

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute the Airspace Lease Agreement for Lease Area No. 04-SF-80-11, an approximately 114,343 square foot property at 450 7<sup>th</sup> Street between Harrison and Bryant Streets for the temporary storage of towed illegally parked and abandoned vehicles, between the City, through the SFMTA, and the State, through Caltrans, for four years and six months, with an initial rent of \$90,000 per month and annual adjustments of three percent each July 1<sup>st</sup>.

**SUMMARY:**

- The SFMTA approved a Towing Agreement with TEGSCO, LLC, dba San Francisco AutoReturn (AutoReturn) that commenced on April 1, 2016 with an initial term of five-years through March 31, 2021 to provide towing, storage and lien auction services for illegally parked and abandoned vehicles.
- AutoReturn currently has a month-to-month lease with Caltrans for Airspace Lease Area No. 04-SF-80-11, also known as 450 7<sup>th</sup> Street between Harrison and Bryant Streets, for temporary storage, customer service and tow truck dispatch services in connection with the Towing Agreement.
- Caltrans has agreed to lease 450 7<sup>th</sup> Street directly to the SFMTA for the same purposes.
- If the SFMTA Board approves the lease, the SFMTA will enter into a License Agreement with AutoReturn for use of the premises in connection with the Towing Agreement.
- The proposed lease with Caltrans would be for four years and six months, to coincide with the initial term of the Towing Agreement, at the same rate of \$90,000 per month that AutoReturn currently pays, with an annual adjustment each July 1<sup>st</sup> of three percent.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Airspace Lease Agreement for Caltrans Lease Area No. 04-SF-80-11

**APPROVALS:**

**DATE**

DIRECTOR: \_\_\_\_\_ 

\_\_\_\_\_ 8/30/16

SECRETARY: \_\_\_\_\_ 

\_\_\_\_\_ 8/30/16

**ASSIGNED SFMTAB CALENDAR DATE:** September 6, 2016

## **PURPOSE**

The proposed resolution authorizes the Director of Transportation to execute the Airspace Lease Agreement for Lease Area No. 04-SF-80-11, an approximately 114,343 square foot property at 450 7<sup>th</sup> Street between Harrison and Bryant Streets for the temporary storage of towed illegally parked and abandoned vehicles, between the City, through the SFMTA, and the State, through Caltrans, for four years and six months, with an initial rent of \$90,000 per month and annual adjustments of three percent each July 1<sup>st</sup>.

## **GOAL**

The proposed lease of the Caltrans property will allow the SFMTA to temporarily store and process illegally parked and abandoned vehicles that have been towed in order to clear the streets, ensure efficient flow of vehicular traffic, and improve congestion management. The proposed lease is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 1: Customer Focus to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Goal 2 – System Performance to get customers where they want to go, when they want to be there

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

Goal 4 – Financial Capacity to ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

## **DESCRIPTION**

The SFMTA Board of Directors, and subsequently the Board of Supervisors, approved a Towing Agreement with TEGSCO, LLC, dba San Francisco AutoReturn (AutoReturn) that commenced on April 1, 2016 with an initial five-year term through March 31, 2021. Under this agreement, AutoReturn provides towing, storage and lien auction services for illegally parked and abandoned vehicles. AutoReturn currently has a month-to-month lease with Caltrans for Airspace Lease Area No. 04-SF-80-11, also known as 450 7th Street between Harrison and Bryant Streets, for temporary storage, customer service and tow truck dispatch services in connection with the Towing Agreement with the SFMTA. AutoReturn currently pays Caltrans \$90,000 per month rent, which is passed through to the SFMTA as an operating expense. Vehicles that are not retrieved by the vehicle owner within 48-hours are transferred to the long-term storage and auction facility located at 2560 Bayshore Boulevard in Daly City that is leased by the SFMTA from Prologis. The SFMTA has already executed a License Agreement with AutoReturn for use of 2560 Bayshore Boulevard in connection with the services provided under the Towing Agreement.

The 450 7<sup>th</sup> Street temporary storage, customer services and dispatch center is centrally located in San Francisco and serves a vital function in processing approximately 42,000 vehicles annually.

Caltrans has agreed to lease the 450 7<sup>th</sup> Street location directly to the SFMTA as a municipality providing service to the public. Caltrans would otherwise be required to offer the location to the general public through a bidding process. There is no guarantee that AutoReturn would be the highest bidder under such a process. This would put the SFMTA tow operation at jeopardy of having to relocate.

The SFMTA intends to enter into a License Agreement with AutoReturn for use of 450 7<sup>th</sup> Street that is substantially in the form of the License Agreement for the 2650 Bayshore location. That license agreement is currently part of the Towing Agreement. The proposed lease with Caltrans would be for a term of four years and six months, to coincide with the initial term of the Towing Agreement with AutoReturn, at the same rate of \$90,000 per month with an annual adjustment each July 1<sup>st</sup> of three percent.

Staff requests that the SFMTA Board of Directors approve a resolution authorizing the Director of Transportation to execute an Airspace Lease Agreement for Caltrans Lease Area No. 04-SF-80-11 for a term of four years and six months commencing on October 1<sup>st</sup>, 2016.

### **STAKEHOLDER ENGAGEMENT**

As the proposed lease does not change conditions of the existing use, no outreach was done.

### **ALTERNATIVES CONSIDERED**

There are no alternative or suitable sites in the area.

### **FUNDING IMPACT**

FY 2017 (9 months) at \$90,000 per month = \$810,000  
FY 2018 (12 months) at \$92,700 per month = \$1,112,400  
FY 2019 (12 months) at \$95,480 per month = \$1,145,760  
FY 2020 (12 months) at \$98,340 per month = \$1,180,080  
FY 2021 (9 months) at \$101,290 per month = \$911,610  
Total Rent (54 months) = \$5,159,850

An increase of three percent each July 1<sup>st</sup>, rounded to the nearest \$5.00 is reflected.

FY 2017 and FY 2018 rent has been approved and incorporated into the SFMTA Operating Budget.

### **ENVIRONMENTAL REVIEW**

On July 19<sup>th</sup>, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Caltrans Airspace Lease Area No. 04-SF-80-11, 450 7<sup>th</sup> Street is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

**Page 4.**

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No additional approvals are needed for the lease.

The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute the Airspace Lease Agreement for Lease Area No. 04-SF-80-11, an approximately 114,343 square foot property at 450 7<sup>th</sup> Street between Harrison and Bryant Streets for the temporary storage of towed illegally parked and abandoned vehicles, between the City, through the SFMTA, and the State, through Caltrans, for four years and six months, with an initial rent of \$90,000 per month and annual adjustments of three percent each July 1<sup>st</sup>.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA approved a Towing Agreement with TEGSCO, LLC, dba AutoReturn (AutoReturn), that commenced on April 1, 2016 to provide towing, storage and lien sale processing of illegally parked and abandoned vehicles; and,

WHEREAS, To provide services under the Towing Agreement, AutoReturn currently rents, on a month-to-month basis, Lease Area 04-SF-80-11, also known as 450 7<sup>th</sup> Street, from the State of California (State), through its Department of Transportation (Caltrans) as temporary vehicle storage and customer service location; and,

WHEREAS, The 450 7th Street temporary storage, customer service and dispatch center is centrally located in San Francisco and serves a vital function in processing approximately 42,000 towed vehicles annually; and,

WHEREAS, If Caltrans had not agreed to lease 450 7<sup>th</sup> Street directly to the SFMTA as a municipality providing service to the public, it would have been required to offer the site to the general public through a bidding process that would not have guaranteed AutoReturn's continued ability to occupy the site; and,

WHEREAS, SFMTA and Caltrans wish to enter into an Airspace Lease Agreement for Lease Area No. 04-SF-80-11 for four years and six months, commencing on October 1, 2016 to coincide with the initial term of the Towing Agreement, for an initial rent of \$90,000 per month, with an annual adjustment each July 1<sup>st</sup> of three percent; and,

WHEREAS, On July 19<sup>th</sup>, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Caltrans Airspace Lease Area No. 04-SF-80-11, 450 7<sup>th</sup> Street is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Airspace Lease Agreement for Lease Area No. 04-SF-80-11, an approximately 114,343 square foot property at 450 7<sup>th</sup> Street between Harrison and Bryant Streets for the temporary storage of towed illegally parked and abandoned vehicles, between the City, through the SFMTA, and the State, through Caltrans, for four years and six months, with an initial rent of \$90,000 per month and annual adjustments of three percent each July 1<sup>st</sup>.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 6, 2016.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

(Lease Area No. 04-SF-80-11)  
(Account No. 04-SFX-080-0011-04)

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
**AIRSPACE LEASE**

THIS LEASE, dated October 1, 2016 is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS MUNICIPAL TRANSPORTATION AGENCY, hereinafter called "Tenant."

W I T N E S S E T H

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: California Department of Transportation

Tenant: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Premises: SF-80-11 located in the City of San Francisco, County of San Francisco, State of California, and more particularly described in Article 2.

Lease Term Four (4) years, 6 months, commencing October 1, 2016 and expiring on March 31, 2021

Monthly Rent: \$ 90,000.00 (Article 4)

Security Deposit: \$ -0- (Article 18)

Use: City of San Francisco Towing, processing and storage services. (Article 5)

Commercial General Liability Insurance: \$5,000,000. (Article 10)

Insurance provider: \_\_\_\_\_.

Policy number: \_\_\_\_\_.

Business Automobile Liability Insurance: \$1,000,000. (Article 10)

Insurance provider: \_\_\_\_\_.

Policy number: \_\_\_\_\_.

Garage Keeper's Legal Liability Insurance: \$1,000,000. (Article 10)

Insurance provider: \_\_\_\_\_.

Policy number: \_\_\_\_\_.

Workers' Compensation Insurance: \$1,000,000. (Article 10)

Insurance provider: \_\_\_\_\_.

Policy number: \_\_\_\_\_.

Addresses for Notices: (Article 19)

To Landlord:

Department of Transportation

Right of Way Airspace Development MS 11

US Mail: PO Box 23440, Oakland, CA 94623-0440

Street Address: 111 Grand Avenue, 13<sup>th</sup> floor Oakland, CA 94612-3771

To Tenant: SFMTA Real Estate Section - Finance and Information Technology Division

San Francisco Municipal Transportation Agency

One South Van Ness Avenue, 3rd Floor, (3099)

San Francisco, CA 94103

Contact: Steven Lee

E-mail: Steven.Lee@sfmta.com

Phone: 415-701-4592

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appear. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

## ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, that certain Premises known as Freeway Lease Area No. 04-SF-80-11, situated in the City of San Francisco and County of San Francisco, said land or interest therein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof.

EXCEPTING THEREFROM all those portions of the above-described Premises occupied by the supports and foundations of the existing structure.

ALSO EXCEPTING THEREFROM all that portion of the Premises above a horizontal plane 5 feet below the underside of the superstructure of the existing structure, which plane extends to a line 10 feet, measured horizontally, beyond the outermost protrusion of the superstructure of the structure.

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. Tenant is hereby advised that the Premises have NOT been inspected by a CASp.

## ARTICLE 3. TERM

The term of this Lease shall be for four (4) years, six (6) months, commencing October 1, 2016, and expiring on March 31, 2021.

## ARTICLE 4. RENT

### 4.1 Monthly Rent

Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the sum of \$ 90,000.00 per month in advance on the first day of each month, commencing on the

date the term commences and continuing during the term. Rent will increase annually at a rate of 3% per year, rounded to the nearest \$5.00 as follows:

Effective July 1, 2017, rent shall automatically increase 3% to \$ 92,700.00 per month.

Effective July 1, 2018, rent shall automatically increase 3% to \$ 95,480.00 per month.

Effective July 1, 2019, rent shall automatically increase 3% to \$ 98,340.00 per month.

Effective July 1, 2020, rent shall automatically increase 3% to \$101,290.00 per month

Rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day. All rent shall be paid to Landlord at the following address: State of California, Department of Transportation, Attention: Cashier, P. O. Box 168019, Sacramento, CA 95816-8019 or State of California Department of Transportation, 1820 Alhambra Boulevard, 2<sup>nd</sup> Floor, Sacramento, CA. **Each payment shall state on the check the rental account number 04-SFX-080-0011-05.**

#### 4.2 Landlord's Compensation upon Assignment, Transfer or Sublease of Tenant's Leasehold

(a) In the event that Tenant voluntarily assigns, transfers or subleases any of Tenant's rights in the Premises, Tenant shall pay to Landlord compensation in connection with the transaction in an amount equal to fifty percent (50%) of any and all consideration, whether in present payments or in future payments, which Tenant receives from an assignee, transferee or subtenant in excess of the amount of rent Tenant is obligated to pay to Landlord under this Lease.

(b) Payment by Tenant of the amount of compensation required under this Section 4.2 is a condition to Landlord's giving its consent to any assignment, transfer or sublease under Section 16.2, and Landlord may withhold its consent to any such assignment, transfer or sublease until this compensation has been paid. In addition, before Landlord gives its consent to any such transaction, Tenant shall deliver to the assignee, transferee or subtenant a written summary of all sums due and owing to Landlord under this section and shall deliver to Landlord a written acknowledgement by the assignee, transferee or subtenant that said person affirms that the sums are due and owing to Landlord and that said person accepts responsibility for ensuring that such sums are paid directly to Landlord.

### ARTICLE 5. USE

#### 5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of conducting City and County of San Francisco towing services and SFPD CSI investigation and storage on designated portions of parcel (as delineated in red on Exhibit A) and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent as a condition to Landlord's approval of any use of the leased premises not specifically permitted by this section.

#### 5.2 Condition of Premises

Tenant hereby accepts the Premises in the **AS-IS** condition existing as of the date of the execution hereof subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof



for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

Except as may be otherwise expressly provided in this Lease, the taking of possession of the Premises by Tenant shall in itself constitute acknowledgement that the Premises are in good and Tenable condition, and Tenant agrees to accept the Premises in its presently existing condition "as is", and that the Landlord shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to the execution of this Lease (including investigation of the surface, subsurface and groundwater for contamination and hazardous materials) and is satisfied that the Premises will safely support the type of improvements, if any, to be constructed and maintained by Tenant upon the Premises, that the Premises is otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that Tenant accepts all risks associated therewith.

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of any hazardous material has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous materials on or beneath the Premises; (3) Landlord has provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and analyze the soil and groundwater on the Premises for the presence of hazardous materials; (4) by signing this Lease Tenant represents to Landlord that, except as otherwise may be stated on "Exhibit C" attached hereto and by this reference incorporated herein, Tenant does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Premises and (5) with respect to any hazardous material which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant has listed the hazardous material on attached "Exhibit C" and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous material at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations. The phrase "hazardous material," as used herein, has the same meaning as that phrase has in Section 5.7 of this Lease.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to the Landlord to take all actions necessary, off as well as on the Premises to improve and continuously use the Premises as required by this Lease and in compliance with all applicable laws and regulations.

### 5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

#### 5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the Premises, a gasoline or petroleum supply station. Tenant shall not permit on the Premises any vehicles used or designed for the transportation or storage of gasoline or petroleum products. Tenant shall also not permit on the Premises any bulk storage of gasoline or petroleum products.

#### 5.5 Explosives and Flammable Materials

The Premises shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials, explosives or other materials or other purposes deemed by Landlord to be a potential fire or other hazard to the transportation facility. The operation and maintenance of the Premises shall be subject to regulations of Landlord so as to protect against fire or other hazard impairing the use, safety and appearance of the transportation facility. The occupancy and use of the Premises shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

#### 5.6 Hazardous Materials

Tenant 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 substances" 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 or regulated by any Hazardous Materials Law or posing a hazard to health or the environment. Except as otherwise expressly permitted in this Lease, Tenant 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 accepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the Premises. Landlord, 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.

In the event Tenant breaches any of the provisions of this Section, this Lease may be terminated immediately by Landlord and be of no further force or effect. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the Premises during Tenant's period of use and possession as owner, operator or Tenant of the Premises. Tenant 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. Tenant 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 Tenant during any period prior to commencement of Tenant's period of use and possession of the Premises as owner, operator or Tenant.

Tenant shall further hold Landlord, 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 Tenant's period of use and possession of the Premises.

## 5.7 Signs

Not more than four (4) advertising signs of a size not greater than thirty (30) square feet of surface area may be erected on the Premises. The wording on these signs shall be limited to Tenant's name or trade name, the words "Parking," or "Auto Parking," a statement of rates, and a directional arrow. The location of all these signs shall be subject to Landlord's prior approval. None of these signs shall be attached to or painted on any bridge structure or building without the express written consent of Landlord. All of these signs shall also comply with all applicable requirements of local governmental entities, including governmental approval and payment of any fees.

Except as set forth in the previous paragraph of this Section, Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the Premises without the prior written approval of Landlord. Tenant 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. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the Premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

## 5.8 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public. Landlord 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 Tenant upon delivery of a copy of them to Tenant.

## 5.9 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the Premises, except as necessary in conjunction with the activities specified in Section 5.1. Any wrecked vehicles permitted shall be removed within a period of 96 hours.

## 5.10 Vending

No third party vending of any kind shall be conducted, permitted or allowed upon the Premises without the prior express written consent of Landlord.

## 5.11 Water Pollution Control

Tenant shall comply with all applicable State and Federal water pollution control requirements regarding storm water and non-storm water discharges from the tenant's leasehold area and will be responsible for all applicable 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 [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/](http://www.swrcb.ca.gov/water_issues/programs/stormwater/).

Tenant 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.

Tenant shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: General Land Use, Office/Retail, Parking Lots, Storage, and Vehicle or Equipment Storage marked "Exhibit B." Tenant shall identify any other potential sources of storm water and non-storm water pollution resulting from Tenant'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 available for review online at: [www.dot.ca.gov/hq/row/rwstormwater](http://www.dot.ca.gov/hq/row/rwstormwater), and

(2) Construction Site Best Management Practices Manual, available for review online at: [www.dot.ca.gov/hq/construc/stormwater/manuals.htm](http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm).

In the event of conflict between the attached fact sheet(s), the above-referenced manuals, and this Lease, this Lease shall control.

Tenant shall provide Landlord with the Standard Industrial Classification (SIC) code applicable to Tenant'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 website: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/gen\\_indus.shtml](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](http://www.osha.gov/pls/imis/sicsearch.html).

Landlord, 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, and/or the testing of storm sewer systems or watercourses on the Premises.

## ARTICLE 6. IMPROVEMENTS

No improvements of any kind shall be placed in, on, or upon the Premises, and no alterations shall be made in, on, or upon the Premises without the prior written consent of Landlord and the concurrence of the Federal Highway Administration. Tenant may, at its sole expense, install and maintain any additional fencing and entrances that may be required by its use of the Premises, subject to the approval of the location by Landlord, the Federal Highway Administration and the City of San Francisco and County of San Francisco; provided that Tenant shall at its sole expense construct and maintain sidewalks and driveways at the locations where the additional entrances are installed. In the event Tenant violates any of the provisions of this Article, this Lease may be terminated immediately by Landlord and be of no further force or effect.

## ARTICLE 7. SURRENDER OF PREMISES AT EXPIRATION OR TERMINATION OF LEASE

At the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield up to Landlord the Premises together with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted.

## ARTICLE 8. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY

### 8.1 Ownership of Improvements

All improvements constructed and placed on the Premises pursuant to Article 6 shall, at the expiration or termination of this Lease, vest in Landlord. Tenant shall not remove any of these improvements from the Premises nor waste, destroy or modify them in any way. Tenant shall deliver these improvements to Landlord in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

### 8.2 Removal of Personal Property and Ownership at Termination

Any signs or other appurtenances placed on the Premises by Tenant under this Lease are the personal property of Tenant. At the expiration or earlier termination of this Lease, Tenant shall remove all personal property placed on the Premises and shall restore the Premises to its previous condition, except surfacing, wheel rails and column guards, at Tenant's sole expense. Any personal property not removed by Tenant after thirty (30) days from Landlord's sending written notice to Tenant may be removed by Landlord. Tenant shall be liable to Landlord for all costs incurred by Landlord in effecting the removal of personal property and restoring the Premises. Landlord may, in its sole discretion, declare all personal property not removed by Tenant to be abandoned by Tenant and this property shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against it by Tenant or any other person.

## ARTICLE 9. MAINTENANCE AND REPAIRS

### 9.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the Premises, and keep it free of all grass, weeds, debris, and flammable materials of every description. Tenant shall ensure that the Premises is at all times in an orderly, clean, safe, and sanitary condition. Landlord requires a high standard of cleanliness, consistent with the location of the Premises as an adjunct of the California State Highway System.

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

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of the all structures from damage incident to Tenant's use of the Premises and any improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned

by Landlord, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or other third parties. At Tenant's request, Landlord may elect to repair the damage to its property, and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

Tenant shall be responsible for the care, maintenance, and any required pruning of trees, shrubs, or any other landscaping on the Premises. Tenant assumes the liability for any damage or injury caused by any falling branches or other such materials from any tree or shrub whether the branches fall due to lack of maintenance or act of god or any other natural or unnatural causes. Tenant's liability insurance required within Article 10 shall cover any damage caused by any falling tree or shrub branches or other materials; and, furthermore, per the same Article 10, Tenant covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost, and obligation on account of any injuries or losses caused by any falling branches or material from any tree or shrub.

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

## 9.2 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If within ten (10) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

## ARTICLE 10. INSURANCE

### 10.1 Exemption of Landlord from Liability

This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operation or use of the Premises by Tenant, its agents, customers or business invitees. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses.

### 10.2 Commercial General Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease comprehensive bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the Premises, including any and all liability of Landlord for damage to vehicles parked on the Premises. Such insurance shall be in an amount of not less than \$5,000,000 combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name the State

as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable to Landlord within not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

#### 10.3 Business Automobile Liability Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease business automobile liability insurance in an amount not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 each occurrence.

#### 10.4 Garage Keeper's Legal Liability Insurance

If Tenant's use involves any auto repair or storage of customer vehicles, Tenant shall obtain and keep in effect at all times during the term of this Lease garage keeper's legal liability insurance in an amount not less than \$1,000,000 for each occurrence combined single limit for loss and damage to vehicles in Tenant's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision, with any deductible not exceeding \$1,000 for each occurrence, and coverage for non-automobile property customarily left in the custody of a garage with a limit of \$5,000.

#### 10.5 Workers' Compensation Insurance

If Tenant employees enter the Premises, Tenant shall obtain and keep in effect at all times during the term of this lease workers' compensation insurance, including employers' liability, in an amount not less than \$1,000,000 for each accident, covering all employees employed in or about the Premises to provide statutory benefits as required by the laws of the State of California. Said policy shall be endorsed to provide that the insurer waives all rights of subrogation against Landlord.

#### 10.6 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, this Lease may be terminated immediately by Landlord and be of no further force or effect. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant 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.

#### 10.7 Waiver of Subrogation

Tenant hereby waives any and all rights of recovery against Landlord, or against the officers, employees, agents and representatives of Landlord, for loss of or damage to Tenant 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. Tenant shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in the Lease.

#### 10.8 Self-Insurance Coverage

The insurance required under Article 10 may include a self-insurance program, subject to Landlord's prior express written consent and approval. No such self-insurance program shall diminish the rights and privileges to which Landlord would otherwise have been entitled to under the terms of this Agreement had there been a third-party insurer.

Tenant's self-insurance shall include such coverage as would have been covered by Commercial General Liability Insurance with respect to the Premises with limits of liability not less than Five Million Dollars (\$5,000,000) per occurrence with no aggregate limit. Tenant shall provide Landlord with a certificate of self-insurance specifying the extent of self-insurance coverage hereunder and containing a waiver of subrogation provision reasonably satisfactory to Landlord. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this Article effective on that termination date. Execution of this Lease Agreement shall be Tenant's acknowledgment that Tenant will be bound by all laws as if the Tenant were an insurer as defined under California Insurance Code Section 22 (7-1.12B(5)).

### ARTICLE 11. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon the Premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to the Premises, buildings, improvements or structures. Specifically, and without placing any limitation on Tenant's obligations under the immediately preceding sentence, Tenant shall pay when due, before delinquency, any and all possessory interest taxes, parking taxes, workers' compensation, taxes payable to the California Franchise Tax Board, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the Premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant defaults in the payment of any of the obligations set forth in this Article, this Lease may be terminated immediately by Landlord and be of no further force or effect.



## ARTICLE 12. RIGHT OF ENTRY

### 12.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

Landlord, through its agents or representatives, and other city, county, state and federal agencies, including the Federal Highway Administration, 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 Tenant, its agents or representatives.

Landlord 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 Landlord 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 Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the Premises which Tenant has failed to perform. All agreements which Tenant enters into for the sublease or use of all or any part of the Premises shall contain a provision, approved by Landlord, which describes Landlord's right of entry as set forth in this Article.

### 12.2 Landlord's Use of the Premises

Tenant understands and agrees that Landlord may, from time to time, be required to perform retrofit work on all or a part of the freeway structures which are situated on, above or adjacent to the Premises or be required to use all or a portion of the Premises in connection with the protection, maintenance, reconstruction, and operation of the state highway system. Landlord shall have the right to impose such restrictions on Tenant's right to enter, occupy, and use the Premises and to construct improvements thereon as Landlord deems are necessary to enable it to maintain, protect, reconstruct or operate the state highway system without interference from Tenant.

In the event Landlord determines that it needs to obtain possession of all or a portion of the Premises, or needs to place restrictions on Tenant's use of the Premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of all or any specified portion of the Premises and comply with the restrictions as stated therein. The monthly rent stated in Section 4.1, shall be reduced by an amount equal to the proportion which the area of the portion of the Premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the Premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the Premises, or for any disruption of Tenant's ability to use any part of the Premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover compensation from Landlord, waives any right it may have to recover for damages to the Premises or any improvements constructed on the Premises, waives any right it may have to assert or recover lost profits or other revenue, and waives its right to use or possess any portion of the Premises or improvements thereon, and damages to any other property, project or operation caused by

Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the Premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the Premises.

Tenant shall conduct its operations on the Premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any work done on or above the Premises. Tenant acknowledges that the performance of the work may cause damage to paving or other improvements constructed by Tenant on the Premises.

## ARTICLE 13. TERMINATION OF LEASE

### 13.1 Termination by Mutual Consent

Notwithstanding any provision herein to the contrary, this Lease may be terminated, and the provisions of this Lease may be altered, changed or amended by mutual consent of Landlord and Tenant.

### 13.2 Termination by One Party

Notwithstanding any provision herein to the contrary, this Lease may be terminated at any time by Tenant upon providing Landlord with NINETY (90) days prior notice in writing, or by Landlord upon providing Tenant with NINETY (90) days prior notice in writing, but in no event shall the notice be given before December 1, 2016. Notices of termination under this section shall be delivered in accordance with the provisions of Section 19.13 to the addresses set forth in Article 1. If Tenant exercises its right to terminate the Lease under this Section, it immediately forfeits any right to bid at the next lease auction for the Premises. In addition, if at the time Tenant terminates this Lease, the entire cost of Tenant's improvements has not been amortized over the remaining term, those improvements shall become the property of Landlord, and Landlord shall not refund or otherwise reimburse Tenant for the remaining unamortized cost of the improvements.

## ARTICLE 14. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping services and all other materials and utilities supplied to the Premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

## ARTICLE 15. DEFAULT

### 15.1 Default

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

(a) Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof has been given by Landlord to Tenant.

(b) The abandonment or vacation of the Premises by Tenant. Failure to occupy and operate the Premises for thirty (30) consecutive days following the mailing of written notice

from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.

(c) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

(d) The failure by Tenant to comply with any provision of any law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 5.3 of this Lease.

(e) The failure by Tenant to comply with the requirements of the Public Parking Lease Application.

(f) The failure by Tenant to comply with the requirements regarding hazardous materials as set forth in Article 5 of this Lease.

(g) The construction by Tenant of any improvements on the Premises contrary to the provisions of Article 6 of this Lease.

(h) The failure by Tenant to pay any tax, assessment, imposition, levy or charge of any kind as set forth in Article 11 of this Lease.

(i) The failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

## 15.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach, terminate Tenant's right to possession by any lawful means, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent 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

(c) the worth at the time of award of the amount by which the unpaid rent 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

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

(e) at Landlord'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 Landlord shall have the right to make any reasonable repairs, alterations or modifications to the premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (a) and (b), 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 (c), 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 "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

### 15.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one-half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one-half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

## ARTICLE 16. ASSIGNMENTS, TRANSFERS, SUBLEASES AND ENCUMBRANCES

### 16.1 Prohibition on Assignments, Transfers and Subleases

Tenant shall not assign, transfer or sublease all or any part of its interest in this Lease or in the Premises, and Landlord reserves the right to deny its consent to any assignment, transfer or sublease of all or any part of this Lease or the Premises.

### 16.2 Voluntary Assignments and Subleases

In addition, with respect to transactions not expressly prohibited under Section 16.1, Tenant shall not voluntarily assign or transfer all or any part of its interest in this Lease or in the Premises, or sublet all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration.

Landlord may, at its sole discretion, elect to consent to any such assignment, transfer or sublease if all of the following express conditions are satisfied:

(a) Landlord receives compensation from Tenant upon the assignment, transfer, sale or sublease of any of Tenant's rights in the Premises per the provisions of Article 4.2.

(b) The prospective assignee, transferee or subtenant completes a Lease Application and meets all of the requirements for eligibility to lease from the State of California.

Tenant's failure to obtain Landlord's required written approval prior to any assignment, transfer or sublease shall render such assignment, transfer or sublease void. Occupancy of the Premises by a prospective transferee, subtenant or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's consent to any assignment, transfer or sublease shall not constitute a waiver of any of the terms, covenants

or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, sublease and transfer of rights under this Lease and shall be severally binding upon each and every party thereto. Any document to transfer, sublet, or assign the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

### 16.3 Change in Partnership or Limited Liability Partnership

If Tenant is a partnership or limited liability partnership, a withdrawal or change, voluntary, involuntary or by operation of law, or the dissolution of the partnership, shall be deemed a voluntary assignment subject to the provisions of Section 16.2.

### 16.4 Change in Tenants

If Tenant consists of more than one person, a purported assignment, voluntary, involuntary or by operation of law, from one tenant to another shall be deemed a voluntary assignment subject to the provisions of Section 16.2.

### 16.5 Change in Corporation or Limited Liability Company

If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 51% of the value of the assets of Tenant, shall be deemed a voluntary assignment subject to the provisions of Section 16.2. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 51% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors or a controlling interest in the LLC.

### 16.6 Assignment of Rent from Subtenants

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

### 16.7 Information to be Supplied to Landlord

Tenant shall supply Landlord with all information Landlord determines to be necessary on all persons or firms to which Tenant proposes to sublet, transfer or assign any of its interest in the Premises, or which might establish rights to enter, control, or otherwise encumber the Premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease, transfer or assignment, Tenant shall provide Landlord with:

- (a) a copy of all documents relating thereto,
- (b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
- (c) a copy of the financial statement of the prospective subtenant, transferee or assignee.
- (d) a copy of all documents showing compliance by the prospective subtenant, transferee or assignee with all of the bid eligibility requirements contained in the bid package.

### 16.8 Processing Fees for Assignments, Transfers and Subleases

(a) In addition to the sum specified in Section 4.2, a fee of one thousand five hundred dollars (\$1,500) shall be paid to Landlord for processing each consent to assignment, transfer, or sublease to Landlord as required by this Lease. This processing fee shall be deemed earned by Landlord when paid and shall not be refundable.

(b) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged.

(c) The amounts specified above for processing fees shall be automatically adjusted at the end of the first year of this Lease and every year thereafter in accordance with an annual fee schedule adopted by Landlord. Landlord shall make said fee schedule available to Tenant upon receiving a request therefor.

## 16.9 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever.

## ARTICLE 17. NONDISCRIMINATION

Tenant, for itself, its 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) 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) 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, and (4) Tenant 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 Landlord 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 18. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum of \$-0- as a Security Deposit. Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith, Landlord may use, apply or retain all or any part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant's default or use it to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied, Tenant shall within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Lease term and after Tenant has vacated the premises.

## ARTICLE 19. ADDITIONAL PROVISIONS

### 19.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term.

### 19.2 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. Exhibits attached hereto, and addenda and schedules initiated by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

### 19.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant 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 Landlord and Tenant. Landlord and Tenant 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.

### 19.4 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.

### 19.5 Costs of Suit

If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

## 19.6 Time, Joint and Several Liability

Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

## 19.7 Binding Effect; Choice of Law

The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

## 19.8 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 Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

## 19.9 Surrender of Premises

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

## 19.10 Holding Over

If Tenant 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 Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and 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 tenancy shall be subject to every other term, covenant, condition and agreement contained herein, except that the monthly rental rate set forth in Section 4.1 may be increased by Landlord effective the first month of the holdover period, or upon 30 days notice any time thereafter.

## 19.11 Interest on Past Due Obligations

Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at a rate one percent (1%) above the discount rate of the Federal Reserve Bank



of San Francisco from the due date. Payment of such interest together with the amount due shall excuse or cure any default by Tenant under this Lease.

#### 19.12 Recording

Neither Landlord nor Tenant shall record this Lease.

#### 19.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant 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 Landlord or Tenant respectively at the addresses set forth in Article 1.

#### 19.14 No Reservation

Submission of this instrument for examination or signature by Tenant 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 Landlord and Tenant.

#### 19.15 Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

#### 19.16 Force Majeure

If either Landlord or Tenant shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, 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 Tenant from prompt payment of any rent, taxes, insurance or any other charge required of Tenant, except as may be expressly provided in this Lease.

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

LANDLORD: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
LINDA EMADZADEH, Chief  
R/W Airspace, LPA, and Utilities

TENANT: CITY AND COUNTY OF SAN FRANCISCO,  
A municipal corporation, acting by and through its  
Municipal Transportation Agency

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

San Francisco Municipal Transportation Agency  
Board of Directors

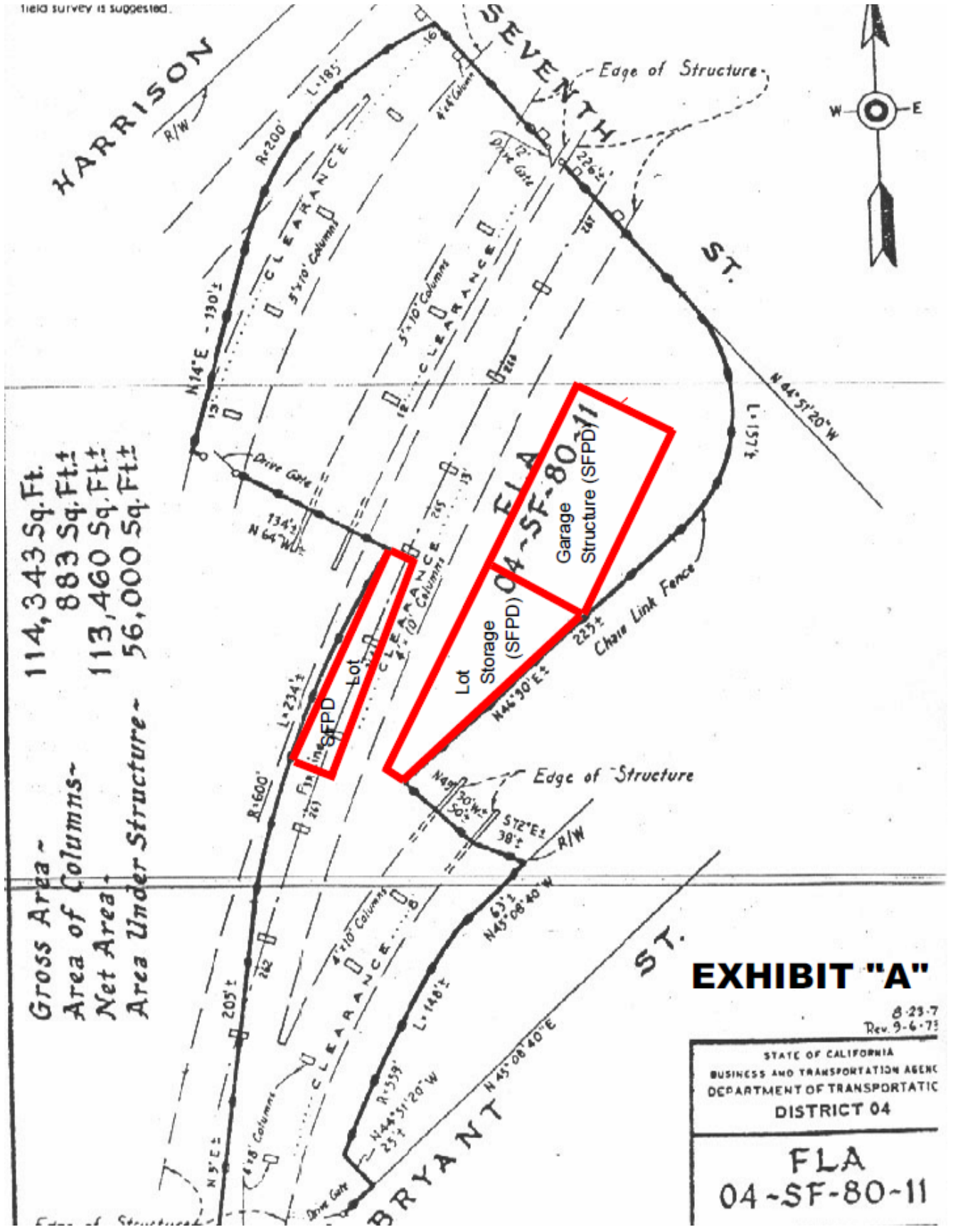
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Robert K. Stone, Deputy City Attorney

**EXHIBIT A**  
**(Site Diagram)**

FIELD SURVEY IS SUGGESTED.



Gross Area - 114,343 Sq. Ft.  
 Area of Columns - 883 Sq. Ft.±  
 Net Area - 113,460 Sq. Ft.±  
 Area Under Structure - 56,000 Sq. Ft.±

**EXHIBIT "A"**

8-23-7  
 Rev. 9-6-73

STATE OF CALIFORNIA  
 BUSINESS AND TRANSPORTATION AGENCY  
 DEPARTMENT OF TRANSPORTATION  
 DISTRICT 04

**FLA**  
**04-SF-80-11**

**EXHIBIT  
B**

# Stormwater Pollution Prevention

## General Land Use

### Illicit Connections/Illegal Discharge

- Locate solid waste storage areas away from drainage facilities and watercourses and not in areas prone to flooding or ponding. Prevent storm water run-on from contacting stored solid waste through the use of ditches, berms, dikes and swales. Use dry cleanup techniques (e.g., vacuuming, sweeping, dry rags) to remove solid waste from the site when practicable. Use wet cleaning techniques only when dry cleanup techniques are not practicable. Periodically inspect the solid waste storage areas and review the disposal procedures.
- Non-storm water discharges to drainage paths, drain systems and watercourses are prohibited. Fluids should be collected by vacuum or other methods and contained and recycled, evaporated or discharged to the sanitary sewer system with approval from the publicly-owned treatment works.
- Store, transport and dispose of all hazardous waste in accordance with federal, state and local regulations. Follow label instructions regarding the proper handling, mixing and application of materials which could generate hazardous waste and a discharge to waterways.
- Train employees in proper waste disposal and cleaning, maintenance and good housekeeping procedures.



### General Maintenance and Repair

Properly collect and dispose of water when pressure washing buildings, rooftops, and other large objects. Properly prepare work area before conducting building maintenance. Properly clean and dispose of equipment and wastes used and generated during building maintenance.

Recycle residual paints, solvents, lumber, and other materials to the maximum extent practical. Buy recycled products to the maximum extent practical.

Do not dump waste liquids down the storm drain. Make sure that nearby storm drains are well marked to minimize the chance of inadvertent disposal of residual paints and other liquids.



Keep the work site clean and orderly. Remove debris in a timely fashion. Sweep the area. Cover materials of particular concern that must be left outside, particularly during the rainy season. Use drip pans or absorbent material under leaking vehicles and equipment to capture fluids.

All maintenance activities should practice water conservation. Keep water application equipment in good working condition. Use the minimum amount of water needed to complete each maintenance activity.

# Stormwater Pollution Prevention

## General Housekeeping

- Purchase only the amount of material that will be needed for foreseeable use. Choose products that do the same job with less environmental risk.
- Keep work sites clean and orderly. Remove debris in a timely fashion. Sweep the area. Dispose of wash water, sweepings, and sediments, properly. Recycle or dispose of fluids properly.
- Specific employees should be assigned specific inspection responsibilities at the work site and given the authority to remedy any problems found.
- Prohibit littering by employees, subcontractors, and visitors.
- Keep lids on dumpsters closed. Arrange for larger dumpsters or more frequent collection of trash from dumpsters to prevent overflow. Do not conduct dumpster washout on the work site. Notify trash hauling contractors that only watertight dumpsters are acceptable for use on-site.



# Stormwater Pollution Prevention

## Office/Retail

### Trash/Trash Bins/Dumpsters Connections/Illegal Discharge

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. Use all of a product before disposing of the container. Ensure that only appropriate solid wastes are added to the solid waste container. Certain wastes such as hazardous wastes, appliances, fluorescent lamps, 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.



## Building Maintenance

Properly collect and dispose of water if pressure washing buildings, rooftops, and other large objects. If pressure washing where the surrounding area is paved, use a water collection device that enables collection of wash water and associated solids. Use a sump pump, wet vacuum or similarly effective device to collect the runoff and loose materials. Dispose of the collected runoff and solids properly. If pressure washing on a landscaped area (with or without soap), runoff must be dispersed as sheet flow as much as possible, rather than as a concentrated stream. The wash runoff must remain on the landscaping and not drain to pavement.

Do not dump any toxic substance or liquid waste on the pavement, the ground, or toward a storm drain. Store toxic material under cover when not in use and during precipitation events. Switch to non-toxic chemicals for maintenance when possible. If cleaning agents are used, select biodegradable products whenever feasible. Consider using a waterless and non-toxic chemical cleaning method for graffiti removal (e.g. gels or spray compounds). Use chemicals that can be recycled. Buy recycled products to the maximum extent practicable.

Use water-based paints whenever possible. They are less toxic than oil-based paints and easier to clean up. Look for products labeled "latex" or "cleans with water." Develop paint handling procedures for proper use, storage, and disposal of paints. Transport paint and materials to and from job sites in containers with secure lids and tied down to the transport vehicle. Test and inspect spray equipment prior to starting to paint. Tighten all hoses and connections and do not overfill paint containers. Mix paint indoors before using so that any spill will not be exposed to rain. Do so even during dry weather because cleanup of a spill will never be 100% effective.



Transfer and load paint away from storm drain inlets. When there is significant risk of a spill reaching storm drains or if sand blasting is used to remove paint, cover nearby storm drain inlets prior to starting painting and remove covers when job is complete. Use a ground cloth to collect the chips if painting requires scraping or sand blasting of the existing surface. Dispose the residue properly.

Cover or enclose painting operations properly to avoid drift. Clean the application equipment in a sink that is connected to the sanitary sewer if using water based paints. Capture all cleanup-water and dispose of properly. Store leftover paints if they are to be kept for the next job properly, or dispose properly.

Regularly train employees on appropriate Best Management Practices implementation, storm water discharge prohibitions, and wastewater discharge requirements. Train employees on proper spill containment and cleanup.



# Stormwater Pollution Prevention

## Landscaping

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 natrescaping and xeriscaping. Use mulch or other erosion control measures on exposed soils.

Dispose of grass clippings, leaves, sticks, or other collected vegetation as garbage at a permitted landfill or by composting. Do not dispose of gardening wastes in streets, waterways, or storm drainage systems. Place temporarily stockpiled material away from watercourses and storm drain inlets, and berm and/or cover.

Irrigate slowly or pulse irrigate so the infiltration rate of the soil is not exceeded. Inspect irrigation system regularly for leaks and to ensure that excessive runoff is not occurring. If re-claimed water is used for irrigation, ensure that there is no runoff from the landscaped area(s). Use automatic timers to minimize runoff. Use popup sprinkler heads in areas with a lot of activity or where pipes may be broken. Consider the use of mechanisms that reduce water flow to broken sprinkler heads.

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.

Whenever possible, 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.

If using pesticides, follow all federal, state, and local laws and regulations governing their use, storage, and disposal. Follow manufacturers' recommendations and label directions. When applicable, use less toxic pesticides that will do the job and avoid use of copper-based pesticides if possible. Do not apply pesticides if rain is expected or if wind speeds are above 5 mph. Do not mix or prepare pesticides for application near storm drains. 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 you can reasonably use in a given time period. 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. Check irrigation schedules so pesticides will not be washed away and to minimize non-stormwater discharge.

Integrate pest management techniques where appropriate. Mulch can be used to prevent weeds where turf is absent. Remove insects by hand and place in soapy water or vegetable oil. Alternatively, remove insects with water or vacuum them off the plants. Use species-specific traps (e.g. pheromone-based traps or colored sticky cards). Sprinkle the ground surface with abrasive diatomaceous earth to prevent infestations by soft-bodied insects and slugs. Slugs also can be trapped in small cups filled with beer that are set in the ground so that slugs can get in easily. In cases where microscopic parasites, such as bacteria and fungi, are causing damage to plants, the affected plant material can be removed and disposed of (pruning equipment should be disinfected with bleach to prevent spreading the disease organism). Small mammals and birds can be excluded using fences, netting, and tree trunk guards. Promote beneficial organisms, such as bats, birds, green lacewings, ladybugs, praying mantis, ground beetles, parasitic nematodes, trichogramma wasps, seedhead weevils, and spiders that prey on detrimental pest species.

## 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.



# Stormwater Pollution Prevention

## 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.





# Stormwater Pollution Prevention

## Parking Lots

### Leaking Vehicles

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.



### Trash

- Post "No Littering" signs and enforce anti-litter laws.
- Provide trash receptacles in parking lots to discourage litter. Clean out and cover trash receptacles frequently to prevent spillage. Regularly inspect, repair, and/or replace trash receptacles.
- Routinely sweep, shovel and dispose of litter in the trash. Remove litter and debris from drainage grates, trash racks and ditch lines to reduce discharge to the storm water drainage systems and watercourses.
- Provide regular training to field employees and/or contractors regarding cleaning of paved areas and proper operation of equipment.

# Stormwater Pollution Prevention

## Storage

### Trash/Trash Bins/Dumpsters

- 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. Use all of a product before disposing of the container. Ensure that only appropriate solid wastes are added to the solid waste container. Certain wastes such as hazardous wastes, appliances, fluorescent lamps, pesticides, etc., may not be disposed of in solid waste containers. Take special care when loading or unloading wastes to minimize losses. Loading systems can be used to minimize spills and fugitive emission losses such as dust or mist. Vacuum transfer systems can minimize waste loss.
- 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.



### Leaking Vehicles

Place drip pans under leaking vehicles. Drain all vehicles in long-term storage. Clean storage facilities on a regular basis to prevent accumulated wastes and pollutants from being discharged into conveyance 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.



Train employees on proper spill containment and cleanup. 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.

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.

### Sediment on Stored Construction Equipment

- Conduct regular cleaning. Sweeping or vacuuming the storage facility is encouraged over other methods. Sweep all storage lots at least once before the onset of the wet season. Establish frequency of sweeping based on usage and field observations of sediment accumulation.
- Washing or rinsing of equipment shall be performed in designated areas and the resulting runoff shall not be discharged to the storm drain system.

# Stormwater Pollution Prevention

## Potential Illegal Discharge from Unknown Materials Inside Storage Units

- Design storage areas to minimize stormwater exposure. Construct a berm or intercept trench at doorways. Install a collection system for pretreatment and sewer disposal under permit by the local sewer authority.
- Utilize dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills. Properly dispose of collected wastes.
- Use secondary containment or protective barriers for indoor liquid storage.
- Train employees on the proper implementation of Best Management Practices, storm water discharge prohibitions, and wastewater discharge requirements. Train employees on proper spill containment and cleanup.

## Outdoor Storage of Loose Materials

Store materials indoors, if feasible. Designate a secure material storage area that is paved with Portland cement concrete, free of cracks and gaps, and impervious in order to contain leaks and spills.

Protect materials stored outside from rainfall and wind dispersal by covering them with a fixed roof or a temporary waterproof covering made of polyethylene, polypropylene, or hypalon. Keep covers in place at all times when work is not occurring. If areas are so large that they cannot feasibly be covered and contained, implement erosion control practices at the perimeter of the area and at catch basins to prevent dispersion of the stockpiled material. Implement erosion control practices at the perimeter of your site and at catch basins to prevent erosion of the stockpiled material off-site, if the stockpiles are so large that they cannot feasibly be covered and contained. Minor slides/slipouts usually occur during major storms. Stockpiles should be removed as soon as practicable and materials should be placed so that waterways are not impacted.



Cover wood products treated with chromated copper arsenate, ammoniacal copper zinc arsenate, creosote, or pentachlorophenol with tarps or store indoors.

Protect materials stored outside from stormwater runoff. Construct a berm around the perimeter of the material storage area to prevent the runoff of uncontaminated stormwater from adjacent areas as well as runoff of stormwater from the material. Paved areas should be sloped in a manner that minimizes pooling of water on the site. A minimum slope of 1.5% is recommended.

Keep storage areas clean and dry. Sweep and maintain routes to and from storage areas. Conduct regular inspections of storage areas.



# Stormwater Pollution Prevention

## Vehicle or Equipment Storage

### Oil Leaks

Place drip pans under leaking vehicles. Drain all vehicles in long-term storage. Clean storage facilities on a regular basis to prevent accumulated wastes and pollutants from being discharged into conveyance 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.

Use dry cleaning methods as much as possible. When wet cleaning methods are necessary, storm drains should be blocked and the wash water should be collected and pumped to the sanitary sewer or discharged to a pervious surface. After cleaning, remove blocks from storm drains. Wash water should not be allowed to enter the storm drains. Do not discharge wash water to the sanitary sewer before contacting the local sewer authority.

Train employees on proper spill containment and cleanup. Have spill cleanup materials readily available and in a known location. Cleanup spills immediately using dry methods if possible. Properly dispose of spill cleanup material. Designate personnel to conduct inspections of the facility and stormwater conveyance systems associated with them. Inspect cleaning equipment/sweepers for leaks on a regular basis.



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.

### Caked Dirt on Tires

- Conduct regular cleaning. Sweeping or vacuuming the storage facility is encouraged over wet cleaning methods. Sweep all storage lots at least once before the onset of the wet season. Establish frequency of sweeping based on usage and field observations of sediment accumulation.



- Washing or rinsing of equipment shall be performed in designated areas and the resulting runoff shall not be discharged to the storm drain system.
- Train employees on appropriate Best Management Practices, storm water discharge prohibitions, and wastewater discharge requirements.

**EXHIBIT C**

Per Section 5.2, Tenant does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Premises

## ADDENDUM TO AIRSPACE LEASE AGREEMENT

This Addendum to Airspace Lease Agreement (this “Addendum”) is a part of and modifies that certain Airspace Lease Agreement (the “Base Lease”) for Lease Area No. 04-SF-80-11 between the State of California, acting by and through its Department of Transportation (“Landlord”), and the City and County of San Francisco, a municipal corporation (“Tenant”), dated as of October 1, 2016.

All undefined, capitalized terms used in this Addendum shall have the meanings given to them in the Base Lease. All references in the Base Lease and in this Addendum to “the Lease” or “this Lease” shall mean the Base Lease, as modified by this Addendum.

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 City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City 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's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Tenant 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 City 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 Tenant may terminate this Lease, without penalty, liability or expense of any kind to Tenant, except for Tenant’s obligation to remove any personal property and restore the Premises to the prior condition per Article 8.2, as of the last date on which sufficient funds are appropriated. Tenant shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

3. Non Discrimination in City’s Contracts and Benefits Ordinance. To the extent Landlord is subject to San Francisco Administrative Code Section 12B in the performance of this Lease, Landlord covenants and agrees not to discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, or any Tenant employee working with, or applicant for employment with, Landlord in any of Landlord’s operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishment or organization operated by Landlord.

4. MacBride Principles – Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Landlord confirms that Landlord has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

5. Bicycle Storage Facilities. Article 1.5, Section 155.1, of the San Francisco Planning Code (the “Planning Code”) requires the provision of bicycle storage at City-leased buildings at no cost to Landlord. In the event public and/or private donations, grants or other funds become available, at any time during the term of this Lease including any extension thereof, Tenant may apply for a Caltrans Encroachment Permit proposing to install compliant bicycle storage at the Premises per Section 6 hereinabove.