

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Statute Authorized Emergency Homeless  
Shelter and/or Feeding Program

(S&H Code 104.30)

Right of Way Use Agreement

**04-SCL-280-09**  
**Felipe Avenue**

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STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY USE AGREEMENT**

THIS RIGHT OF WAY USE AGREEMENT, herein called "Lease," dated January 1, 2020 is entered into by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and CITY OF SAN JOSE a municipal subdivision, authorized and empowered to enter into this Lease, hereinafter called "Tenant", pursuant to Streets and Highways Code 104.30.

WITNESSETH

In mutual consideration of the terms and conditions contained herein, Landlord and Tenant hereby agree that Landlord shall lease to Tenant the "Premises," as specifically described herein, for the term, specified use, and on the conditions hereinafter set forth.

**ARTICLE 1. SUMMARY OF LEASE PROVISIONS**

Landlord: California Department of Transportation

Tenant: CITY OF SAN JOSE

Freeway Lease Area: 04-SCL-280-09 located on Felipe Ave. in the City of San Jose, State of California, and more particularly described in Article 2.

Lease Term Three (3) years, commencing January 1, 2020, and expiring on December 31, 2023.

Yearly Rent: \$1 per month + \$500 annual Administration Fee (Article 4)

Security Deposit: \$0 (Article 18)

Use: Temporary Emergency Homeless Shelter and/or Feeding Program (Article 5)

Commercial General Liability Insurance or Self-Insurance or Combination: \$15M. (Article 10)

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

Mailing Addresses for Notices: (Article 19)

To Landlord:

Department of Transportation  
Right of Way Airspace Development MS 11  
Address: 111 Grand Avenue  
Oakland, CA 94612  
Contact: Jim Bozionelos  
Phone: (510) 286-6236  
Email: jim.bozionelos@dot.ca.gov

To Tenant:

City of San Jose  
Department of Housing  
Address: 200 E. Santa Clara St.  
San Jose, CA 95113  
Contact: James Stagi  
Phone: 408-535-8238  
Email: james.stagi@sanjoseca.gov

References in this Article 1 to the other Articles of this Lease shall be construed to incorporate all of the terms of the portion of the Lease so referenced. 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-SCL-280-09, located on Felipe Ave. in the City of San Jose, State of California, 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.

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 and have not been issued a disability access inspection certificate.

As provided in California Civil Code Section 1938(e):

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

This Lease is subject to (1) approval by the Federal Highway Administration (FHWA) for lease use and rent at less than fair market value, (2) California Transportation Commission (CTC) approval for rent at less than fair market value, (3) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (4) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (5) all matters known to Tenant or of which Tenant has notice, constructive or otherwise including, without limitations, those shown on the attached map Exhibit "A."

## **ARTICLE 3. TERM**

The term of this Lease shall be for a maximum of three (3) years, commencing January 1, 2020 and expiring on December 31, 2023. Tenant may extend the term of this lease for four (4) individual extended terms of one (1) year each by notifying Landlord in writing at least ninety (90) days prior to the expiration of the original term, not to exceed past the statutory authority for the purposes of this Lease. Said extended term shall be upon all the terms and conditions hereof. The total term of this lease will be a maximum of seven (7) years.

#### ARTICLE 4. RENT

In accordance with Streets and Highways Code Section 104.30, Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the sum of one dollar (\$1) per month, plus an additional \$500 per year administration fee, in advance on the date the term commences, and annually thereafter on the commencement anniversary date. 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.

**Each payment shall state on the check the rental tenancy number 04-SCL-280-0009-01.**

#### ARTICLE 5. USE

##### 5.1 Specified Use

The Premises shall be used and occupied exclusively by Tenant, and Tenant's contractors, agents and clients, for the purposes outlined in Streets and Highways Code Section 104.30 for a temporary emergency homeless shelter and/or feeding program only, as further defined in Section 5.13 Shelter/Feeding Program Operations. No other use shall be permitted. The Premises shall not be used for storage, except those items that are necessary for shelter/feeding program operation and used daily by shelter/feeding program staff may be stored in reasonable quantities for such daily use. Tenant's use in violation of this specified use will result in Lease termination. The parties agree that use of the Premises for any purpose not specifically authorized above in this section is prohibited. Landlord's actual, constructive, or implied knowledge of use of the Premises for a purpose that is not specifically described and authorized in this section shall not be deemed acceptance of the use, nor waiver of the right of Landlord to require Tenant to only and exclusively use the Premises for the purpose specifically described and authorized in this section.

##### 5.2.1 Condition of Premises

Tenant hereby acknowledges that this Lease is entered into by Landlord pursuant to the provisions of California Streets and Highways Code Section 104.30 which identifies a temporary shelter/feeding program as a public use, and that authorization allows but does not mandate lease of highway airspace for temporary shelter/feeding program use. The use of the Premises for a temporary shelter must be consistent with the Governor's signing document enacting the above Streets and Highways Code section and only be for temporary shelter use and not permanent housing. Such temporary use does not create a right of occupancy (Exhibit "B"). Further, any structure erected on the Premises by Tenant must be a temporary structure only and not permanent.

Landlord has conducted no inspection of the Premises to determine suitability of the Premises for the intended use, and Tenant is solely responsible for conducting a sufficient inspection, prior to entering into this Lease, for determining the suitability of the Premises for its intended use. By signature of its authorized representative herein, Tenant hereby certifies and agrees that it has conducted its own inspection of the Premises and is entering into this Lease solely upon reliance of its own inspection and not on the basis of any promises or obligations of the Landlord other than those set forth herein. Tenant hereby accepts the Premises in their "AS-IS" condition, with all faults, both known and unknown, which would have been discovered in the course of a reasonable inspection, existing as of the date of the execution hereof. Tenant has had an opportunity to inquire and discover 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 without limitation. 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 specified use; nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises. Tenant acknowledges that Landlord specifically does not warrant fitness of the Premises for the specified use and specifically does not warrant the premises fit for human habitation, whatsoever.

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

Tenant is a political subdivision with the staff and resources necessary to investigate the condition of the Premises and hereby agrees and acknowledges that it has made a sufficient investigation of the condition 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 as defined in Section 5.6) and is satisfied that the Premises will safely support the Tenant's use and type of improvements, if any, to be constructed and maintained by Tenant upon the Premises. Tenant's investigation sets a base line condition as documented in Exhibit "C" and shall be used to determine if improvements are required to make the Premises safe for homeless clients and facility staff. Investigation included a Phase I Environmental Site Assessment (ESA) (as defined in Exhibit "F") reviewed and accepted by Landlord and any invasive sampling indicated by the results of the ESA or required by a regulatory agency with jurisdiction. Tenant hereby acknowledges and agrees that the Premises are otherwise fully fit physically 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 Landlord does not know nor has reasonable cause to believe that any release of any hazardous material, other than the Aerially Deposited Lead (ADL) discussed below, has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, Landlord has made available to Tenant, for review and inspection, records in the possession or control of 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 and that upon discovery of hazardous materials, Tenant shall promptly disclose the information to the Landlord and such information shall be listed in Exhibit "C"; (4) by signing this Lease Tenant represents to Landlord that, except for ADL and as otherwise may be stated in 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; (5) the hazardous substances, other than those listed in Exhibit "C", which are introduced to the Premises, or exposed or disturbed, during Tenant's period of use and possession as tenant of the Premises, shall be completely remediated and removed by Tenant at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations; and (6) the hazardous substances, other than those listed in Exhibit "C", which are found on the Premises during Tenant's use, possession, or development of the Premises shall be completely remediated and removed by Tenant at no cost or

expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations. The phrase "hazardous substance," as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to 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.

Tenant expressly acknowledges and understands that: (1) use of the Premises for a temporary emergency homeless shelter/feeding program is being allowed at the Tenant's request; (2) the Premises are not designed for temporary emergency homeless shelter/feeding program use; and, (3) the Premises lie in close proximity to a State Highway presenting an increased risk of exposure for clients of a temporary emergency homeless shelter/feeding program operated on the Premises to vehicular emissions, including the possible exposure to ADL. Tenant further expressly acknowledges and understands that the operation of the State Highway will continue at all times during the anticipated term of this Lease, and that normal highway traffic, highway operations, and the foreseeable misuse of a State Highway by motorists and members of the traveling public may present unique risks to the clients of a temporary emergency homeless shelter/feeding program operating on the Premises.

#### 5.2.2 Aerially Deposited Lead

ADL is defined as lead found in soil primarily as a result of historical exhaust emissions from the operation of motor vehicles. Exposure to lead can cause a variety of adverse health effects, especially in children and infants.

The Department of Toxic Substances Control (DTSC) currently regulates lead in soil at concentrations higher than 80 mg/kg total lead and/or equal to or higher than 5 mg/l soluble lead. Total lead concentrations over 80 mg/kg are not acceptable for properties used for parks, schools, daycares, medical services, and food services for the needy; and not acceptable for properties used for any residential uses including shelters, emergency shelters, day shelters, apartments motels and hotels; and not acceptable for property uses that allow occupants to have daily, repeated, and/or long term exposure to ADL on the premises. Total lead concentrations up to and including 320 mg/kg of lead in soil are generally acceptable for properties used for commercial/industrial purposes. Soil with soluble lead concentrations equal to or greater than 5 mg/l is a hazardous waste. Landlord has an executed agreement with DTSC regarding the management and reuse of ADL and Tenant is required as a condition of this Lease to follow the standards and procedures set forth in that agreement, a copy of which has been provided to Tenant and Tenant acknowledges and accepts thereof (Exhibit "D").

Landlord and Tenant each acknowledge that ADL may be present on the Premises. Landlord shall not be obligated to evaluate or mitigate the property for ADL prior to proposed use. Tenant shall perform a soil evaluation for ADL and any necessary mitigation prior to property modification and/or use.

Tenant shall conduct a soil evaluation, at Tenant's sole cost, for lead prior to modification and/or use of the Premises. Sampling of soils from the surface to a depth of one foot by Tenant is required. If excavation is necessary for modification of the Premises for Tenant's planned use, sampling by Tenant



shall extend from the surface to the total depth of planned excavation. Soil sampling and chemical analysis for lead shall be consistent with United States Environmental Protection Agency (US EPA) SW 846 and produce a representative data set large enough to produce defensible statistics. Tenant shall submit a sampling and analysis plan to Landlord for review and approval before implementing it. The results of the ADL sampling, chemical analysis, and data analysis with full documentation shall be submitted to Landlord for evaluation. If the Premises are to be used for industrial purposes, ADL concentration based on statistical analysis of the data using a 95 % upper confidence limit must be at or below 320 mg/kg total lead and below 5 mg/l soluble lead. If the Premises are to be used for non-industrial purposes, ADL concentration based on statistical analysis of the data using a 95 % upper confidence limit must be at or below 80 mg/kg total lead and below 5 mg/l total lead. If these levels for the intended purposes of the Premises are exceeded, it is the Tenant's sole responsibility to clean the property to acceptable levels in compliance with applicable legal requirements with DTSC oversight, including legal removal, transport, and disposal of contaminated soil prior to occupancy of the Premises. The parties each agree that Tenant is the hazardous waste generator of excavated soil determined to be a hazardous waste and Tenant shall bear the cost for such removal.

### 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 the 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 agency, enforcement authority or similar body, now or hereafter constituted, relating to, or affecting, the temporary construction permitted under this Lease, or the condition, use or occupancy of the Premises, including but not limited to the City of San Jose Ordinance declaring a shelter crisis and authorizing the temporary suspension of various laws. 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, nor shall the transportation or storage of gasoline or petroleum products be permitted, except those products stored within an operable vehicle owned or used by Tenant or Tenant's employees, agents, contractors, or staff. 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

Landlord is the sole entity authorized by law to operate and maintain State Highways, and its authority over State Highways is plenary. Tenant recognizes the special power of Landlord over State Highways and agrees to be bound by the Landlord's determination of what activity presents a danger to the continued operation of the State Highway adjacent to the Premises. Tenant acknowledges and agrees

that 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. As between Landlord and Tenant, Landlord shall have sole discretion to determine what constitutes materials which present a fire or other hazard to the transportation facility and the determination of Landlord shall not be subject to review by any other entity. Tenant specifically waives any right to contest Landlord's determination in this area. Tenant specifically acknowledges and agrees that the operation and maintenance of the Premises shall be subject to continued review by Landlord so as to protect against fire or other hazards impairing the use, safety and appearance of the transportation facility. Tenant specifically acknowledges and agrees that the occupancy and use of the Premises shall not cause hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility. Tenant shall make the Premises available for inspection upon reasonable notice for the purpose of Landlord's determination of hazardous activity conducted upon the Premises. Upon discovery of a breach of this section, Landlord shall provide notice of the breach to Tenant. Thereafter, Tenant shall have 24 hours to remedy the hazard identified by Landlord. Failure of Tenant to remedy the hazard so identified by Landlord within 24 hours shall be a material breach of the terms of this Lease and may be grounds to terminate the Lease.

#### 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 materials" under any such laws, ordinances or regulations (collectively "Hazardous Materials Laws"). As used in the provisions of this Lease, "hazardous materials" include any "hazardous substance" as that term is defined in Section 25316 of the California Health and Safety Code and any other material or substance listed in or regulated by any Hazardous Materials Law or posing a hazard to a person's 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 excepted. Household cleaning supplies limited to quantities that are reasonably necessary to support shelter operations are excepted. Tenant is prohibited from stockpiling large quantities of cleaning supplies. All cleaning supplies shall be properly stored under safe conditions. Cleaning supplies that are incompatible shall be stored separately. Cleaning supplies shall be properly secured and only accessible to authorized staff.

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 by Landlord. 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, or exposed or disturbed, during Tenant's period of use and possession as 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, or exposure or disturbance of any pre-existing 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.

### 5.7 Signs

Tenant shall post signs at all entrances and exits and other conspicuous areas as appropriate on the Premises, that state the following:

- Warning: Clients of this shelter/feeding program are at increased risk of exposure to Aerially Deposited Lead, vehicle emissions, and other hazardous or harmful materials and substances. Use of this shelter/feeding program is at each inhabitant's own risk, and neither the State of California nor the California Department of Transportation is liable for any injury or property damage suffered while using the Premises.
- Firearms and illegal weapons may not be possessed on the Premises.
- Open fires are prohibited.
- Use or possession of prescription drugs, or other substances which are designated controlled substances under Federal Law, without a valid medical prescription in the holder's name, is prohibited on the Premises. Use or possession of medical marijuana, or recreational marijuana, is prohibited on the Premises even with a valid medical prescription in the holder's name.
- All inquiries should be directed to [Tenant contact information].

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, the decision of which shall be final and not subject to review. No sign shall be placed upon any structure without written permission from Landlord. Tenant acknowledges that the Premises constitute operating right of way for State Highways and as such are not a public forum and no display of a political nature shall be permitted. Tenant shall not place, construct, or maintain, upon the Premises any third-party advertising media of any kind or nature whatsoever. Tenant shall not place, construct, or maintain upon the Premises any advertising media advertising additional Tenant provided client services if that advertising media includes 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 attached 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 such removal is completed.

#### 5.8 Landlord's Rules and Regulations

Tenant hereby acknowledges and agrees that Landlord has a unique responsibility to maintain State Highways in safe and efficient operating status for the traveling public. Tenant hereby acknowledges and agrees that Landlord's acceptance and use of federal funds for highway construction requires Landlord to uphold and enforce all federal mandates upon which funds are conditioned. Tenant further hereby acknowledges and agrees that changing circumstances relating to the security, efficiency, and maintenance of the adjacent State Highway may necessitate the Landlord's imposition of additional restrictions for the use of the Premises which cannot be identified at this time. Tenant hereby agrees that it 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 or changes to federal law. Any additions and modifications to those rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Tenant's sole alternative to compliance with the rules and regulations related to the safety of the transportation facility and motoring traveling public or federal law as hereinafter applied to the use of the Premises shall be termination of the Lease and the prompt refund of any advance rental paid to Landlord. Tenant's exercise of termination as an alternative to compliance with Landlord's rules and regulations shall be communicated promptly upon notice of change of such rules and regulations, and in no event more than thirty (30) days after Tenant has been notified of such change. Termination shall be effective one hundred and twenty (120) days after Tenant provides notice pursuant to the termination procedures in Article 13 of this Lease.

#### 5.9 Wrecked Vehicles

Tenant shall not park nor store wrecked or inoperable vehicles of any kind on the Premises.

#### 5.10 Commercial Activity Prohibited

No commercial activity of any kind whatsoever shall be conducted on the Premises, including without limitation third-party vending, solicitation of or provision of third-party services, or any other kind of commercial activity. Homeless clients permitted on the Premises may be provided homeless related services on site as long as it is at no cost to the clients. The conduct of commercial or any other prohibited activity upon the Premises may be grounds for termination of the Lease.

#### 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 compliance with, and all costs and expenses related to, all applicable provisions of the following permits including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit, and permits and ordinances issued to and promulgated by municipalities, counties, drainage districts, and other local agencies regarding discharges of storm

water and non-storm water to sewer systems, storm drain systems, or any watercourses under the jurisdiction of the above agencies. Copies of the current storm water related NPDES permits are available on the State Water Resources Control Board's website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov) under Programs→Storm Water.

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 the Premises is strictly prohibited. To the extent applicable, as determined by Landlord, Tenant shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: General Land Use, Parking Lots, and Storage (Exhibit "E"). 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 two other manuals, (1) Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at Landlord's District Right of Way office or online at [www.dot.ca.gov/hq/row/rwstormwater](http://www.dot.ca.gov/hq/row/rwstormwater) and (2) Construction Site Best Management Practices (BMPs) Manual, which is available 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 among the attached Fact Sheet(s), the 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 Premises. A list of SIC codes regulated under the General Industrial Permit SIC codes may be found at the State Water Resources Control Board (SWRCB) website at:[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/gen\\_indus.shtml](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 at the Premises for testing.

#### 5.12 Environmental Analysis

Tenant will be the lead agency for purposes of the California Environmental Quality Act (CEQA) and is required to perform a CEQA compliant environmental study unless Tenant determines that the Project is exempt from CEQA as provided therein. If applicable, Tenant is required to also perform, and bear all costs associated with, a National Environmental Policy Act (NEPA) compliant environmental study, although Landlord will be the lead agency for NEPA purposes. Tenant shall draft and submit to Landlord a completed draft environmental document with supporting documentation for review, comment, and approval prior to making the document available for public review and/or comment.

Unless determined to be categorically exempt from CEQA, as provided in CEQA and its implementing regulations, Tenant's environmental review shall include, but not be limited to, an analysis



of impacts to the following resources: sensitive habitats and species, cultural resources, water quality, aesthetics, geology, hydrology, noise, neighborhood impacts, hazardous waste, and air quality. If necessary, Tenant shall perform mitigation to address any impacts. Tenant will be responsible for preparing, publicizing, and circulating all CEQA-related public notices, and for attending all CEQA-related public meetings.

Tenant will coordinate and obtain any and all necessary resource agency permits, agreements, and/or approvals, and will pay all related costs.

Tenant will ensure that the Premises remain in environmental compliance and will pay all costs of such environmental compliance.

### 5.13 Shelter/Feeding Program Operations

Tenant shall inform shelter/feeding program invitees that the shelter/feeding program facility installed and operated by Tenant within the Premises is in response to the City of San Jose emergency homelessness crisis, and permission to enter the Premises and use shelter/feeding program services is temporary only, and that shelter/feeding program use invitees will not be tenants, subtenants, residents, lessees, boarders, or lodgers within the Premises. As used herein, the term "client" shall mean each party who participates either in an emergency shelter program or any services provided at the Premises. Each shelter/feeding program client shall be subject to Tenant's established rules of entry, continued occupancy, and client services. The shelter services shall be limited to occupancy of six (6) months or less as specified in the California Health and Safety Code section 50801 (e). Tenant, its officers, employees, agents, and contractors, shall not accept any gift or payment from any shelter/feeding program use invitee; this prohibition applies to gifts or payment of any kind and for any purpose, and particularly to any gift or payment meant to reimburse or compensate Tenant for use of the emergency shelter/feeding program.

Consistent with Government Code Section 8698.4, subdivision (a)(2)(A)(ii), any cause of action for habitability or tenantability of the Premises shall be suspended. Tenant shall adopt health and safety standards for the emergency shelter, and ensure those standards are complied with, in accordance with Government Code Section 8698.4, subdivision (a)(2)(A)(ii).

Tenant shall be solely responsible for addressing and resolving pollution, noise, and any other form of nuisance complaints from nearby residents, businesses or other complainants.

Tenant understands and agrees that the Premises are within the footprint of an elevated freeway, or otherwise within the operating right of way of a State Highway, and as such are part of the access-controlled right of way subject to regulation by Landlord for all activity conducted on access-controlled freeways. Tenant hereby acknowledges and agrees that Landlord's acceptance and use of federal funds for highway construction requires Landlord to uphold and enforce all federal mandates upon which all funds are conditioned. Tenant agrees that it shall prohibit clients from: (1) starting or maintaining open fires on the Premises; (2) erecting flags, banners, or signs of any kind; (3) possessing or using controlled substances as they are defined under federal law, except prescription medicines used in compliance and under the supervision of a medical doctor; (4) possessing or using marijuana, in any form, with or without a prescription issued by a medical doctor; (5) using hypodermic needles or other "sharps," unless necessary to self-administer prescription medications under a valid prescription of a medical doctor;

and, (6) possessing firearms and illegal weapons (except the duty weapons of law enforcement personnel, or private security retained for the Premises if licensed and privileged to carry firearms in the applicable jurisdiction). Tenant's failure to prohibit clients from engaging in the above enumerated activities, or Tenant's failure to enforce the requirements of this section, shall be a material breach of this Lease.

Tenant is solely responsible for providing refuse waste disposal areas and a secure location for bio-hazard waste disposal, and for maintaining such areas in a safe, lawful, sanitary, and orderly manner.

Tenant is solely responsible for graffiti removal within the leased Premises. Graffiti removal shall be commenced promptly whenever such graffiti is identified and in no event more than five (5) days of tagging.

Tenant is solely responsible for compliance with the Americans with Disabilities Act (ADA).

Tenant is solely responsible for preventing criminal activity on the Premises including but not limited to metal theft. Tenant shall be responsible for repair of metal items if removed from the Premises, and for curing and repairing any property damage or injury arising therefrom.

Tenant is solely responsible for preventing illegal tapping of any electrical or natural gas system on the Premises. Tenant shall be responsible for curing and repairing any electrical and/or natural gas facilities if damaged, and any damage or injury arising therefrom.

Tenant is solely responsible for preventing illegal tapping of any water resource. Tenant shall be responsible for curing and repairing any water or irrigation facility if damaged, and any damage or injury arising therefrom.

Tenant, may, at its discretion, and in conformance with its established rules of client entry, continued occupancy, and client service, allow Premises clients to keep service animals or other animals on the Premises. However, Tenant shall be solely responsible for the safety of its clients and third parties arising out of the implementation of such policy.

## **ARTICLE 6. IMPROVEMENTS**

### **6.1 No Improvements Without Prior Written Consent of Landlord**

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 FHWA. Any approved alteration and improvement shall be at Tenant's own cost and expense unless otherwise specified by Landlord. The cost of Landlord's review of the Tenant plans of improvement shall be borne by Tenant and shall be separately assessed and shall not be deemed to be rent or administrative costs of this Lease.

Tenant, at its sole expense, shall install improvements consistent with the use of the Premises as a temporary emergency homeless shelter/feeding program. No shelter improvements will be erected below Landlord's structure, or within the area below a horizontal plane extending to a line twenty (20)

feet, measured horizontally, from the outermost protrusion of the structure, without Landlord's prior written consent.

All improvements installed by Tenant shall be placed in conformance with the procedures contained herein. Improvements installed without complying with these provisions are unauthorized and will result in a material breach of the terms of the Lease subject to lease termination.

Tenant may, at its sole expense, remove existing fencing, install and maintain any additional fencing and entrances that may be required by its use of the Premises, subject to the approval of the Landlord. Upon review of Tenant's plan of occupancy, Landlord may require additional fencing to be installed to protect the highway structure, Tenant's invitees, motoring public, pedestrians, or other third parties. Such additional fencing, as may be required by the Landlord upon review of Tenant's occupancy plan, shall be installed and maintained at Tenant's sole expense during the Lease term. Said fencing must be approved and inspected by Landlord's engineer and legal division. Failure to maintain the required fencing in serviceable condition throughout the Lease term may be cause for termination of the Lease. The Landlord's determination of the requirements for such fencing, including the length, height, and acceptable fencing materials and standards, shall be the minimum fencing requirement and shall be binding on Tenant. However, nothing in this Lease prevents Tenant from installing more stringent, durable, and effective fencing to achieve the same or greater level of security from the risks identified in the Landlord's requirements. All such fencing shall be approved by Landlord, and if required by FHWA and the City of San Jose. The Tenant shall, at its sole expense, construct and maintain sidewalks and driveways at the locations where the additional entrances are installed in compliance with the State housing law or other laws in effect during the emergency shelter crisis. When required by Tenant's occupancy plan, the perimeter of the Premises shall remain fenced at all times. In the event Tenant violates any of the provisions of this Article, this Lease may be terminated by Landlord.

## 6.2 Encroachment Permit

Except with respect to those fencing improvements referenced in Section 6.1, prior to construction or alteration of any improvements on or off the Premises, Tenant shall submit to Landlord for review engineered preliminary and final plans depicting all improvements and shall obtain environmental clearance and an executed Encroachment Permit from Landlord.

Issuance by Landlord of an Encroachment Permit shall be contingent upon Tenant providing, at Landlord's sole discretion, all, or a combination of, the following, at Tenant's own cost and expense, to the extent applicable:

- a) Final construction plans and detailed specifications. All such plans and specifications submitted by Tenant to Landlord shall be subject to the review and approval of Landlord, and, if on an interstate freeway, FHWA.
- b) Evidence of coverage that assures Landlord that sufficient monies will be available to complete the proposed construction or alteration. The amount of coverage shall be at least equal to the total estimated construction cost. Such coverage shall take one of the following forms:
  - 1) Completion bond issued to Landlord as obligee.
  - 2) Performance bond and labor and materials bond or performance bond containing the provisions of the labor and materials bond supplied by Tenant's contractor or contractors, provided said bonds are issued jointly to Tenant and Landlord as obligees.



- 3) Satisfactory evidence of availability of funds necessary for completion of the proposed construction or alteration.
- 4) Any combination of the above.

All bonds shall be issued by a company qualified to do business in the State of California and acceptable to Landlord. All bonds shall be in a form acceptable to Landlord and shall ensure faithful and full observance and performance by Tenant of all terms, conditions, covenants and agreements relating to the construction of improvements within the leased Premises.

- a) Liability insurance as provided in Article 10.
- b) A copy of a building permit issued by the appropriate local jurisdiction, or any other evidence of local agency (City or County) authorization.
- c) A copy of Tenant's contract with the general contractor actually performing construction.
- d) Note and Deed of Trust, if any.
- e) Loan escrow instructions, if any.
- f) Final landscaping and irrigation plans and detailed specifications including a maintenance plan for litter removal, watering, fertilization and replacement of landscaping.
- g) Evidence of compliance with the applicable provisions of all federal, state and local environmental statutes, laws, regulations and ordinances.

Tenant agrees to diligently apply for and meet all requirements for issuance of the Encroachment Permit and Landlord agrees to not unreasonably withhold issuance of said Encroachment Permit. Tenant is obligated to deliver to Landlord the documents described in subdivisions (a) through (g) of this section regardless of whether an Encroachment Permit may have been issued inadvertently before these documents have been provided to Landlord.

### 6.3 Approved Improvements

Tenant has proposed, and Landlord has approved Tenant's conceptual proposal to install, operate, and maintain a temporary emergency homeless shelter facility on the Premises. To construct the temporary shelter facility, Tenant will be installing, at Tenant's own cost and expense: (As Applicable)

- a) Applicable utilities (i.e. electrical, water, gas, sewer);
- b) Temporary modular buildings or tents to provide shelter, restrooms, and bathing facilities;
- c) Lighting;
- d) Fencing;
- e) Storage containers.

### 6.4 Planning and Zoning

Tenant's use and proposed improvements shall be subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and the City of San Jose Ordinance declaring a shelter crisis and authorizing the temporary suspension of various laws.

### 6.5 Standard of Construction

Tenant agrees that any improvements or construction upon the Premises shall: (a) be consistent with all fire safety requirements including local fire district approval, if required, (b) be subject to

Landlord's prior written approval, and (c) be erected or modified under this section in compliance with the minimum standards adopted pursuant to Chapter 7.8 (commencing with Section 8698 of Division 1 of Title 2 of the Government Code) or the minimum standards provided in the 2019 California Building Code Appendix O, the 2019 California Residential Code Appendix X, and any future standards adopted by the Department of Housing and Community Development related to emergency shelter or emergency shelter facilities.

Tenant shall not construct or place on the Premises any improvements which impair Landlord's ability to maintain, operate, use, repair or improve any part of the transportation facility situated on the Premises or on adjoining real property. Tenant shall be responsible for promptly removing, at its sole expense, any improvement which Landlord identifies as a hazard to the transportation facility adjacent to the Premises.

#### 6.6 Soil Testing

At Tenant's sole cost and expense, Tenant shall secure soil compaction tests and other tests as necessary for construction of Tenant's improvements and for the support of the improvements on the underlying land. In furtherance of Tenant's acknowledgments and representations made within Article 5 of this Lease, Tenant shall secure soil tests as necessary for ADL and other hazardous materials as may be required by law prior to commencement of construction, and Tenant shall either take all steps required by federal or state law to remediate any discovered ADL or other hazardous materials to the extent required by law for Tenant's permitted use hereunder, or terminate this Lease by notifying Landlord in writing. Tenant is required to defend, indemnify, and hold harmless Landlord for any claims arising out of or related to exposure to ADL on the Premises.

When conducting testing, Tenant shall notify Landlord of the location of all test borings, which shall not interfere in any manner with the operation of the facility by Landlord or the structural integrity of the facility. Tenant hereby agrees that Landlord is making no representation regarding existing soil compaction or structural capability of the land or any existing structure thereon. Responsibility for any loss or damage caused by inadequate soil compaction or other structural capacity for Tenant's proposed improvements shall be subject to the indemnification provisions of Section 10.1 without limitation.

#### 6.7 Commencement of Construction

Tenant shall commence construction of the improvements, if any, described in Tenant's final construction plans and detailed specifications, if any, prior to January 1, 2021. For the purposes of this Article, construction shall be deemed to have commenced upon the issuance by Landlord of an encroachment permit. In the event construction is not commenced within the time set forth herein, this Lease may be terminated by Landlord.

#### 6.8 Completion of Construction and Occupancy of Improvements

Construction of the improvements shall be completed consistent with the approved construction plans, if any, prior to January 1, 2022. Tenant shall not occupy or use any of the improvements until Tenant has received final building approval and any required Certificate of Occupancy from the appropriate local agency and Landlord has issued to Tenant an executed Encroachment Permit

Completion Notice. In the event Tenant violates any of the provisions of this section, this Lease may be terminated by Landlord and be of no further force and effect.

#### 6.9 "As-Built" Plans

Within ninety (90) days after Tenant has completed construction of improvements or alterations, Tenant shall furnish Landlord, at Tenant's expense, one set of "As-Built" plans (a) according to a scale and size designated by Landlord; (b) stamped and approved by a California licensed professional engineer; and (c) showing the improvements as constructed in detail, including the location of underground and above-ground utility lines.

### **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 to Landlord the Premises together with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted.

### **ARTICLE 8. REMOVAL OF PERSONAL PROPERTY AND OWNERSHIP AT TERMINATION**

All actual and alleged improvements that are not considered realty (such as paving, lighting, plumbing, underground utilities or any such improvements affixed to the ground) and placed on the Premises pursuant to Article 6, and all signs or other appurtenances placed on the Premises by Tenant under this Lease, shall be deemed to be 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 their 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 any and all personal property and restoring the Premises to their previous condition. 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 shall be solely liable for continued maintenance of the Premises, and shall, at its own cost and expense, maintain the Premises, and keep the Premises free of all grass, weeds, debris, and flammable materials of every description. Tenant shall ensure that the Premises are at all times in an orderly, clean, safe, and sanitary condition. Tenant shall not allow any open flames on the Premises. 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 statute or amendment thereto.

Tenant shall take all steps necessary to protect and preserve the fences, guardrails, and the piers and columns, if any, of all structures from damage arising out of 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, utility-related equipment and facilities caused by Tenant, Tenant's contractors, clients, invitees, trespassers or any 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 under Article 10 shall cover any damage caused by any falling tree or shrub branches or other materials.

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 of the Premises.

## 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 thirty (30) 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 such work is completed 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. INDEMNITY AND INSURANCE

### 10.1 Statement of the Parties' Intent

It is the intent of the Landlord and Tenant that Landlord shall bear no liability whatsoever arising out of the Tenant's use of the Premises except for liability caused by Landlord's willful misconduct or gross negligence.

### 10.2 Insurance

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

### 10.2.A Workers' Compensation and Employer's Liability Insurance

Tenant shall provide workers' compensation and employer's liability insurance as required under the Labor Code.

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

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

If Tenant chooses to procure insurance coverage to meet its insurance obligations under this section of the Lease, instead of meeting those obligations based entirely on self-insurance, then Tenant shall provide Landlord with written proof of the insurance coverage required by this section.

### 10.2.B Commercial General Liability Insurance

Tenant shall procure Commercial General Liability Insurance and Umbrella or Excess Liability Insurance coverage, or utilize self-insurance, such that the total of self-insurance and Commercial General Liability insurance and Umbrella or Excess Liability insurance coverage is no less than \$15 million per occurrence and aggregate limits, with at least \$5 million of that amount covered by a General Liability policy unless only self-insurance is used, covering all operations by or on behalf of Tenant, providing primary insurance for bodily injury liability and property damage liability, and including coverage for:

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

If Tenant procures insurance coverage to meet its insurance obligations under this Lease in whole or in part, Tenant shall provide written proof to Landlord of the Commercial General Liability Insurance and/or Umbrella or Excess Liability Insurance policies along with all endorsements, riders, and amendments on or before the commencement of this Lease by a Certificate of Additional Insured.

Any Commercial General Liability Insurance and/or Umbrella or Excess Liability Insurance policies procured by Tenant shall also comply with the following:

1. Shall extend to all of Tenant's operations and remain in full force and effect during the term of this Lease.
2. Must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
3. Shall be on Commercial General Liability policy form no. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form no. CG0001.
4. Shall contain completed operations coverage with a carrier acceptable to Landlord through the expiration of the latent and patent deficiency in construction statutes of repose set forth in Code of Civil Procedure Section 337.15.

5. Shall name Landlord and Landlord's officers, directors, agents (excluding agents who are design professionals), and employees, as additional insureds under all General Liability Insurance, Umbrella, and Excess policies with respect to liability arising out of or connected with work or operations performed in connection with this Lease. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code Section 11580.04.
6. Shall provide additional insured coverage by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by Landlord.
7. Shall state the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by Landlord is excess only and must not be called upon to contribute with this insurance.

#### 10.2.C Automobile Insurance

Tenant shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability must be not less than \$1 million combined single limit for each accident for bodily injury and property damage. Tenant shall provide Landlord with written proof of the insurance coverage required by this section.

#### 10.2.D Deductibles

On a case by case basis, Landlord may allow reasonable deductible clauses which are not overly broad, do not exceed \$250,000, and/or are not harmful to Landlord. By executing this Lease, Tenant agrees to comply with its obligations under Article 10, Section 10.3.A of this Lease until such deductible is paid or applied to any claim arising out of this Lease, regardless of Tenant's evaluation of liability, if such deductible exists.

#### 10.2.E No Lapses in Coverage

Landlord may assure Tenant's compliance with Tenant's insurance obligations. Ten (10) days before an insurance policy lapses or is canceled during the term of this Lease, Tenant must submit evidence of renewal or replacement of the policy. Tenant is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless Landlord and Landlord's officers, directors, agents, and employees by Landlord's acceptance of insurance policies and certificates. The minimum insurance coverage amounts do not relieve Tenant from liability in excess of such coverage.

#### 10.2.F Self-Insurance

Landlord acknowledges that Tenant provides self-insured protection against all liabilities and agrees that this satisfies the insurance requirements of this Lease. Tenant certifies it will maintain at least \$15,000,000 in its reserves during the term of the Lease and further represents that, with respect to claims made in relation to the Premises or the Lease. Landlord's claims will be first-in-line with respect to the reserve. A letter documenting Tenant's self-insurance will appear in Exhibit "G" to this Lease, will reflect coverage of "all claims" required under this Lease, and will reflect the appropriate FLA tenancy number associated with the letter. Reasonable self-insurance programs and self-insured retentions in

insurance policies are permitted by Landlord. If Tenant uses a self-insurance program or self-insured retention, Tenant must provide Landlord with the same priority of protection from liability and defense of suits as would be afforded by first-dollar insurance. Tenant shall certify its intent to self-insure, in writing, in amounts meeting the requirements of this Lease prior to execution of this Lease. The certification does not negate or override Tenant's responsibility to provide insurance or self-insurance coverage in the amounts set forth in Article 10, Sections 10.2.A, 10.2.B, 10.2.C of this Lease, nor shall it operate or be interpreted to limit in any way Tenant's indemnification obligations in this Lease. 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 Article 10 effective on that termination date.

#### 10.2.G Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance or self-insurance required by Article 10 in full force and effect and in the amounts required by Article 10, this Lease may be terminated by Landlord. In addition, if Tenant fails to procure or maintain the insurance or self-insurance required by Article 10, Tenant shall cease and desist from all operations on the Premises and the improvements thereon, and shall prevent members of the public from gaining access to the Premises during any period in which such insurance policy and/or self-insurance is not in full force and effect or does not meet the amounts required by Article 10.

Each and every insurance policy required under Article 10 shall contain a provision that coverage will not be cancelled without thirty (30) days' prior written notice to Landlord.

#### 10.2.H Waiver of Subrogation

Tenant hereby waives any and all rights of recovery against Landlord and/or the officers, directors, agents, and employees of Landlord, for loss of or damage to Tenant or Tenant's property or the property of others under Tenant's 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.

#### 10.3.A Defense, Indemnification, and Hold Harmless

Tenant shall defend, indemnify, and hold harmless Landlord and Landlord's officers, officials, employees, agents, and volunteers ("Landlord's Personnel"), from any and all losses, claims, injuries, damages, suits, obligations, penalties, judgments, awards, and other liabilities, including attorney fees, (collectively, "Claims") whether caused by, relating to, based upon, arising out of, or in connection with the performance of this Lease, the temporary emergency shelter, the feeding program, or the following:

- a. Claims by shelter/feeding program clients or users arising out of, or related to, the use of the Premises.
- b. Any Claim by Tenant and/or any person or entity acting on behalf of, under, or at the direction of Tenant, against Landlord and/or Landlord's Personnel relating to delay, impairment, imposition of restrictions upon, and/or interference with Tenant's possession of or ability to use all or any portion of the Premises or of any improvement thereon. This includes but is not limited to Claims regarding lost profits, loss of use, and/or lost revenue.

- c. Anything done or omitted to be done by Tenant or by Tenant's officers, employees, agents, contractors, invitees, emergency shelter clients, and/or any other users of the Premises other than Landlord or Landlord's Personnel, under or in connection with any work, authority, or jurisdiction conferred upon Tenant within, or arising under or related to, this Lease, including but not limited to inadequate maintenance.
- d. Any illness, personal injury, death, property damage, or any other injury or damage to any person or property either: (1) arising out of the Tenant's use or occupancy of the Premises or the use or occupancy of the Premises by Tenant's officers, employees, agents, contractors, invitees, emergency shelter/feeding program clients, and/or any other persons; or (2) incurred or sustained by any person in connection with this Lease while on the Premises or entering onto or exiting therefrom; or (3) related to the condition of the Premises during Tenant's use or occupancy of the Premises. This may include, but is not limited to:
  - 1. Claims alleging dangerous condition of public property.
  - 2. Claims regarding air quality issues on or around the Premises.
  - 3. Claims regarding the proximity of the temporary emergency homeless shelter/feeding program to the adjacent roadway.
  - 4. Claims arising from microscopic or macroscopic objects that may enter upon or fall onto the Premises from the adjacent roadways, including but not limited to falling branches, leaves, cones, or other materials from any tree or shrub whether such items fall due to lack of maintenance or act of god or any other natural or unnatural cause.
  - 5. Claims arising from exposure to ADL and/or vehicular emissions.
  - 6. Claims for injuries caused to persons present on the Premises as a result of or in connection with this Lease, when such injuries are related to the use of a State Highway, including the misuse by motorists and members of the traveling public.
  - 7. Claims related to seismic events or other natural events or acts of god, including but not limited to falling debris or other objects, soil subsidence, and water ponding/flooding.
  - 8. Claims arising out of the use of Landlord's highway facilities by the traveling public.
- e. The presence or use of hazardous materials on the Premises during Tenant's period of use and/or possession of the Premises.
- f. Any cause of action for habitability or tenantability of the Premises which is consistent with Government Code Section 8698.4, subdivision (a)(2)(A)(ii).
- g. Claims arising out of or related to the Tenant's policies concerning the presence and/or activities of animals brought on the Premises by Tenant's invitees or emergency shelter/feeding program clients.
- h. Any improvements to the Premises made by or on behalf of the Tenant or the Tenant's clients, including but not limited to the construction of any such improvements.
- i. Removal of personal property from the Premises after termination of the Lease for any reason.
- j. Restoring the Premises to their pre-Lease condition after termination of the Lease for any reason.
- k. Falling branches, leaves, cones, or other similar materials from any tree or shrub whether such items fall due to lack of maintenance or act of god or any other natural or unnatural cause.
- l. Relocation benefits for persons staying on the Premises for any length of time.
- m. Charges for water, gas, heat, light, power, telephone, sewage, air conditioning, ventilation, scavenger services, janitorial services, landscaping services and/or all other materials and utilities supplied to the Premises.
- n. Failure, interruption, or removal of any utility service furnished to the Premises.
- o. Any legal challenges to the environmental process or documentation including, but not limited to, any legal challenge to the CEQA/NEPA documentation, resource agency permits, agreements,



and/or approvals. Tenant is responsible for paying the cost of any awards, judgments, settlements, and costs arising from legal challenges to the environmental process or documentation.

- p. Pollution, noise, and/or any other form of nuisance, and specifically including the cost of any judgment, award, and settlement.

#### 10.3.B Tenant's Evaluation of Liability Not Determinative

Tenant's obligations to defend, indemnify, and hold harmless Landlord are not excused because of Tenant's inability to evaluate liability or because Tenant evaluates liability and determines Tenant is not liable. Tenant must respond within thirty (30) days to any tender of defense and/or request for indemnity by Landlord, unless this time has been extended by Landlord. This provision does not preclude Tenant from reserving its rights to indemnify Landlord, notwithstanding Tenant's duty to defend required under this Lease.

#### 10.3.C Time of Obligation

Tenant is required to comply with its defense, indemnity, and hold harmless obligations under this Lease regardless of whether such claim is made during the Lease term or after expiration.

#### 10.4 Tenant's Contractors

Tenant shall include in any contract it enters with any third party to conduct work upon or related to the Premises a requirement that the contractor will fully defend, indemnify, and hold harmless Landlord and Landlord's Personnel to the same extent described in Section 10.3.A above, including but not limited to any such contractors who enter onto the Premises for construction, or to maintain equipment, structures, fixtures, or other property, and any contractors who will operate and maintain the Premises. If Tenant has any additional insured endorsements executed by any third parties conducting work in association with this Lease, such insured endorsements shall also name Landlord and Landlord's Personnel as additional insureds in order to comply with this provision, and Tenant shall provide copies of the additional insured endorsements and a Certificate of Insurance to Landlord no later than thirty (30) days prior to such third party beginning work on or related to the Premises.

#### 10.5 Lease Termination

In the event the Lease is terminated for any reason, Tenant also agrees to indemnify, defend, and save harmless Landlord and Landlord's Personnel from any third-party claims for damages arising out of, or related to, the termination of the Lease. Such third-party claims shall include but not be limited to claims from any of Tenant's contractors.

#### 10.6 Severability

If any portion of this indemnification provision is deemed to be invalid by a court of competent jurisdiction, it is the express intent of the Landlord and Tenant that the remaining provisions be given full force and effect and be construed in accordance with Section 10.1.

## **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, fees, 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, and any applicable assessments levied by an entity authorized by law to impose such assessment.

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 by Landlord.

## **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 local fire district and FHWA, 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, representatives, clients, invitees or trespassers. Twenty-Four (24) hours' notice may be provided in most cases (excluding the local fire district) for field inspections. No notice may be provided in cases of emergency.

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 the Premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, Tenant recognizes and agrees that Landlord shall have the further right, at its discretion, to immediate possession of the Premises 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 Landlord for the purpose of performing any maintenance activities upon the Premises which Tenant has failed to perform.

## 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 such notice, Tenant shall peaceably surrender possession of all or any specified portion of the Premises and comply with the restrictions as stated therein. Tenant shall be responsible for removing any and all emergency shelter clients from the portions of the Premises to be possessed by Landlord, and ensure that the Premises are free of debris and waste, upon or before the effective notice date. In the event Landlord notifies Tenant that Landlord needs to obtain possession of all or a portion of the Premises, and/or takes possession as set forth above, Tenant shall have no claim upon Landlord and waives any and all claims for compensation, damages, or relocation assistance.

The annual rent stated in Article 4, shall remain due and owing unless Landlord has taken possession of the entire Premises, in which case no rent shall be due for that period of time during which Tenant has surrendered the Premises to Landlord. This reduction or suspension 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. Tenant 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.

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. Tenant expressly agrees to waive all claims against Landlord for all such damage to its improvements unless arising from Landlord's willful misconduct or gross negligence.

## 12.3 Relocation Benefits

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 not collect fees nor any other form of payment from clients in exchange for access or use of the shelter or feeding program on the Premises. Tenant acknowledges that no employee, agent, invitee, trespasser, client, client of a temporary emergency homeless shelter/feeding program, program participant, or other person on the Premises shall be designated or attain the status of a "tenant" or "resident" for any purpose.

Tenant shall accept, review, and reply to any claims from any party seeking relocation benefits. Tenant shall notify all emergency shelter users and clients that Premises use is temporary, and that shelter users are not entitled to relocation benefits when asked to move. Upon entry to the Premises, each prospective emergency shelter user and client shall sign an express acknowledgment that they are not tenants, that they are staying on the Premises on a temporary basis, and that they waive any claim to relocation benefits.

Tenant agrees that no clients shall be "tenants" or "residents". Tenant further agrees that Tenant shall only allow clients to occupy the Premises pursuant to a revocable license executed by the clients which provides (a) that the license is revocable at Tenant's discretion; (b) that the total occupancy may not exceed six (6) months; and (c) that clients shall not acquire, as a result of the license or client's use of the Premises, any right to any relocation benefits or reimbursement of relocation expenses.

#### 12.4 Security and Law Enforcement

City of San Jose law enforcement police and sheriff services shall be primarily responsible for all law enforcement-related issues on the Premises. At Landlord's request, Tenant agrees to provide security for Landlord's employees, agents, or contractors at any time Landlord requires access onto the Premises or through the Premises to gain access to the adjoining right of way and/or freeway bridge structures. In the event Landlord requests law enforcement security, and Tenant does not comply for any reason, and Landlord alternatively employs the services of the California Highway Patrol (CHP), Tenant shall reimburse Landlord the cost of CHP services including the Maintenance Zone Enhanced Enforcement Program (MAZEEP), which amount shall be invoiced to Tenant and shall be due promptly upon receipt of invoice. Security service payments shall not constitute rent or administrative costs under this Lease.

### **ARTICLE 13. TERMINATION OF LEASE**

#### 13.1 Termination by Mutual Consent

This Lease may be altered, changed or amended by mutual written agreement of Landlord and Tenant. Notwithstanding this provision, termination of this Lease may be affected as set forth below.

#### 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 one hundred twenty (120) days prior notice in writing, or by Landlord upon providing Tenant with one hundred twenty (120) days prior notice in writing. 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 approved in accordance with Article 6 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 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, and may result in termination of the Lease at Landlord's option.

- a) 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.
- b) Notwithstanding subdivision (a) of section 15.1 of this Lease, the failure by Tenant to observe and perform any provision of this Lease to be observed or performed by Tenant which poses a health or safety risk, as determined by Landlord at Landlord's sole discretion, for three (3) days after written notice thereof by Landlord to Tenant.
- c) Notwithstanding subdivisions (a) and (b) of section 15.1 of this Lease, the failure by Tenant to observe and perform any provision of this Lease to be observed or performed by Tenant, which poses an imminent health or safety risk, as determined by Landlord at Landlord's sole discretion.

##### **15.2 Landlord's Remedies**

In the event of any material default or breach by Tenant and after Landlord gives Tenant notice thereof and the applicable cure period has expired, 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 Landlord's Right to Cure Tenant's Default

At any time while Tenant is in default or material breach of this Lease and after Landlord gives Tenant notice thereof and the applicable cure period has expired, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 19.11 from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

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

Tenant understands and agrees that this Lease is granted at preferable terms as the Tenant's use for temporary emergency homeless shelter/feeding program purposes is specifically provided for by law. Accordingly, Tenant shall not assign, transfer or sublease all or any part of its interest in this Lease or in the Premises. Transfer or sublease of the Premises or any portion thereof to any other entity shall be a material breach of the Lease and may result in termination. Operation of the temporary emergency homeless shelter/feeding program on the Premises by a third party is allowed through an operational agreement between the local entity and the third party.

## **ARTICLE 17. NONDISCRIMINATION**

Tenant, for itself, its personal representatives, and successors-in-interest as a part of the consideration hereof, does hereby covenant and agree as a covenant of this Lease 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 the Premises and facilities, (2) in connection

with the construction of any improvements on the Premises 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 Premises 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 such regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease, and to re-enter and repossess the Premises and the facilities thereon, and hold the same as if the 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 zero dollars (\$0) as a Security Deposit.

#### **ARTICLE 19. ADDITIONAL PROVISIONS**

##### **19.1 Quiet Enjoyment**

Tenant understands and agrees that Landlord has a primary obligation to maintain the adjacent transportation facility for use by the motoring public. Accordingly, the covenant of quiet enjoyment normally presumed to be inferred in every real property lease is specifically and affirmatively waived by Tenant herein. Tenant's use of the Premises is subject to Landlord's control as set forth herein and the Tenant understands and agrees that its use of the Premises may be impacted by the proximity to the freeway facility and the need for Landlord to maintain that facility.

##### **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. No prior promises or agreements have been made by Landlord and Tenant which are not referenced in this Lease, and no evidence of prior agreements shall be admissible to prove the respective obligations under this Lease.

This agreement, including all the exhibits and attachments hereto, may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant which specifically references this Lease and states the intention to alter or amend its terms. Landlord and Tenant agree 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 enforceable to the fullest extent permitted by law.

#### 19.5 Costs of Suit

In any action to enforce the terms of this agreement, the parties shall be responsible for their own attorney fees. No judgment or award in any action between the parties to this Lease, based on the terms and conditions herein, shall award attorney fees under any theory of recovery.

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 indemnify, defend, save and hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof, in accordance with the provisions of Article 10 of this Lease; therefore, this attorney fee provision is not meant to, and shall not be construed to, affect Tenant's obligations to pay Landlord's cost of defense and attorney fees in such cases.

#### 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 termination of the Lease, whether voluntary or otherwise shall result in the prompt vacation of the Premises by Tenant and the surrender of the Premises to Landlord by Tenant. Any sublease or sub-tenancy entered into by Tenant in contravention of the prohibitions of this Lease, shall terminate concurrently with the Lease and Tenant shall be responsible for surrender of vacated Premises without third party occupants.

#### 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. 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.

#### 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 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 Authority

Each individual executing this Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the City of San Jose, and that this Lease is binding upon Tenant in accordance with its terms. Tenant represents and certifies that it has, through its regular political process, authorized the execution of this Lease by appropriate resolution, delegation, or plenary authority, as required, and shall not in any instance assert the lack of authority as a defense in any action to enforce the Lease terms.

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.

19.17 Tenant Contact Information

Tenant shall immediately notify Landlord of any changes to Tenant's contact information, including the contact name, telephone numbers, mailing address, and email address.

Signature page follows

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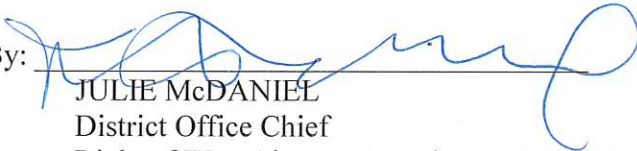
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LANDLORD: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: 12/18/2019

By:   
JULIE McDANIEL  
District Office Chief  
Right of Way Airspace Development, Local Programs  
Relocation Assistance and Utility Relocations


TENANT: CITY OF SAN JOSE, a California municipal corporation

Dated: 12/4/19

By:   
LELAND WILCOX  
Chief of Staff  
City Manager's Office

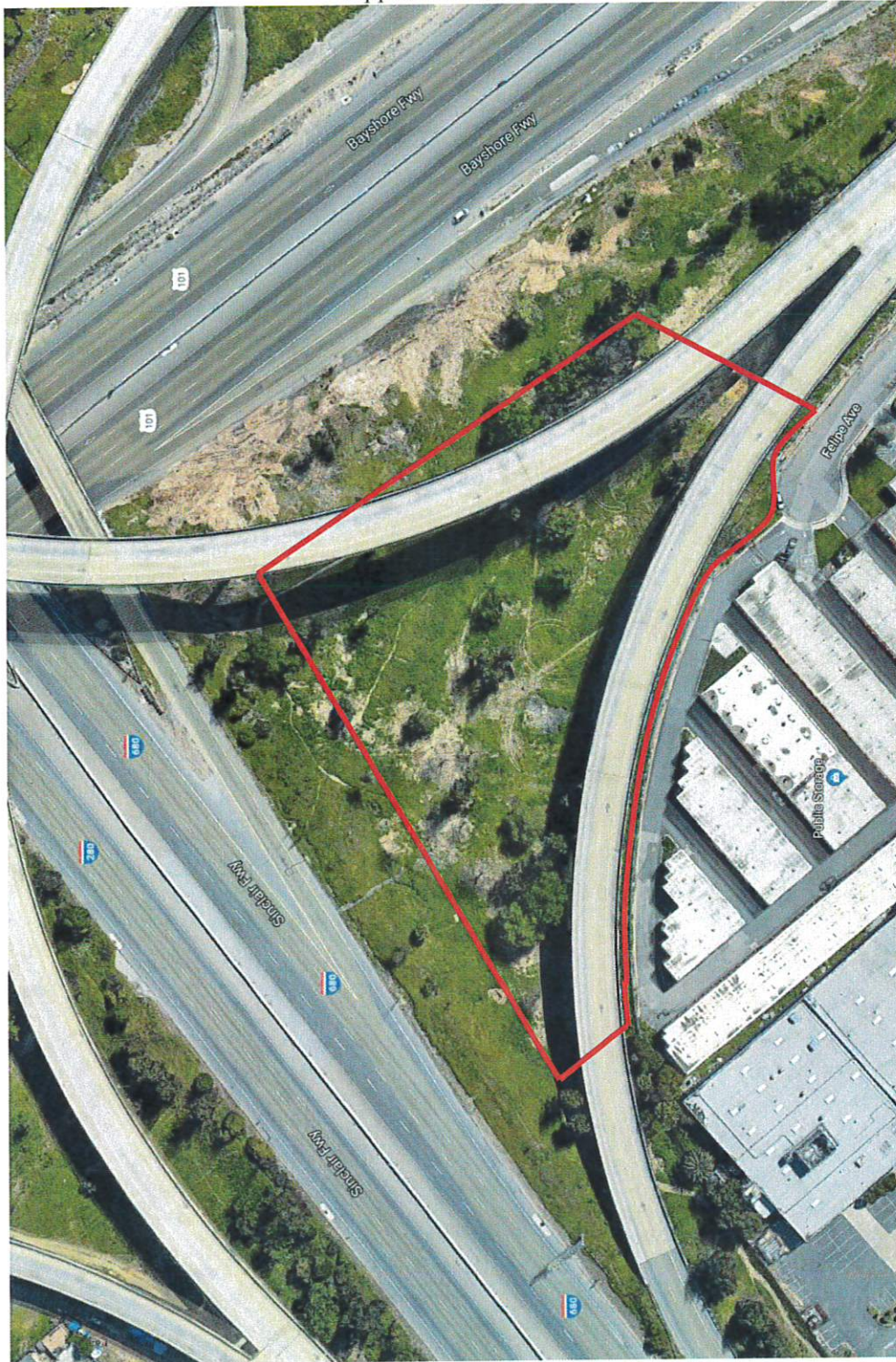
Approved as to form:

Dated: 12-4-2019

By:   
SHASTA GREENE  
Senior Deputy City Attorney

**EXHIBIT A: FLA Map**

**FLA 04-SCL-280-09**  
Felipe Avenue  
Approx. 150,000 sf





**EXHIBIT B: GOVERNOR'S SIGNING DOCUMENT**



OFFICE OF THE GOVERNOR

SEP 17 2018

To the Members of the California State Assembly:

I am signing the following bills:

Assembly Bill 2629  
Assembly Bill 3061  
Assembly Bill 3139  
Senate Bill 519

These bills authorize the Department of Transportation to lease properties in different cities for one dollar a month, if they are used to provide homeless services.

It is important to remember that these properties were never meant to be places for people to live and are generally not suitable for those purposes. The cities outlined in these bills wish to erect temporary shelters on these properties, as emergency measures. Accordingly, I am directing the Department of Transportation, the Department of Housing and Community Development, and the Office of the State Fire Marshal to work in collaboration with these local governments to ensure, through lease agreements, that emergency housing for the homeless is safe, that fire and life safety standards are met, and that such habitations are temporary, not permanent.

Sincerely,

  
Edmund G. Brown Jr.

GOVERNOR EDMUND G BROWN JR. • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841



## EXHIBIT C: HAZARDOUS MATERIALS

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 unless otherwise noted below:

On August 14, 2019, staff from the City's Environmental Services Department completed a Phase I environmental site assessment with limited soil sampling at the subject property. Historical Aerially Deposited Lead (ADL) from automobile emissions are a recognized source of contamination in soils along heavily used roadways that were in existence at a time when gasoline containing lead additives was common. Surface and near-surface soils along heavily traveled roadways such as highways have the potential to contain elevated concentrations of lead. Soil within, and adjacent to, Caltrans rights-of-way frequently contain ADL.

Results of limited soil sampling show lead levels in soil onsite are well below the Residential Environmental Screening Levels of 80 mg/kg. These results indicate that historical automobile traffic emissions from the adjacent highway have not adversely impacted the location of the proposed temporary housing project. Based upon these findings, Environmental Services does not have objections or concerns with leasing the property for the proposed temporary housing facility. No further investigations are recommended.



### Executive Summary - Detections

Constituent	Result	PQL	MDL	Units	Method	Lab Quals
1925277-01 S-1, 8/1/2019 1:40:00PM Lead	42	2.5	0.28	mg/kg	EPA-6010B	
1925277-02 S-2, 8/1/2019 2:20:00PM Lead	36	2.5	0.28	mg/kg	EPA-6010B	
1925277-03 S-3, 8/1/2019 2:17:00PM Lead	43	2.5	0.28	mg/kg	EPA-6010B	
1925277-04 S-5, 8/1/2019 1:55:00PM Lead	15	2.5	0.28	mg/kg	EPA-6010B	
1925277-05 S-6, 8/1/2019 2:10:00PM Lead	32	2.5	0.28	mg/kg	EPA-6010B	
1925277-06 S-7, 8/1/2019 2:15:00PM Lead	52	2.5	0.28	mg/kg	EPA-6010B	
1925277-07 S-8, 8/1/2019 1:35:00PM Lead	53	2.5	0.28	mg/kg	EPA-6010B	
1925277-08 S-10, 8/1/2019 2:00:00PM Lead	39	2.5	0.28	mg/kg	EPA-6010B	
1925277-09 S-11, 8/1/2019 1:45:00PM Lead	20	2.5	0.28	mg/kg	EPA-6010B	
1925277-10 S-12, 8/1/2019 1:50:00PM Lead	18	2.5	0.28	mg/kg	EPA-6010B	

**EXHIBIT D: DTSC AGREEMENT**

<http://www.dot.ca.gov/env/hazwaste/adl.html>

## EXHIBIT E: STORMWATER POLLUTION PREVENTION

# 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.



Rev. 6-1-07



# 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.



Rev. 6-1-07

# 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.





## **EXHIBIT F: ENVIRONMENTAL SITE ASSESSMENT CRITERIA**

1. For the completion of any environmental assessments (Phase 1 or Phase 2), hazardous material removal plans, or other hazardous material work done, prospective Tenant shall employ personnel with the training, experience, references, and insurance coverage that evidence an ability to competently complete the relevant task. Tenant, or the consultant preparing the environmental assessment, shall provide a copy of the environmental assessment to Landlord and shall provide a certification as to the accuracy of the environmental assessment and the methodology employed in its preparation. A "Phase 1" environmental assessment shall include at a minimum:
  - (a) A historical review of the uses and improvements made to the Premises. This historical review shall include an appropriately designed chain of title search using the complete records of the appropriate county recorder in order to discover relevant deeds, property descriptions, covenants, restrictions, and other recorded documents;
  - (b) An analysis of old aerial photographs to determine the construction or destruction of buildings and the existence of ponds and disposal areas on the Premises over time;
  - (c) An investigation of the Premises and sites within 2,000 feet of the Premises with regard to the Environmental Protection Agency's National Priority List, Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) list, and any similar State lists such as the State Water Resources Control Board Geotracker and the Department of Toxic Substances Control (DTSC) Envirostor;
  - (d) A description of sites within 2,000 feet of the Premises, which may contain hazardous materials that could impact the Premises and a description of any regional groundwater plumes that may extend beneath the property regardless of the distance from the source;
  - (e) A review of building, zoning, planning, sewer, water, fire, environmental, and other records that would have information on the Premises and the sites described in subparagraphs (c) and (d) above;
  - (f) A review of the files and records of the Department of Health Services, Solid Waste Management Board, Regional Water Quality Control Board, Air Quality Management District, and other relevant boards or agencies whose actions may affect, or may have affected, the Premises or the sites described in subparagraphs (c) and (d) above;
  - (g) An inspection of the Premises and all existing improvements with particular attention to the use of hazardous materials on the land, within structures, as building components, or in operating equipment;
  - (h) Findings from interviews with neighbors to determine prior uses of the Premises (when appropriate and acceptable to the parties involved);
  - (i) An indication as to whether present or past owners or tenants have stored, created, or

discharged hazardous materials or wastes, and a review of whether appropriate procedures, safeguards, permits and notices are in place;

(j) A discussion of the hazards, if any, posed by the presence of radon gas, underground storage tanks, contaminated soil, contaminated ground water, landfill gas, or other dangerous soil gases;

(k) A clear, concise, and prominent summary of the reports' findings, conclusions, and recommendations; and

(l) An indication of the qualifications of the environmental assessor and the subcontractors used in preparing the report.

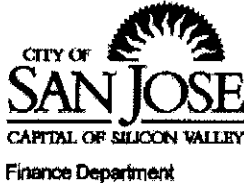
Prospective Tenant warrants and represents that the Report meets the requirements set forth in this subparagraph 1.

2. In the event the "Phase 1" environmental assessment indicates the possible presence of hazardous materials as determined by Landlord and Tenant desires to proceed to rent the property, Tenant shall conduct a "Phase 2" environmental assessment to determine if hazardous materials are actually present, and to what extent they are present. This "Phase 2" environmental assessment may include: (1) testing underground storage tanks for content and integrity, (2) analyzing soil gas, (3) soil sampling, (4) groundwater and surface water sampling, (5) analyzing local geology for potential chemical spill pathways and, (6) listing individual groundwater wells and subsurface water bodies that may be affected by a hazardous material release. Phase 2 sampling for aerially deposited lead is required unless relevant lead data, as determined by Landlord, is available. In the event that Landlord determines, based on the Phase 2 assessment, that hazardous materials are actually present making the property inappropriate for the planned use, Tenant shall prepare and submit, to DTSC and Landlord, a detailed plan it would be willing to follow to remove or mitigate these hazards in a manner which will result in full compliance with all applicable hazardous material laws and regulations. This plan shall include time frames, costs, sources of funds, necessary governmental approvals and any other relevant information related to the scope of the work needed to remove or mitigate the presence of hazardous materials.

3. Landlord may waive or reduce specific requirements in subparagraphs 1 and 2 of this Exhibit if it determines that equivalent studies or plans have been completed or that other evidence satisfactory to the Landlord exist which eliminates the necessity of undertaking specific activities required by subparagraphs 1 and 2 of this Exhibit.

4. Upon the completion of an environmental assessment, hazardous material removal, or any related work required under this Exhibit, Tenant shall complete a CERTIFICATION OF COMPLETION OF HAZARDOUS MATERIAL ASSESSMENT OR REMEDIATION certifying that the work has been appropriately completed.

**EXHIBIT G: LETTER OF CERTIFICATE OF TENANT'S SELF-INSURANCE**



November 22, 2019

Attn: State of California Department of Transportation  
Right of Way Airspace Development MS II  
111 Grand Avenue  
Oakland, CA 94612  
Attn: Jim Bozionelos

Re: Statement of Self Insurance for City of San Jose Related to Airspace Lease Agreement with California Department of Transportation for Premise known as Freeway Lease Area 04-SCL-280-09 Felipe Avenue ("Airspace Lease")

To Mr. Jim Bozionelos:

The City of San José is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability, and automobile liability insurance). Further, the City is self-insured covering workers' compensation claims, and has received the necessary consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third party claims and workers' compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website <http://www.sanjoseca.gov/budget/>.

The City certifies it will maintain at least \$15 million in its reserves during the term of the Airspace Lease and further represents that, with respect to claims made in relation to the Airspace Lease, claims from the State of California Department of Transportation will be first-in-line with respect to the reserve.

Should you need any additional information regarding this letter, please feel free to direct those inquires through my office.

Sincerely,

By: 

Miguel Bernal  
Risk Manager

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RISK MANAGEMENT DIVISION  
200 E. Santa Clara Street, 14<sup>th</sup> Floor Tower  
San Jose, CA 95113-1905

Phone: (408) 975-1438  
Fax: (408) 286-6492

