

(Lease Area No. 10-SJX004-0500-02)

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE GROUND LEASE
PARKING

PARKING AND OPEN STORAGE LEASE AGREEMENT

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**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
PARKING AND OPEN STORAGE LEASE AGREEMENT**

THIS LEASE, dated August 1, 2016, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and the CITY OF STOCKTON, hereinafter called "Tenant."

WITNESSETH

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

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord:	California Department of Transportation (Caltrans)
Tenant:	City of Stockton
Premises:	Under Highway 4 between Center and El Dorado Streets, Located in the City of Stockton, County of San Joaquin, State of California, commonly known as 10-SJX004-0500, and more particularly described in Article 2.
Lease Term:	Twenty (20) years, commencing <u>August 1, 2016</u> and expiring on <u>July 31 2036</u> . (Article 3)
Rent:	Annual: \$ <u>30,600.00</u> Monthly: \$ <u>2,550.00</u> (Article 4)
Security Deposit:	\$0 (Article 17)
Use:	Parking and Open Storage Only (Article 5)
Fire Insurance:	One hundred percent (100%) of the full replacement value of the property covered (Article 9, Section 9.3)
Liability Insurance:	\$5,000,000.00 (Article 9)
Address for Notices:	(Article 22)
Landlord:	Tenant:
Department of Transportation	City of Stockton
Right of Way, Airspace	ATTN: Director of Economic Development Department
855 M Street, Suite 200	425 N. El Dorado St
Fresno, CA 93721	Stockton, CA 95202-1997

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

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. **10-SJX004-0500-02**, situated in the City of Stockton, County of San Joaquin, 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, and more particularly described as follows:

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

Block 28, east of Center Street in the City of Stockton according to the official Map thereof filed in the office of the San Joaquin County Recorder.

EXCEPTING THEREFROM all that portion of said Block 28 situated within the boundaries of Parcel 7 and of Parcel 26 as said parcels are shown on those certain maps entitled "Proposed Relinquishment to the City of Stockton" recorded November 9 1972 in the State Highway Map Book 15 at page 50, San Joaquin County Records.

EXCEPTING THEREFROM all those portions of the above described property needed for highway purposes, more particularly that property occupied or to be occupied by the supports and foundations of the viaduct, if any.

ALSO EXCEPTING THEREFROM all that portion of said property about a horizontal plane 3 feet below the underside or soffit, whichever is lowest, of the viaduct which plane extends to the vertical boundaries of the above described property.

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

ARTICLE 3. TERM

The term of this Lease shall be for Twenty (20) years, commencing August 1, 2016, and expiring July 31, 2036.

ARTICLE 4. RENT

4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$2,550.00, per month in advance on the first day of each month, commencing on the date the term commences and continuing during the term. Minimum monthly rent for the first month or portion of it shall be paid on the day the term commences. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day.

Checks should have a reference number of **10-SJX004-0500-02** denoted clearly on the payment. All rent shall be paid to Landlord at the following address:

By Mail:

Department of Transportation
Attention: Cashier
P.O. Box 168019
Sacramento, CA 95816-8019

In Person:

Department of Transportation
1820 Alhambra Boulevard, 2nd Floor
Sacramento, CA.
(800) 404-7787

4.2 Adjustment to Rent

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment at the commencement of the 2nd year of the term and every year thereafter, except in those years in which a reevaluation occurs under Section 4.3, as follows:

The base for computing the adjustment is the Consumer Price Index (All Urban Consumers - All Items) in the San Francisco area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the second month prior to the month in which the term commences April 2016, or the month in which the most recent Calculation Period commences ("Beginning Index"). The period between each adjustment date, or between a reevaluation date and the next adjustment date, is referred to herein as the "Calculation Period". If the index published for the second month immediately preceding the month of the adjustment date ("Extension Index") has increased over the Beginning Index, the adjusted minimum monthly rent for the following year period shall be set by multiplying the minimum monthly rent, as previously adjusted, by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. If the Extension Index is equal to or less than the Beginning Index, no adjustment shall be made to the minimum monthly rent as previously adjusted. This automatic adjustment shall be calculated using the following formula:

$$A = M \times B/C$$

A = Adjusted minimum monthly rent.

M = Minimum monthly rent stated in Section 4.1, or in effect at the beginning of the current Calculation Period, unless different minimum monthly rent has been established by reevaluation under this Article 4 or by operation of the provisions of Articles 11, in which case the most recently created rate shall apply.

B = "Extension Index," the Index published for the second month prior to the month in which each rental rate adjustment is to become effective.

C = "Beginning Index," the Index published for the second month prior to the month in which the term commences or in which the current Calculation Period commences.

In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this section.

If the Index is changed so that the base year differs from that used in calculating the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this lease, any similar index published by any branch of the United States Government shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative shall be substituted by Landlord.

4.3 Reevaluation of Minimum Monthly Rent

At the request of Landlord during the 9th year from the date of the commencement of the term, a fair market lease rate shall be determined in the manner set forth below and shall be established as the minimum monthly rent commencing on the following date: August 1, 2026.

The minimum monthly rent established by this section shall be subject to the adjustment provided in Section 4.2. For the purpose of computing said adjustment, after the new minimum monthly rent has been established pursuant to this section, the Beginning Index shall be the Index published for the second month prior to the month in which new minimum monthly rent commences.

The term "fair market lease rate" means the highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by Tenant thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the purpose and uses to which the leased premises is being put and the restrictions on use contained in Section 5.1 of this lease.

The parties intend to establish the fair market lease rate through negotiation. However, if Landlord and Tenant have not agreed upon the fair market lease rate for the leased premises at least one-hundred eighty (180) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above, then each party shall appoint an appraiser, who is a member of the Appraisal Institute (M.A.I.) and who has appraised property put to commercial or industrial uses in San Joaquin County, and notify the other party of such appointment. Each party shall use its best efforts to give the notice of appointment to the other party at least one-hundred fifty (150) days before the said commencement date.

Landlord shall set the time and place for a conference between the parties hereto and said two appraisers, which conference shall be held within thirty (30) days of the receipt of notice of appointment by both parties. At such conference, the parties shall agree upon the general instructions to be given to said appraisers. The appraisers shall be instructed that in determining the fair market lease rate they shall consider the use to which the premises are being put and shall not consider the highest and best use for the premises without regard to the restrictions on use of the premises contained in the Lease. It is the intent of the Landlord and Tenant that the rent payable under this Lease not be less than the fair market rental value of the leased premises, and the purpose of this section is to assure the establishment of this rent and to prevent a bonus value from accruing to either party. The appraisers shall be instructed as to this intent. The general instructions shall not place any additional limitations upon the appraisal techniques to be employed by the appraisers in the evaluation of the rent.

Within forty-five (45) days after receiving said instructions, each of the appraisers shall deliver copies of a fully-documented signed written report containing an opinion of the fair market lease rate for the leased premises to Landlord and Tenant. When in receipt of both appraisals, Landlord shall set a time and place for a conference. Those to be in attendance at the conference shall include: (a) representatives of Landlord, (b) representatives of Tenant, and (c) the two appraisers. The parties shall endeavor to reach agreement on the adjusted rent.

If the parties cannot agree on the amount of the adjusted rent, the Landlord's and Tenant's appraisers shall select a third appraiser. Said third appraiser shall be allowed access to the two reports, shall prepare a third appraisal, and shall submit one copy of same to Landlord and Tenant within thirty (30) days of his selection as appraiser.

Landlord and Tenant shall each pay for their respective appraisals and, if a third appraisal is necessary, each shall pay one-half (1/2) of the fees and expenses for said third appraisal. The

determination of the fair market lease rate for the leased premises by the third appraiser, as documented in his signed written report submitted to the parties, shall be binding on Landlord and Tenant. The signed report shall be received at least thirty (30) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above or on such other date upon which the parties shall have agreed. It is the intent of Landlord and Tenant that the time limitations specified in this section are guidelines only and not mandatory. The failure to meet any of the time limitations set forth in this section shall not prevent a reevaluation from occurring so long as Landlord requests the reevaluation prior to the scheduled commencement date of the new minimum monthly rent.

If the fair market lease rate for the leased premises shall not have been determined prior to the date of the scheduled commencement of the new minimum monthly rent as set forth above, Tenant shall continue to pay the same rent as was being paid in the preceding period until a final determination has been made. Within thirty (30) days after such final determination is made, Tenant shall pay to Landlord the amount of difference between the rent actually paid during the period between the scheduled date of commencement of the new minimum monthly rent and the date the final determination is made and the amount of rent which should have been paid had the determination of the new minimum monthly rent been timely. Such payment shall include interest thereon at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of the scheduled commencement of the new minimum monthly rent until payment is made. For the purposes of this section, the applicable Federal Reserve Board discount rate shall be that which exists on the date of the scheduled commencement of the new minimum monthly rent. In no case shall the minimum monthly rent reevaluated pursuant to this section be less than the minimum monthly rent set forth in Section 4.1, as adjusted by Section 4.2, unless said minimum monthly rent has been reduced pursuant to Articles 11.

4.4 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Section 4.3 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by Section 5.1 and as a condition to any amendment to or changes in the uses permitted by that section. If such a reevaluation is made, the provisions of Section 4.3 shall be followed except that in determining the fair market lease rate the appraisers shall also be instructed to consider the new uses to which the premises may be put as a result of Landlord's approval of those additional uses. If such a reevaluation is made, the time for all subsequent scheduled reevaluations under Section 4.3 shall be extended by the period elapsed between the most recent previous reevaluation and the reevaluation made under this section.

ARTICLE 5. USE

5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of Public Parking and Open Storage and as authorized under sublease described in Article 16, for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Sections 4.3 and 4.4 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by this section.

5.2 Condition of Premises

Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

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

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

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous substances 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 substances; (4) by signing this Lease Tenant represents to Landlord that, except as otherwise may be stated on Exhibit "D" attached hereto and by this reference incorporated herein, Tenant does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on or beneath the Property and (5) with respect to any hazardous substance which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant has listed the hazardous substance on attached Exhibit "D" and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous substance 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 the Landlord to take all actions necessary, off as well as on the premises to improve and continuously use the Premises as required by this Lease and in compliance with all applicable laws and regulations.

5.3 Compliance with Law

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

5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the land above or below a highway or freeway, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted under the structures, except those products stored within an operable vehicle for exclusive use by that vehicle.

5.5 Explosives and Flammable Materials

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

5.6 Hazardous Materials

Hazardous materials are those substances listed in Division 4, Chapter 30, Article 9 of Title 22 of the California Code of Regulations or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of that Code, as well as any other substance which poses a hazard to health or 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.

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

Breach of any of these covenants, terms and conditions shall give Landlord authority to immediately terminate this Lease. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises during Tenant's period of use and possession as owner, operator or

Tenant of the premises. Tenant shall also be responsible for any clean-up and decontamination on or off the leased premises necessitated by the introduction of such hazardous materials on the leased 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 leased premises as owner, operator or Tenant.

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

5.7 Signs

In total, no more than two (2) advertising signs, of a size not greater than thirty (30) square feet of surface area, may be erected on the Premises. The wording on these signs shall be limited to Tenant's name or trade name. The location of all these signs shall be subject to Landlord's prior approval. None of these signs shall be attached to or painted on any bridge structure or building without the express written consent of Landlord. All of these signs shall also comply with all applicable requirements of local governmental entities, including governmental approval and payment of any fees. Further signs may be required by Encroachment Permits related to parallel parking requirements on the highway.

Except as set forth in the previous paragraph of this Section, Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. Tenant shall not place, construct or maintain upon the premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 19.11 from the date of completion of such removal.

5.8 Landlord's Rules and Regulations

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

5.9 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the leased premises.

5.10 Vending

No vending of any kind or character shall be conducted, permitted or allowed upon the Premises.

5.11 Water Pollution Control

Tenant shall not allow the discharge of contaminated storm water runoff or unauthorized non-storm water discharges to private or public storm water drainage systems.

Tenant shall comply with State and Federal water pollution control requirements, and those of 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.

In order to minimize the discharge of pollutants, spilled, leaked fluids, and any other wastewater into the storm water drainage system, Tenant shall not allow vehicle or equipment washing, fueling, maintenance and repair on the Premises, unless separately authorized by this lease agreement for industrial activity.

In order to minimize the discharge of pollutants to storm water resulting from contact with hazardous material, Tenant shall not allow the storage or stockpile of hazardous material on Premises.

Tenant shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: Parking Lots ("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 the Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at the Landlord's District Right of Way office or online at www.dot.ca.gov/hq/row/rwstormwater. In the event of conflict between the attached Fact Sheet(s) and this Lease, this Lease shall control.

Tenant shall provide Landlord with the Standard Industrial Classification (SIC) code applicable to Lessee's facilities and activities on the lease premises. A list of regulated SIC codes may be found at the State Water Resources Control Board (SWRCB) website: <http://www.swrcb.ca.gov/stormwtr/>. Other SIC codes may be found at www.osha.gov/pls/imis/sicsearch.html.

Landlord, or its agents or contractors, shall at all-time have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. Inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises.

5.12 General Industrial Permit

For any activities conducted on the lease premises listed in Attachment 1 to the General Permit for Storm Water Discharges Associated with Industrial Activities (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB), Tenant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) covering those activities. Information on the General Industrial Permit is electronically available at the SWRCB web site: <http://www.swrcb.ca.gov/stormwtr/industrial.html>. Tenant will address storm water and water quality protection by implementing appropriate Best Management Practices (BMPs) described in the SWPPP. A copy of the SWPPP, including any updates, will be provided to the Landlord and also maintained on the lease premises.

Tenant shall also provide a copy of the following: Notice of Intent (NOI) or No Exposure Certification (NEC) filed with the SWRCB; Receipt Letter from SWRCB showing

Waste Discharge Identification (WDID) Number; and Notice of Termination (NOT), if applicable. Tenant is solely responsible for compliance with the General Industrial Permit.

ARTICLE 6. IMPROVEMENTS

No improvements of any kind shall be placed in, on, or, upon the Premises, and no alterations shall be made in, on, or, upon the Premises without the prior written consent of Landlord through an encroachment permit. Existing Improvements include: landscaping (trees, bushes, and stone retaining walls), asphalt driveway/parking lot, within the lease area.

ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

7.1 Ownership of Improvements During Term

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

7.2 Removal of Personal Property and Ownership at Termination

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

ARTICLE 8. MAINTENANCE AND REPAIRS

8.1 Tenant's Obligations

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

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

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

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to Tenant's use of said premises and improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned by Landlord, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or other third parties. At Tenant's request, Landlord will 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 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.

8.2 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 of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

ARTICLE 9. INSURANCE

9.1 Exemption of Landlord from Liability

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

9.2 Liability Insurance

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

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

Landlord acknowledges that Tenant may be self-insured. Tenant may elect to provide the insurance required by this Article in the form of self-insurance. If Tenant elects to exercise this option, Tenant shall so notify Landlord in writing and provide Landlord with a written statement explaining how it will provide Landlord with protection equivalent to that provided by the insurance policies required by this section, together with written evidence of the adequacy of this protection. Tenant's exercise of this option is subject to Landlord's approval. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this section effective on that termination date.

9.3 Fire and Extended Coverage Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease fire and extended coverage insurance upon all buildings, structures and improvements constructed on the premises. Such policy or policies of insurance shall be for not less than one hundred percent (100%) of the full replacement value of the property covered and shall provide for payment of losses to Tenant. Landlord shall be named as an additional insured on all fire and extended coverage insurance policies placed on the buildings, structures and improvements on said premises. The full replacement value of the buildings, structures and improvements to be insured under this section shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Not more frequently than once each year, either party shall have the right to notify the other party that it elects to have the replacement value redetermined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination

9.4 Business Automobile Liability Insurance

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

9.5 Garage Keeper's Legal Liability Insurance

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

9.6 Workers' Compensation Insurance

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

9.7 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, Landlord may take out insurance and pay the premiums thereon. The repayment of those premiums, plus payment of interest as provided in Section 23.11 from the date such insurance is obtained, shall be the sole obligation of Tenant and shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the premises and the improvements erected thereon and shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

9.8 Waiver of Subrogation

Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. The party obtaining the policies of insurance required hereunder shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in the Lease.

ARTICLE 10. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or

governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon said premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

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

ARTICLE 11. RIGHT OF ENTRY

11.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

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

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

11.2 Landlord Use of the Premises

Tenant understands and agrees that Landlord may be required to perform retrofit work on all or a part of the freeway structures which are situated on and above the premises. 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 complete construction of all freeway structural retrofit work without interference from Tenant.

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the

effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. In that event, Tenant will have no claim upon Landlord and waives any and all claims for compensation, damages or relocation assistance.

The minimum monthly rent stated in Section 4.1, as adjusted and reevaluated in accordance with Section 4.2 and 4.3, shall be reduced by an amount equal to the proportion which the area of the portion of the premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

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

ARTICLE 12. TERMINATION OF LEASE

12.1 Termination by Mutual Consent

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

12.2 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 thirty (30) days prior notice in writing, or by Landlord upon providing Tenant with thirty (30) 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 shall become the property of Landlord, and Landlord shall not refund or otherwise reimburse Tenant for the remaining unamortized cost of the improvements.

ARTICLE 13. UTILITIES

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

ARTICLE 14. LIENS

14.1 Exemption of Landlord from Liability

Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

14.2 Tenant's Obligations

In the event a lien is imposed upon the premises as a result of such construction, repair, alteration or installation, Tenant shall either:

- (a) Record a valid Release of Lien, or
- (b) Deposit sufficient cash with Landlord to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgement holder that may arise as a matter of public record from litigation with regard to a lien holder claim, or
- (c) Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the premises from the claim of the lien and from any action brought to foreclose the lien.

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination.

ARTICLE 15. DEFAULT

15.1 Default

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

- A. Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten(10) days after written notice thereof has been given by Landlord to Tenant.
- B. The abandonment or vacation of the premises by Tenant. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.
- C. A 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.

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

15.2 Landlord's Remedies

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

1. the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
2. 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
3. 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
4. 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
5. 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 (1) and (2), 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 (3), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

15.3 Late Charges

This section intentionally deleted per Right of Way Manual 11.08.07.00.

15.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, 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, SUBLEASES AND ENCUMBRANCES

16.1 Voluntary Assignments, Subleases and Encumbrances

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

16.2 Change in Tenant's Vesting

Any change in the legal status of TENANT shall be deemed an assignment in violation of the lease unless approved in advance in writing by LANDLORD.

16.3 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever.

ARTICLE 17. NONDISCRIMINATION

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

1. no person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities,
2. in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors,
3. such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the premises, and
4. Tenant shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 18. SECURITY DEPOSIT

This section intentionally deleted per Right of Way Manual 15.05.05.02.

ARTICLE 19. ADDITIONAL PROVISIONS

19.1 Quiet Enjoyment

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

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

19.3 Entire Agreement

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

19.4 Severability

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

19.5 Costs of Suit

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

judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

19.6 Time, Joint and Several Liability

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

19.7 Binding Effect; Choice of Law

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

19.8 Waiver

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

19.9 Surrender of Premises

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

19.10 Holding Over

If Tenant remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable in the amount and at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant 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

Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a noncurable default of Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

19.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

19.14 No Reservation

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

19.15 Corporate Authority

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

19.16 Force Majeure

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

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

LANDLORD: STATE OF CALIFORNIA
DEPT OF TRANSPORTATION

TENANT: CITY OF STOCKTON

By: _____
MARIA TOLES
Airspace Functional Manager
Right of Way

By: _____
KURT O. WILSON
City Manager

APPROVED AS TO FORM AND CONTENT

JOHN M. LUEBBERKE
CITY ATTORNEY

ATTEST:

BONNIE PAIGE
City Clerk, City of Stockton

By: _____
Deputy City Attorney

EXHIBIT A: MAPS

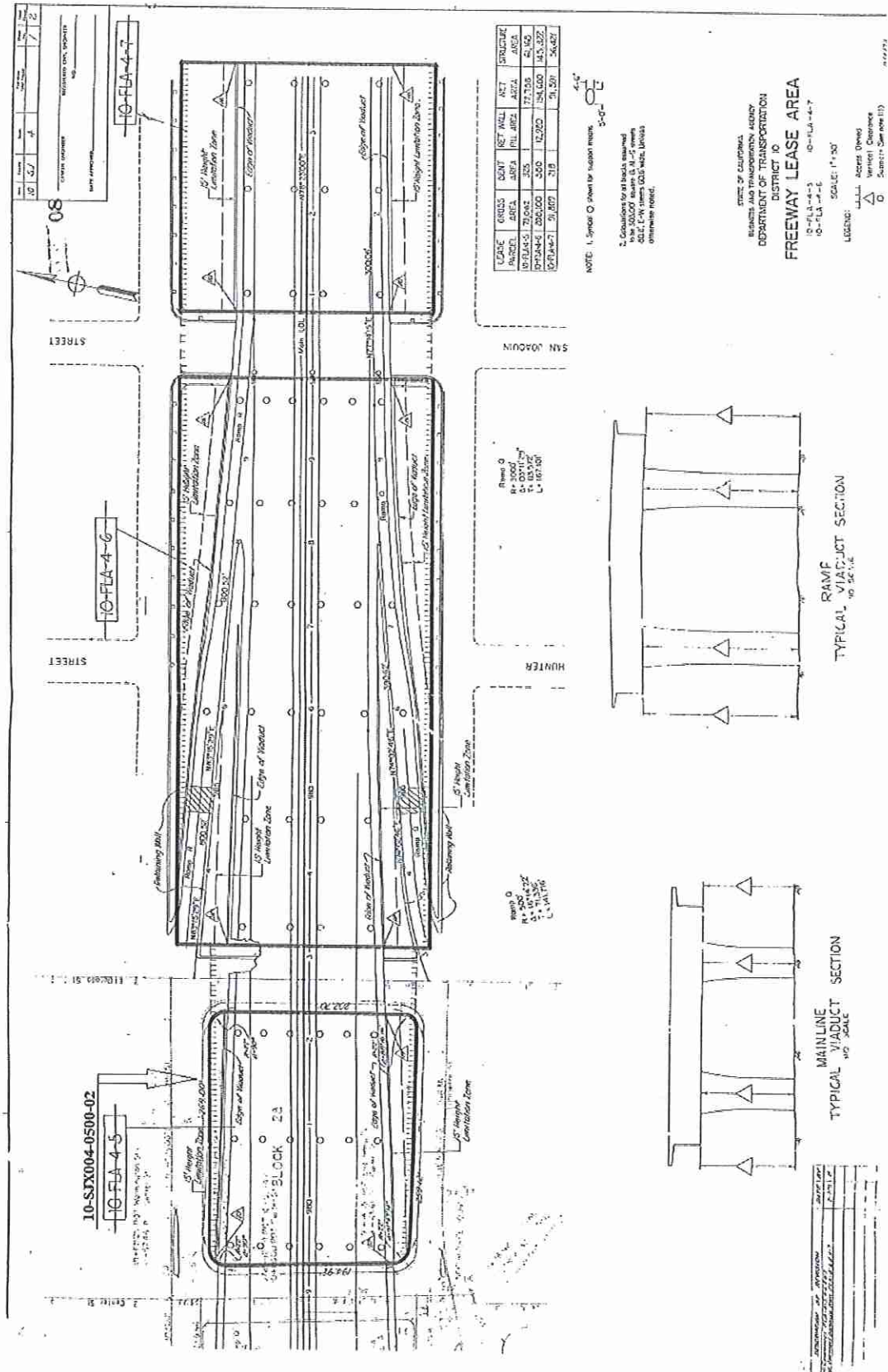


EXHIBIT D: HAZARDOUS SUBSTANCES

Unknown.

EXHIBIT E: STORMWATER POLLUTION PREVENTION

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.

