditions, and covenants of this MOU, except that the amount of Rent shall be as provided below in Section 5(b). Either party may cancel the month-to-month agreement upon thirty (30) days written notice to the other party. "Term" shall refer to the total time period during which this MOU exists as a binding agreement between the parties, including all month-to-month holdover periods.

Premises:

Parcel A	111,949 square feet	Yard area
Parcel B	25,145 square feet	Warehouse/shop area
Parcel C	1,319 square feet	Office area
Total	138,413 square feet	n/a

Security Deposit: Waived.

5. RENTAL PAYMENTS

a. Rent. SFMTA will cause to be paid on the first day of each calendar month during the Term (the “Due Date”) to Port according to the following schedule:

Monthly Base Rent	Sq. Ft.	Monthly Base Rate (per sq. ft.)	Total Monthly Base Rent
Months 1-12:			
Parcel A	111,949	\$ 0.35	\$ 39,182.15
Parcel B	25,145	\$ 0.85	\$ 21,373.25
Parcel C	1,319	\$ 1.35	\$ 1,780.65
Total:			\$ 62,336.05
Months 12-24:			
Parcel A	111,949	\$ 0.36	\$ 40,301.64
Parcel B	25,145	\$ 0.87	\$ 21,876.15
Parcel C	1,319	\$ 1.39	\$ 1,833.41
Total:			\$ 64,011.20
Months 25-36:			
Parcel A	111,949	\$ 0.37	\$ 41,421.13
Parcel B	25,145	\$ 0.90	\$ 22,630.50
Parcel C	1,319	\$ 1.43	\$ 1,886.17
Total:			\$ 65,937.80
Months 37-48:			
Parcel A	111,949	\$ 0.38	\$ 42,540.62
Parcel B	25,145	\$ 0.92	\$ 23,133.40
Parcel C	1,319	\$ 1.47	\$ 1,938.93
Total:			\$ 67,612.95
Months 49-60:			
Parcel A	111,949	\$ 0.39	\$ 43,660.11

Monthly Base Rent	Sq. Ft.	Monthly Base Rate (per sq. ft.)	Total Monthly Base Rent
Parcel B	25,145	\$ 0.95	\$ 23,887.75
Parcel C	1,319	\$ 1.51	\$ 1,991.69
Total:			\$ 69,539.55
Months 61-72:			
Parcel A	111,949	\$ 0.40	\$ 44,779.60
Parcel B	25,145	\$ 0.98	\$ 24,642.10
Parcel C	1,319	\$ 1.55	\$ 2,044.45
Total:			\$ 71,466.15
Months 73-84:			
Parcel A	111,949	\$ 0.41	\$ 45,899.09
Parcel B	25,145	\$ 1.00	\$ 25,145.00
Parcel C	1,319	\$ 1.60	\$ 2,110.40
Total:			\$ 73,154.49

If SFMTA fails to pay or cause to be paid, Rent or any portion of Rent within five (5) days following the Due Date, such unpaid amount shall be subject to interest of ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable laws and a late payment charge equal to \$50.00 in a manner consistent with Port practices. The SFMTA is not responsible for delays caused by the City's Controller Office processing such payments.

b. Holdover Rent. Should SFMTA hold over, the monthly rent shall be increased on the Expiration Date and on each subsequent annual anniversary during which this MOU is still in effect by three percent (3%).

6. ENVIRONMENTAL FINANCIAL ASSURANCES

- a. Environmental Deposit: \$ 10,000.00
- Environmental Risk Deposit: \$ 50,000.00 (refundable upon Port approval of MTA installation of environmental risk mitigating measures (e.g., construction of containment) pursuant to the Operations Plan)

7. PERMITTED USES

- a. SFMTA may use the Premises for the following "permitted uses," subject to compliance with the Port-approved Operations Plan, and no others:

(i) general office; (ii) general storage (iii) related parking of MUNI and staff vehicles (iv) maintenance and repair of MUNI buses including fueling and washing of same; and (v) for incidental directly related uses and for no other purpose.

b. Restrictions On Use

SFMTA shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in this Paragraph. SFMTA shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof.

8. UTILITIES; SERVICES, MAINTENANCE; SURRENDER OF PREMISES

SFMTA shall make all arrangements and shall pay all charges for all utilities and services provided to the Premises or to be used by SFMTA and shall repair and maintain all utilities in good operating condition. SFMTA will be strictly responsible for the maintenance and security of the Premises during the Term. SFMTA agrees not to make any improvements or alterations to the Premises without the prior written consent of Port. At the expiration of this MOU, SFMTA shall surrender the Premises in at least as good condition as when received, clean and free of any items stored on the Premises by SFMTA, and shall repair any damage to the Premises occasioned by SFMTA's use. SFMTA shall hold Port harmless from and against any and all loss or liability resulting from SFMTA's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant or developer founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant or developer, together with, in each case, actual attorneys' fees and costs.

9. HANDLING HAZARDOUS MATERIALS/ENVIRONMENTAL LAWS

a. Requirements for Handling. Neither SFMTA nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises or any other Port property except in compliance with a Port-approved Operations Plan. The Operations Plan must document procedures consistent with Laws, industry standards and best management practices and good house-keeping and must address:

- fueling procedures;
- vehicle washing procedures (if MTA intends to wash vehicles); - permits and other regulatory mandates;
- Hazardous Materials, types, quantities, uses and locations;
- hazardous wastes that are generated on the site and how they are managed;
- best management practices, including a description and location of spill kits;
- emergency response protocols, resources, notification requirements (including the Port).

Failure to comply with the Operations Plan is a material breach of this MOU. Port may, from time to time, review SFMTA's Operations Plan and make

recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or SFMTA, are subject to Port approval, in its sole discretion.

b. SFMTA Responsibility. SFMTA agrees to protect its Agents and Invitees in its operations in the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

1. will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility except as described in the approved Operations Plan, or other Port property;
2. will not cause or permit any Hazardous Material Condition; and
3. will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises or any other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

c. SFMTA Environmental Condition Notice Requirements.

1. SFMTA must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when SFMTA learns or has reason to believe Hazardous Materials were Released or Handled, in, on, or about the Premises, any other Port property, or the environment, or from any vehicles or vessels that SFMTA, its Agents or Invitees use during SFMTA's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to a Regulatory Agency.

2. SFMTA must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(a). Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, any other Port property, or the environment, or from any vehicles or vessels SFMTA or its Agents or Invitees uses during SFMTA's occupancy of the Premises that SFMTA or its Agents or Invitees provides to a Regulatory Agency;

(b). Any notice of a violation, or a potential or alleged violation, of any Environmental Law that SFMTA or its Agents or Invitees receives from any Environmental Regulatory Agency;

(c). Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against SFMTA or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels SFMTA or its Agents or Invitees use during SFMTA's use of the Premises;

(d). Any Hazardous Materials Claim that is instituted or threatened by any third party against SFMTA or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port

property, or the environment, or from any vehicles or vessels that SFMTA or its Agents or Invitees use during SFMTA's use of the Premises; and

(e). Any notice of the termination, expiration, or substantial amendment of any Regulatory Approval needed by SFMTA or its Agents or Invitees for their operations at the Premises.

(f). SFMTA must notify Port of any meeting, whether conducted face-to-face or telephonically, between SFMTA and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(g). SFMTA must notify Port of any Environmental Regulatory Agency's issuance of a Regulatory Approval. SFMTA's notice to Port must state the issuing entity, the Regulatory Approval identification number, and the date of issuance and expiration of the Regulatory Approval. In addition, SFMTA must provide Port with a list of any Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." SFMTA must provide Port with copies of any of the documents within the scope of this Section upon Port's request.

(h). SFMTA must provide Port with copies of all communications with Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from SFMTA 's or its Agents' or Invitees' operations at the Premises. Upon Port's request, SFMTA must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(i). Port may from time to time request, and SFMTA will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

d. Requirement to Remediate.

1. SFMTA's Remediation obligations under this Subsection (1) are subject to Subsection (2).

(a). After notifying Port in accordance with Subsection (C) (SFMTA's Environmental Condition Notice Requirements), SFMTA must Remediate at its sole cost in compliance with all Environmental Laws and this MOU, any Hazardous Material Condition occurring during the Term or while SFMTA or its Agents or Invitees otherwise occupy any part of the Premises. SFMTA must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(b). In addition to its obligations under clause (a), before this MOU terminates for any reason, SFMTA must Remediate at its sole cost in compliance with all Environmental Laws and this MOU: (A) any Hazardous Material Condition caused by SFMTA 's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and

(B) any Hazardous Material Condition discovered during SFMTA 's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for SFMTA 's use of the Premises.

(c). If Environmental Laws require a Remediation action plan, SFMTA must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Regulatory Agency, and a copy of the final plan as submitted.

(d). In all situations relating to Handling or Remediating Hazardous Materials, SFMTA must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises, such as obtaining Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly, or indirectly to Hazardous Materials.

2. Unless SFMTA or its Agents or Invitees Exacerbate the Hazardous Material Condition, SFMTA will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during SFMTA 's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of SFMTA's first use of the Premises, whichever is earlier.

e. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials.). Port's failure to inspect or obtain samples or to detect conditions attributable to SFMTA 's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be SFMTA 's responsibility under this MOU.

f. Failure to Comply. Failure to comply with this Section VIII shall constitute a material default under this MOU. In the event of such default, Port shall have all rights available under this MOU and at law or equity including, without limitation, the right to either:

1. Terminate this MOU and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises or any other Port property; or

2. Continue this MOU and require SFMTA to remediate such Hazardous Materials at the SFMTA's sole cost and expense.

g. Storm Water Pollution Prevention. SFMTA must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. SFMTA 's SWPPP and a copy of a Notice of Intent for SFMTA's Premises must be submitted to Port's Real Estate Division before beginning on-site operations.

In addition to requiring compliance with the permit requirements under Subsection (a), SFMTA shall comply with the post-construction stormwater control

provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

h. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, SFMTA is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, those Hazardous Materials described in: Draft Phase I Environmental Audit, 1399 Marin Street Site, AGS, Inc., March 1999., a copy of which has been made available to SFMTA. By execution of this MOU, SFMTA acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. SFMTA also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

i. Survival. SFMTA 's obligations under this Section shall survive the expiration or earlier termination of this MOU.

j. For purposes of this MOU, the following terms have the following meanings:

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Facility.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Exacerbate" or "Exacerbating" means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of SFMTA's operations and activities under this MOU. "Exacerbation" has a correlating meaning.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on

the Premises by or on behalf of SFMTA, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels SFMTA, or its Agents and Invitees uses during SFMTA 's occupancy of the Premises.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require SFMTA's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this MOU is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises other Port property, or the environment.

"Remediate" or **"Remediation"** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "Remediation" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

10. ENTRY BY PORT

Port may enter the Premises at any reasonable time, upon advance notice to SFMTA for the purpose of inspection, inventory or repairs, and when otherwise reasonably necessary for the protection of the Port's interests.

11. INSURANCE

At no cost or expense to Port, SFMTA shall cause any vendor or any other subtenant to maintain throughout the Term of this MOU the insurance policies with limits acceptable to the City Risk Manager and Port. All policies shall be endorsed to name as additional insured the City and County of San Francisco, the San Francisco Port Commission and their officers, directors, employees and agents.

12. ASSIGNMENT AND SUBLEASING

Assignment or subletting is strictly prohibited under this MOU.

13. MINERAL RESERVATION

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of these Statutes, Port and SFMTA shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to SFMTA for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of SFMTA, or entitle SFMTA to any abatement or diminution of Rent or otherwise relieve SFMTA from any of its obligations under this MOU.

14. SOUTHERN WATERFRONT COMMUNITY BENEFITS AND BEAUTIFICATION POLICY

SFMTA is subject to the Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the southern waterfront (from Mariposa Street in the north to India Basin) that require funding.

For the 1399 Marin MOU project, SFMTA will provide:

1. Landscape and plant the eastern perimeter of the site with Popular trees spaced approximately 20' on center to match those along the Islas Creek Promenade, minimum size 15 gallons, staked to City standard; and
2. Create low maintenance, drought tolerant, rock landscaped area on south east corner of building' and
3. Weed abate entire site utilizing City Grazing, supporting a local neighborhood business; and

SFMTA will look into the following as an option:

4. Capture roof storm run-off for use on site irrigation to helps establish landscaping.

15. DEFAULT; REMEDIES

Any of the following shall constitute an event of default (the "**Event of Default**") by SFMTA hereunder:

- a. Failure to pay to Port any Rent or other sum payable hereunder when due;
- b. abandonment or vacation of the Premises by SFMTA; or
- c. Non-compliance with the approved Operations Plan; or
- d. failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and reasonable discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and reasonable discretion, be deemed an incurable breach of this MOU, allowing Port to immediately terminate this MOU without notice or demand to SFMTA; or
- e. an assignment or sublease of this MOU or the Premises by SFMTA

Upon the occurrence of an Event of Default, SFMTA shall have a period of forty-five (45) days from the date written notice is received from Port within which to cure such default under this MOU, or, if such default is not capable of cure within such forty-five (45)-day period, SFMTA shall have a reasonable period to complete such cure if SFMTA promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion and uses diligent efforts to complete such cure.

16. DAMAGES

It is the understanding of the parties that Port shall not expend any funds due to or in connection with SFMTA 's use of the Premises, except as otherwise specifically set forth in this MOU. Therefore, SFMTA agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by SFMTA, its agents or invitees, and its contactors and their subcontractors, agents and invitees; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises or which arise as a result of SFMTA 's or its agents' or invitees' act or omission; or (iii) out of SFMTA's failure to comply with the terms of this MOU, including, without limitation, compliance with all laws and regulatory approvals. The foregoing obligation of SFMTA shall survive the expiration or termination of this MOU.

17. NOTICES

All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and SFMTA as shall from time to time be designated by the parties for the receipt of notice, or when deposited in the United States mail, postage prepaid, and addressed,

if to Port to:

Director of Real Estate
Port of San Francisco
Pier 1
San Francisco, CA 94111
FAX No: (415) 732-0492
Telephone No: (415) 274-0501


and if to SFMTA to:

SFMTA
City and County of San Francisco
Attention: Senior Manager of Real Estate
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Tel: (415) 701-4323


18. ENTIRE AGREEMENT

This MOU (including attached exhibits) contains the entire understanding between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first written above.

AGREED TO AS WRITTEN ABOVE: SAN FRANCISCO PORT COMMISSION	AGREED TO AS WRITTEN ABOVE: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
By: 	By:
MONIQUE MOYER EXECUTIVE DIRECTOR PORT OF SAN FRANCISCO	EDWARD D. REISKIN DIRECTOR OF TRANSPORTATION SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
	Resolution No. _____ Adopted: _____ Attest: By: _____ Secretary, SFMTA Board of Directors

REVIEWED:
DENNIS J. HERRERA, City Attorney

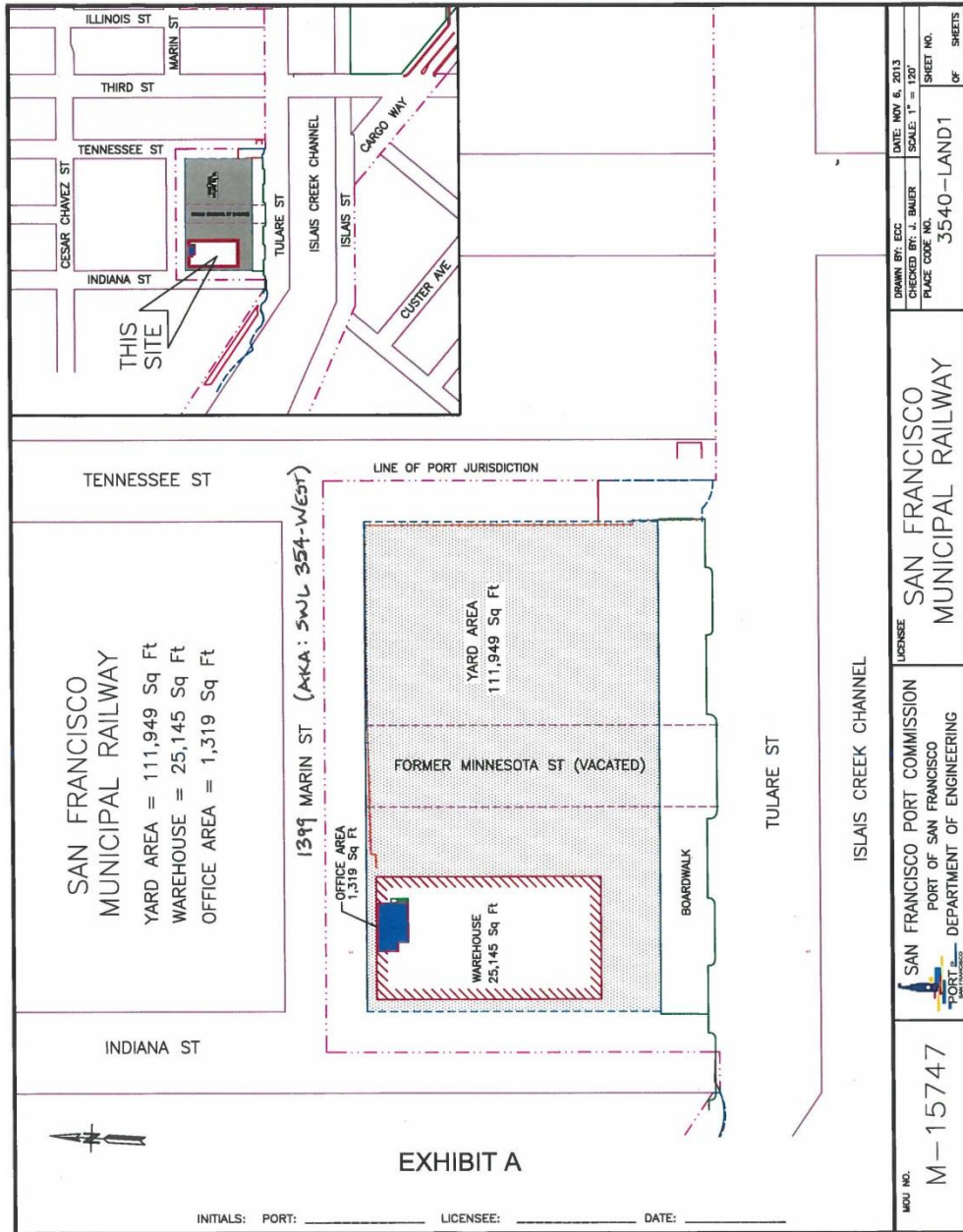
By: 

 Deputy City Attorney

Prepared by: Susan Reynolds, Deputy Director Real Estate _____(initial)

EXHIBIT A DESCRIPTION OF PREMISES

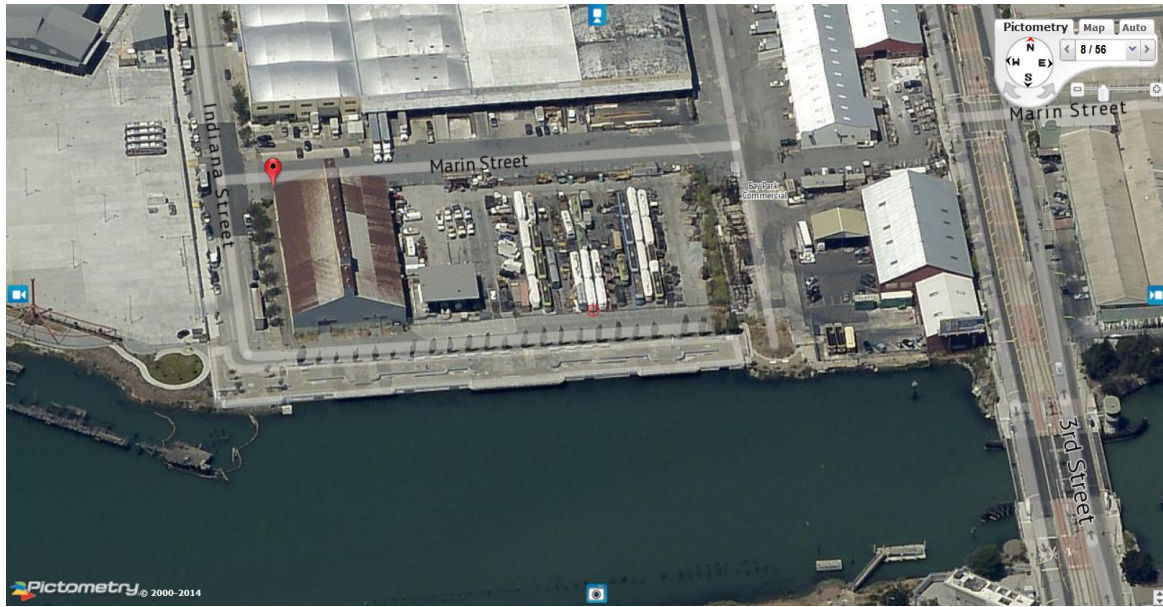
1399 Marin Street - Site Plan



MOU NO. M-15747	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	LICENSE SAN FRANCISCO MUNICIPAL RAILWAY	DRAWN BY: ECC CHECKED BY: J. BAUER PLACE CODE NO.	DATE: NOV 6, 2013 SCALE: 1" = 120' SHEET NO.
			3540-LAND1	OF SHEETS

FOR PROPERTY FILES: MapViewer: SWL354-WEST-001 Map Reading

1399 Marin Street - Location Map



SCHEDULE 1 ASBESTOS NOTIFICATION AND INFORMATION

NOTICE TO EMPLOYEES, OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS FOR PERIOD THROUGH: December 2013

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing. Asbestos may be found in soils as well, especially if soil is non-native or commingled with municipal waste (land fill).

1 WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to HIGH AIRBORNE LEVELS of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

2 ASBESTOS SAMPLING RESULTS

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (flee) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 flee as a 30 minute TWA. When employees are exposed at these levels, OSHA and Ca/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 flee, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure lcc or 70 structures per square millimeter of filter (slmrn2). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which as voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

3 GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specifications which include work practice procedures, removal techniques, clean up and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with, or release or disturb asbestos containing building materials, it is required that the area be posted with a clear and conspicuous warning sign. The warning sign must read:

4 "CAUTION. ASBESTOS CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"

Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Bureau of Environmental Health Management at 252-3800.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

5 SITE SPECIFIC INFORMATION

At this time, the Port has not sampled for asbestos in your building. The following materials, if present in your building, are assumed to contain asbestos and should be treated as such:

Insulation on pipes and ducts; Fireproofing; Drywall and associated taping compound; Plaster; Texturing or acoustic materials on walls or ceilings; Stucco; ceiling tiles; floor tiles or sheet flooring; roofing; fire door core insulation; carpet, baseboard, flooring, and ceiling tile mastics; window glazing compound; ceramic tile grout and mastic. Asbestos may also be found in soil due to natural or man-made conditions.

These materials must not be drilled into, sanded, demolished or otherwise disturbed by unauthorized personnel. Prior to any renovation activities or other activities which may disturb asbestos, please contact your property manager.

The asbestos coordinator for this building is Tim Felton, who can be reached at 274-0582.

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

Condition	Yes	No	More Review Needed
1.Collapse, partial collapse, off foundation	n/a	X	n/a
2.Major building element significantly	n/a	X	n/a
3.Severe cracking of walls, obvious distress	n/a	X	n/a
4.Parapet or other falling hazard	n/a	X	n/a
5.Severe ground or slope movement present	n/a	X	n/a
6.Other hazard present	n/a	X	n/a

Comments:

(IV) Recommendations/Actions

Required: (A) Immediate Actions-

- (1) Load restrictions- None
- (2) Barricades/Closures -None

(B) Long Term Actions

The following actions are required by the Tenant

- (1) Detailed Structural Evaluation Required? No
If yes, due Date-
- (2) Repair Plans -None
 - (i) Submit Repair Plans by__
 - (ii) Secure all permits (including BCDC, ARMY Corps, CEQA, Historic review etc.)

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #1-Exterior view



Photograph #2 -Interior view of framing

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #3 -View of column



Photograph #4 -View of column looking upward

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #5 -View of foundation



Photograph #6 -Interior view looking north

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #7 -View looking south



Photograph #8 -View looking southwest

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #9 -View of northwest corner of building, note damage

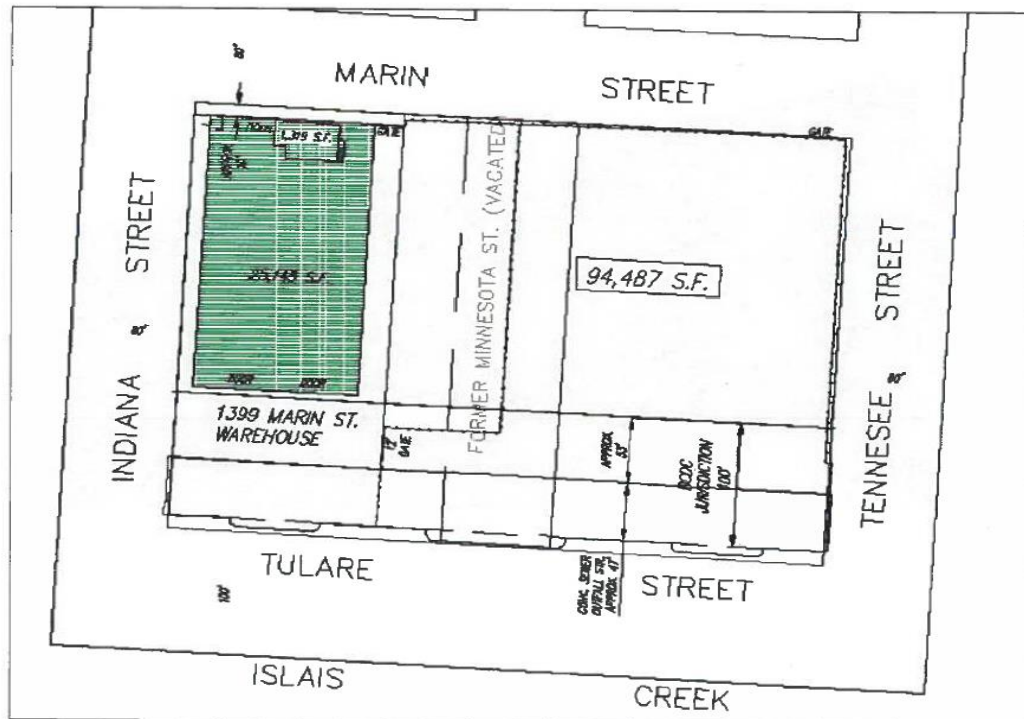


Photograph #10 -View looking southeast

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Photograph #11-View looking northeast



Partial Schematic Site Plan and Structural Rating Map

SCHEDULE 3 FEMA DISCLOSURE NOTICE

The Federal Emergency Management Agency ("**FEMA**") is revising Flood Insurance Rate Maps ("**FIRMs**") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-yearflood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("**SFHA**").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("**NFIP**"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>).