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9/23/10

State of California, Department of Transportation
District 06

LEASE AREA NUMBER: FRE-180-R57.5
Account Number: FRE-180-0001-01

CITY OF FRESNO
City Clerk's Office (Original)

MARLER JOHNSON PARK LEASE

THIS LEASE is made and entered into this 23rd day of Sep. by and between the STATE OF CALIFORNIA, Department of Transportation, hereinafter referred to as "DEPARTMENT," and the CITY OF FRESNO, a municipal corporation, herein referred to as "LESSEE."

WITNESSETH

WHEREAS, it has been determined by the Director of the Department of Transportation that the following described real property is the proper subject of a lease pursuant to Section 14013 of the Government Code of the State of California: See Attachment A (Parcels 75395-0A-01 & 78123-01-01)

1. This Lease shall be for a term of TWENTY (20) years at the rate of \$12.00 dollars per annum. It will be paid, in advance, to the DEPARTMENT at the office of the **State of California, Department of Transportation, Attn: Cashier, Airspace, P.O. Box 168019, Sacramento, California 95816-3819**, commencing on the ___ day of _____, subject to earlier termination as provided hereunder. At DEPARTMENT'S option, said Lease may be renewed for an additional FIVE (5) year period subject to a reevaluation of the lease rate in accordance with such terms as may be mutually agreed upon in writing by the parties hereto.
2. The property herein leased shall be used exclusively for park purposes and shall at all times be maintained at the sole cost and expense of LESSEE in orderly, clean, safe and sanitary condition. Said Lease may immediately be terminated by DEPARTMENT upon the happening of any of the following conditions:
 - a. When subject property is used for any purpose other than park purposes;
 - b. When any portion of the property herein leased is required for State highway or other public transportation purposes as determined by the governing body of the Department of Transportation or other public transportation agency;

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- c. When, in the opinion of the Director of the Department of Transportation, the leased property is not maintained in such a manner as to protect and enhance the highway improvement and its environments, and LESSEE within TEN (10) days after notice from DEPARTMENT fails to correct any deficiencies.
3. In the event this Lease is terminated for any of the reasons stated herein in the preceding paragraph, or at the expiration of the period of this Lease, LESSEE agrees to remove all improvements except landscaping within the right of way at its sole expense within NINETY (90) days after the termination of this Lease. If LESSEE fails to remove all improvements, DEPARTMENT may remove such improvements at the expense of LESSEE and bring an action for recovery of such costs, together with all expenses and attorney's fees incurred by reason of said action.
4. LESSEE shall not install facilities for, nor operate on the land below a viaduct structure, a gasoline supply station, nor shall the transportation of gasoline or petroleum products be permitted under the viaduct structures. The premises will not be used for any storage of flammable materials, explosives, or other materials or other purposes deemed by DEPARTMENT to be a potential fire or other hazard to the transportation facilities. The operation and maintenance of the leased premises shall be subject to regulations of Department 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 odor to rise above the grade line of the transportation facility. DEPARTMENT, through its agents or representatives and other City, County, State and Federal agencies, through their agents or representatives, shall at all times have the right to go upon and inspect the leased premises. Further, the DEPARTMENT reserves the right to serve or to post thereon any notice required or permitted by law for protection of any right or interest of DEPARTMENT. If any of the previously approved materials creates conditions which makes its use not compatible with the terms of this lease, the DEPARTMENT has the right to request that the noncompliant material(s) be removed and replaced with a compliant material at the LESSEE'S expense.
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5. The lease area shall at all times be subject to such uses by DEPARTMENT as are necessary for highway facilities without the interference by LESSEE.
 6. Upon termination of said Lease for any reason whatsoever, DEPARTMENT, shall not be required to provide replacement lands or facilities or any compensation in any manner for land or improvement(s) or for any damages of any kind caused by said termination.
 7. LESSEE shall place no improvements, including landscaping, on leased premises except those included in the development plans approved by the DEPARTMENT in writing, a copy (Attachment A) of which is attached hereto. Any additional improvements shall only be permitted with the written consent of the DEPARTMENT. All signs shall be subject to prior approval by the DEPARTMENT.
 8. If it is determined by DEPARTMENT that any special facilities are necessary for the safe and proper operation of the leased premises in conjunction with highway uses, such facilities shall be constructed in a manner determined by DEPARTMENT at the sole cost and expense of LESSEE, or LESSEE may terminate this Lease at its option.
 9. Prior to the award of any contract for the development of improvements on the leased premises, the LESSEE shall cause to be obtained separate performance and labor and materials bonds executed by an admitted surety insurer. Said performance bonds shall be for the full amount of the contract price, and the labor and materials bonds shall be in a sum equal to one half of the contract price. LESSEE, its contractors and subcontractors, or all of the parties may provide said bonds.
 10. DEPARTMENT, its assigns or successors in interest, shall not be liable for taxes or assessments of any nature whatsoever on the leased property.
 11. LESSEE shall not sublet or assign a Lease of the property without prior written consent of the DEPARTMENT, and the concurrence of the Federal Highway Administration.
 12. LESSEE shall indemnify and hold harmless DEPARTMENT and all officers and employees thereof from any and all claims, suits, or actions of every name, kind, or description brought for or on account of injury or death of any person or damage to any property resulting from existence, operation and maintenance of
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the property except for the sole willful act or omission or sole negligence of the DEPARTMENT, its officers, or employees and reimburse DEPARTMENT for any other cost or expense incurred by DEPARTMENT as a result thereof.

13. LESSEE agrees to secure and keep in force during the term of this Lease bodily injury liability and property damage liability insurance adequate to protect DEPARTMENT, 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 DEPARTMENT for damage to vehicles parked on the leased premises. Such insurance shall be in the amount of not less than TEN MILLION (10,000,000.00) dollars combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of LESSEE.

All insurance required hereunder shall be in one of the two (2) following forms:

- a. Self-Insurance – Qualified public agencies will be permitted to self-insure in lieu of the requirements for insurance secured from a private carrier.
- b. Insurance With a Private Carrier – All insurance required hereunder shall be with companies to be approved by DEPARTMENT.

All such policies shall be written as a primary policies, not contributing with and not in excess of coverage which DEPARTMENT may carry. Said policies shall name the State as an additional insured and shall insure the contingent liabilities, if any, of DEPARTMENT and its officers, agents, employees; and shall obligate the insurance carriers to notify DEPARTMENT in writing, not less than THIRTY (30) days prior to the cancellation thereof, of any change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody of 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.

LESSEE shall furnish to DEPARTMENT, a Certificate of Insurance on a form prescribed by the DEPARTMENT or a Statement of Self-Insurance within not more than TEN (10) days after execution of

said policy. DEPARTMENT shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of DEPARTMENT, the insurance provisions in this Lease do not provide adequate protection for DEPARTMENT and for members of the public using the leased premises, DEPARTMENT may require LESSEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. DEPARTMENT'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. DEPARTMENT shall notify LESSEE in writing of changes in the insurance requirements; and if LESSEE does not show proof of acceptable insurance policies with DEPARTMENT incorporating such changes within SIXTY (60) days of receipt of such notice, this Lease may be terminated, at DEPARTMENT'S option, without further notice to LESSEE, and be of no further force and effect.

14. LESSEE shall be responsible for any liability imposed by law for injury or death to any person or damage to property or damage to the State Highway facility's resulting from maintenance of said leased property.
 15. Notwithstanding any other provision in this Lease, nothing shall be done on said leased property that in any way whatsoever would result in danger to the traveling public. The determination of whether any improvement or proposed activity shall endanger the safety of the traveling public shall be determined by the DEPARTMENT, acting by and through its State Highway Engineer at his sole discretion. LESSEE shall make provisions necessary to protect users of its proposed facility from any hazards resulting from use and operation of the highway at the sole cost and expense of LESSEE.
 16. There shall be no access from the leased property to highway facilities from said property. All access to said property shall be provided by LESSEE by other means unless otherwise provided by agreement in writing between DEPARTMENT and LESSEE.
 17. The LESSEE, itself and its officers, agents, employees, successors in interest, and assigns, as 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
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the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) that 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 practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, (3) that such discrimination shall not be practiced against of operated on, over or under the space of the right of way, and (4) that the 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 DEPARTMENT shall have the right of termination of 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.

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

“This park has been developed for your convenience by The City of Fresno under a Lease with the CALIFORNIA DEPARTMENT OF TRANSPORTATION. The Lease is subject to termination if the property is needed for State highway operating purposes.”

19. Any and all notices or demands by or from DEPARTMENT to LESSEE or LESSEE to DEPARTMENT shall be in writing. They shall be served either personally or by mail; service shall be conclusively deemed made at the time of service. If served personally, services shall be deemed made at the time or service. If serviced by certified mail; services shall be deemed made forty-eight (48) hours after the deposit thereof in United States mail, postage prepaid, addressed to the party to whom such notice or demand is to be given and issuance or receipt thereof. Any notice or demand to DEPARTMENT may be given to DEPARTMENT at 855 M St., Ste. 200, Fresno, CA 93721, Attn: Airspace and Wireless Coordinator, or at such other place or places as shall be designated by DEPARTMENT from time to time. Any notice or demand to LESSEE shall be give to LESSEE at 1515 E. Divisadero St., Fresno, CA

93721-1115, or at such other place as may be subsequently designated by LESSEE in accordance with a written notice to DEPARTMENT.

20. The terms of this Lease may be amended at any time upon such terms and conditions as shall be mutually agreed upon between DEPARTMENT and LESSEE.
 21. LESSEE agrees: (a) to pay all taxes and assessments that may be legally assessed on LESSEE'S possessory interest or on any improvements or equipment placed by LESSEE on said premises during the continuance of the tenancy hereby created; (b) to pay all charges for water furnished to the herein-described through a meter to be contracted for by LESSEE, if any; and (c) to pay all charges for electricity furnished or supplied to or upon any part of the leased premises through a meter to be contracted for by the LESSEE.
 22. The LESSEE, at LESSEE'S own cost and expense, shall maintain said premises, including all driveways and fences and guardrail heretofore or hereafter erected, provided that the LESSEE may at it's expense install and maintain such additional entrances as may be required by its use of said premises, subject to the approval as to the location thereof by the DEPARTMENT, the Federal Highway Administration and other regulatory bodies; and provided, further, that the LESSEE at its sole expense shall construct and maintain sidewalks and driveways at all locations where such additional entrances are installed. The LESSEE shall take all steps necessary to effectively protect the fences and guardrail, and the piers and columns of the viaduct from damage incident to LESSEE'S use of incident to LESSEE'S use of such premises, all without expense to the DEPARTMENT. The LESSEE shall be liable to and shall reimburse the DEPARTMENT for any damages to said fences, guardrail, piers, or columns in any way resulting from or attributable to the use and occupancy of said premises by the LESSEE or any person entering upon the same with the consent of the LESSEE, expressed or implied. Proposed plans for driveways, fence openings, wheel rails, surfacing, column protection and lighting shall be filed with, and approved by the Department of Transportation subject to the concurrence of the Federal Highway Administration prior to the commencement of any work hereunder by the LESSEE. When the leased premises contains
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lighting, either installed during the tenancy, or in place at its commencement, LESSEE has the duty of maintaining said lighting in good working order, and shall hold the DEPARTMENT harmless against any claims arising from a breach in LESSEE'S duty to maintain adequate illumination, to extent provided for in this lease agreement.

23. The DEPARTMENT specifically reserves the right of entry by an authorized officer, engineer, employee, contractor, or agent of the DEPARTMENT or of the Federal Highway Administration, for the purpose of inspecting said premises, or doing 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 the DEPARTMENT reserves the further right, at its discretion, to immediate entry upon the leased premises and to take 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 terms of this Lease shall be extended for a period equal to the emergency occupancy by DEPARTMENT, and during said period LESSEE shall be relieved from the performance of all conditions or covenants specified herein.

24. Except as otherwise permitted in this Lease, LESSEE shall not use, create, store or allow any hazardous materials on the premises. Fuel stored in motor vehicles for the exclusive use in such vehicles is accepted. Hazardous materials are those substances listed or described for toxicity, reactivity, corrosivity, or flammability criteria in Division 4.5, Chapter 11, Articles 1 through 5 of Title 22 of the California Code of Regulations, as well as any other substance which poses a hazard to health or environment.

In no case shall LESSEE cause or allow the deposit or disposal of any such substance on the leased property. However, household products necessary for routine cleaning and maintenance of the property may be kept on the leased premises in quantities reasonable for current needs.

The DEPARTMENT, or its agents or contractors, shall at all times have the right to go upon and inspect the leased premises and the operations conducted thereon to assure compliance with the requirements

herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the premises.

Where hazardous waste is generated on site, the facility must be fully permitted by the California Department of Health Services, and all conditions of the permit must be complied with.

Breach of any of these covenants, terms and conditions shall give the DEPARTMENT authority to immediately terminate this Lease upon a LESSEE'S failure to cure within THIRTY (30) days. It is the intent of the parties hereto that the LESSEE shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste introduced to the premises during LESSEE'S period of use and possession as owner, operator, or lessee of the property. The LESSEE shall also be responsible for any clean up and decontamination on or off the leased premises necessitated by such materials or waste.

LESSEE shall further hold the State and any officer or employee, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the premises during the LESSEE'S period of use and possession.

IN WITNESS WHEREOF, the undersigned have executed this Lease on ____ day of _____,

LESSEE:
CITY OF FRESNO



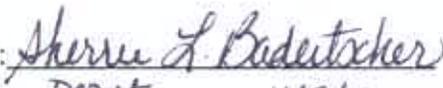
Randall Cooper, Director
Parks, After-school, Recreation,
& Community Services Department

DATE 10-1-10

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By: 
K. BRADUE, DEPUTY
ATTEST

REBECCA E. KLISCH
City Clerk

BY: 
Deputy 11/9/10

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: 

NICHOLAS G. DUMAS
Assistant Regional Division Chief
Right of Way, Central Region

DATE 11/3/2010

AGENDA ITEM NO.	1 D
COUNCIL MEETING	9/23/10
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER 	

September 23, 2010

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation and Community Services Department

BY: IRMA YEPEZ, Grant Writer 
Parks, After School, Recreation and Community Services Department

SUBJECT: AUTHORIZE THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES (PARCS) DIRECTOR TO ENTER INTO A TWENTY-YEAR LEASE WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR SAN PABLO FAMILY PARK LOCATED AT BELMONT AND SAN PABLO AVENUES.

RECOMMENDATION

Staff recommends that the City Council approve the attached 20-year lease with the State of California Department of Transportation (Caltrans) for the San Pablo Family Park and authorize the Parks, After School, Recreation and Community Services (PARCS) Director, or his designated representative, as agent of the City of Fresno to execute and submit all documents which may be necessary to carry out the purpose specified in the agreement, all subject to prior approval as to form by the City Attorney's Office.

EXECUTIVE SUMMARY

The current lease agreement with the California Department of Transportation will expire December 31, 2010. The terms of the new lease are very similar to the original, except that the lease term has been extended to 20 years. The agreement requires a \$12.00 annual lease rate to be paid in advance, and the property must be used exclusively for park purposes.

BACKGROUND

On April 11, 2001, the California Department of Transportation (Caltrans) entered into a ten-year lease agreement with the City of Fresno for the use of the property at Belmont and San Pablo Avenues for park purposes. The leased property has been developed as the San Pablo Family Day Park and is maintained by the PARCS Department.

On July 14, 2010 PARCS celebrated the dedication of a playground at San Pablo Park. The new playground was constructed thanks to the support of First 5 Fresno County. Additional amenities in the park design plans call for a basketball court, a skating stage, and a community garden.

FISCAL IMPACT

If agreement is approved, a nominal fee of \$240 will be paid up front per the lease agreement.

K/JosieK/Rept to CC/2010
9/7/10

Attachment: Lease Agreement

Presented to City Council
Date 9/23/10
Disposition Rec. approved

