

ORIGINAL

MARLER - JOHNSON PARK AGREEMENT

SUMMARY OF LEASE PROVISIONS

LESSEE (local agency): City of San Diego

PREMISES: I-15 University Avenue Bridge Deck, located in the City of San Diego, County of San Diego, State of California, commonly known as Lease Area No. 11-SDX015-0017-01.

LEASE TERM: Five (5) years; with one (1) five (5) year option (10-years total)
commencing on February 3rd, 2020 and first term expiring on February 2nd, 2025

LEASE RATE: See Article 3.

ADJUSTMENT TO LEASE RATE: Four percent (4.0%) every two (2) years.

REEVALUATION: At the start of the five (5) year option, if exercised.

SECURITY DEPOSIT: None

PUBLIC USE: Public plaza with access to the adjacent transit station and micro vendors.

LIABILITY INSURANCE: Self Insured

ADDRESS FOR NOTICES:

LESSOR:

Department of Transportation
D11 Right of Way, Airspace
4050 Taylor Street, M.S.310
San Diego, CA 92110
619-688-6091

LESSEE:

THE CITY OF SAN DIEGO
Attention: Director
Real Estate Assets Department
1200 Third Avenue
Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

DOCUMENT NO RR-312712-2
FILED OCT 22 2019
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
AIRSPACE LEASE – MARLER-JOHNSON PARK AGREEMENT

THIS LEASE, dated February 3, 2020, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "LESSOR", and THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "LESSEE" effective when signed by the parties and approved by the San Diego City Attorney.

WITNESSETH

It has been determined that the following described purpose is the proper use by a bonafide public agency pursuant to Section 14013 of the Government Code of the State of California; the parties hereto covenant and agree as follows:

ARTICLE 1. PREMISES

LESSOR, for and in consideration of the covenants, conditions, agreements, and stipulations of the LESSEE expressed, does hereby lease unto the said LESSEE, of those certain premises situated in the City of San Diego, County of San Diego, State of California, sometimes designated as Freeway Lease Area Number 11-SDX015-0017-01. The leased premises shall consist of the restrooms, storage rooms and retail areas of the two (2) permanent structures located at 4023 and 4024 University Avenue, and an additional 400 SF on the north bridge deck and 400 SF on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1200 square feet. The kiosks will be supplied by sublessee. Said demised area being described on the attached map or plat marked "Exhibit A", and commonly known as I-15, University Avenue Bridge Deck.

EXCEPTING THEREFROM all those portions of the above-described property occupied by the supports and foundations of the existing structure. 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 LESSEE or of which LESSEE has notice, constructive or otherwise including, without limitations, those shown on attached Exhibit "A".

ARTICLE 2. TERM

The term of this Lease shall be for five (5) years commencing on February 3, 2020 and expiring February 28, 2025. At LESSEE'S option, and with LESSOR'S concurrence, this lease may be extended for additional five (5)-years subject to a reevaluation of the lease rate in accordance with such terms as may be mutually agreed upon by the parties.

ARTICLE 3. LEASE RATE

3.1 Beginning Monthly Lease Rate

LESSEE shall pay to LESSOR, as beginning monthly rent, without deduction, off set, prior notice or demand, the sum of \$350.00 per month, in advance on the first day of each month, commencing on the date the lease term commences and continuing until the date of the first sub-lessee. Beginning monthly rent for any partial month shall be prorated at the rate of 1/30th of the beginning monthly rent per day

3.2 Monthly Kiosk Lease Rate

Commencing on the date of the first kiosk sub-lease, and continuing during the term of the lease, LESSEE'S rent shall be based on the Rent Schedule for each kiosk, attached hereto as Exhibit E. This sum of the beginning monthly rent and the rent for each applicable kiosk will then become the monthly rent due to the LESSOR. LESSEE shall pay to LESSOR the monthly rent, without deduction, off set, prior notice or demand, in advance of the first day of the month. The rent is subject to adjustment as provided in section 3.3 and the reevaluation period as provided in section 3.4. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum month rent per day.

The lease rate is for the Premises only; LESSEE must arrange to pay for all utility, maintenance and landscaping services.

All lease payments shall be paid to LESSOR at the address to which notices to LESSOR are given. Checks should have a reference number of 11-SDX015-0017-01 clearly denoted on them.

3.3 Adjustment to Lease Rate

The current annual lease rate provided for in Section 3.2 shall be subject to an increase of four percent (4%) every two (2) years.

3.4 Reevaluation of Lease Rate

If the LESSEE elects to exercise the five (5) year extension option, a fair market lease rate shall be determined in the manner set forth below and shall be established as the monthly rent commencing February 3, 2025.

The monthly rent established by this section shall be subject to the adjustment provided in Section 3.3. The term "fair market lease rate" means the highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by LESSEE thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a LESSEE, 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 4.1 of this lease. The fair market lease rate is solely determined by LESSOR's appraisal staff.

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 extended term monthly rent as set forth above, LESSEE 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, LESSEE shall have the option to terminate in accordance with Article 15 of this lease or pay to LESSOR 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 beginning monthly rent set forth in Section 3.1, as adjusted by Section 3.3, unless said minimum monthly rent has been reduced pursuant to Article 11.

ARTICLE 4. USE

4.1 Specified Use

The Premises shall be used and occupied by LESSEE and sub-tenants only and exclusively for the purpose of a public plaza with access to the adjacent transit station and for any legal use not prohibited under Article 4.4 by micro vendors occupying the permanent and temporary kiosks on the Premises, and for no other purpose whatsoever. The Premises shall be maintained at the sole cost and expense of LESSEE in an orderly, clean, safe and sanitary condition and subject to that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B". LESSOR will terminate this lease immediately if LESSEE uses the Premises for any purpose other than as allowed by this section.

The Premises shall at all times be subject to such uses by the LESSOR as are necessary for highway facilities without interference by LESSEE

4.2 Condition of Premises

LESSEE hereby accepts the Premises in the 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. LESSEE acknowledges that neither LESSOR nor any agent of LESSOR has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of LESSEE's business, nor has LESSOR 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 LESSEE shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept the Premises in its presently existing condition "as is," and that the LESSOR shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

LESSEE 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 LESSEE upon the Premises, that the Premises are otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that LESSEE accepts all risks associated therewith.

LESSEE acknowledges that (1) LESSOR has informed LESSEE prior to the commencement of the term of this Lease that the LESSOR 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 LESSOR has made available to LESSEE, for review and inspection, records in the possession or control of the LESSOR which might reflect the potential existence of hazardous substances on or beneath the Premises; (3) LESSOR has provided LESSEE access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to LESSEE 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 LESSEE represents to LESSOR that, except as otherwise may be stated on Exhibit "A" attached hereto and by this reference incorporated herein, LESSEE does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on the Premises and (5) with respect to any hazardous substance which LESSEE knows or has reasonable cause to believe has come or will come to be located on the Premises, LESSEE has listed the hazardous substance on attached Exhibit "A" 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 LESSOR 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.

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

4.3 Compliance with Law

LESSEE 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 LESSEE in any action against LESSEE, whether LESSOR be a party thereto or not, that LESSEE has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between LESSOR and LESSEE. LESSEE shall not allow the Premises to be used for any unlawful purpose, nor shall LESSEE cause, permit or maintain any nuisance in, on or about the Premises. LESSEE shall not commit or suffer to be committed any waste in or upon the Premises.

4.4 Prohibited Uses

LESSEE is to use the Premises for public plaza with access to the adjacent transit station and micro vendors only. The following are specifically prohibited:

- (a) Using the Premises in violation of any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements.
- (b) Operating or installing gasoline or petroleum supply station, transporting or storing gasoline or petroleum products under the structures,
- (c) Manufacturing or storage or use of flammable materials, explosives or other materials, deemed by LESSOR to be a potential fire or other hazard to 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
- (d) Using, creating, storing or allowing any hazardous materials on the premises, except as otherwise expressly permitted in this Lease.
- (e) Constructing, erecting, maintaining or permitting any sign, banner or flag upon the Premises, except as provided for in Section 7.3, without the prior written approval of LESSOR. LESSEE shall not place, construct or maintain upon the premises or fencing any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media.
- (f) Parking of any vehicles, storing wrecked or inoperable vehicles of any kind on the leased premises. Vending in any manner that would require or encourage vehicles to stop or park on the bridge decks, in the bus lane, or any portion of the travel way, in such a manner that would impede traffic or create a hazard to the traveling public (ie Food Trucks).
- (g) Vending, offering, trading, marketing or selling whatsoever, of any kind of cannabis, cannabis product or extract, cannabis based edible or beverage, or alcoholic beverage of any kind.
- (h) Flea markets, swap meets, or farmers markets.

4.5 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, LESSEE 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 LESSEE cause or allow the deposit or disposal of any hazardous materials on the leased premises. LESSOR, 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 LESSOR authority to immediately terminate this Lease. It is the intent of the parties hereto that LESSEE shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises by LESSEE during LESSEE'S period of use and possession as owner, operator or LESSEE of the premises. LESSEE 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. LESSEE 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 Lessee during any period prior to commencement of LESSEE'S period of use and possession of the leased premises as owner, operator or Lessee.

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

4.6 Stormwater

LESSEE shall comply with all applicable State and Federal water pollution control requirements regarding storm water and non-storm water discharges from the LESSEE'S leasehold area and will be responsible for all applicable permits including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit, and permits and ordinances issued to and promulgated by municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water and non-storm water to sewer systems, storm drain systems, or any watercourses under the jurisdiction of the above agencies. Copies of the current storm water related NPDES permits are available on the State Water Resources Control Board's website at www.swrcb.ca.gov under Stormwater.

LESSEE understands the discharge of non-storm water into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-storm water into the storm sewer system, vehicle or equipment washing, fueling, maintenance and repair on the PREMISES is prohibited.

In order to prevent the discharge of pollutants to storm water resulting from contact with hazardous material, the storage or stockpile of hazardous material on PREMISES is strictly prohibited. Lessee shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: _____. [Insert title of applicable Fact Sheet(s) from RW Property Management and Airspace Storm Water Guidance Manual e.g. parking lot, retail, nursery, storage, etc. Applicable fact sheet(s) should be attached to lease.] LESSEE shall

identify any other potential sources of storm water and non-storm water pollution resulting from Lessee's activities on the PREMISES, which are not addressed by the BMPs, contained in the attached Fact Sheet(s), and shall implement additional BMPs to prevent pollution from those sources. Additional BMPs may be obtained from 2 other manuals, (1) Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at the Lessor's District Right of Way office or online at 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. In the event of conflict between the attached Fact Sheet(s), the manuals and this Lease, this Lease shall control.

LESSEE shall provide Lessor with the Standard Industrial Classification (SIC) code applicable to Lessee's facilities and activities on the lease PREMISES. A list of SIC codes regulated under the General Industrial Permit SIC codes may be found at the State WaterResources Control Board (SWRCB) website at

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.

LESSOR, or its agents or contractors, shall at all times have the right to enter and inspect the PREMISES and the operations thereon to assure compliance with the applicable permits, and ordinances listed above. Inspection may include taking samples of substances and materials present for testing PREMISES.

4.7 LESSOR's Rules and Regulations

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

ARTICLE 5. COMMENCEMENT AND COMPLETION OF INITIAL INSTALLATION

5.1 Commencement of Installation

LESSEE or sub-lessees shall commence installation or repairs of the improvements as described in LESSEE's or sub-lessees final plans and detailed specifications as approved by Lessor within 30 calendar days of the date of issuance by LESSOR of an encroachment permit under Section 6.1. In the event installation is not commenced within the time set forth herein, this Lease may be terminated by LESSOR and thereafter be of no further force and effect.

5.2 Completion of Installation and Occupancy of Improvements

Installation or repairs of the improvements shall be completed consistent with the Lessor approved plans within 90 calendar days after the commencement of installation. LESSEE shall not occupy or use any of the improvements until LESSEE has received final building approval and a Certificate of Occupancy from the appropriate local agency, State Fire Marshal, and LESSOR has issued to LESSEE an executed Encroachment Permit Completion Notice. In the event LESSEE violates any of the provisions of this section, this Lease may be terminated by LESSOR and be of no further force and effect.

ARTICLE 6. REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

6.1 Encroachment Permit

LESSEE, prior to installation or alteration of any improvements on or of the leased premises, shall obtain an executed Encroachment Permit from LESSOR.

Issuance by LESSOR of an Encroachment Permit shall be contingent upon LESSEE's providing the following:

- A. Final plans and detailed specifications. All such plans and specifications submitted by LESSEE to LESSOR shall be subject to the review and approval of LESSOR, and the State Fire Marshal.
- B. Liability insurance as provided in Section 9.2.
- C. Fire insurance as provided in Section 9.3.
- D. A copy of a building permit issued by the appropriate local jurisdiction.
- E. A copy of LESSEE's contract with the contractor actually performing the installation.
- F. A copy of the approved City funding document.

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

6.2 Standard of Construction

LESSEE agrees that any improvements or installation upon the Premises shall: (a) be consistent with all fire safety requirements, (b) be subject to the approval of LESSOR, and (c) in every respect comply with the laws, ordinances and regulations, federal, state, municipal or otherwise, that may govern construction of the same. LESSEE shall not construct or place on the Premises any improvements which impair LESSOR's ability to maintain, operate, use, repair or improve any part of the transportation facility situated on the Premises or on adjoining real property. LESSEE shall save LESSOR harmless of and from any loss or damage caused by reason of the installation of said improvements.

ARTICLE 7. IMPROVEMENTS

7.1 KIOSK Improvements

LESSEE shall be allowed to install up to two (2) kiosks per bridge deck, for a total of four (4) semi-permanent kiosks on the University Avenue bridge. Kiosks design and method of installation shall be approved by LESSOR, in writing, prior to installation and according to the attached plans marked as "Exhibit C" and with Section 6.0. Any additional improvements are subject to the review and approval of the LESSOR. All improvements installed on the Premises by LESSEE as permitted or required by this Lease shall be and remain the property of LESSEE (or sub-lessee). LESSEE's interests, rights and powers with respect to the improvements are subject to the terms and limitations of this Lease. Following completion of installation, LESSEE shall not remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as specifically permitted by this Lease.

At the expiration or termination of this lease, all improvements installed on the premises by LESSEE shall be removed at the sole expense of the LESSEE. LESSEE shall deliver the Premises to the LESSOR in the condition and repair existing immediately prior to the execution of this Lease, excluding regular wear and tear, without compensation to LESSEE, any sublessee or third party, free and clear of all claims to or against them by LESSEE, any sublessee or third party, and LESSEE shall defend and hold LESSOR harmless from all liability arising from such claims or from the exercise by LESSOR of its rights under this section. In the event the lease area is not delivered to LESSOR in good condition and repair, reasonable wear and tear excepted, LESSOR shall make the necessary

maintenance and repairs and LESSEE shall be liable to and shall reimburse LESSOR for any such expenditures made, plus interest as provided in Section 19.8 from the date of completion of work.

7.2 Permanent Improvements

Two (2) permanent kiosks were constructed at the time of the bridge construction. LESSEE shall be allowed to make improvements and repairs to these structures as necessary. Any and all improvements and repairs shall be approved by the LESSOR, in writing, prior to the commencement of any work and in accordance with the attached plans marked "Exhibit C" and with Section 6.0, and subject to that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B" Any additional repairs or improvements not covered by said Maintenance Agreement shall be reviewed and approved, in writing, by LESSOR.

At the termination of this Lease any improvements made to the permanent kiosks will revert to the LESSOR, unless otherwise demised according to said Maintenance Agreement attached and marked as, "Exhibit B"

7.3 Vendor Signs

In total, no more than two (2) advertising signs per vendor, 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 LESSEE's name or trade name. The location of all these signs shall be subject to LESSOR's prior approval and shall be compliant with the Outdoor Advertising Act. None of these signs shall be attached to or painted on any bridge structure or building without the express written consent of LESSOR. All signs shall be affixed to the kiosk and not be visible from the highway. All of these signs shall also comply with all applicable requirements of local governmental entities, including governmental approval and payment of any fees.

Except as set forth in the previous paragraph of this Section, LESSEE shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of LESSOR. LESSEE 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. LESSOR may remove any unapproved sign, banner or flag existing on the premises, and LESSEE shall be liable to and shall reimburse LESSOR for the cost of such removal plus interest as provided in Section 14 from the date of completion of such removal.

7.4 Required Sign

LESSEE shall post the premises with a sign giving the following notice:

- (a) "This public plaza has been developed for your convenience by City of San Diego under a Lease with the California Department of Transportation. The Lease is subject to termination if the property is needed for State highway purposes"

7.5 Removal of Personal Property and Ownership at Termination

At the expiration or earlier termination of this Lease, LESSOR may, at LESSOR's sole election, require the removal from the premises, at LESSEE's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be affected by notice given at least ninety (90) days before the expiration date. A demand to take effect on any other termination of the term of this Lease shall be effectuated by notice given concurrently

with notice of such termination or notice given within ninety (90) days after such termination. LESSEE shall be liable to LESSOR for costs incurred by LESSOR in effecting the removal of personal property which LESSEE has failed to remove after demand pursuant to this Section 7.5.

LESSEE may remove any personal property from time to time within forty-five (45) days of the expiration of the term. LESSEE shall repair all damage (structural or otherwise) caused by any such removal. Any personal property not removed by LESSEE within forty-five (45) days following expiration of the term shall be deemed to be abandoned by LESSEE and shall, without compensation to LESSEE, become the LESSOR's property, free and clear of all claims to or against them by LESSEE or any other person.

7.6 Removal of Improvements at Termination

Upon the expiration or earlier termination of this Lease, LESSOR may, upon written notice, require LESSEE to remove, at the sole cost and expense of LESSEE, and not later than 120 days after the expiration or earlier termination of this Lease, all structures, buildings and improvements of any kind whatsoever placed or maintained on the premises, whether below, on or above the ground by LESSEE or others, including, but not limited to, foundations, structures, buildings, utility lines, switchboards, transformer vaults and all other service facilities constructed or installed upon the premises; and LESSEE shall, upon the expiration or earlier termination of this Lease, immediately restore, and quit and peacefully surrender possession of the premises to LESSOR in at least as good and usable condition, acceptable to LESSOR, as the same was in at the time of first occupation thereof by LESSEE or its sublessees, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should LESSEE fail to so remove said structures, buildings and improvements and restore the premises, LESSOR may sell, remove or demolish the same, and in the event of said sale, removal or demolition, LESSEE shall reimburse LESSOR for any cost or expense thereof in excess of any consideration received by LESSOR as a result of such sale, removal or demolition.

Removal of any of the afore mentioned structures and or improvements is subject to that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B".

7.7 Legal Status of the Premises

Lessee understands and acknowledges that the PREMISES lie within the operating right of way of a state highway and that the state highway use predates this lease. Lessee further understands and agrees that Lessor may require some or all of the PREMISES in the future to maintain or improve the highway. Lessee understands and agrees that this lease, and the use of the PREMISES as a plaza, shall not be used as grounds by Lessee, or any municipal entity in privity therewith, to obstruct, hinder, or interfere with the Lessor's ability to operate, maintain, modify, reconstruct, or improve the existing highway. Therefore Lessee promises and agrees that the public plaza use of the PREMISES, as set forth in this lease, shall not ever be deemed to be, or eligible to be, of "local significance", as that term is used in 23 U.S.C. section 138 and 49 U.S.C. section 303 (hereinafter referred to as "Section 4(f)" or otherwise "significant" as that term is used in the California Public Resources Code. This promise is a material lease condition the breach of which shall be grounds to terminate the lease. Lessee further promises that it shall undertake no activity, nor construct any improvement, upon the PREMISES, which may as a consequence cause the PREMISES to be deemed a resource of local significance by any authority competent to make such a determination. It is hereby understood and agreed by and between LESSOR and LESSEE that the public plaza use under this lease is not intended to convert the PREMISES into a significant resource or recreation area as defined in Section 4(f). Further, LESSEE shall, to the extent legally permissible, deny to all others, and otherwise prevent, the

improvement of the PREMISES that would cause the PREMISES to be a significant resource or recreation area under Section 4(f). In the event that the PREMISES is declared by any competent entity to be a significant resource or recreation area under Section 4(f) this lease shall immediately terminate, and improvements placed on the PREMISES by Lessee shall be removed so as to return the PREMISES to the condition existing prior to the execution of this lease. Lessee promises and agrees that the use of the PREMISES as a public plaza shall never be asserted as grounds to delay, hinder, or otherwise challenge the Lessor's sole authority to operate, maintain, construct, reconstruct, or modify the state highway, in the footprint of which the PREMISES lie.

7.8 Not a Public Forum

Lessee understands and agree that the California State Highway System is not, and has not become, a public forum. Lessee agrees that it will not authorize or support the conversion of the premises into a public forum.

ARTICLE 8. MAINTENANCE AND REPAIRS

8.1 LESSEE'S Obligations

LESSEE, at its own cost and expense, shall maintain the leased premises, improvements and landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in first class order, repair and condition and in compliance with all requirements of law, subject to ordinary wear and tear that does not reduce its attractiveness and utility. LESSEE shall also, at its own cost and expense, install or provide for the installation of all required lighting on the leased premises and shall maintain the lighting in first class order, repair and condition.

LESSOR and LESSEE recognize that because of the length of the term of this Lease it may be necessary for LESSEE 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.

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

LESSEE shall take all steps necessary to effectively protect the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to LESSEE's use of said premises and improvements, all without expense to LESSOR. LESSEE shall, at its own cost and expense, repair in accordance with LESSOR's standards any damage to any property owned by LESSOR, including, but not limited to, all fences, guardrails, piers and columns, caused by LESSEE, invitees or other third parties. At LESSEE's request, LESSOR will repair the damage to its property and LESSEE agrees to reimburse LESSOR promptly after demand for the amount LESSOR has reasonably expended to complete the repair work.

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

Notwithstanding any obligation laid out in the foregoing section, Lessee's maintenance obligation is subject to that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B".

8.2 LESSOR'S Rights

In the event LESSEE fails to perform LESSEE's obligations under this Article, LESSOR shall give LESSEE notice to do such acts as are reasonably required to so maintain the premises. If within sixty (60) days after LESSOR sends written notice to repair or quit, LESSEE fails to do the work and diligently proceed in good faith to prosecute it to completion, this lease shall be deemed cancelled.

ARTICLE 9. INSURANCE

9.1 Indemnification

Neither LESSOR nor any of LESSOR'S officers or employees is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by LESSEE under or in connection with any work, authority, or jurisdiction conferred upon LESSEE or arising under this Lease.

It is understood and agreed LESSEE will fully defend, indemnify, and save harmless LESSOR and all of its officers and employees from all claims, suits, or actions of every kind brought forth under any theory of liability occurring by reason of anything done or omitted to be done by LESSEE under this lease. LESSEE'S obligations to defend, indemnify, and save harmless LESSOR extends to any and all claims, suits, or actions of every kind brought forth under any theory of liability occurring due to the use of the PREMISES and LESSEE'S operations under this Lease, any accompanying agreement with LESSOR, and any encroachment permit issued by Lessor.

LESSEE shall include in any contract it enters with any third party to conduct work in association with this Lease, including any contractors who design, construct, or maintain equipment, structures, fixtures or other property, a requirement the contractor will fully defend, indemnify and save harmless LESSOR and its officers and employees from any and all claims, suits or actions of every kind brought forth under any theory of liability occurring due to the work conducted in association with this Lease. If LESSEE has any additional insured endorsements executed by any third parties conducting work in association with this Lease naming LESSOR to comply with this provision, Lessee shall provide copies of the additional insured endorsements and a Certificate of Insurance to Lessor.

If the Lease is terminated for any reason, LESSEE also agrees to indemnify, defend, and save harmless LESSOR from any third-party claims for damages arising out of the termination of the Lease due to LESSEE'S failure to comply with the requirements of the Lease. Such third-party claims include any claims from any contractors retained by Lessee or its successors.

Furthermore, LESSEE agrees it controls the PREMISES. As such, LESSEE agrees to defend, indemnify and hold harmless LESSOR, its officers, agents, and employees for any and all claims arising out of any allegedly dangerous condition of public property based solely upon the condition of the PREMISES.

LESSEE agrees to defend, indemnify and save harmless LESSOR, its officers, employees, and agents from any and all claims, suits or actions of every kind brought forth under any theory of liability with respect to the PREMISES or the activities of LESSEE or its officers, employees, and agents at the PREMISES, excluding those arising by reason of the sole or active negligence of LESSOR, its officers, employees, and agents.

LESSEE'S obligations to defend and indemnify LESSOR is not excused because of LESSEE'S inability to evaluate liability or because LESSEE evaluates liability and determines LESSEE is not liable. LESSEE must respond within 30 days to the tender of any defense and indemnity by LESSOR, unless this time has been extended by Lessor.

Notwithstanding any contrary provision in this Lease, LESSEE's duty to defend, indemnify and save harmless LESSOR, its officers, employees, and agents shall not extend to any claims, suits or actions arising from the active negligence or willful misconduct of LESSOR or its officers, employees, and agents.

9.2 Liability 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.

A. Workers' Compensation and Employer's Liability Insurance

LESSEE shall provide workers' compensation and employer's liability insurance as required under the Labor Code and provide LESSOR the following certification before performing any work (Labor Code § 1861) in connection with this Lease:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

LESSEE shall provide Employer's Liability Insurance 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

B. Comprehensive General Liability Insurance

LESSEE shall procure Comprehensive General Liability Insurance with \$5 million per occurrence and aggregate limits covering all operations by or on behalf of LESSEE, providing 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

LESSEE shall provide proof of the Comprehensive General Liability insurance policy with all endorsements, riders, and amendments to LESSOR on or before the commencement of this Lease by a Certificate of Additional Insured.

The Comprehensive General Liability insurance procured by LESSEE shall also comply with the following:

1. Shall extend to all of LESSEE'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 LESSOR 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 LESSOR, including its officers, directors, agents (excluding agents who are design professionals), and employees, as additional insureds under the General Liability Policy 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 Lessor.
7. Shall state the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by Lessor is excess only and must not be called upon to contribute with this insurance.

LESSEE 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 \$1,000,000 combined single limit for each accident for bodily injury and property damage. The umbrella or excess liability coverage required under this Article shall also apply to automobile liability.

LESSOR allows reasonable deductible clauses not overly broad, exceeding \$250,000, or harmful to LESSOR. LESSEE agrees by executing this Lease it shall defend, indemnify, and hold harmless LESSOR until such deductible is paid or applied to any claim arising out of this Lease, regardless of LESSEE'S evaluation of liability, as discussed in Section 9.1.

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

9.3 Fire and Extended Coverage Insurance

LESSEE 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 LESSEE. LESSOR 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 Self Insurance

Reasonable self-insurance programs and self-insured retentions in insurance policies are permitted by LESSOR. If LESSEE uses a self-insurance program or self-insured retention, LESSEE must provide LESSOR with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Further, execution of this Agreement is Lessee's acknowledgment LESSEE will be bound by all laws as if LESSEE were an insurer as defined under Insurance Code section 23 and

Lessee's self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code section 22.

9.5 Failure to Procure and Maintain Insurance

If LESSEE fails to procure or maintain the insurance required by this Article in full force and effect, this Lease may be terminated immediately by LESSOR. In addition, if LESSEE fails to procure or maintain the insurance required by this Article, LESSEE 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.

9.6 Waiver of Subrogation

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

ARTICLE 10. PAYMENT OF TAXES

LESSEE agrees to pay all taxes and assessments that may be legally assessed on lessee's possessory interest or income.

ARTICLE 11. RIGHT OF ENTRY

11.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

LESSOR, 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 LESSEE, its agents or representatives.

LESSOR 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 LESSOR 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 LESSOR, and during said period LESSEE shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. LESSOR further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the LESSOR for the purpose of performing any maintenance activities upon the property which LESSEE has failed to perform.

11.2 Future Transportation Project

LESSEE specifically acknowledges LESSOR may cancel this lease upon 90 days' notice for the construction of an "Approved or Funded Transportation Project" or an emergency highway repair. In that event, LESSEE will have no claim upon LESSOR and waives any and all claims for compensation, damages or relocation assistance.

11.3 Retrofitting of Freeway Structures

LESSEE acknowledges LESSOR may be required to perform retrofit work on all or a part of the freeway structures that the leased areas are situated on or are a part of. LESSOR shall have the right to impose such restrictions on LESSEE's right to enter, occupy, and use the premises and to construct improvements thereon as LESSOR deems are necessary to enable it to complete construction of all freeway structural retrofit work without interference from LESSEE.

In the event LESSOR determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on LESSEE's use of the premises, LESSOR shall, at least ninety (90) days prior to the effective date of the commencement of such possession or restrictions notify LESSEE in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, LESSEE shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. In that event, LESSEE will have no claim upon LESSOR and waives any and all claims for compensation, damages or relocation assistance.

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

If a portion of the premises is rendered unusable due to such work, LESSOR and LESSEE shall negotiate in good faith to determine an appropriate rental adjustment during such period. If the parties cannot agree, the matter shall be submitted to binding arbitration, with the arbitrator chosen by the Presiding Judge of the Superior Court in which the property is located if the parties cannot mutually agree on an arbitrator.

ARTICLE 12. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES

LESSEE intends to sublet each kiosk, both permanent and semi-permanent, to a variety of vendors. All LESSEE's right, responsibilities and obligations set forth in this lease shall continue and apply to any sub-lessee, with the exception of that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B", or any other agreement entered into exclusively by the Department and the City of San Diego.

LESSEE shall not voluntarily assign or transfer its interest in this Lease or in the premises, or sublet all or any part of the premises, or allow any other person or entity (except LESSEE's authorized representatives) to occupy or use all or any part of the premises without first obtaining LESSOR's written consent which shall not be unreasonably withheld, conditioned, or delayed. LESSEE's failure to obtain LESSOR's required written approval of any assignment, transfer, or sublease shall render such assignment, transfer, sublease void. Occupancy of the Premises by a prospective transferee, sub-lessee or assignee before approval of the transfer, sublease or assignment by LESSOR shall constitute a breach of this Lease. LESSOR's consent to any assignment, or sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, sublease and encumbrance of this Lease and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease. This Lease or any sub-lessee agreements shall not be recorded.

ARTICLE 13. SECURITY

Lessee and any sub-lessees will be responsible for providing security for the safety of the vendors during hours of operation.

ARTICLE 14. DEFAULT

14.1 Default

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

- (a) Any failure by LESSEE to pay lease payment 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 LESSOR to LESSEE.
- (b) The abandonment or vacation of the premises by LESSEE. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from LESSOR to LESSEE calling attention to the abandonment shall be deemed an abandonment or vacation.
- (c) A failure by LESSEE to observe and perform any other provision of this Lease to be observed or performed by LESSEE, where such failure continues for thirty (30) days after written notice thereof by LESSOR to LESSEE; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, LESSEE shall not be deemed to be in default if LESSEE shall within such period commence such cure and thereafter diligently prosecute the same to completion.

14.2 LESSOR'S Remedies

In the event of any material default or breach by LESSEE, LESSOR may at any time thereafter, without limiting LESSOR in the exercise of any right of remedy at law or in equity that LESSOR may have by reason of such default or breach

- (a) Terminate LESSEE'S right to possession by any lawful means, in which case this Lease shall immediately terminate and LESSEE shall immediately surrender possession of the premises to LESSOR. In such event LESSOR shall be entitled to recover from LESSEE all damages incurred by LESSOR by reason of LESSEE's default including, but not limited to, the following:
 - (i) the worth at the time of award of any unpaid lease payment which had been earned at the time of such termination; plus
 - (ii) the worth at the time of award of the amount by which the unpaid lease payment 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
 - (iii) the worth at the time of award of the amount by which the unpaid lease payment 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,
 - (iv) any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus
 - (v) at LESSOR'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 LESSOR shall have the right to make any reasonable repairs,

alterations or modifications to the premises, which LESSOR in its sole discretion deems reasonable and necessary. As used in subparagraphs (i) and (ii), 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 (iii), 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 "lease rate" as used in this Article shall be deemed to be and to mean lease rate to be paid pursuant to Article 4 and all other monetary sums required to be paid by LESSEE pursuant to the terms of this Lease.

14.3 Late Charges

This section intentionally deleted per Right of Way Manual 11.08.07.00.

ARTICLE 15. TERMINATION OF LEASE

15.1 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 LESSOR and LESSEE.

15.2 Termination by One Party

Notwithstanding any provision herein to the contrary, this Lease may be terminated at any time and for any reason by LESSEE upon providing LESSOR with thirty (30) days prior notice in writing, or by LESSOR upon providing LESSEE with thirty (30) days prior notice in writing. Notices of termination under this section shall be delivered in accordance with the provisions of Section 19.9 to the addresses set forth in Article 1. In addition, if at the time LESSEE terminates this Lease, the entire cost of LESSEE's improvements has not been amortized over the remaining term, those improvements shall become the property of LESSOR, and LESSOR shall not refund or otherwise reimburse LESSEE for the remaining unamortized cost of the improvements.

LESSOR may also terminate this lease with a 30-day notice if:

- (a) Premises is required for State highway or other public transportation purposes as determined by the LESSOR or other public transportation agency.
- (b) Premises are not maintained in such manner as to protect and enhance the highway improvement and its environments, or in accordance with that certain Maintenance Agreement entered into by the City of San Diego and the State of California, Department of Transportation on April 27th, 2012 and attached as "Exhibit B", and LESSEE has failed to take corrective action within 30 days of being notified.

LESSEE may also terminate this lease with a 30-day notice if:

- (a) Sub-lessee occupancy falls below six (6) sub-lessees' for six (6) months or more.
- (b) LESSEE fails to attract enough interest from the initial RFP

ARTICLE 16. UTILITIES

LESSEE shall pay when due, and shall hold LESSOR 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. LESSOR 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 LESSEE to terminate this Lease.

ARTICLE 17. NONDISCRIMINATION

LESSEE, for itself, its agents, contractors, employees, officers, and 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:

- (a) 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,
- (b) In connection with the installation 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,
- (c) 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,
- (d) LESSEE 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 LESSOR 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

LESSOR covenants and agrees with LESSEE that upon LESSEE paying lease payment and other monetary sums due under the Lease and performing its covenants and conditions, LESSEE 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. Any marginal or clause headings on this lease are not a part of this and shall have no effect upon the construction or interpretation of any part hereof.

19.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between LESSOR and LESSEE 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 LESSOR and LESSEE. LESSOR and LESSEE 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 Time is of the Essence

Time is of the essence of each and all of the terms and provisions of this Lease.

19.6 Binding Effect; Choice of Law

The terms and conditions of this lease shall extend and be binding upon and inure to the benefits of the heirs, executors, administrators or to any approved successor of the LESSEE. The terms and conditions of this Lease shall be governed by the laws of the State of California, if any legal action is initiated, the venue shall be in the appropriate court of the State of California in the county in which the premises are located

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

19.8 Interest on Past Due Obligations

Except as expressly herein provided, any amount due to LESSOR 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 LESSEE under this Lease.

19.9 Notices

All notices or demands of any kind required or desired to be given by LESSOR or LESSEE 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 LESSOR or LESSEE respectively at the addresses set forth on the signature pages of this lease.

19.10 No Reservation

Submission of this instrument for examination or signature by LESSEE 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 LESSOR and LESSEE.

19.11 Force Majeure

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

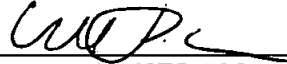
19.12 Lease Contingency

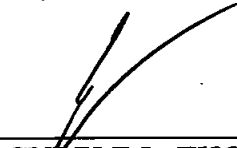
LESSEE's continuing obligations under this Lease are hereby made contingent upon the LESSEE obtaining appropriated funds from which payment for contract purposes can be made. LESSEE will use good faith efforts to obtain funding for this Lease; however, nothing in this Lease may be considered as implying that City Council will appropriate funds sufficient to extend this Lease in subsequent fiscal years. LESSEE shall promptly notify Landlord in writing in the event appropriated funds are not available. In such event this Lease shall terminate as of the date that no further appropriated funds are available and the parties shall have no further obligations hereunder, except for any obligations that expressly survive the expiration or termination of this Lease.

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

Lessor: STATE OF CALIFORNIA
DEPT OF TRANSPORTATION

Lessee: CITY OF SAN DIEGO

By: 
MARK PHELAN
Deputy District Director
Right of Way Division

By: 
CYBELE L. THOMPSON
Director, Real Estate Assets

Approved as to form this 4th day
of February 2019 2020.

MARA W. ELLIOTT, City Attorney

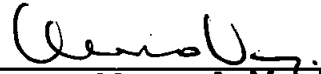
By: 
Name: Marco A. Verdugo
Title: Deputy City Attorney

Exhibit A: Map

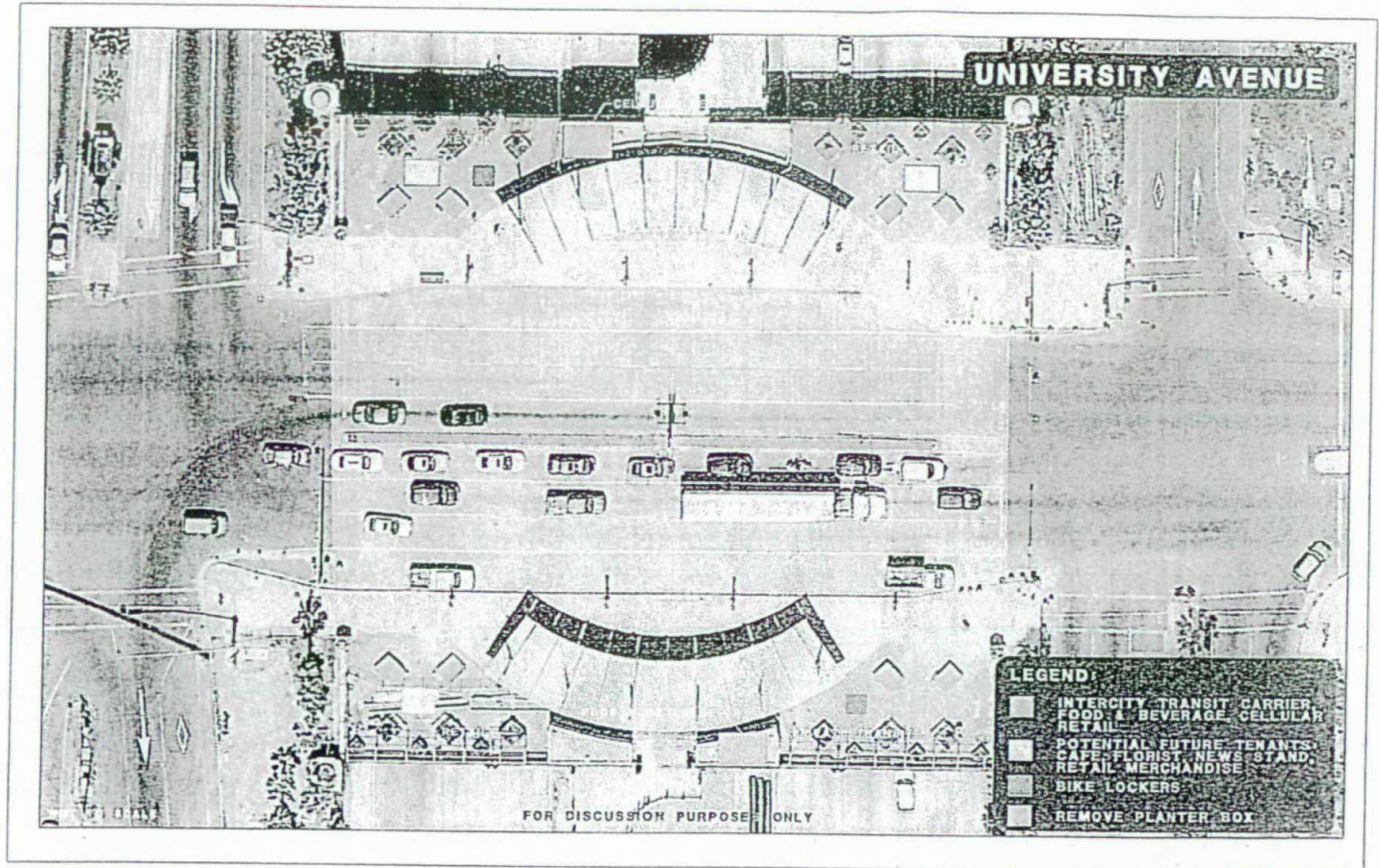


Exhibit B: 2012 Maintenance Agreement

Exhibit C: City of San Diego Sublease

Exhibit D: Rent Schedule

North Existing Kiosk: \$350.00

South Existing Kiosk: \$350.00

Space for Temporary Kiosk: \$250/per kiosk

The beginning rent \$350.00 per month will be escalated by the above amounts as spaces are leased.

Stormwater Pollution Prevention

General Maintenance

Painting

- Use water-based paints whenever possible. They are less toxic than oil-based paints and easier to clean up. Look for products labeled "latex" or "cleans with water." Develop paint handling procedures for proper use, storage, and disposal of paints. Transport paint and materials to and from job sites in containers with secure lids and tied down to the transport vehicle. Test and inspect spray equipment prior to starting to paint. Tighten all hoses and connections and do not overfill paint containers. Mix paint indoors before using so that any spill will not be exposed to rain. Do so even during dry weather because cleanup of a spill will never be 100% effective.
- Transfer and load paint away from storm drain inlets. Plug nearby storm drain inlets prior to starting painting and remove plugs when job is complete when there is significant risk of a spill reaching storm drains or if sand blasting is used to remove paint. Use a ground cloth to collect the chips if painting requires scraping or sand blasting of the existing surface. Dispose the residue properly.
- Cover or enclose painting operations properly to avoid drift. Clean the application equipment in a sink that is connected to the sanitary sewer if using water based paints. Capture all cleanup-water and dispose of properly. Store leftover paints properly if they are to be kept for the next job, or dispose properly.
- Regularly train employees on appropriate BMP implementation, storm water discharge prohibitions, and wastewater discharge requirements. Train employees on proper spill containment and cleanup.



Fence Repair

- Properly clean and dispose of equipment and wastes used and generated during fence repair/maintenance.
- Solid waste storage areas at repair sites should be located away from drainage facilities and watercourses and not located in areas prone to flooding or ponding.
- Compaction is not an alternative to restoring vegetation. Compaction is restricted to areas where vegetation is undesirable or is not sustainable such as in guardrail post or fence post installation. Consider the effect of runoff from the compacted soil on nearby surface water. Evenly grade or level the area prior to compaction. Do not perform compaction while storm water runoff is observed. Compact exposed soil as soon as possible after grading or soil disturbance. Inspect compacted areas to identify any evidence of erosion upon the completion of maintenance activities.

Plumbing

- Copper enters receiving waters through storm drains and from wastewater discharged from wastewater treatment plants. Copper is acutely toxic to plankton and affects the reproduction and growth of shellfish.
- Design each plumbing system to minimize velocity, minimize hot water temperature, avoid stagnant sections and minimize direction and size changes to preserve pipe integrity.
- Eliminate small burrs created from pipe cutting. This reduces turbulence and significantly decreases corrosion. Remove all oxides, debris, and surface soil from tube ends.
- Maintain good housekeeping practices while working. Keep the work site clean and orderly. Remove debris in a timely fashion. Sweep the area. Protect stored pipe from weather and damage so that installed pipe is as clean as possible.
- Newly installed systems should be flushed soon after completion to remove excess flux and debris. For inactive systems, repeat flushing periodically.
- Avoid excess use of flux. Excess flux residue can increase pipe corrosion that leads to copper discharges.



Stormwater Pollution Prevention

Graffiti Removal

- If painting over graffiti, use Painting Best Management Practices.
- If removing graffiti using wet sand blasting methods, minimize the quantity of water used, direct runoff to landscaped or soil area, filter runoff through a boom to keep sand out of storm drains, sweep debris and sand and dispose of all waste to avoid future runoff contamination.
- If removing graffiti using high-pressure washing and cleaning compound, direct washwater runoff to landscaped or soil area. No runoff can discharge into stormdrains. Seal stormdrains and vacuum/pump washwater to the sanitary sewer. Contact the local wastewater treatment plant for guidance, as harsh cleaning compounds may require pretreatment.

Roof Repair or Replacement/Chimney Maintenance

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



- Maintain good housekeeping practices while work is underway. Keep the work site clean and orderly. Remove debris in a timely fashion. Sweep the area.
- Store materials properly that are normally used in repair and remodeling such as paints and solvents. To provide protection from rain, bagged and boxed materials stored outdoors should be stored on pallets throughout the rainy season and covered prior to rain events. Storage areas should be kept clean, well organized and equipped with cleanup supplies. Perimeter controls, containment structures, covers and liners shall be repaired or replaced as needed.

- Do not dump waste liquids down the storm drain. Dispose of sweepings, and sediments properly. Properly collect and dispose of water when pressure washing rooftops, chimneys and other large objects.
- Solid waste storage areas at the work site should be located away from drainage facilities and watercourses and shall not be located in areas prone to flooding or ponding.
- Periodically inspect the solid waste storage areas and review the disposal procedures.
- Use dry cleanup techniques (e.g., vacuuming, sweeping, dry rags) to remove solid waste from the site when practicable. Use another technique only when dry cleanup techniques are not practicable, such as having to wet for dust control for safety or air quality reasons.

Carpentry

- Wood pieces too small for construction reuse should be recycled or chipped for mulch or compost to reduce solid wastes.
- Maintain good housekeeping practices. Keep the work site clean and orderly. Remove debris in a timely fashion. Sweep the area. Dispose of sweepings, and sediments properly. Storage areas should be kept clean, and well organized.
- Solid waste storage areas at the work site should be located away from drainage facilities and watercourses and shall not be located in areas prone to flooding or ponding. Periodically inspect the solid waste storage areas and review the disposal procedures.
- Use dry cleanup techniques (e.g., vacuuming, sweeping, dry rags) to remove solid waste from the site when practicable. Use another technique only when dry cleanup techniques are not practicable, such as having to wet for dust control for safety or air quality reasons.

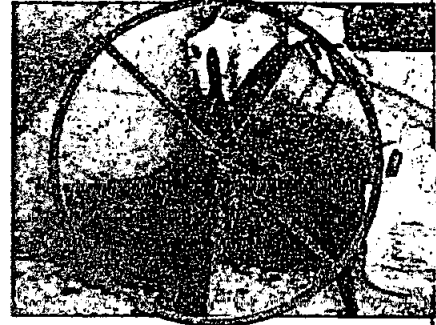


Stormwater Pollution Prevention

General Land Use

Illicit Connections/Illegal Discharge

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



General Maintenance and Repair

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

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

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



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

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

Stormwater Pollution Prevention

General Housekeeping

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



Rev. 6-1-07

RESOLUTION NUMBER R- **312712**

DATE OF FINAL PASSAGE **OCT 24 2019**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF TWO FIVE-YEAR LEASE AGREEMENTS WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE OPERATION AND MAINTENANCE OF THE EL CAJON BOULEVARD AND UNIVERSITY AVENUE BRIDGE DECKS AS PUBLIC PLAZAS WITH VENDORS, AND AUTHORIZING THE EXPENDITURE OF UP TO \$5,600 FOR RENT.

WHEREAS, the City of San Diego is obligated to operate and maintain the improvements located on the El Cajon Boulevard Bridge Deck and the University Avenue Bridge Deck that cross Interstate 15 under the Operation and Maintenance Agreement entered into on April 27, 2012 between the State of California Department of Transportation (State) and the City of San Diego; and

WHEREAS, under the Operation and Maintenance Agreement, the City can enter into a separate agreement for commercial uses on the bridge decks; and

WHEREAS, the City desires to allow vendors to occupy kiosks on the El Cajon Boulevard Bridge Deck and the University Avenue Bridge Deck to activate the bridge deck plaza areas for use by the public; and

WHEREAS, the City has negotiated a five-year lease, with one five-year extension option, with the State for the operation and maintenance of the El Cajon Boulevard Bridge Deck, under the terms and conditions set forth in that lease on file with the Office of the City Clerk as Document No. RR- **312712**, and

WHEREAS, the City has negotiated a five-year lease, with one five-year extension option, with the State for the operation and maintenance of the University Avenue Bridge Deck,

under the terms and conditions set forth in that lease on file with the Office of the City Clerk as Document No. RR- 312712-2, NOW, THEREFORE,

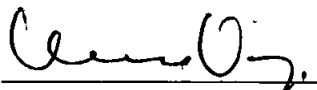
BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The Mayor, or his designee, is authorized to execute and deliver the lease, on file with the Office of the City Clerk as Document No. RR- 312712-1, between the City of San Diego, as lessee, and the State of California, as lessor, for the property located at 4023 and 4024 El Cajon Boulevard, commonly known as the El Cajon Boulevard Bridge Deck.

2. The Mayor, or his designee, is authorized to execute and deliver the lease, on file with the Office of the City Clerk as Document No. RR- 312712-2, between the City of San Diego, as lessee, and the State of California, as lessor, for the property located at 4023 and 4024 University Avenue, commonly known as the University Avenue Bridge Deck.

3. The Chief Financial Officer is authorized to appropriate and expend up to \$5,600.00 in fiscal year 2020 for the purpose of paying rent for the El Cajon Boulevard Bridge Deck and for the University Avenue Bridge Deck upon the Chief Financial Officer furnishing a certificate certifying that the funds necessary for the expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Marco A. Verdugo
Deputy City Attorney

MAV:sc
10/8/2019
Or.Dept: READ
CC No.: 300012625
Doc. No.: 2192918

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 22 2019.

ELIZABETH S. MALAND
City Clerk

By Linda Irwin
Deputy City Clerk

Approved: 10/24/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

DEPT.
NO. 9912

3000012625

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$5,600.00

Vendor: Marler-Johnson Park Agreements

Purpose: Approve two (2) five (5) year Marler-Johnson Park Agreements with State of California Department of Transportation for the El Cajon Boulevard and University Avenue Bridge Decks.

Date: October 3, 2019 By: Marybrook Cox

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
1	100000	NON-PROGRAM		OTHR-00000000-GG	512217	9912	9912001112		\$5,600.00
TOTAL AMOUNT									\$5,600.00

FUND OVERRIDE ☐

Passed by the Council of The City of San Diego on OCT 22 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage OCT 24 2019

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Gina Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **312712**

Passed by the Council of The City of San Diego on October 22, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,**
MORENO, GÓMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

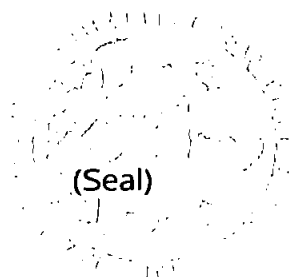
AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California



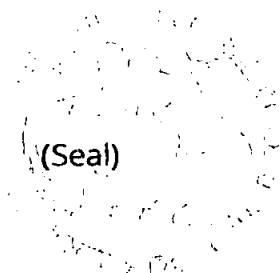
(Seal)

By: *Linda Kruein* Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312712**, approved on **October 22, 2019**. The date of final
passage is **October 24, 2019**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California



(Seal)

By: *Linda Kruein* Deputy