

**SUBLEASE AGREEMENT  
BETWEEN  
ANIMAL ASSISTED HAPPINESS AND  
THE CITY OF SUNNYVALE**

This Sublease Agreement ("Sublease") is dated for reference purposes as of \_\_\_\_\_, 2017, and is made and entered into by and between Animal Assisted Happiness, Inc. ("AAH") (specify 501C-3 or type), a California non-profit, with its principal place of business located at 11824 Hilltop Drive, Los Altos Hills, California 94024, and the City of Sunnyvale, a California municipal corporation ("CITY"). AAH and CITY are referred to collectively as "Parties" or in the singular as "Party", in this Sublease.

**RECITALS**

- A. The County of Santa Clara, a political subdivision of the State of California ("County" or "Park Owner") owns an approximately 177-acre parcel of land commonly known as the Sunnyvale Baylands Park located within the City of Sunnyvale (the "Park") which use is restricted by law, and by the terms of an existing Lease Agreement dated March 2, 2010 (the "Master Lease") entered into between the County and City, to "park, playground and recreational purposes" (collectively, the "Park Purposes") for the benefit of park users within the County of Santa Clara, attached and incorporated as Exhibit "A". County's authority to enter into the Master Lease was pursuant to Section 25536 of the California Government Code. City represents, warrants and agrees that City, and its employees, agents, representatives, officers and directors, shall comply and ensure compliance with and enforce at all times the terms and conditions of the Master Lease as they relate to the Subleased Premises and/or AAH.
- B. By its terms, the Master Lease obligates the City to assure the continued operation and maintenance of the Park for park, playground and recreation purposes, to operate and maintain the Park and assume all liability related thereto. Specifically, the City is limited to a defined "Permitted Use": For the purpose of providing public recreational opportunities, specifically use of an existing trail system, playground, preservation of the wildlife habitat, and related activities consistent with the County's regional park system and the Baylands Park Master Plan". If the City desires to introduce a new use, it must first obtain advance County consent and comply fully with the California Environmental Quality Act.
- C. The City and AAH both recognize, acknowledge and agree that nothing stated in this Sublease in any way modifies, alters or changes any of the terms or conditions of the Master Lease nor does this Sublease release the City from any of its obligations, responsibilities or liabilities under the Master Lease.
- D. Pursuant to the County Lease and its predecessors, the City has been operating and maintaining the Park for Park Purposes since 1986.
- E. CITY desires to sublease a portion of the Park ("Subleased Premises") to AAH, which portion is shown and labeled on Exhibit "B", with exclusive rights for the use of the Subleased Premises in order to provide barnyard interaction services for children and families with special needs but only so long as AAH complies fully with all terms and conditions of this Sublease at all times during the Sublease Term, as amended from time to time, and City complies fully with all

terms and conditions of the Master Lease at all times during the Master Lease Term, including any and all amendments and extensions. County's rights under the Master Lease shall not be altered, amended or modified as a result of any term or condition in this Sublease and County's rights with respect to the Park shall remain the same, including within the Subleased Premises.

F. The Master Lease expressly states that City may not assign or sublet any portion of the Park without County's prior written approval. On March 2, 2010, the Santa Clara County Board of Supervisors delegated authority to the Director of the Parks and Recreation Department to negotiate, execute, amend, terminate, and take any and all necessary or advisable actions regarding lease with the City of Sunnyvale relating to Sunnyvale Baylands Park for the period April 1, 2010 through March 31, 2045 following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. This Sublease has been approved by the Director of the Parks and Recreation Department on, after first having been reviewed as to form and legality by the County Counsel and approved by the Office of the County Executive.

G. Both City and AAH acknowledge, agree and accept that under the terms of the Master Lease, County will continue to refrain from collecting rent so long as revenues received do not exceed City costs of operation of the Park. County reserves the right to collect rent where County has reason to believe that revenues exceed operational costs.

H. City and AAH acknowledge, agree and accept that any construction or other improvements performed within the Subleased Premises must conform to and meet all requirements of Sections 6, 8 and 9 of the Master Lease.

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, AAH and City agree to the foregoing and as follows:

### **1. Purpose.**

In consideration of the rent hereinafter reserved and subject to the terms and conditions set forth in this Sublease, the CITY will make available to AAH, the Subleased Premises for unrestricted use to conduct year-round barnyard interaction services for general public, including but not limited to private families, school groups and classrooms and other organizations for park, recreation or playground purposes. AAH may install improvements consisting of program facilities, including barns, sheds and fences, on the Subleased Premises in accordance with all applicable permit and approval requirements and Sections 6, 8 and 9 of the Master Lease. A more detailed description of the program services and facilities is attached in the "AAH SmileFarm Concept Design" attached as Exhibit "C".

### **2. Term.**

The term ("Term") of this Agreement shall commence on \_\_\_\_\_, 2017, and shall continue for a period of five (5) years, which may be renewed by mutual written agreement of both City and AAH for two additional five (5) year periods. However, this Sublease is contingent upon the existence of a valid and enforceable Master Lease between the City and the County. If at any point during the Sublease term the Master Lease between the CITY and COUNTY is terminated or expires, then this Sublease shall automatically terminate without notice, in which case AAH shall immediately vacate, and ensure all its employees, agents, representatives, contractors, subtenants, licensees, permittees

and users also vacate, the Subleased Premises. AAH understands, acknowledges and accepts that under no circumstances shall AAH or any of its users be entitled to or claim any relocation assistance from the County. AAH is not a third party beneficiary of the Master Lease. County is a third party beneficiary of the Sublease, including the right to enforce its terms. At County's sole election, AAH and County may enter into a separate lease agreement provided such agreement is first approved by the Santa Clara County Board of Supervisors.

### **3. Rent.**

AAH hereby covenants and agrees to pay CITY, as rent for unrestricted use of the Subleased Premises for park, recreational or playground purposes consistent with the terms of the Master Lease, the amount of \$1.00 per year, payable on the first day of \_\_\_\_\_(month) of each year during the term of this sublease.

### **4. Utilities and Services.**

AAH may install utility connections for the program facilities within the Subleased Premises in accordance with all appropriate regulations. AAH shall pay all service charges including but not limited to gas, electric, water, sewer, trash removal, pest control, alarm service, fire monitoring for sprinkler system, janitorial, and property management and any other services furnished on the Subleased Premises during the term of the lease.

### **5. Maintenance and Repair.**

Except for damage caused by the sole negligence or intentional acts of the CITY, County or its employees, AAH shall be responsible for all maintenance and repair of the Subleased Premises as well as any damage related to operations or animals to either the Subleased Premises or the CITY's Master Lease area.

AAH shall be responsible for establishing security protocol and implementing and adhering to compliance requirements under CEQA (an approved Initial Study and Mitigated Negative Declaration) to adequately maintain subleased area addressing the following but not limited to:

- a) Sanitation/Animal waste processes and management
- b) Odor containment/management
- c) Maintenance of good appearance
- d) Construction: Plans/Review process; following lease terms of City's master agreement with County

### **6. Use.**

AAH shall use the Subleased Premises for barnyard animal interaction services and related community purposes that conform to the Park Purposes provided in the Master Lease, and as more fully set forth in the Concept Design referenced above. The Subleased Premises will be used in a manner consistent with the terms of the Master Lease between the City and County and may not be subleased to any third parties. Any additional uses shall be prohibited and subject to the Termination provisions in section 9, unless otherwise agreed to in writing by the County, the City and AAH in advance.

AAH shall post and update all programing hours listed in Exhibit B, in a manner consistent with County and City policies and practices.

**7. Representations/Warranties.**

CITY hereby covenants and agrees that it has obtained the written consent required from the County in order to sublease the Subleased Premises to AAH, attached as Exhibit "D".

AAH hereby covenants and agrees that it has performed all required environmental review required under the California Environmental Quality Act ("CEQA"), including but not limited to, the preparation of studies, documentation and response to comments and has obtained all City and County approvals regarding same.

**8. Obligations of CITY.**

CITY agrees to maintain the Master Lease during the term of this sublease, subject, however, to any earlier termination of the Master Lease by its own terms.

**9. Termination.**

If the Master Lease is terminated, this Sublease shall terminate simultaneously and the Parties shall thereafter be released from all obligations under this Sublease. Additionally, either Party may terminate the Sublease for convenience upon thirty (30) days written notice unless a shorter timeframe is otherwise agreed upon.

This Agreement may also be terminated by CITY for failure, neglect or refusal by AAH to comply with any term or condition of this Sublease or for engaging in any prohibited use, provided City give not less than thirty (30) days prior written notice and opportunity to cure (if such breach is curable). Within said thirty (30) days, AAH shall cure the breach or otherwise confirm that the cited condition has ceased, been corrected or is diligently being pursued to the satisfaction of the CITY.

**10. Insurance.**

**A. AAH shall maintain limits no less than:**

a. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.

b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.

c. Workers' Compensation Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

**B Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by the City. The AAH shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

#### **C Other Insurance Provisions**

The general liability policy shall be endorsed to contain, the following provisions:

a. The City, its officials, employees, agents and volunteers and the County, its officials, employees, agents and volunteers, are to be covered as additional insured with respects to liability arising out of activities performed by or on behalf of AAH; products and completed operations of the AAH; premises owned, occupied or used by AAH; or automobiles owned, leased, hired or borrowed by the AAH. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers or to the County of Santa Clara, its officers, employees, agents or volunteers.

b. For any claims related to this project, AAH's insurance shall be primary. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of AAH's insurance and shall not contribute with it. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall not contribute with or to it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers or to the County, its officers, officials, employees, agents or volunteers.

d. AAH's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

f. City's obligations and responsibilities to maintain insurance for the benefit or on behalf of County under the terms of the Master Lease shall remain unchanged and shall continue to apply to the Subleased Premises.

#### **D. Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

#### **E. Verification of Coverage**

AAH shall furnish the City with original Certificates of Insurance, naming the City as additional insured, and endorsements affecting the coverage required. The certificates are to be signed by a

person authorized by that insurer to bind coverage on its behalf. City shall be provided with updated Certificates prior to any expiration date of coverage.

**11. Indemnification.**

AAH shall defend, indemnify and hold harmless CITY and the COUNTY, its officers, directors, agents, employees and volunteers from and against any and all demands, claims, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, sustained by any person or to any property in, on or about the Subleased Premises except for the sole negligence or willful misconduct of the CITY or COUNTY and their employees, officers, directors, volunteers and agents.

**12. No Assignment.**

This Sublease, or any of the rights or obligations hereunder, shall not be assigned by AAH without prior written approval by the CITY and County.

**13. Maintenance and Removal of Personal Property.**

AAH shall maintain CITY's personal property as the same may be present or utilized on the Subleased Premises. Upon termination of this Sublease, AAH shall remove and properly dispose off-site its personal property and all improvements from the Subleased Premises and shall repair to good condition any damage caused thereby, restore the site to its natural condition in its naturally draining contours and reseeded and vegetated state with native species. In the event AAH does not adequately remove all personal property and improvements from the Subleased Premises or repair any damage caused thereby, CITY may perform all necessary removals and restorations and all actual expenses, including administrative and legal costs, AAH agrees to pay CITY upon demand.

**14. Records and Access.**

AAH shall maintain complete, accurate and current records pertaining to the Subleased Premises, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to visitor data, to include number of monthly attendance of visitors served, submitted on an annual basis. AAH shall retain copies of all materials obtained or produced with respect to the Subleased Premises for a period of at least five (5) years.

**15. Hazardous Material.**

a. AAH shall not cause, nor shall AAH allow or permit any of the AAH employees, agents, contractors, subcontractors, invitees, guests, visitors, permittees, licensees or volunteers (collectively and each the "AAH Representatives") to cause, any Hazardous Material (as defined below) to be sold, offered for sale, released, brought upon, kept, used, stored, generated or disposed of, in, on or about the Subleased Premises or anywhere in or on the Park. If such Hazardous Material is brought upon or used on, in, over or upon the Subleased Premises or the Park, AAH shall immediately cause such Hazardous Material to be cleaned up, handled and removed in compliance with all laws. AAH shall immediately notify County and City when AAH learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Subleased Premises or Park. AAH shall further comply with all laws requiring notice of such releases or threatened releases to all governmental or quasi-governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that there is a release of Hazardous

Material, AAH shall, without cost to County or City and in accordance with all laws and regulations, return the Subleased Premises and locations impacted within the Park to the condition immediately prior to the release. In connection therewith, AAH shall afford County and City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material and shall not settle any such violation without the full consent of County and City. For purposes hereof, "Hazardous Material" means (1) material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, safety, welfare or the environment, including but not limited to consumer safety and health; (2) any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Premises or are naturally occurring substances in the Premises; any chemical, content or product failing to meet the applicable standards imposed by regulation or other law falling within the jurisdiction of the U.S. Consumer Product Safety Commission, the U.S. Department of Transportation, the U.S. Environmental Protection Agency, the U.S. Federal Trade Commission, the U.S. Food and Drug Administration, U.S. Department of Agriculture, or any local or state agency or department of equivalent or similar jurisdiction or authority; and/or any other similarly regulated product, substance or chemical containing regulated levels of lead, phthalates, bloodborne pathogens, bio-waste, medical waste, pesticides, those products for which a pesticidal claims is made, and/or pharmaceuticals; and/or (3) any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. Notwithstanding the foregoing, AAH may permit the use of cleaning materials and fuel within the Subleased Premises in reasonable consumer quantities provided that such uses would not require remediation by the relevant local, state or federal authorities and provided AAH complies fully and ensures that all others comply fully with all applicable local, state and federal laws pertaining to such use; by way of example, and not by way of limitation, the introduction of gasoline powered motor vehicles onto the Premises' parking lots would be permitted so long such vehicles do not release gasoline in quantities that would require remediation and are otherwise in full compliance with local, state and federal laws. For clarification, under no circumstances shall any fuels be brought into any buildings or structures where people or animals may potentially occupy or enter the space.

b. Environmental Notices. AAH shall deliver promptly to County and City complete copies of all written notices, demands, or other written communications from any and all governmental or quasi-governmental authority, insurance company or board of fire underwriters or like or similar entities, regarding any Hazardous Material on, in, about, upon, under, at, in, or from the Premises. AAH shall promptly, upon receiving notice thereof, inform County and City in writing (and orally in the event of a Hazardous Material release or other emergency) of (a) any and all enforcement or remediation, or other governmental, regulatory, or judicial acts or orders instituted, contemplated, or threatened pursuant to any Environmental Laws affecting any Hazardous Material in, on, upon, over or under the Subleased Premises; and/or (b) all claims made or threatened by any third party relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual, proposed, or threatened use, remediation, or release on, in, upon, at, under, from, to, or about the Subleased Premises.

**16. Prohibition of Advertising.**

a. All advertising and promotional materials shall comply at all times with County and City policies and ordinances pertaining to advertising on County-owned property. County and City each reserve the right, without obligation, to require AAH or any of the AAH Representatives to remove any advertising, depiction or representation (including signs and other marketing materials) from the Subleased Premises or other areas within the Park at any time if County or city in either of their sole discretion determines there is good reason to do so.

b. All advertising within the Subleased Premises shall be kept to a minimum and shall be approved in advance by County and City. In no event shall County's name, logo or intellectual property be used or represented in any advertising or marketing materials of any kind, nor shall County be identified as a sponsor of the use, without the prior written consent of the County.

c. AAH and AAH Representatives shall conduct themselves in a professional, courteous and respectful manner at all times. AAH, not the County and not the City, shall be responsible and liable for handling, addressing and responding to any and all customer, invitee, guest and visitor concerns, injuries, deaths and damages pertaining in any way or relating to the Subleased Premises or its use, including but not limited to, product or service complaints or defects.

**17. Visitor Parking.** AAH staff will not be required to pay an entrance fee for Baylands Park as long as the visit is associated with AAH duties. Baylands Park entrance fees will be required to be paid by those visiting AAH as well as for those attending any AAH functions held at Baylands Park. Visitor parking will be allowed on the Subleased Premises in locations determined by City and County to be appropriate for such use. AAH and AAH Representatives shall not charge a fee for the use of the visitor parking except as expressly authorized herein above.

**18. Fire Code.** AAH shall at all times ensure that all activities, installations, uses, facilities, operations and conduct is fully compliant with all applicable fire codes and any and all directives or requirements of the fire marshal for Santa Clara County.

**19. Nondiscrimination.** AAH and each of the AAH Representatives shall comply with all laws and County of Santa Clara policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code sections 1101 and 1102. AAH and each of the AAH Representatives shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation, nor shall AAH or any of the AAH Representatives discriminate in the provision of services provided under this Sublease because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

**20. Conflict of Interest.** AAH represents, warrants and agrees that it shall comply, and require



the AAH Representatives to comply, with all applicable (a) requirements governing avoidance of impermissible client conflicts; and (b) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Sublease and is grounds for immediate termination of this Sublease by the County or City, without notice to cure.

**21. Integrated Pest Management Ordinance.** When conducting or allowing the performance of any pest management practices or pesticide uses, AAH shall comply with and require any pest management service providers hired by AAH or any of the AAH Representatives to comply with the County's Integrated Pest Management ordinance.

**22. Taxes.**

**a. Tax Expenses.** AAH shall pay and shall be liable and responsible for any and all Tax Expenses (as defined below) applicable to the Subleased Premises or its use. Prior to delinquency, AAH shall pay any and all taxes and assessments levied upon the Subleased Premises, including, without limitation, (a) any and all taxes and assessments resulting from or relating to any increase in real property taxes attributable to any and all improvements, fixtures, or equipment of any kind whatsoever placed or existing in, on or about the Subleased Premises, and (b) taxes and assessments levied or assessed upon or with respect to the possession, operation, use or occupancy of the Subleased Premises during the Sublease Term. "Tax Expenses" means, without limitation, any form of tax and assessment (general, special, supplemental, ordinary or extraordinary), commercial rental tax, payments under any improvement bond or bonds, license fees, license tax, business license fee, rental tax, transaction tax or levy imposed by any authority having the direct or indirect power of tax (including any governmental, school, agricultural, lighting or other improvement district) as against any legal or equitable interest in the Premises or any other tax, fee, or excise, however described, including, but not limited to, any tax imposed in substitution (partially or totally) of any tax previously included within the definition of Tax Expenses and any cost and/or fee (including without limit attorneys' and appraisers' fees and court costs) incurred in calculating, contesting or negotiating any such taxes or assessments.

**b. Possessory Interest Tax.** AAH acknowledges that its interest in and/or use of the Subleased Premises may be subject to possessory interest taxation and that such taxation shall be AAH's sole responsibility and liability. Pursuant to Section 107.6 of the California Revenue and Taxation Code, AAH and City are hereby notified that the use of any County property pursuant to this Sublease or the Master Lease may or does create a possessory interest in said property under California law and as such you may be subject to the payment of property taxes levied on such interest.

**23. California Public Records Act. County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA").** If AAH's proprietary information is contained in documents submitted to County or City, and AAH claims that such information falls within one or more CPRA exemptions, then AAH must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information before providing such documents to County or City. In the event of a CPRA request for

such information or documents, County or City may notify AAH in writing of any such request (“CPRA Notice”) so that AAH can seek a protective order against County or City (as applicable) to preclude disclosure, from a court in Santa Clara County. AAH acknowledges that if AAH contends that any documents or information are exempt from CPRA and wishes to prevent disclosure, AAH is required, at its sole cost, liability and expense, to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County and thereafter to properly serve notice on County or City (as applicable) of such court-provided remedy at least two (2) business days before the County’s or City’s deadline (as applicable) for responding to the CPRA request. If, after County’s or City’s delivery of a CPRA Notice (as applicable), AAH fails to obtain such court-provided remedy before the disclosure deadline for responding to the CPRA request, County or City (as applicable) may disclose the requested information even if marked “CONFIDENTIAL AND PROPRIETARY” without any liability of County and City and without any obligation to AAH or any third parties. AAH represents, warrants and agrees that it shall defend, indemnify and hold County harmless from and against any and all claims, allegations, costs, expenses, damages, losses, injuries, litigation costs and attorneys’ fees that may or do result from denial by County or City of a CPRA request for any information provided by AAH or any of the AAH Representatives which are claimed to be or are marked confidential or proprietary, or the failure to release any information as a result of or arising out of or from any representation, or any action or inaction, by AAH or any of the AAH Representatives.

**24. Warranties of AAH.** AAH warrants and represents, for the express benefit of County and City, that AAH has undertaken a complete and independent evaluation of the risks inherent in the execution of this Sublease and the operation of the Subleased Premises for the use permitted hereby, and that, based upon said independent evaluation, AAH has elected to enter into this Sublease and hereby assumes all risks with respect thereto. Except as otherwise provided herein, AAH further warrants and represents, for the express benefit of County and City, that in entering into this Sublease, AAH has not relied upon any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth herein or in the Master Lease and that any statement, fact, promise or representation (whether express or implied, written or oral) made at any time to AAH, which is not expressly incorporated herein, is hereby waived by AAH.

**25. Office of Foreign Assets Control Compliance.** AAH represents and warrants that: (a) AAH is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (b) AAH is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

**26. County Regulatory Authority.** AAH acknowledges and agrees that County and City, each acting not as landlord or sublandlord but in their respective governmental regulatory or enforcement capacity or in using their/its police power, each have certain governmental regulatory or enforcement authority over the Subleased Premises and that nothing in this Sublease binds the County or City to exercise or refrain from exercising their respective discretionary governmental authority in any particular manner.

**27. Inspection by Certified Access Specialist.** AAH acknowledges and understands that the

Subleased Premises have not undergone inspection by a Certified Access Specialist (CAsp).

**28. Mechanics Liens.** If, because of any act or omission of AAH or any of the AAH Representatives, any mechanic's lien or other lien, charge or order for the payment of money are filed against any portion of the Subleased Premises, AAH shall at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from County or city; and AAH shall indemnify and save harmless County and City against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting.

**29. No Recorded Memorandum.** Neither this Sublease nor any memorandum or assignment hereof shall be filed in any place of public record by the AAH.

**30. Nutrition Guidelines.** The uses contemplated and authorized under this Sublease DO NOT include the right to sell, offer for sale or distribute any food or beverage of any kind, including coupons, discounts or other reference materials in relation to food, food services or beverages of any kind. If AAH desires to offer any such food, beverage, reference materials or coupons, then County's nutrition guidelines shall apply and AAH must first obtain the prior written approval of County and City for any such activity. In addition, all licenses, permits, certifications and other requirements applicable to the sale, distribution or offering for sale of food or beverages shall apply and AAH shall be solely and exclusively liable for such compliance at all times even where such actions or inactions are those of any of the AAH Representatives.

**31. Prevailing Wage.** AAH acknowledges and agrees that work performed under this Sublease on, in or around the Subleased Premises may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. AAH has included (and will include) consideration for this obligation in calculating compensation under this Sublease, if such prevailing wage requirements are applicable. AAH is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws.

**32. Subcontractors.** If any obligation is performed for or on behalf of AAH through a contractor, volunteers, service providers or subcontractors, AAH will remain fully responsible for the performance of all obligations under this Sublease and AAH will be solely responsible for all payments due to its service providers, contractors or subcontractors. No AAH Representative will be deemed a third party beneficiary for any purposes under or to this Sublease or the Master Lease.

**33. Written Communications and Notice.**

Any notice, demand, request, consent, approval, or communication that either Party or County desires or is required to give to the other Party or to County pursuant to this Sublease shall be in writing and either served personally, sent by fax, as evidenced by a fax transmittal receipt, or sent by prepaid, first class, certified mail. Such notices shall be deemed delivered and served upon actual receipt thereof or upon the fifth day after mailing as herein provided. Such matters shall be addressed to the other Party at the following addresses:

To AAH at:

Animal Assisted Happiness  
C/O Vicki Amon-Higa

11824 Hilltop Dr.  
Los Altos, CA 94024

To CITY at:

Manuel Pineda,  
Director of Public Works  
456 W. Olive Avenue  
Sunnyvale, CA 94086

To COUNTY at:

Robb Courtney  
Director Parks and Recreation  
298 Garden Hill Drive  
Los Gatos, CA 95032

**34. Captions.**

The captions of the various articles and paragraphs of this Sublease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope or intent of this Sublease or any part or parts of this Sublease.

**35. Amendment in Writing.**

Any amendment to this Sublease shall be in writing and signed by both Parties, and shall first be reviewed and approved by the County.

**36. Severability.**

The invalidity of any portion of this Sublease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the Parties.

**37. Governing Law; Exclusive Jurisdiction.** This Sublease, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Sublease or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Sublease, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

**38. Authorization.**

Each individual executing this Sublease on behalf of a Party represents and warrants that he or she has been authorized to do so by the Party on whose behalf he or she executes this Sublease and that

said entity will thereby be obligated to perform the terms of this Sublease.

**39. Entire Agreement.** This Sublease, along with the Master Lease, as amended from time to time, constitutes the entire agreement between the Parties concerning the Subleased Premises and supersedes any prior written or oral agreements (excluding the Master Lease) between or among the Parties with respect to the matters contained herein.

**40. Survival.** Those Sections and provisions that by their nature should survive termination, cancellation or expiration of this Agreement, shall so survive, including but not limited to Sections 7, and 10 through 40, inclusive.

**IN WITNESS WHEREOF,** the Parties hereto have hereunto set their hands on the date and year first above written.

|  |  |
|--|--|
| <b>CITY:</b><br>City of Sunnyvale<br>a municipal corporation | <b>AAH:</b><br>Animal Assisted Happiness |
|--|--|

|  |                                     |
|--|-------------------------------------|
| By:<br>Deanna Santana, City Manager<br>Date: _____ | By:<br>[Name, Title]<br>Date: _____ |
|--|-------------------------------------|

|  |                                     |
|--|-------------------------------------|
| APPROVED AS TO FORM:<br><br>By:<br>City Attorney | By:<br>[Name, Title]<br>Date: _____ |
|--|-------------------------------------|

**LEASE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF SUNNYVALE FOR THE SUNNYVALE BAYLANDS PARK**

This is a lease ("**Lease**") between the City of Sunnyvale, a municipal corporation of the State of California ("**City**"), and the County of Santa Clara, a political subdivision of the State of California ("**County**"), for the City's lease of certain County property.

**RECITALS**

1. County owns an approximately 177-acre parcel of land located in the City of Sunnyvale (the "**Premises**"), which Premises are further described on **Exhibit A**, attached hereto, and which excludes the Twin Creeks Sports Complex, as depicted on **Exhibit A**.
2. The City has previously operated the Premises pursuant to the Master Agreement between the County of Santa Clara and City of Sunnyvale Pertaining to Development and Improvement of Sunnyvale Baylands Park, and Related Matters effective April 15, 1986 ("Previous Agreement").
3. The City and County wish to assure the continued operation and maintenance of the Premises for park, playground, and recreational purposes and the City is willing to continue having responsibility for the operation and maintenance of the Premises and the liability related thereto.
4. The County Parks Department recommends that the County Executive grant the City of Sunnyvale a five-year exemption from the County's Integrated Pest Management Ordinance for the first five years of the lease term.
5. The County is authorized, upon 4/5 vote of the Board of Supervisors, to lease County land held for park use under Government Code section 25536 without bidding. The parties wish to enter into this agreement for the lease of the Premises for the mutual benefit of County and City residents.

County and City agree as follows:

**1. LEASE**

- a. **Agreement.** County leases to City, and City hires from County, the Premises, including all improvements.
- b. **County Access to Premises.** County reserves the right to enter the Premises at all reasonable times and with reasonable notice for any purpose, including, but not limited to, to plan or construct County improvement projects, to observe the City's Lease compliance, or to perform health and safety inspections. If County's work cannot be completed within one (1) business day, County will coordinate with City for County installation of appropriate signage and safety barriers, if applicable.

County reserves the right to enter and use the Premises for emergency staging or response activities, without notice, at all times for any emergency. City shall provide County with keys or combinations to access all improvements, entrances and doors on the Premises. City shall provide County with new keys or combinations before any re-keying or lock changes.

- c. **No Assignment or Subletting.** City may not assign or sublet this lease, or any portion of the Premises, without County's prior written approval, which approval is in County's sole and absolute discretion.
- d. **Termination of Previous Agreements.** As of the Effective Date of this Agreement, the Previous Agreements are hereby terminated and replaced with this Lease.

## 2. PREMISES

The Premises are commonly known as the Sunnyvale Baylands Park and are described and depicted on **Exhibit A**.

- a. **Location.** The Premises are located at 999 E. Caribbean Drive, Sunnyvale, CA.
- b. **Existing Improvements.** The Premises include the following Existing Improvements ("**Improvements**"):

|                           |                            |                    |
|---------------------------|----------------------------|--------------------|
| Roadways and parking lots | Boardwalk/overlook         | Irrigation Systems |
| Trails and pathways       | Ropes course               | Sprinkler System   |
| Restrooms                 | Amphitheater               | Fencing            |
| Picnic Areas              | Benches                    |                    |
| Landscaping, trees        | Playgrounds and play areas |                    |

- c. **Premises As Is, No Warranty.** Pursuant to the previous Master Agreement, City has had possession and control of the Premises, and accepts the Premises as is. Nothing in this Lease shall be deemed to create any obligation on the part of County to make any improvements or alterations to the Premises. County does not warrant the condition of the Premises, its soil, water, or utilities.

## 3. PERMITTED USE

- a. **Permitted Use.** The County leases the Premises to City for the purpose of providing public recreational opportunities, specifically use of an existing trail system, playground, preservation of the wildlife habitat, and related activities consistent with the County's regional park system and the Baylands Park Master Plan ("**Permitted Use**"). If City wishes to introduce a new use, City shall obtain the County Park and Recreation Department Director's advance, written authorization. Following County's written authorization, City will further comply with other legal requirements for establishing such use, including California's Environmental Quality Act. Once all required approvals are secured, the approved recreational use will be a Permitted Use.

b. **Public Access.** City will operate and maintain the Premises so as to allow public access for the Permitted Use on a year round basis. City may create and administer a system of permits and licenses for the temporary, exclusive use of areas by private parties in furtherance of the Permitted Use, or grant licenses or permits to other public entities for temporary access to construct improvements or restore/enhance natural features of the Premises. The City's indemnification of County (as further set forth in **Section 9**) includes damages or injury that may result from City's grant of use to any other person or entity.

c. **Prohibited Uses**

(i) **Natural Resources.** City shall not cut timber, conduct mining operations, remove sand, gravel, or similar substances from the ground, commit waste of any kind, nor in any manner substantially change the contour or condition of the Premises by grading, filling or depositing material, except as may be specifically authorized under this Lease. City shall remove fallen or dead timber as required for safety or aesthetic reasons and dispose of it or use it in any legal manner and in compliance with the Santa Clara County Fire Prevention Operational Procedure "CDF MOU" attached as **Exhibit E** and incorporated by reference.

(ii) **Water Pollution.** City shall not discharge any substances that will contaminate streams or other bodies of water or otherwise become a public nuisance. City will comply with applicable laws and regulations in effect or prescribed by the federal, state or local government. City shall promptly comply with any regulations, conditions, or instructions relative to the Premises if and when issued by the federal, state, interstate or local government water pollution control agency having jurisdiction to abate or prevent water pollution.

4. **TERM**

a. **Term.** The term of this Lease shall commence on the date of execution by the parties ("**Effective Date**") and shall continue for twenty-five (25) years thereafter, unless sooner terminated under the provisions of this Section ("**Term**").

b. **Extension of Initial Term.** If the City is in compliance with the Lease, the term of this lease will automatically renew for one (1) additional term, comprising an additional ten (10) years ("**Extended Term**"), with said ten-year term ending on the anniversary of the Effective Date, in the year 2044, unless the City gives the County written notice of election not to renew at least one year prior to the expiration of the Term. Except as provided in paragraph 4.f below, under no circumstances shall the Term, plus any Extended Term, exceed thirty-five (35) years from the Effective Date of this Lease.

c. **No Cause Termination Prior to End of Term.** Notwithstanding anything set forth in **Section 4(b)**, above, either party may terminate this Lease at its



discretion at any time before the expiration of the Term by giving the other party written notice not less than twenty-four (24) months before the date of such termination (the "Notice Period"). In addition to indicating that the party wishes to terminate the Lease, such written notice shall also specify the Notice Period when the County will obtain possession of the Premises.

If City constructs significant New Capital Improvements (that exceed a total cost of \$10,000) with the approval of the County, and the County exercises its right to terminate without cause, then the parties shall meet and confer to calculate an amortization value of the improvement, and determine the amount the County shall refund to the City for the cost of said new capital Improvements, less the depreciated value of the New Capital Improvements.

- d. **Termination for Default.** County may terminate this Lease for City's default of any of City's material obligations ("**Event of Default**"). Prior to termination, County shall provide City with notice of an Event of Default. City shall have ninety (90) days to cure the Event of Default ("**Cure Period**"), or commence to cure if the default cannot be cured within the Cure Period. If, in the County's reasonable judgment, City has not cured the Event of Default, or in good faith commenced to cure the Event of Default, at the conclusion of the Cure Period, the County may provide notice to City that the Lease is terminated, effective upon City's receipt of County's notice. For the purposes of this Section, City's material obligations include those set forth in **Section 1**, Lease, **Section 3**, Permitted Use, **Section 5**, Consideration and Rent, **Section 6**, Improvements and Alterations, **Section 7**, Operation, Maintenance, Repair and Replacement, **Section 8**, Hazardous Materials, and **Section 9**, Indemnification and Insurance.
- e. **Restoration and Surrender of Premises.** When the Lease ends for any reason, City must vacate the Premises, remove City's personal property (except County-owned Improvements as specified in **Section 7**), and repair damage or injury to the Premises.
- f. **City Opportunity to Purchase Twin Creeks Softball Complex.** If the County property devoted to Twin Creeks Softball complex shall no longer be managed, leased and maintained by a private operator, then the City shall have the opportunity to meet and confer with the County concerning the possible purchase or operation by City of the land and buildings pursuant to mutually agreeable price and terms.
- g. **Sunnyvale Baylands Park Ownership.** Every five (5) years the parties may meet and confer to discuss the City's interest in acquiring the property that is Sunnyvale Baylands Park from the County.

## 5. CONSIDERATION

County leases the Premises to City in consideration of the material obligations of this Lease, including City's year round operation and maintenance of the Premises for the Permitted Use and mutual public benefit. City assumes all costs of operation and maintenance of the Premises according to the standards set forth in **Section 7**, and for the design, permitting and construction of improvements, if any, contained in **Section 6** and, assumes all liability and indemnification obligations set forth below.

a. The Parties acknowledge that any revenues received by the City for providing recreational programs and special use permits provide a fraction of the funds to operate, manage and maintain the Premises. County may request a meeting to meet and confer from time to time to verify that costs to operate the Premises exceed revenues. City shall be able to document its revenue and costs for the operation and maintenance of Sunnyvale Baylands Park under its management and control.

b. The Parties may meet and confer from time to time to discuss the planning, funding, construction and operation and maintenance of future New Capital Improvements. The construction of New Capital Improvements is not an obligation in consideration of this Agreement.

c. To the extent possible the parties shall pursue joint grants and shall cooperate with each other in submitting applications and providing information in connection with such grant applications.

## 6. IMPROVEMENTS & ALTERATIONS

a. **New Capital Improvements.** New Capital Improvements are newly constructed capital infrastructure, and are not replacement or renovation of an Existing Improvement as defined in **Section 2(b)**. As a condition of allowing New Capital Improvements to the Premises after the Effective Date of this Lease, County may, at its sole discretion, establish additional operational or maintenance standards to which the City shall agree in advance of construction. The agreed operational and maintenance standards shall be incorporated into this Lease by written addendum executed by both parties. The parties shall also discuss whether the term of the Agreement should be extended, taking into account the life of the New Capital Improvements that may extend beyond the term, and any modification to the term shall be incorporated into a written Addendum executed by both parties.

City shall provide the County with a written proposal for the New Capital Improvements ("**Improvements**"), including but not limited to, the following information:

(i) **Existing Conditions Map.** A scaled plan of the Premises showing the location of the existing site features and including but not limited to:

- Surrounding land uses, ownership, and access to the Premises;

- Existing vegetation, drainage or water features, utilities, and any structures, noting their construction materials;
  - Roads, trails, parking surfacing, and all other pertinent site circulation information.
- (ii) **Site Plan.** An overall Site Plan of the Premises that graphically shows location of the existing and proposed site features, using the Existing Conditions Map as a base. The Site Plan may also include a narrative to describe the proposed improvements in detail.
- (iii) **Budget and Schedule.** A proposed Budget and Schedule for completion of the design, permitting and construction of the proposed improvements, including description of funding sources and any qualifications associated with the funding sources.
- (iv) **Other Information.** Any other additional information that the County may reasonably require to evaluate the proposal, including but not limited to, soil, geologic or other investigations, surveys, hydrologic studies or environmental assessments.

**b. Modifications to Improvements.**

Modifications or replacement of Improvements may be proposed by City without regard to the procedures set forth in this section provided however that not less than ninety (90) days prior to City approval of any such modifications or replacement of Improvements City shall submit the proposal to County in writing for approval. Failure by County to respond to City in writing within said ninety (90) day period shall be deemed an approval.

- c. **Environmental Assessment.** For any New Capital Improvements or modifications to Existing Improvements or Improvements constructed pursuant to this Section, City, at City's sole cost and expense, will perform, or cause to be performed, all required environmental review required under the California Environmental Quality Act ("CEQA"), including but not limited to, the preparation of studies, documentation, response to comments and revised documentation. City shall prepare and submit the administrative draft environmental document to County for review prior to public circulation. City shall be the lead agency (as that term is defined in CEQA) for noticing and securing the necessary approvals on the final environmental document. County shall be a "responsible agency", as that term is defined in CEQA with sole and absolute discretion to approve the project. If project is approved by County, City will implement the project at its sole cost and expense.

- d. **Construction Documents.** After County's written consent to the Improvements, City, at City's sole cost and expense, will prepare or cause to be prepared construction documents for the Improvements. Unless otherwise agreed by the parties, City will submit construction documents to the County for review and

comment at the 50%, 95% and 100% stages of completion, and before submission to the required permitting agencies. City will not finalize any required regulatory permits until the County has completed its review of the construction documents and provides written approval to City to proceed with the permitting process. Nothing herein shall be deemed to require City to obtain construction permits from the County as long as the City has received all required construction permits from the City of Sunnyvale.

- e. **Permit Approval and Compliance.** City, at City's sole cost and expense, will obtain and comply with all applicable regulatory permits required for the Improvements.
- f. **Retention of Consultants and Contractor; Prevailing Wages, Bonds and Insurance.** Any Improvements constructed on the Premises are a public work within the meaning of California Labor Code Section 1720, to which the provisions of Section 1771, et. seq. apply. City will ensure that all pre-construction consultants and contractors performing work on the Premises comply with these Labor Code requirements, as applicable. In connection with the design and construction of Improvements on the Premises, City will further retain appropriately qualified and licensed consultants and contractors to perform work or services, and select or award contracts consistent with State law requirements that apply to the construction of City's public projects. City will require all consultants and contractors under contract to provide services or construct Improvements provide adequate insurance, and include the County as an additional insured by obtaining an endorsement that includes as additional insureds: "the County of Santa Clara, members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively as additional insureds."
- g. **Construction Observation.** During the construction period, City will provide County with advance notice of all project team meetings, and allow County's representative reasonable access to the project site. Prior to City's acceptance of the Improvements from the construction contractor, City shall allow County an opportunity to make a final inspection of the project for conformance with County's approved plans, and will correct, or cause the contractor to correct, any deficiencies found by County. County will provide written acceptance of the Improvements to City. City must remove any Improvements that County has not accepted from the Premises prior to termination of the Lease.
- h. **As-builts.** City will provide County with a complete set of as-built drawings for Improvements within thirty (30) calendar days after County's acceptance of the Improvements. City will provide the as-built drawings in a hard copy and an electronic format, geo-referenced according to County Parks' requirements.
- i. **Removal of Improvements.** City shall be required to remove such Improvements if (i) County provided City with written notice that such Improvements must be removed from the Premises at termination of this Lease

as a condition of County approval of their construction or (ii) such Improvements were placed on the Premises during the term of the Lease without County approval.

j. **Revision to Master Plan.**

In the event that City's proposed alterations to Existing Improvements or proposed New Capital Improvements or park uses necessitate revision to the existing Master Plan for Sunnyvale Baylands Park, the City shall be responsible for the preparation of all revisions, in consultation with the County, including any environmental review and procurement of any required approval by a governmental agency.

7. **OPERATION, MAINTENANCE, REPAIR, AND REPLACEMENT**

- a. **General.** City will operate and maintain the Premises in a manner that ensures public safety and recreation. Hours of operation shall, at a minimum, be in accordance with the standards utilized by County with respect to urban parks owned and operated by County.

- b. **County Operational/Maintenance Requirements.** City shall conduct all operations and maintenance activities in accordance with the following requirements:

(i) City agrees to maintain the Premises in a manner consistent with the level of maintenance City provides its neighborhood parks.

(ii) The County may utilize its Lease Monitoring Checklist (**Exhibit C**) to assist with periodic inspections but the City will maintain the Premises pursuant to its Operations Standards attached as **Exhibit F**.

(iii) County's Memorandum of Understanding with the State of California Division of Forestry ("CDF MOU") attached as **Exhibit E** and incorporated by reference for the operation of equipment to prevent fires.

(iv) County's Integrated Pest Management Ordinance, attached as **Exhibit D-1** and incorporated by reference, provides for up to a five-year exemption under authorization of the County Executive. During the period of such exemption, the City will comply with City's Integrated Pest Management Policy, attached as Exhibit D-2 and incorporated by reference, and thereafter the City will comply with the County's Integrated Pest Management Ordinance.

- c. **Replacement of Capital Infrastructure.** The parties shall meet and confer every 2 years to establish a capital replacement list, priorities and funding alternatives. The parties shall meet and confer to agree on a process for safe removal of the infrastructure if required, for joint funding initiatives from their respective budgets and for pursuit of grant funding applications for projects to replace the existing infrastructure.

- d. **Sign/Park Name.** All written media promoting or providing information on the Premises where Baylands Park is the sole subject of the advertising shall state that the park is a joint County and City park. All media promoting or providing information on recreation services or programs or general city park programs, including Internet pages and posting and brochures, upon which the name of the park appears may state that the park is a joint County of Santa Clara and City of Sunnyvale park and recreation facility. County Parks Public Information Management Analyst shall provide City with the appropriate logo and wording for publication on a mutually agreeable bi-annual schedule. In lieu of replacing the existing Sunnyvale Baylands Park entry sign, City agrees to install a separate sign identifying the Park as a joint City and County facility.
- e. **Notice to County of Fee Schedule.** Not later than ninety (90) days prior to adoption or amendment of any schedule of user fee fees, City shall submit any proposed fee schedule to County for approval. City shall include with its submittal a table showing fees charged by other public entities in the Bay Area for similar services and/or facilities. County may disapprove a fee schedule if it reasonably determines that the fee schedule proposed is inconsistent with fees charged by other public entities in the Bay Area for similar services and/or facilities. Failure by County to report to City within the ninety (90) day period shall be deemed an approval.

## **8. HAZARDOUS MATERIALS**

### **a. Definition.**

**"Hazardous Materials"** shall mean any hazardous or toxic substance, material, or waste, which is or becomes regulated by any Hazardous Materials Law. "Hazardous Materials" includes petroleum products, asbestos PCB's, and any material or substance which is:

- (i) Listed under Article 9 or defined as hazardous or extremely hazardous according to Article 1, Title 22, California Administrative Code, Division 4, Chapter 20;
- (ii) Defined as a "hazardous waste" according to Section 14 of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 6903);
- (iii) Defined as a "hazardous substance" according to Section 10, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601).

**"Hazardous Materials Law"** shall mean any law or regulation of any governmental body with jurisdiction over the Premises (including the U.S. Environmental Protection Agency, California Regional Water Quality Control Board, and the California Department of Health Services), which regulates the use, storage, release, or disposal of any Hazardous Material.

- b. **Hazardous Materials on Premises.** City shall not permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of on the Premises in violation of any Hazardous Materials Law.
- c. **City Responsibility.** City is solely responsible for all releases of Hazardous Materials affecting the Premises from the date this Lease is executed, excepting only releases directly caused by County's actions. City will notify County in writing of:
- (i) Any enforcement, cleanup, removal, or other governmental or regulatory actions undertaken by or threatened against City concerning the Premises under any applicable Hazardous Materials Laws;
  - (ii) All claims made or threatened by any third party against City about damage, contribution, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials on or about the Premises;
  - (iii) City's discovery of any Hazardous Materials on the Premises; and
  - (iv) City's discovery of any Hazardous Materials on any adjoining property, which City reasonably believes may affect the Premises.
- d. **Indemnity.** City shall indemnify and defend upon demand with counsel reasonably acceptable to County, and hold County harmless from any liabilities, losses, claims, damages, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result in any way from any cause or source of Hazardous Materials that the City generates, introduces, uses or stores (or negligently allows the generation, introduction, use or storage) on the Premises or which are introduced onto the Premises during the Lease Term.
- e. **Survival of Conditions.** City's obligations under this **Section 8** shall survive the expiration or termination of this Lease. If any inconsistency between this Section and any other part of this Lease is found, the terms of this Section shall control.

## 9. **INDEMNIFICATION AND INSURANCE**

Without limiting the City's indemnification of County set forth in **Section 8** and in **Exhibit B**, City shall provide and maintain the insurance coverage described in **Exhibit B** during the Term of this Lease. The County understands that the City is self insured.

## 10. **EMINENT DOMAIN**

In the event a portion of the Premises are condemned, City may terminate this Lease at City's discretion under **Section 4(c)**, or continue operations on the remainder of the Premises under this Lease's terms. City shall provide County with written notice of its intent and, if City continues to Lease the remainder of

the Premises, the definition of Premises under this Lease shall be automatically revised on the date of the condemnation order to exclude the condemned portion of the Premises.

## **11. COUNTY NO SMOKING POLICY**

"Contractor and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles."

## **12. GENERAL PROVISIONS**

### **a. Entire Agreement.**

This Lease and any exhibits or addenda set forth all conditions and understandings between County and City about the Premises. There are no conditions or understandings, oral or written, between the parties other than those set forth in the Lease.

### **b. Exhibits.**

The following exhibits are incorporated into this Lease by reference:

|                    |  |
|--------------------|--|
| <b>Exhibit A</b>   | Map of the Premises  |
| <b>Exhibit B</b>   | Insurance Requirements for Leases with Tenants on County Property (Ex. B-5 revised)                                    |
| <b>Exhibit C</b>   | Lease Monitoring Checklist   |
| <b>Exhibit D-1</b> | County Integrated Pest Management Ordinance  |
| <b>Exhibit D-2</b> | City Integrated Pest Management Policy   |
| <b>Exhibit E</b>   | Santa Clara County Fire Prevention Operational Procedure (California Division of Forestry Memorandum of Understanding) |
| <b>Exhibit F</b>   | City Operational Standards   |
| <b>Exhibit G</b>   | Form of Memorandum of Lease  |

### **c. Changes.**

This Lease may be modified only by a writing signed by both parties. The County's Parks and Recreation Director has authority to administer the Lease and to take all actions for County under this Lease, including but not limited to, termination, extension of the Term, or approval of Improvements to be constructed.



**d. Notices.**

Communications relating to this Lease shall be in writing and shall be delivered personally, sent by United States mail, first class postage prepaid, or by private messenger or courier service, to the addresses below:

County of Santa Clara  
Parks and Recreation Department  
Real Estate Services Division  
298 Garden Hill Drive  
Los Gatos CA 95032-7669

City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: City Manager

Any change in address shall be sent by written notice to the other party and delivered according to this Section.

**e. Severability.**

If any provision of this Lease or any specific application shall be deemed invalid or unenforceable, the remainder of this Lease or the application of the provision in other circumstances shall not be affected. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**f. Text to Prevail Over Headings.**

The captions and section headings appearing in this Lease are included for convenience only and do not in any way limit or amplify the terms or provisions of this Lease.

**g. Waiver.**

County's waiver of any breach of this Lease shall not be deemed to waive the same breach on a future occasion. No provision of this Lease shall be waived by County, unless the waiver is in writing and signed by the County.


**h. Memorandum of Lease.**

Concurrently with the execution and delivery of this Lease, County and City shall execute and deliver in form suitable for recording the Form Memorandum of Lease ("MOL") attached to this Agreement as **Exhibit G**. Either party may record this MOL at any time, in its absolute discretion. At any time after the expiration of this Lease and City's receipt of County's written request therefor, City shall promptly execute and deliver to County a quitclaim deed quitclaiming to County all of City's right, title and interest in and to the Premises.

i. **Meet and Confer.**

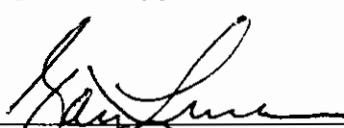
In the event there are disputes relating to the operation, maintenance and management of the Premises, the interpretation of the Lease, or the legal rights and remedies hereunder, then the parties shall each appoint an individual to represent each party hereunder. Either party may provide written (or telephone) notice 48 hours prior to the meeting and select a mutually convenient time and place to meet. The City's representative shall be the Parks and Recreation Director, or his or her designee. The County's representative shall be the County Parks Director, or his or her designee. The representatives shall meet and confer to resolve the issues.

**COUNTY OF SANTA CLARA**

By:   
Ken Yeager, President  
Board of Supervisors

Date: MAR 02 2010

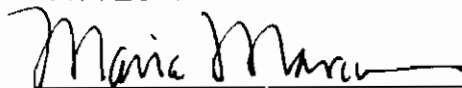
**CITY OF SUNNYVALE**

By:   
Gary M. Luebbers  
City Manager

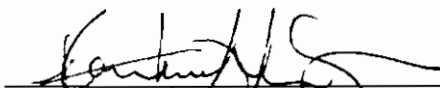
Date: 3/17/10

Signed and certified that a copy of this document has been delivered by electronic or other means to the Chair, Board of Supervisors


**ATTEST:**

  
Maria Marinos, Clerk  
Board of Supervisors

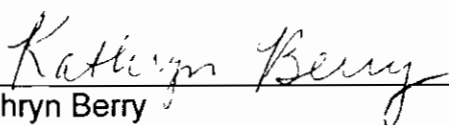
**ATTEST:**

  
Kathleen Franco Simmons  
City Clerk

**APPROVED AS TO FORM & LEGALITY**

  
Katherine Harasz  
Deputy County Counsel

**APPROVED AS TO FORM**

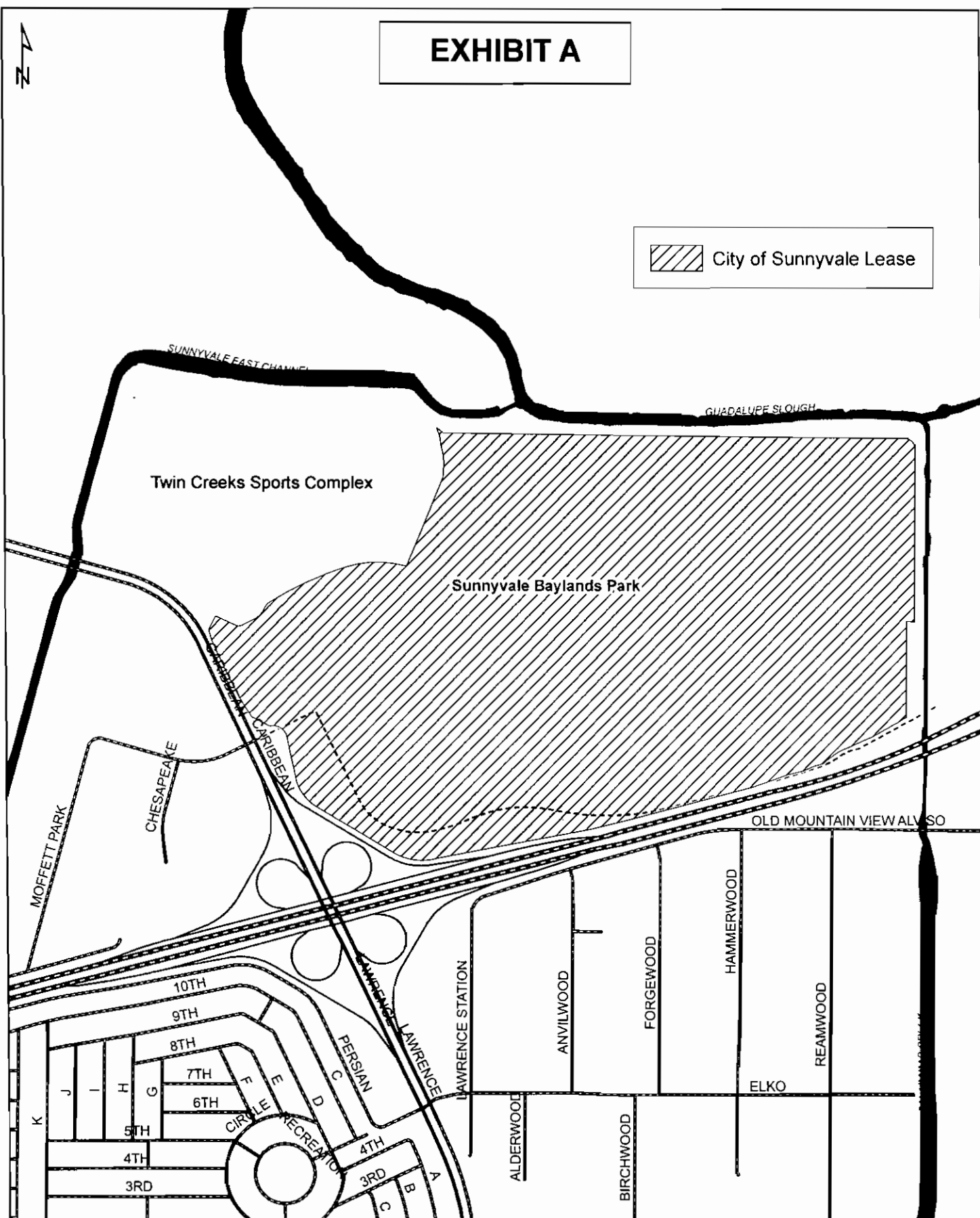
  
Kathryn Berry  
Senior Assistant City Attorney

**EXHIBIT A**  
**MAP OF THE PREMISES**

# EXHIBIT A



City of Sunnyvale Lease



**SANTA CLARA  
COUNTY PARKS**

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Title:

City of Sunnyvale - Lease

Date:

April 3, 2009

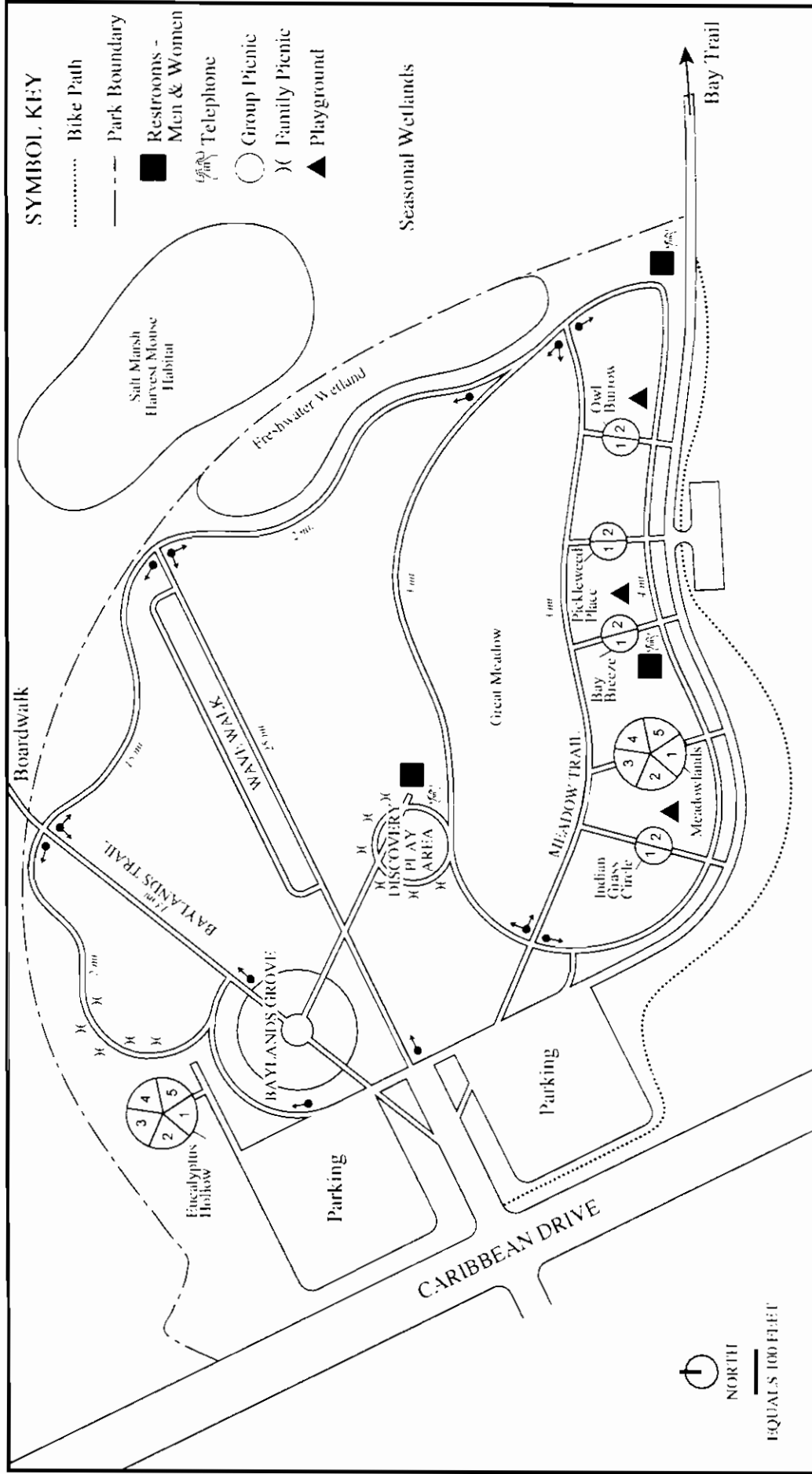
Comments:

Created By:

Scale

0 162.5 325 650 975 1,300 Feet

# BAYLANDS PARK DIRECTORY



Rev. 8/18/98

TOTAL PERIMETER = 1 MILE; BAYLANDS TRAIL = .13 MILE; MEADOW TRAIL = .3 MILE;

**EXHIBIT B**

**INSURANCE REQUIREMENTS FOR  
LEASES WITH TENANTS ON COUNTY PROPERTY**

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS FOR LEASES WITH TENANTS ON COUNTY PROPERTY**

#### **Indemnification**

To the fullest extent allowed by law, LESSEE will indemnify, reimburse, hold harmless and defend County from any and all liability, damages, loss, costs, and obligations, including, but not limited to, court costs and reasonable attorney's fees, arising out of any claim, suit, judgment, loss, or expense occasioned by, but not limited to, injury or death of any person or loss or damage to any property, that is suffered or sustained by Tenant or any person using, occupying or visiting the Premises, or by any person in, on, or about the Premises, from any cause whatsoever during the Term of the Lease, excepting only claims arising from the sole negligent or intentional acts or omissions committed by County. Tenant's obligation under this Indemnification section will survive the termination or expiration of the Lease with respect to any claims or liabilities arising out of an injury to person or damage to property that occurred during the Term of the Lease.

#### **Insurance**

Without limiting the LESSEE's indemnification of the County, LESSEE, shall at its own expense, provide and maintain the following insurance coverage in full force and effect throughout the term of this lease:

##### **A. Evidence of Coverage**

Before the start of this Lease, LESSEE shall provide a Certificate of Insurance certifying that coverage as required has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, LESSEE shall provide a certified copy of the policy or policies upon request.

For long-term leases a periodic review/change of insurance requirements may be made every five years to ensure appropriate coverage by County standards is in place.

##### **B. Qualifying Insurers**

All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide, unless otherwise approved by County's Insurance Manager.

##### **C Notice of Cancellation**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

#### **D. Insurance Required**

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage, which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate- \$2,000,000
- c. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

"County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage, which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Property Insurance

LESSEE shall maintain not less than fifty thousand dollars (\$50,000) Fire Legal Liability on all real property being leased, including improvements and betterments owned by COUNTY, and shall name COUNTY as a loss payee. LESSEE shall also provide fire insurance on all personal property contained within or on the leased premises. The



policy shall be written on a standard "all risk" contract, excluding earthquake and flood. The contract shall insure for not less than ninety (90) percent of the actual cash value of the personal property, and LESSEE shall name COUNTY as an additional insured.

7. Interruption of Business Insurance

LESSEE shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to COUNTY for a period of up to one (1) year if the premises are destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements

**D. Waiver of Subrogation**

Except as may be specifically provided for elsewhere in this lease, County and the LESSEE hereby each mutually waive any and all rights of recovery from the other in event of damage to the premises or property of either caused by acts of God, perils of fire, lightning, and all other all-risk perils as defined in insurance policies and forms approved for use in the state of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver.

**EXHIBIT C**

**LEASE MONITORING CHECKLIST**

## LEASE MONITORING CHECKLIST

Park - Sunnyvale Baylands

Facility - City of Sunnyvale

Day -                      Date -                      Time -                      #Employees    Apprx.

|   |                           |     |    |     |
|---|---------------------------|-----|----|-----|
| 1 | <b>RENT/CONSIDERATION</b> | YES | NO | N/A |
|---|---------------------------|-----|----|-----|

a Is rent paid in full? On time? Late fees assessed if warranted?

b Have rent escalations been paid on time?

|   |                            |     |    |     |
|---|----------------------------|-----|----|-----|
| 2 | <b>ANNUAL REPORT/AUDIT</b> | YES | NO | N/A |
|---|----------------------------|-----|----|-----|

a Annual Certified Financial Statement provided? On time?

b Taxes and assessments paid? On time?

|   |                  |     |    |     |
|---|------------------|-----|----|-----|
| 3 | <b>INSURANCE</b> | YES | NO | N/A |
|---|------------------|-----|----|-----|

a Insurance levels according to current County basic insurance requirements and the Lease?

b General and automotive liability insurance?

c General and automotive bodily injury limit \$1,000,000 per person per occurrence?

d General and automotive property damage limit \$500,000 per occurrence?

e General and automotive combined bodily injury and property damage limit \$1,000,000 per occurrence?

f General Policy aggregate \$1,000,000?

g Fire insurance?

h Alcoholic beverage insurance?

i Workers compensation and employer's liability insurance? \$1,000,000 per occurrence?

|   |                             |     |    |     |
|---|-----------------------------|-----|----|-----|
| 4 | <b>CAPITAL IMPROVEMENTS</b> | YES | NO | N/A |
|---|-----------------------------|-----|----|-----|

a Are capital improvements on schedule?

- b Are conditions for planning, design, and construction addressed, including Department review and approval of each project plan?
- c Has Lessee secured Parks & Recreation Department written approval of construction plans before starting work?
- d Have all necessary permits, including environmental, grading, and building been obtained and County supplied with copies before start of construction?
- e Has Lessee provided performance bond, cash, or US Government securities for 100% of project?
- f Written notice of completion received from Lessee's architect or engineer on file?
- g Written notice from Lessee certifying that all costs and expenses have been paid in full, and that there are no unpaid costs and expenses of any nature?
- h Have any mechanic's, laborer's, material men's, contractor's, subcontractor's or other liens or charges been filed?
- i If any lien or charge has been filed, has tenant furnished County a bond in that amount?

| 5 | EXTERIOR CONDITIONS/LANDSCAPING  | YES | NO | N/A |
|---|--|-----|----|-----|
| a | Employees wear uniform shirt that includes operator I.D.?  |     |    |     |
| b | All parking lots and facility areas swept at least weekly? Daily litter pick-up?   |     |    |     |
| c | Premises free from litter and trash disposed of? Cans emptied? Washed if necessary?  |     |    |     |
| d | Regularly scheduled landscape and tree maintenance? Mowing frequent enough and at correct height for grass type? Clippings removed? Damaged, diseased, dead wood removed from trees? |     |    |     |
| e | Premises free from fire hazard conditions? Weed growth controlled? Weed free condition in area 1-foot wide on inside of base of all fence lines?                                     |     |    |     |
| f | Is there an herbicide application program? Does program appear to meet EPA standards? Is applicator licensed?  |     |    |     |
| g | Are public restrooms cleaned daily?  |     |    |     |

- h Are pest problems monitored and, if any, controlled (pigeons, flies, etc.)?
- i Burned out bulbs replaced promptly?
- j Are all fences and gates in good repair? Grasses and weeds trimmed? Locks operable?
- k Are all signs installed, painted, and oriented aesthetically and any unauthorized signs removed?
- l Are all roads and parking in good repair? Is striping easily visible?

|   |                                 |     |    |     |
|---|---------------------------------|-----|----|-----|
| 6 | <b>BUILDINGS AND FACILITIES</b> | YES | NO | N/A |
|---|---------------------------------|-----|----|-----|

- a Do all buildings and facilities appear to be in compliance with applicable building code, including provisions of Americans with Disabilities Act (ADA)?
- b Are all exterior surfaces in good repair? Paint?
- c Are all interior surfaces in good repair? Paint?
- d Have floors, walls, ceilings, doors, and windows been kept clean?
- e Any evidence of insects (termites, ants, roaches)?
- f Has all equipment been kept clean and in good repair? Preventive maintenance performed?
- g Are stockrooms and storage areas neat, clean, and orderly?

|   |                             |     |    |     |
|---|-----------------------------|-----|----|-----|
| 7 | <b>FOOD FACILITIES AREA</b> | YES | NO | N/A |
|---|-----------------------------|-----|----|-----|

- a Are health cards, permits, and certificates current and displayed?
- b Date of most recent health inspection? Any items outstanding?
- c Is merchandise aesthetically displayed and competitively priced?
- d Are food products neatly stored?
- e Are floors, walls, ceilings, doors, windows clean?
- f Are exhaust hoods and screens free from grease and lint?
- g Are ventilating fans operational? Free of dust and lint?

- h Are windows and doors fitted with tight fitting screens?
- i Is area free from evidence of insects (roaches, ants)?
- j Is all equipment clean?
- k Are shelves and drawers clean?
- l Has entire area been cleaned, including countertops and food preparation area?

|   |                         |     |    |     |
|---|-------------------------|-----|----|-----|
| 8 | <b>PUBLIC RESTROOMS</b> | YES | NO | N/A |
|---|-------------------------|-----|----|-----|

- a Are restroom doors self closing? Properly fitted? Kept clean?
- b Is hot and cold water available?
- c Is hand washing soap, towels, and toilet paper available?
- d Are all fixtures clean, tight, and in good repair, free of odor and leaks?
- e Have all floors and walks been kept clean and dry?
- f Has all graffiti and tagging been removed?
- g Are all cleaning materials neatly stored?

|   |                        |     |    |     |
|---|------------------------|-----|----|-----|
| 9 | <b>RISK MANAGEMENT</b> | YES | NO | N/A |
|---|------------------------|-----|----|-----|

- a All areas free from apparent health or safety hazards?  
Structures/grounds/fire? If no, explain.
- b Is an operating public telephone available?
- c Do all hazardous wastes and toxic materials appear to be legally disposed of or contained?
- d Are accident reports filed on a timely basis? If no, explain.
- e Are County "Accident Report Forms" adequately stocked? Waivers?
- f Is staff trained in implementing emergency procedures and first aid?
- g Are first aid kits available, adequately stocked, marked, and stored in plain view?
- h Are safety procedures and posted notices pertaining to local 911, fire,

police and local safety authorities displayed?

- i** Is staff trained in Cardio Pulmonary Resuscitation (CPR)? Is at least one CPR certified staff member available at all times the facility is open to the general public?
- j** Date of most recent Fire Marshal inspection? Any outstanding items?
- k** Are fire extinguishers available? Date of most recent inspection? Number of extinguishers?
- l** Are fire alarms operational?
- m** Is there a current Emergency Plan and book of procedures properly stored for easy access and in plain view?

|           |                  |            |           |            |
|-----------|------------------|------------|-----------|------------|
| <b>10</b> | <b>PERSONNEL</b> | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|-----------|------------------|------------|-----------|------------|

- a** Are all personnel courteous, friendly, and helpful?
- b** Are all personnel clean and neat in appearance?
- c** Are personnel easily identified by uniforms, name badges, or in some other manner?
- d** Is there a list of personnel, home addresses, and phone numbers available to park staff in the event of an after-hours emergency?
- e** Are there any acts of misconduct by personnel? Recurring? Documented in writing?
- f** Is there a formal procedure under which the general public may offer compliments, suggestions or file complaints?
- g** Have any complaints been filed? If yes, were they satisfactorily resolved?
- h** Prevailing wage: Does Lessee meet applicable provisions of section 1774 and 1775 of the Labor Code of the State of California and Department of Industrial Relations of the State of California?
- i** Is there any evidence of discrimination for report to the Director, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission? Have any acts of discrimination been reported?

|           |                                      |            |           |            |
|-----------|--------------------------------------|------------|-----------|------------|
| <b>11</b> | <b>WATER MANAGEMENT/CONSERVATION</b> | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|-----------|--------------------------------------|------------|-----------|------------|

Is there a water conservation/drought plan? If no, explain. Conservation

- a information posted?
- b Is area free from any evidence of water pollution?
- c Are all water fixtures (faucets, toilets, pipes, fountains) operated and maintained in a manner promoting water conservation? If no, explain.

|    |                       |            |           |            |
|----|-----------------------|------------|-----------|------------|
| 12 | <b>GUEST SERVICES</b> | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|----|-----------------------|------------|-----------|------------|

- a Are facilities operated and maintained in a manner that ensures a first class, quality, recreational experience for the general public?
- b Are fee schedules and advertising aesthetically displayed? Copies available to park office?

|  |                |            |           |            |
|--|----------------|------------|-----------|------------|
|  | <b>SUMMARY</b> | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|--|----------------|------------|-----------|------------|

Is Park Staff/Lessee interaction positive? If no, explain.

General compliments, suggestions, complaints?

**EXPLANATION AND/OR ACTION - NEXT STEPS/COMMENTS**



**EXHIBIT D-1**

**COUNTY INTEGRATED PEST MANAGEMENT ORDINANCE**

**Division B28****INTEGRATED PEST MANAGEMENT AND PESTICIDE USE****Chapter 1. General Provisions****Section B28-1. Intent and Purpose.**

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The County, in carrying out its operations, finds it necessary from time to time to use pesticides on County property. The intent of this Division is to protect the health and safety of County employees and the general public, the environment, and water quality, as well as to provide sustainable solutions for pest control on County property. The Board of Supervisors hereby finds and declares that it shall be the policy of the County of Santa Clara to eliminate or reduce pesticide applications on County property to the maximum extent feasible. Preference shall be given to available non-pesticide alternatives, where feasible, before considering the use of pesticides on County property.

This Division concerns the application of pesticides to property owned by the County of Santa Clara only, and does not concern the application of pesticides to property that is not owned by the County of Santa Clara.

**Section B28-2. Definitions.**

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Whenever used in this Division, the following terms shall have the meanings set forth below:

(a) "Antimicrobial pesticides" are pesticides, such as disinfectants and sanitizers, that are intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects (for example floors and walls), industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(b) "Approved List" is the list of pesticides authorized by the County IPM Coordinator for use on County Property developed in accordance with section B28-5.

(c) "Carbamates" means esters on N-methyl carbamic acid, which inhibit cholinesterase.

(d) "Contract" is a binding written agreement, including but not limited to a contract, permit, license or lease between a person, firm, corporation or other entity, including a governmental entity, and the County of Santa Clara which grants a right to use or occupy property of the County or which provides pest management services.

(e) "County Executive" is the County Executive or his or her designee of the County of Santa Clara.

(f) "Demonstration site" is a specific area or site designated by a department to evaluate the use of a pest management strategy.

(g) "Department" is any agency or department of the County of Santa Clara. Department does not include the Vector Control District or any other local, state, or federal agency.

(h) "Departmental IPM Coordinator" is someone designated by a department head to coordinate the Department's IPM program.

(i) "County IPM Coordinator" is the person designated by the County Executive to implement and oversee the County of Santa Clara's IPM Program.

(j) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(k) "Integrated Pest Management (IPM)" is a decision-making process for managing pests using monitoring to determine pest-caused injury levels and combining biological control, cultural practices, mechanical and physical tools, and chemicals to minimize pesticide usage. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements, and natural enemies to complement and facilitate biological and other natural control of pests. The method uses the least hazardous pesticides only as a last resort for controlling pests.

(l) "IPM Technical Advisory Group (IPM TAG)" is the technical advisory group to the County for the IPM Program and is further described in section B28-9.

(m) "Organophosphates" means organophosphorus esters, which inhibit cholinesterase.

(n) "Pest" is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except certain insects, viruses, bacteria, or other microorganism on or in living man or living animals).

(o) "Pesticide" is any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment. Pesticide for purposes of this Division does not include antimicrobial agents.

(p) "Posting" is to place signs as identified in section B28-7 to inform employees and the public of pesticide use at a given site.

(q) "Signal Words" are the words used on a pesticide label--Danger, Warning, Caution--to indicate level of toxicity.

(r) "Toxicity Category I Pesticide Product" is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category I under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

(s) "Toxicity Category II Pesticide Product" is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category II under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

### **Section B28-3. General Exemptions.**

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(a) This Division shall not apply to the use of any pesticide for the purpose of improving or maintaining water quality at any County owned or operated drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution, and treatment facilities.

(b) This Division shall not apply to any use of pesticides on County property by any department when performing pest management or pesticide activities authorized by state or federal laws or regulations.

(c) This Division shall not apply to the use of pesticides by the Vector Control District.

(d) This Division shall not apply to antimicrobial pesticides or pesticides used to control pests in or on living humans or animals.

(e) This Division shall not apply to existing Contracts except as provided in section B28-10.

(f) This Division shall not apply to Contracts under negotiation at the time this Division becomes effective for a period of five years.

## **Chapter 2. Pesticide Management**

### **Section B28-4. County Integrated Pest Management (IPM) Program.**

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(a) The County IPM Coordinator shall oversee and coordinate implementation of the IPM Program.

- (b) The IPM Program shall include, but not be limited to, the following:
- (i) Identify staff member(s) responsible for program implementation;
  - (ii) Acquaint County workers with the IPM approach and new pest management strategies, as they become known;
  - (iii) Inform the public of the County's effort to reduce pesticide use;
  - (iv) Respond to questions about the County's pest management program and practices;
  - (v) Conduct ongoing educational programs, where appropriate;
  - (vi) Maintain records and evaluate program effectiveness;
  - (vii) Develop and maintain the Approved List of pesticides.

(c) Departments shall implement the IPM Program consistent with the IPM practices outlined below. Where feasible, departments shall consider a range of potential treatments for the pest problem and employ non-pesticide management tactics first, consider the use of chemicals only as a last resort, and select and use chemicals in accordance with the provisions of this Division. The IPM practices shall include ways to:

- (i) Monitor pests to determine pest population size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep records of monitoring results;
- (ii) Set treatment levels for each pest at each site based on how much biological, aesthetic or economic damage the site can tolerate;
- (iii) Determine the most effective treatment time, based on pest biology and other variables, such as weather, seasonal changes in wildlife use and local conditions;
- (iv) Design construction and building remodels to reduce or eliminate pest habitats and improve efficiency in facility and landscape maintenance and sanitation;
- (v) Reduce pest incidences by modifying management practices such as watering, mulching, fertilizer use, and pruning;
- (vi) Modify pest ecosystems, including waste management and food storage, to reduce pest food, living space, and access;

- (vii) Use physical controls such as hand-weeding, traps and barriers, heat and cold;
- (viii) Use biological controls such as introducing or enhancing pests' natural enemies;
- (ix) When indoors, use baits or least toxic methods of pest control rather than sprays;
- (x) Monitor treatment to evaluate effectiveness;
- (xi) Maintain records as set forth in section B28-8.

#### **Section B28-5. Pesticide Use.**

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(a) **Approved List.** The County IPM Coordinator shall develop the Approved List using a set of criteria that will be developed with the review and input of the IPM TAG. The criteria will take into account environmental and human health hazards, principles of the IPM approach, and technically based methods, conditions, and specifications for pesticide use. The County IPM Coordinator shall maintain the list of approved pesticides that may be used on County property. The Approved List shall be reviewed and updated at least annually. The IPM Coordinator may amend this list as needed at any time as long as the products are consistent with the established criteria. These amendments shall be communicated to the IPM TAG in writing at the quarterly meetings.

(b) **Specific Exemptions.** An exemption may be obtained from the County IPM Coordinator for use of a product not on the Approved List as follows:

- (i) **One-year exemptions.** The County IPM Coordinator may grant a specific exemption, with limited conditions for use, for a one-year period upon a written request showing that a department has:
  - (1) Identified the need for use;
  - (2) Made a good-faith effort to find alternatives to the pesticide;
  - (3) Identified or demonstrated that effective economic alternatives to the pesticide do not exist for that particular use; and
  - (4) Developed a reasonable plan for investigating alternatives to the pesticide during the exemption period.
- (ii) An exemption may be continued beyond the one-year period by filing a new request for exemption as required in subsection (b)(i) above.

- (iii) The County Executive shall have the discretion to revoke any exemption.
- (c) Emergency use of pesticides.
  - (i) A department responsible for maintenance of a site or facility may apply to the County IPM Coordinator for an emergency pesticide use exemption in the event that a pest outbreak poses an immediate threat to public health or may cause significant economic damage.
  - (ii) If the County IPM Coordinator cannot respond to the application in a timely manner, the Departmental IPM Coordinator submitting the application may authorize the one-time emergency use of the required pesticide and provide notice of the emergency application to the County IPM Coordinator in writing within 48 hours.
  - (iii) Posting of emergency use of pesticides shall be at the time of pesticide application and comply with all other posting requirements.
  - (iv) Reporting of the exemption and pesticide use will comply with all other reporting requirements as stated in section B28-8.

#### **Section B28-6. Restriction on the Use of Pesticides.**

---

Except for the use of pesticides exempted pursuant to section B28-3, pesticides granted an exemption pursuant to section B28-5(b) or 5(c) or pesticides on the Approved List per section B28-5(a), no department shall use any of the following types of pesticides. A list of the pesticides and pesticide products identified in (b) through (g) below shall be on file with the County IPM Coordinator.

- (a) Toxicity Category I or II pesticide products.
- (b) Any pesticide containing a chemical identified by the State of California as a chemical known to the State to cause cancer or reproductive or developmental toxicity pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986.
- (c) Pesticides identified by the State of California on the Groundwater Protection List (Section 13145 (d), Food and Agricultural Code, Division 6. Pest Control Operations).
- (d) Pesticides classified by active ingredient as organophosphate type pesticides as identified by the United States Environmental Protection Agency (Office of Pesticide Programs, document 735-F-99-14, May 1999), or California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.

(e) Pesticides containing carbamate-type chemicals (California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.)

(f) Any pesticide classified as a human carcinogen, probable human carcinogen or possible human carcinogen by the United States Environmental Protection Agency, under procedures established in "Proposed Guidelines for Carcinogen Risk Assessment," EPA/600/P-92/003C, April 1996, or equivalent documents.

(g) Any pesticide group officially designated by the California Environmental Protection Agency Department of Pesticide Regulation or by the United States Environmental Protection agency as posing significant hazard to human health or the environment.

#### **Section B28-7. Posting of Pesticide Use.**

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(a) Except as provided for in section B28-5(c) and section B28-7(b), any department that uses or authorizes the use of a pesticide shall comply with the following posting procedures:

- (i) Signs shall be posted at least three days before application of the pesticide and remain posted at least four days after application, except for baits and emergency use of pesticides, which are posted at the time of treatment in accordance with section B28-5(c)(iii) above and subsection (b)(iii) below;
- (ii) For buildings and/or landscaped areas adjacent to buildings, signs shall be posted at main entry points where the pesticide is applied;
- (iii) For open areas, signs shall be posted in highly visible locations around the perimeter of the area where the pesticide is applied;
- (iv) For vehicles used primarily by county staff, signs shall be posted at areas where vehicles are obtained or posting information shall be given to the primary drivers.
- (v) Signs shall contain the:
  - (1) Trade name and active ingredient of the pesticide product;
  - (2) Target pest;
  - (3) Date of posting;



- (4) Date(s) of anticipated pesticide use; the date(s) of actual pesticide use will be posted at the main entrance, park office, or designated site;
  - (5) Signal word indicating the toxicity category of the pesticide product;
  - (6) Date for re-entry of staff and the public to the area treated if applicable;
  - (7) Name and contact number for the department responsible for the application.
- (vi) Signs shall have a standard design that is easily recognizable by the public and workers;
- (b) Exemptions to posting.
  - (i) Departments shall not be required to post signs in accordance with section B28-7(a) in right-of-way locations and other areas that the general public does not use for recreational purposes.
    - (1) Each department that uses pesticides in such locations shall provide a public access telephone number for information about pesticide applications. The public access telephone number shall be posted in a prominent location at the department's main office building. Information provided shall include all the items in subsection (a)(v) above.
  - (ii) Any pesticide granted an emergency exemption by the County IPM Coordinator shall not be required to be posted prior to treatment. However, all other requirements for posting as set forth in section B28-7(a) shall be followed.
  - (iii) Any pesticide bait placed in a container or trap, or applied as a gel or paste in a crack or crevice shall not be required to post signs prior to treatment. Baits, used indoors, shall be posted in the vicinity of application. Baits, used outdoors, shall be posted in the main office, park office, or a designated site. Signs shall be posted according to the requirements as set forth in section B28-7(a).
  - (iv) The County IPM Coordinator may in his or her discretion grant necessary exemptions to the posting requirements.

## **Section B28-8. Record Keeping and Reporting.**

---

(a) Each department that uses pesticides shall keep records of pest management activities, including information about demonstration sites and exemptions. A copy of this information shall be placed in a centralized record keeping area in each department. Where feasible, this information shall be kept in a notebook or electronic equivalent maintained in each occupied building. Each pest management activity such as pesticide application, trapping or inspection shall be recorded and, when applicable, include at least the following information:

- (i) Target pest and extent of problem;
- (ii) Product name, active ingredients, EPA Registration number, formulation, and quantity of pesticide used;
- (iii) Site of the pesticide application;
- (iv) Date of pesticide application;
- (v) Name of person conducting pest management activity;
- (vi) Application equipment number, if applicable;
- (vii) Prevention and other non-chemical methods of control recommended or used, and;
- (viii) Evaluation of effectiveness.

(b) The Departmental IPM Coordinator shall keep the following:

- (i) Records of pesticide use;
- (ii) A copy of the label of all pesticides used; and,
- (iii) The material safety data sheet for each pesticide used.

(c) Each department that uses pesticides shall submit a summary of pest management records required in section B28-8(a) and (b) to the County IPM Coordinator at least quarterly.

(d) Pest management records, including pesticide use records, are all public records.

(e) Pesticide use records shall be kept indefinitely until an electronic database tracking system has been established.

### **Chapter 3. IPM Implementation**

#### **Section B28-9. Implementation of County Integrated Pest Management Ordinance.**

(a) This Division shall be phased-in over one to two years in order to provide adequate time for developing the Approved List, documenting current IPM practices and/or reductions, and identifying and implementing alternate pest management measures. The County IPM Coordinator shall develop a timetable and format for departments to each submit a plan for implementing this Division.

(b) A Technical Advisory Group (TAG) shall be formed and shall meet at least four times per year to review the County's IPM program and provide comments to the County Executive. The following representatives will be invited to participate on the TAG: two from Pesticide Alternatives of Santa Clara County; one from the Santa Clara Valley Water District; one from the County Agricultural Commissioner; one from the Santa Clara County Pollution Prevention Committee; one County employee representing a labor organization; and one representative from each of the following Santa Clara County agencies and departments: Roads and Airports, Parks and Recreation, the General Services Agency, Valley Health and Hospital System, and Occupational Safety and Environmental Compliance. The Board of Supervisors may at their discretion make changes to the composition of the group as deemed necessary.

(c) The IPM Coordinator shall provide a quarterly report to one or more Board-designated committees on the status of the IPM Program including information about pest problems, pesticide use, list of exemptions, goals and progress, staff training and public education, and anticipated changes that may affect pesticide use.

#### **Section B28-10. County Contracts and Easements.**

(a) Except as provided in (i) below, when a department enters into a new Contract (see section B28-2(d)) or amends an existing Contract to extend the term of the Contract for more than six months beyond the current term and any optional extension periods, the Contract shall require compliance with the provisions of this Division including those relating to pesticide restrictions, record keeping, and reporting.

(i) The County Executive may grant an exemption for up to five years from Contract compliance with all or part of the provisions of this Division in the event compliance would negatively impact County revenues, prevent the highest and best use of an asset as determined by the County Executive, or where it is demonstrated that full

compliance cannot be achieved. Notice of any exemption granted pursuant to this subsection (i) shall be given to the applicant and to the IPM TAG. The notice shall state that any person dissatisfied with the decision of the County Executive may file an appeal with the Clerk of the Board within fifteen (15) calendar days of the date of the notice. The appeal will first be heard before the County's Housing, Land Use, Environment, and Transportation Committee, which Committee shall make a recommendation to the Board of Supervisors. The decision of the Board of Supervisors shall be final.

(b) A contractor, or department on behalf of a contractor, may apply for exemptions authorized under section B28-5(b) and (c), and this section B28-10.

(c) When a department enters into a new lease in which the County is occupying or using property not owned by the County (and thus not within the definition of Contract in section B28-2(d)), the County shall use reasonable efforts to negotiate the use of IPM practices as part of that lease.

(d) In current leases in which the County is occupying or using property not owned by the County, the County shall encourage the use of IPM practices whenever practical.

(e) When the County is granted an easement, the maintenance of the easement shall be in compliance with this Division if consistent with the terms of the easement.

(f) A process, which incorporates a request for qualifications, shall be used in the selection of all contractors for pest management services and shall be in compliance with county contracting policies and state law. The County IPM Coordinator and the TAG may participate in the process. All contractors applying for pest management services shall submit a Pest Management Plan, which outlines how they will comply with the IPM Ordinance. The Plan shall give preference to prevention and other non-pesticide or least toxic methods of pest control.

#### **Section B28-11. Pesticide Purchases.**

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All pesticide products and pest control services that include pesticide applications shall comply with this Division and be purchased through the County Procurement department, not using the petty cash or direct pay methods.

#### **Section B28-12. Policy and Guidelines.**

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The County Executive may recommend policy for Board approval and issue guidelines to implement this Division.

#### **Section B28-13. No Criminal Penalties or Sanctions.**


The provisions of sections A1-28 of the Santa Clara County Ordinance Code shall not apply to this Division; nor shall any person, or government official, board, commission, or agency be responsible for any criminal penalties for any violation of the Division.

#### **Section B28-14. No Civil Liability for Violations of this Chapter.**

This Division and the provisions are directory, and are intended to set forth goals and program elements for management of pests and pesticide use. This chapter is not intended to create a standard of civil liability for the acts or failure to act of the County and its employees and contractors. No person, government official, board, commission, or agency shall be liable in any civil action or proceeding for damages for violation of any of the provisions of this Division.

**EXHIBIT D-2**

**CITY INTEGRATED PEST MANAGEMENT POLICY**

|  |   |
|--|---|
|  <b>Integrated Pest Management Policy for City-Owned Facilities</b> | <b>Administrative Policy Manual</b><br><b>Chapter 6 – Facilities &amp; Equipment</b><br><b>Article 12</b> |
|  | <b>Attachments:</b><br><i>none</i>  |
| <b>Effective Date:</b> November 2002   | <b>Responsible Department:</b><br>Department of Public Works  |
| <b>Prior Version &amp; Notes:</b><br>Prior Version: <i>not available</i>   |   |

### **Section 1.     Purpose**

This policy sets forth the guiding principles for development and implementation of Integrated Pest Management (IPM) on all City properties. The goals of the IPM policy and its implementation throughout the city are to:

- Create awareness among City staff of pest management techniques.
- Provide a means of educating all City departments to practice the most appropriate approach to managing pests on City properties.
- Reduce or minimize pesticide use on City properties.
- Eliminate adverse impacts to water quality (both in urban streams and South San Francisco Bay) due to pesticide usage.
- Prevent adverse impacts of pesticide usage on the quality of composted green waste.

### **Subd. 1.     Background**

The City's National Pollutant Discharge Elimination System (NPDES) permit from the California Regional Water Quality Control Board (NPDES Permit No. 01-024) requires that the City develop and implement a pesticide toxicity control plan to address urban stream impairment by pesticides. In particular, organophosphate-containing pesticides (e.g., Diazinon and chlorpyrifos) have been found to persist in the environment and cause water quality impairment of some South San Francisco Bay area urban creeks and streams. Also, the City is required to limit discharges of copper into South San Francisco Bay by its NPDES permit. Using non-chemical controls, biological controls, and less toxic chemicals instead of using copper-based and organophosphate pesticides to deal with pest problems will help reduce the impacts to urban streams and South San Francisco Bay.

Clopyralid is the very persistent active ingredient in a number of herbicides that can be used for weed control. Very small amounts of Clopyralid contained in green waste that is collected for composting will continue to be active and cause the finished compost product to adversely affect plants to which it is applied. However, Clopyralid is also a valuable herbicide for managing the noxious thistle family of weeds that may infest native grass areas and restoration projects.

Restrictions on the collection of green waste for composting from Clopyralid-treated areas are included in this policy to prevent the contamination of compost products produced at the SMaRT Station or other City facilities.

## **Section 2. Policy**

### **Subd. 1. Definitions**

The following definitions are used in this Article:

Biological control – The use of biological technologies to manage unwanted pests. Examples of this type of control include, but would not be limited to the use of pheromone traps or beneficial insect release for control of certain types of weeds or invasive insects in landscapes.

Cultural control - The use of IPM control methods such as grazing, re-vegetation and seeding or landscaping with competitive or tolerant species to manage unwanted weeds, rodents or plant diseases.

DPR - Department of Pesticide Regulations for the State of California's Environmental Protection Agency. DPR, in partnership with Federal Environmental Protection Agency (EPA) and County Department of Agriculture, oversees all issues regarding the registration, licensing and enforcement of laws and regulations pertaining to pesticides.

Environmental Stewardship - The strategic approach to pest management in which the IPM practitioners focus on preserving the natural integrity and health of the environment, including public safety, while recommending or applying pest management methods. Environmental Stewardship philosophy helps to create awareness of the Best Management Practices (BMPs) and their relationship to maintaining a healthy environment while conducting pest management activities.

Integrated Pest Management (IPM) – IPM is the strategic approach that focuses on long-term prevention of pests and their damage from reaching unacceptable levels by selecting and applying the most appropriate combination of available pest control methods. These include cultural, mechanical, biological and chemical technologies that are implemented for a given site and pest situation in ways that minimize economic, health and environmental risks.

Mechanical controls – The use of IPM control methods utilizing hand labor or equipment such as mowers, graders, weed-eaters, and chainsaws. Crack and crevice sealants and closing small entryways (i.e., around pipes and conduits) into buildings for insect and rodent management are also mechanical controls.

PCA – PCA or Pest Control Advisor is one licensed by the California Department of Pesticide Regulations according to Title 3, Article 5 of the California Code of Regulations. Only a licensed PCA, who is registered with the County Agricultural Commissioner may provide written pest control recommendations for agricultural pest management, including parks, cemeteries, golf courses, and rights-of-way.



Pesticides – Defined in Section 12753 of the California Food and Agricultural Code as any spray adjuvant, or any substance, or mixture of substances intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5 (of the Food and Agricultural Code), which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever. The term pesticide applies to herbicides, insecticides, fungicides, rodenticides and other substances used to control pests. Antimicrobial agents are not included in this definition of pesticides

QAL - Qualified Applicators License is a licensed applicator according to Title 3, Article 3 of the California Code of Regulations. This license allows supervision of applications that may include residential, industrial, institutional, landscape, or rights-of-way sites.

QAC - Qualified Applicators Certificate is a certified applicator of pesticides according to Title 3, Article 3 of the California Code of Regulations. Applications may include residential, industrial, institutional, landscape, rights-of-way sites.

Structural Pest Control Operator (Branch I, II or III) – A licensed applicator for pest control within buildings and homes according to the requirements of the Structural Pest Control Board of the California Department of Consumer Affairs.

## **Subd. 2. Integrated Pest Management (IPM) Policy**

The City of Sunnyvale, including all departments and staff herein, and contractors providing pest control services on City property shall follow the City's IPM policy for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.

### **A. Pest Control Advisor (PCA)**

Licensed PCAs will consider the options or alternatives listed below in the following order, before recommending the use of or applying any pesticide on City property:

- (1) No controls (e.g., tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds)
- (2) Physical or mechanical controls (e.g., hand labor, mowing, etc.)
- (3) Cultural controls (e.g., mulching, disking, alternative vegetation)
- (4) Biological controls (e.g., natural enemies or predators, goats)
- (5) Reduced-risk chemical controls (e.g., soaps or oils)

### **B. Pesticide Applicator (QAL, QAC, or Structural Pest Control Operator)**

- (1) Those licensed or certified City staff and contractors employed by the City to control or manage pests will follow the IPM Best Management Practices and Standard Operating Procedures found in the City of Sunnyvale Urban Runoff Management Plan (URMP) Pest Management Control Program chapter.
- (2) Pesticide Applicators will use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health.

**C. All City Staff and Departments**

- (1) City departments and staff will promote non-toxic and reduced-risk alternatives for structural and landscape pest control, seeking to use the most up to date IPM technologies and best management practices.
- (2) The City will provide education for all City staff regarding IPM practices. The Public Works Department/Environmental Division will also provide information to residents and special districts within the City regarding the IPM Policy and how it is being implemented. The City, through Public Works Department/Environmental Division activities, will establish a role model approach to encourage the use of IPM techniques for structural and landscaping pest management practices with residents, businesses, and special districts.

**D. Pest Management Contractors Employed by the City**

New contracts that are negotiated with pest management contractors doing work on City-owned property after January 9, 2003 will include requirements that the contractors follow the practices of the City's IPM Policy as described in the Sunnyvale Administrative Policy Manual and the Best Management Practices and Standard Operating Procedures of the Sunnyvale Urban Runoff Management Plan, Pest Management Control Program chapter.

**E. City Property Leaseholders**

- (1) The City shall use reasonable efforts to require the use of IPM practices as a part of new and renewed leases negotiated for City property after January 9, 2003.
- (2) City property leaseholders will be informed of the City's IPM Policy by Public Works Department staff and encouraged to use, whenever practical, the IPM Best Management Practices and Standard Operating Procedures described in the Sunnyvale Urban Runoff Management Plan.

**Subd. 3. Pesticide Application**

**A. Who May Apply Pesticides**

- (1) Only City employees or pest control contractors employed by the City who are authorized and trained to recommend or apply pesticides (i.e., hold PCA, QAL, QAC, or Structural Branch Operator I, II, or III certifications or licenses) may apply any pesticides to City property.
- (2) City employees who are not authorized and trained in pesticide application are prohibited from using any pesticides, including over-the-counter brands, in or around the work place. If insects or other pests are infesting a work area, contact Facilities Management (x7761) to arrange for a pest management contractor to apply the appropriate control methods.

B. Pesticides of Concern

- (1) City employees and/or contractors employed by the City who are trained to recommend or apply pesticides will not use organophosphate pesticides (e.g., those containing Diazinon and chlorpyrifos) or copper-based pesticides unless:
  - (a) Their use can be justified,
  - (b) Other approaches and techniques have been considered, and;
  - (c) Adverse water-quality impacts are eliminated.
- 2) Pesticides that contain Clopyralid are of concern because they are persistent and must not enter the green waste recycling/composting process. Therefore, City employees or pest control contractors employed by the City will not apply Clopyralid-containing pesticides to City property unless:
  - (a) Their use can be justified,
  - (b) Other approaches and techniques have been considered, and;
  - (c) Green waste (grass clippings, etc.) from areas where Clopyralid-containing pesticides are to be applied will not be collected for composting, but will be left on site to promote a healthy thatch layer.

C. Water Quality Management

- (1) When recommending pesticides for use or applying pesticides, the element of Environmental Stewardship must always be taken into consideration. City employees or pest control contractors employed by the City will select and apply IPM methods that will have the least impact on water quality and the environment.
- (2) City employees or pest control contractors employed by the City will always avoid applications of pesticides that directly contact water, unless the pesticide is registered under Federal and California law for aquatic use. Pesticides that are not approved for aquatic use will not be applied to areas immediately adjacent to water bodies where through drift, drainage, or erosion, there is a possibility of a pesticide being transported into surface water.

- (3) Discharges of pollutants from the use of aquatic pesticides to the waters of the United States require coverage under a NPDES permit. Those city employees or pest control contractors employed by the City who apply pesticides directly to waters of the United States will obtain a NPDES permit from the California State Water Quality Resources Control Board Region 2, prior to making any pesticide applications.

**Subd. 4. Employee and Pest Control Contractor Training for PCA, QAL, QAC or Structural Pest Control Operators (Branch I, II, and III)**

- A. All Pest Control Advisors and Applicators employed by the City or its pest control contractors will be licensed by the State of California Department of Pesticide Regulations (DPR) as a Pest Control Advisor or licensed Qualified Applicator.
- B. All other employees involved with pesticide applications as a normal part of their job duties and pest control contractors hired by the City will be trained as required by State of California DPR rules, the County Agricultural Commissioner, and/or the Structural Pest Control Board. They will work directly under the supervision of a licensed applicator.
- C. All City Departments that use pesticides on City property will provide annual training to all employees who apply pesticides as a normal part of their job duties on:
  - Pesticide Safety,
  - The City's IPM Policy, and
  - Appropriate BMPs and SOPs from the Sunnyvale Urban Runoff Management Plan, Pest Management Control Program chapter.

**Subd. 5. Education and Outreach on the Sunnyvale IPM Policy and Implementation Plan**

- A. The Public Works Department/Environmental Division, in participation with the Santa Clara Valley Urban Runoff Pollution Prevention Program, will continue with its existing program to encourage people who live, work, and/or attend school in Sunnyvale to:
  - (1) Obtain information on IPM techniques to control pests and minimize pesticide use;
  - (2) Use IPM technologies for dealing with pest problems; and
  - (3) Properly dispose of unused pesticides and their containers.
- B. The Public Works Department/Environmental Division will expand its current public outreach program on the topics described above to include:
  - (1) City employees who are not authorized to apply pesticides as a part of their normal job duties.
  - (2) Selected business owners (i.e. landscape gardeners and commercial pesticide applicators).

- (3) Special Districts that occur within the Sunnyvale city limits.
- (4) School District staff that may be involved with pest management.

**Subd. 6. Reporting**

- A. To provide details on the previous year's pesticide use on City-owned property, each City department and pest control contractor employed by the City will submit copies of their State of California Monthly Summary Pesticide Use Report (Form PR-ENF-060) to the Environmental Division Manager of the Public Works Department in January of each calendar year. This information is reported as a part of the City's NPDES Stormwater Permit Annual Report compiled by the Public Works Department/ Environmental Division.
- B. Each City department that applies pesticides will conduct an annual inventory by December of each calendar year to identify pesticides that are no longer legal or appropriate for applications per Federal, State, County, or City requirements. Results of the inventory will be reported to the Environmental Division Manager of the Public Works Department in January of each calendar year for the previous year's inventory. This information is reported as a part of the City's NPDES Stormwater Permit Annual Report compiled by the Public Works Department/ Environmental Division.
- C. Each City department that applies pesticides will conduct an annual review and evaluation process of the effectiveness of the City's IPM Policy, BMPs and SOPs. They will provide a written evaluation to the Environmental Division Manager of the Public Works Department in July of each year that discusses:
  - (1) New IPM techniques that could be used to improve results
  - (2) Staff training needs with a focus on the safe use, disposal, and storage of pesticides
  - (3) Suggested modifications to the City's IPM Policy, BMPs, and SOPs to ensure that the Policy and implementation plan continue to be effective.

**Section 3. Roles and Responsibilities**

It is the responsibility of all City departments, staff and contractors to adhere to the Integrated Pest Management Policy.

**All City Departments that use pesticides**

- Submit monthly summary pesticide use reports to the Environmental Division Manager.
- Conduct annual inventory of pesticides and report to Environmental Division Manager.
- Conduct annual review of the effectiveness of the City IPM and report results to Environmental Division Manager.

#### Public Works Department/Environmental Division

- Provides information to residents and special districts regarding the IPM and encourage the use of IPM techniques for structural and landscaping pest management practices.
- Encourages the use of IPM practices by City property leaseholders.
- Works with the Santa Clara Valley Urban Runoff Pollution Prevention Program to disseminate information about IPM techniques

#### Environmental Division Manager

- Receive monthly summary pesticide use reports from City departments and contractors
- Receive results of annual inventory and review of pesticides and processes from the city departments
- Compiles NPDES Stormwater Permit Annual Report

#### Facilities Management

- Arranges for pest management contractors in response to reports of insect or pest infestations.
- Provide information to the Environmental Division on the details (types and quantities) of pesticides used on City property by the contractors they hire.

**EXHIBIT E**

**SANTA CLARA COUNTY FIRE PREVENTION OPERATIONAL PROCEDURE  
(CALIFORNIA DIVISION OF FORESTRY MEMORANDUM OF UNDERSTANDING)**

# Santa Clara County Fire Prevention Operational Procedure

When Using Internal Combustion Engine  
And Other Equipment  
Which May Cause Flame or Sparks in  
Dry Grass, Brush or Forest  
Covered Areas of the County

In Cooperation With  
The California Department of Forestry  
And Fire Protection  
Santa Clara Unit

May 14, 2001



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# 1. Procedural Objective

It is the objective of the County of Santa Clara to be in compliance with all codes, regulations, and ordinances pertaining to fire prevention standards.

This document serves as a procedural guideline for ALL Santa Clara County Departments, performing operations INVOLVING COMBUSTIBLE ENGINE EQUIPMENT OR EQUIPMENT WHICH CAUSES SPARKS OR FLAMES within the grass, brush or forest covered areas of the Santa Clara County.

All Departments are encouraged to complete as many projects in the grass, brush or forest covered areas of the County prior to the curing of flammable vegetation whenever practical.

## 2. Fire Season Defined

- (a) It is the intent of this policy to implement the most cautious measures during "Fire Season".
- (b) For purpose of this document, Fire Season is defined as
  - (II) May 1 through November 30 of any calendar year, or
  - (III) anytime weather monitoring indicates that relative humidity is less than 30%.

This policy will be implemented fully during May 1 through November 30 irrespective of weather monitoring results, and will be extended into other days and months of the year anytime relative humidity is less than 30%.

- (c) In non-fire season, wind speed above 10 MPH will in itself not stop operations. In fire season, sustained wind speed above 10 MPH will stop operations

### **3. Operational Procedures and Required Equipment**

**DURING FIRE SEASON, OPERATIONS** Involving use of combustible engines or equipment which produce flames or sparks which will be CONDUCTED WITHIN OR ADJACENT TO NON-IRRIGATED GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING RULES:

(a) Prior to commencement of operations:

(II) Staff will secure the current fire conditions from Santa Clara County Communications at (408) 299-2507.

No OPERATIONS shall occur within 24 hours of a predicted Red Flag day AS DETERMINED BY the National Weather Service.

(III) Staff will assess current weather conditions at the planned site of operation every two hours:

In the event one of the following readings are noted, Operations shall not begin, or will cease IMMEDIATELY!

THE RELATIVE HUMIDITY IS AT OR BELOW 30%

SUSTAINED WIND SPEEDS REACH 10MPH

(IV) If ambient temperature reaches 80 degrees Fahrenheit at any time during the operation, weather samples must be taken hourly.

(b) Required Equipment

During Fire Season, THE FOLLOWING EQUIPMENT MUST BE IMMEDIATELY AVAILABLE AT the Actual JOB SITE:

(II) 1 serviceable round point shovel with an overall length of not less than 46 inches

(III) 1 (5 gallon) water backpack pump fire extinguisher

(IV) Weather Sampling Device

**(IV) Non-Divertible Truck mounted water pump Required**

In addition to a backpack water pump, shovel, and weather-sampling device, **all high-risk activities must have a non-divertible water pump equipped pick-truck** assigned to the operation. A trained observer that is familiar with the operation, the fire apparatus, the vehicle radio, and the location of the operation must staff the truck. The observer must remain in the immediate area of the truck; and the truck must remain in the immediate area of the activity being monitored.

**High Risk Activities include:**

Flailing, Disking, Operating Brush Hog Equipment and Grading in heavy brush areas with less than 10' of clearance and other like activities.

**(V) Non-Divertible Truck mounted water pump Not Required**

**Low to Moderate risk activities do not require a non-divertible water pump equipped pick-truck.** However, a shovel, 5-gallon backpack water pump and weather-sampling device must still be immediately available at the actual job site.

**Low to Moderate Risk Activities include:**

Weed-whacking, Torch Cutting, Spot Welding, High Wheel Mowing, Generators, Mowing light grass immediately adjacent to irrigated lawns where natural fire breaks like roads, creeks or paved paths are present.

**(VI) Exempted Activities**

**It is not required to check weather conditions or suspend operations on red flag days when performing any type of work in or around well-irrigated green lawns or while using a leaf blower. However, shovels and backpack fire pumpers shall be near-by as a precautionary measure.**

**DURING NON- FIRE SEASON, OPERATIONS CONDUCTED WITHIN OR ADJACENT TO GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING RULES:**

**(a) Prior to commencement of operations:**

**(II) Weather Samples will be taken at the job site**

**If relative humidity is more than 30% operations can proceed without further weather monitoring or other fire fighting devices.**

**If original relative humidity reading is less than 30% the preceding operational rules for fire season will be followed.**

## **4. Equipment Inspection and Record Keeping**

- (a) Prior to May 1<sup>st</sup> of each calendar year, Santa Clara County will inspect all combustible engine equipment that is intended for use by the County in or adjacent to any grass, brush or forested areas within Santa Clara County. Inspected equipment must meet the requirements of section 4442 of the Public Resource Code. Equipment that has not been inspected shall not be used.**

*Section 4442 of the Public Resource Code requires that any type of equipment that is powered by an internal combustion engine must be equipped with an approved spark arrestor. This does not include most motor vehicles if, they are equipped with an approved muffler system, routed properly, as described in the Motor Vehicle Code.*

- (b) Hired or contracted private equipment must meet the requirements of this plan. Inspection of hired equipment is the responsibility of the County.**
- (c) Santa Clara County will maintain maintenance and inspection records for equipment related to this plan and make them available for inspection.**

## 5. Applicable Laws and Regulations:

### CALIFORNIA HEALTH AND SAFETY CODE REFERENCE SECTIONS:

#### 13001. Causing Fire

Every person is guilty of a misdemeanor who, through careless or negligent action, throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where it may directly or indirectly start a fire, or who uses or operates a welding torch, tar pot or any other device which may cause a fire, who does not clear the inflammable material surrounding the operation or take such other reasonable precautions necessary to insure against the starting and spreading of fire.

#### 13005. Use of Hydrocarbon Burning Engine Without Exhaust Spark Arrester

Every person is guilty of a misdemeanor who:

(a) Sells, offers for sale, leases, or rents to any person any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels, if either:

(1) It is specifically designed for use in harvesting or moving grain or hay or for use on land covered with any other flammable agricultural crop, unless the exhaust system of the engine is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(2) It is not specifically designed for any of the uses described in paragraph (1) but could be used for any of those uses, unless the person provides written notice to the purchaser or bailee at the time of sale or at the time of entering into the lease or rental contract stating that the use or operation of the engine on any flammable agricultural cropland is a violation of subdivision (b), unless the exhaust system is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(b) Operates or causes to be operated any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels in harvesting or moving grain or hay, or on land covered with any other flammable agricultural crop, unless the engine is equipped with a spark arrester maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

*Spark arrester, as used in this section, is as defined in Section 4442 of the Public Resources Code. Spark arresters attached to the exhaust system of engines on equipment or vehicles, as described in this section, shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material. Motortrucks, truck tractors, buses, and passenger vehicles except motorcycles, are not subject to the provisions of paragraph (2) of subdivision (a) if the exhaust system is equipped with a muffler as defined in the Vehicle Code.*

13007. Any person who personally or through another willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.

## **CALIFORNIA PUBLIC RESOURCE CODE REFERENCES SECTIONS:**

**4427.** During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate any motor, engine, boiler, stationary equipment, welding equipment, cutting torches, tarpots, or grinding devices from which a spark, fire, or flame may originate, which is located on or near any forest-covered land, brush-covered land, or grass-covered land, without doing both of the following:

- (a) First clearing away all flammable material, including snags, from the area around such operation for a distance of 10 feet.
- (b) Maintain one serviceable round point shovel with an overall length of not less than forty-six (46) inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation.

Section 4427 (b) of the Public Resource Code also requires these tools to be carried on each piece of equipment and that they be kept in a serviceable condition.

**4442.** (a) Except as otherwise provided in this section, no person shall use, operate, or allow to be used or operated, any internal combustion engine which uses hydrocarbon fuels on any forest-covered land, brush-covered land, or grass-covered land unless the engine is equipped with a spark arrester, as defined in subdivision (c), maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to

**4443.** (b) Spark arresters affixed to the exhaust system of engines or vehicles subject to this section shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

(c) A spark arrester is a device constructed of non-flammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that uses hydrocarbon fuels or which is qualified and rated by the United States Forest Service.

(d) Engines used to provide motive power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(e) Turbocharged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbocharger is in effective mechanical condition.

## **6. CONTACT INFORMATION:**

### **County Communications – Control 12 Weather Conditions**

(408) 299-2507

### **California Department of Forestry and Fire Protection Morgan Hill Headquarters:**

(408) 779-2121

Ask for the ECC during regular business hours

### **ANY Fire Emergency:**

911

### **CDF / Santa Clara Fire Prevention Bureau:**

(408) 779-2121

## **Attachments:**

### **Sample Forms**

#### Attachment A

Weather Monitoring Sheet





AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_  
OPERATOR: \_\_\_\_\_ DATE: \_\_\_\_\_

PRIOR TO COMMENCEMENT OF AT RISK OPERATIONS INVOLVING EQUIPMENT IN DRY GRASS, BRUSH OR FOREST COVERED AREAS, STAFF WILL SECURE FIRE CONDITIONS FROM COUNTY COMMUNICATIONS (408) 299-2507.

NO OPERATIONS WILL OCCUR WITHIN 24 HOURS OF A PREDICTED RED FLAG DAY.



| TIME | HUMIDITY | WIND SPEED | TEMPERATURE | INITIALS | FIELD NOTES |
|------|----------|------------|-------------|----------|-------------|
| 600  |          |            |             |          |             |
| 700  |          |            |             |          |             |
| 800  |          |            |             |          |             |
| 900  |          |            |             |          |             |
| 1000 |          |            |             |          |             |
| 1100 |          |            |             |          |             |
| 1200 |          |            |             |          |             |
| 1300 |          |            |             |          |             |
| 1400 |          |            |             |          |             |
| 1500 |          |            |             |          |             |
| 1600 |          |            |             |          |             |
| 1700 |          |            |             |          |             |



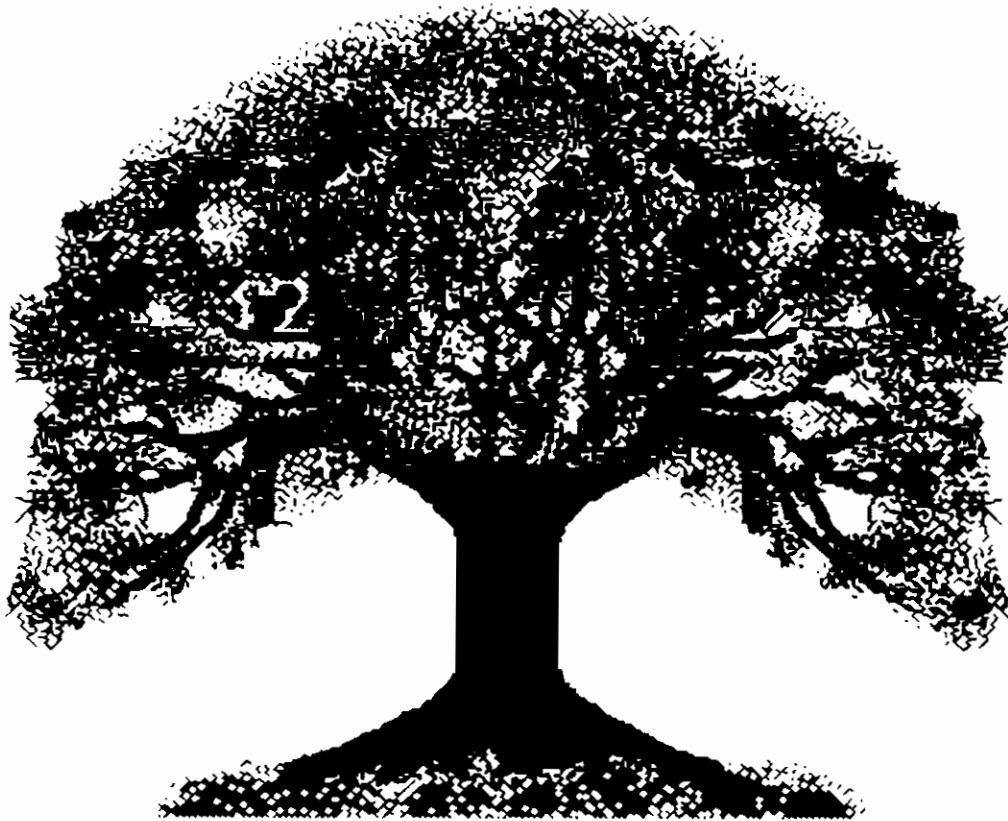
Prior to commencement of AT RISK OPERATIONS, weather samples will be recorded at the site. Additional weather samples will be recorded every **two hours** thereafter until completion of the operation. **If the ambient temperature reaches 80 degrees Fahrenheit at any time during the operation, weather samples must be taken and recorded hourly.**



## **EXHIBIT F**

### **CITY OPERATIONAL STANDARDS**

# SUNNYVALE PARKS QUALITY STANDARDS MANUAL



PARKS AND RECREATION  
DEPARTMENT



Rev. October 2002

Washington - Victory Village - Encinal - Braly - Arboretum - Columbia - De Anza - Greenwood Manor - John W. Christian Greenbelt - Las Palmas - Ortega - Serra - Community Center - School Districts' Athletic Fields and Facilities - San Antonio - Panama - Orchard Gardens - Murphy - Senor Center - Butcher's Corner - Raynor - Cannery - Fairwood - Civic Center Campus - Fair Oaks - Ponderosa - Washington

## **CREDITS**

This manual was first created by Parks Division staff in 1989 and subsequently revised in 2002. Below are the people who have been instrumental in the creation and revision of this document.

Robert A. Walker  
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Principal Office Assistant

Barbara Allen  
Staff Office Assistant

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## INTRODUCTION

Revised in 2002, this **QUALITY STANDARDS MANUAL** makes obvious the important connection between the budget and park operations. When the Parks Division budget structure was revised in the fall of 1995, special effort was taken to create **OUTCOME MEASURES for ATTRACTIVENESS and USABILITY** that relate to tangible park features. These same **ATTRACTIVE and USABILITY OUTCOMES** serve as the framework of this manual, thereby exposing each employee to, and facilitating their ability to comprehend the budget structure.

The **QUALITY STANDARDS** contained in the manual define the desired conditions of those same tangible park features and are a natural expansion of budgetary **OUTCOME MEASURES**. Broad division goals and objectives have thereby been translated into very simple, yet specific, outcome standards with which all employees can identify.

This manual also provides a framework for periodically inspecting the tangible features of each park site, and for evaluating their condition. Senior Parks Leaders and other staff that evaluate park areas will note that the following Quality Standards for park components have been simplified. That is, the inspection audits contain a series of "Yes" and "No" questions. For example, either turf color is "uniform and quite green despite occasional small (in proportion to overall size of lawn) spots of discoloration (yellowing/browning, etc.) noticeable from a distance", or it's not. Therefore, the Quality Standards have been placed in **BOLD** type for each component as staff perform regular inspections and evaluate conditions. The findings of these inspections are then reported and compared to planned levels of achievement as detailed in the budget.

The greatest benefit of this manual to park employees, however, has little to do with the budget structure. ***Clear expectations relative to the maintenance of those physical features for which they are held responsible provide staff with basic information and direction related to the provision of service levels expected by management and agreed upon by City Council.*** As management's expectations serve as the basis for evaluating employee performances as well, the information contained in this manual could be likened to a road map depicting some of the most direct routes to acceptable or above average performance audit ratings.

## ORNAMENTAL TURF

Ornamental turf refers to those lawn areas serving primarily as visual attractions. Because different types of grasses serve different functions, the methods we use to maintain them, the dollars allotted for their maintenance and the criteria we use to evaluate them are also different. On athletic fields, for example, usability is more important than attractiveness (for information on athletic fields see "Recreational Facilities"; for meadow grasses see "Ground Covers").

No other structure, fixture or landscape feature has a greater impact on the appearance of our park system than that of the ornamental turf. Indeed, the quality of it often overshadows all else. For many observers, it is the primary indicator of overall park quality. A well-managed lawn can effectively draw attention away from shortcomings in other areas, while impressions of even the best facility can be quickly ruined by poorly-managed turf.

In regard to attractiveness, the quality of turf in lawn areas shall be judged by a review of five factors - color, height, density, texture, and edging.

In regard to usability, the quality of turf in lawn areas shall be judged by a review of one factor – utility.

## ATTRACTIVE

### Color

There is no doubt that color is one of the most obvious and widely-used (if not the most valid) indicator of turf quality. So great is its influence that it can leave a lasting impression (good or bad) on those who may never do more than view the park from a passing automobile.

It is intended that only the color of existing turf will be evaluated. That is, a lack of color due to an inoperative sprinkler or chemically treated Kikuyu grass would affect the rating, but a lack of color due to non-existent turf (bare patches) would not. Such problems would be identified and rated under a separate category (e.g., density).

***Quality Standard: Overall color is uniform and quite green despite occasional small (in proportion to overall size of lawn) spots of discoloration (yellowing/browning, etc.) noticeable from a distance.***

### Height

The importance of uniform height to turf is easily demonstrated by the visual impact of a newly-mowed lawn next to one that has not been maintained for several days. Height also can affect the utility of the turf.

***Quality Standard: Turf is kept at a uniform height.***

## **Density**

The density of turf is as important as its height. A thick stand of turf provides a more functional surface for park users, a healthier, groomed appearance, and greater protection against texture variations (by allowing fewer weeds to germinate) than does a thin stand. It is intended that the overall density of designated lawn areas will be evaluated, not just that of existing grasses. That is, this is where the impact of bare spots is taken into account

***Quality Standard: Turf appears extremely dense from a distance. Closer inspection reveals that while it is quite dense, the soil surface can be identified without great difficulty.***

## **Texture**

The importance of uniform texture when judging the overall quality of a lawn is subtle but considerable. Often, for example, it is the different texture of weeds which makes them offensive to the eye in a stand of turf. Degrees of difference in texture account for the fact that broadleaf weeds are generally more noticeable, and hence more offensive, than grassy weeds.

***Quality Standard: Texture from a distance is quite consistent as characterized by lawns comprised solely of grass blades. Slight or patchy variations in grass blade texture may be evident. Close inspection may reveal occasional, broadleaf weeds.***

## **Edging**

The aesthetic qualities of turf are generally enhanced by clear, purposeful contrasts to surrounding differences in material, texture and color. This is achieved by clearly defining the borders of designated turf areas. The more obvious the border, the sharper the contrast. Allowing grasses to stray from their designated boundaries may impact not only the overall appearance of the turf, but the utility of surrounding park surfaces as well.

***Quality Standard: Designated turf boundaries are obvious and sharply defined throughout the park.***

# **USABLE**

## **Utility**

Park visitors use lawn areas for a variety of purposes, including such activities as picnicking, informal ball games, kite flying and passive recreation. While the five factors previously mentioned may influence the utility of a lawn, other constraints affect it as well. An uneven soil surface, for example, can make it more difficult or dangerous for users to jog or to play ball; a soggy or deeply-rutted lawn is of little use to picnickers.

***Quality Standard: Entire lawn area is capable of supporting all reasonable lawn activities. There are no areas unsuitable for use.***



## TREES

Sunnyvale maintains an urban forest throughout its park system because it recognizes the vital roles that trees play in landscape beautification. Trees provide us with various colors, shapes and textures – with natural grace and beauty. They camouflage unsightly scenes and break the monotony of man-made materials such as concrete and asphalt.

The City also realizes that trees contribute a great deal more than their natural beauty to the quality of our lives. They help to keep our air supply fresh by producing oxygen and absorbing the carbon dioxide we, our industries and automobiles produce. Their leaves trap and filter dust and pollen. Trees act as natural air conditioners, providing shade in the summer and insulation during winter months. Trees slow strong winds, function as effective sound barriers, afford us shade and privacy, and increase surrounding property values.

The large number of trees comprising our park systems forest makes it difficult to perform a detailed, time-consuming appraisal of each tree on a tri-annual basis. Indeed, a thorough evaluation would require that each tree be climbed and inspected by a qualified arborist—an unwarranted task requiring thousands of hours. While initial observations of specific trees may prompt such detailed evaluations on occasion, the routine inspection of each tree on a tri-annual basis shall be performed from ground level and in the following manner:

### ATTRACTIVE

***Quality Standard: Trees should display at least some semblance of the form common to the species. Some allowance shall be made for natural "character", but grossly misshapen trees will not pass muster.***

***Quality Standard: There should be no stubs, dead "flags" or other unsightly distractions.***

***Quality Standard: Stumps should not be visible. They should either be removed to at least twelve inches below ground (e.g., in open turf) or hidden by existing vegetation (e.g., planter beds).***

### USABLE

***Quality Standard: Trees planted for a specific reason (e.g., to serve as visual screens, noise barriers, or to provide summer shade) should serve the intended purpose.***

***Quality Standard: Tree limbs should not interfere with buildings, utility wires, etc.***

***Quality Standard: Limbs and/or foliage should not obstruct park signs. Tree roots should not interfere with the utility of surrounding facilities or fixtures.***

## GROUND COVERS AND SHRUBS

Ground covers vary widely in height, leaf color, texture and form. Although technically most any plant which covers the surface may be called ground cover, most plants within the park system designated as ground cover are low-growing evergreen plants which are encouraged to form a fairly dense mat.

A shrub can be generally defined as a woody perennial plant, often with many stems, which measure 8" or less. This is a useful working definition, but is rather arbitrary, as distinctions between ground covers and shrubs and between shrubs and trees can blur. Certain shrubs can be designated as ground cover while others can be trained as trees.

Both Ground Cover and Shrubs serve several landscape functions. Ground Cover is a relatively low maintenance portion of the landscape, which can help suppress weeds and aid in soil retention. Ground Cover/Shrubs may be planted to route traffic or camouflage unsightly objects (vacuum breakers, poles, etc.) They also provide visual interest and contrast to expanses of turf areas by varying heights, shapes, and seasonal color.

### ATTRACTIVE

***Quality Standard: There are no inappropriate bare areas in ground cover areas. One may see bare ground in a close view, but the planting presents an overall dense appearance.***

***Quality Standard: Flowering G.C./Shrubs display good distribution of flowers (in appropriate season) across entire planting.***

***Quality Standard: No evidence of pests or debris from normal viewing distances. Close inspection reveals minor signs of pests/disease.***

### USABLE

***Quality Standard: Plants conform to height consistent with species and intended function.***

## **ORNAMENTAL WATER FEATURES**

Ornamental water features provide accent to parks areas and public facilities. The fountains and ponds at the Sunnyvale Community Center play a major role in visitor satisfaction and usability. Similarly, park water features such as the Serra Park stream, Las Palmas and Braly Park ponds provide soothing sounds and visual relief for City dwellers. While all parks do not have ornamental water features, it is essential that the Parks Division maintains these features in accordance with the following standards.

### **ATTRACTIVE**

*Quality Standard: are free of floating objects and algae.*

*Quality Standard: appropriate water color is maintained.*

*Quality Standard: appropriate water level is maintained.*

### **USABLE**

*Rating Criteria : fountains should be functional*

*Quality Standard: pond lights should be functional (if applicable).*

## TURF ATHLETIC FIELDS

No other structure, fixture or landscape feature has a greater impact on the appearance of our park system than that of the ornamental turf. Indeed, the quality of it often overshadows all else. For many observers, it is the primary indicator of overall park quality. A well-managed lawn can effectively draw attention away from shortcomings in other areas, while impressions of even the best facility can be quickly ruined by poorly-managed turf.

### ATTRACTIVE

#### Color

There is no doubt that color is one of the most obvious and widely-used (if not the most valid) indicator of turf quality. So great is its influence that it can leave a lasting impression (good or bad) on those who may never do more than view the park from a passing automobile.

It is intended that only the color of existing turf will be evaluated. That is, a lack of color due to an inoperative sprinkler or chemically treated Kikuyu grass would affect the rating, but a lack of color due to non-existent turf (bare patches) would not. Such problems would be identified and rated under a separate category (e.g., density).

***Quality Standard: Overall color is uniform and quite green despite occasional small (in proportion to overall size of lawn) spots of discoloration (yellowing/browning, etc.) noticeable from a distance.***

#### Height

The importance of uniform height to turf is easily demonstrated by the visual impact of a newly-mowed lawn next to one that has not been maintained for several days. Height also can affect the utility of the turf.

***Quality Standard: Turf is kept at a uniform height.***

#### Density

The density of turf is as important as its height. A thick stand of turf provides a more functional surface for park users, a healthier, groomed appearance, and greater protection against texture variations (by allowing fewer weeds to germinate) than does a thin stand. It is intended that the overall density of designated lawn areas will be evaluated, not just that of existing grasses. That is, this is where the impact of bare spots is taken into account

***Quality Standard: Turf appears extremely dense from a distance. Closer inspection reveals that while it is quite dense, the soil surface can be identified without great difficulty.***

## **Edging**

The aesthetic qualities of turf are generally enhanced by clear, purposeful contrasts to surrounding differences in material, texture and color. This is achieved by clearly defining the borders of designated turf areas. The more obvious the border, the sharper the contrast. Allowing grasses to stray from their designated boundaries may impact not only the overall appearance of the turf, but the utility of surrounding park surfaces as well. Edges designed to flow or be more subtle in nature should be identified prior to the audit.

***Quality Standard: Designated turf boundaries are obvious and clearly defined throughout the park.***

## **USABLE**

### **Utility**

Park visitors use lawn areas for a variety of purposes, including such activities as picnicking, informal ball games, kite flying and passive recreation. While the five factors previously mentioned may influence the utility of a lawn, other constraints affect it as well. An uneven soil surface, for example, can make it more difficult or dangerous for users to jog or to play ball; a soggy or deeply-rutted lawn is of little use to picnickers.

***Quality Standard: Entire lawn area is functional (capable of supporting all reasonable lawn activities).***

## **BALL FIELDS (INFIELDS)**

Turf areas of sports fields are maintained in accordance with the Quality Standards in section II. of this manual. However, the condition of the ball field infields is integral to use of the sport fields for hundred of park visitors of all ages. The following Quality Standards apply specifically to the softball, pony colt and little league ball fields throughout the neighborhood park system.

### **ATTRACTIVE**

*Quality Standard: areas are free of litter and debris.*

*Quality Standard: areas are free of weeds.*

*Quality Standard: bleachers and backstops are properly painted/sealed where appropriate.*

### **USABLE**

*Quality Standard: areas are reasonably level, free of holes, depressions, rocks and debris.*

*Quality Standard: areas have clearly defined boundaries.*

*Quality Standard: areas are free of compaction.*

*Quality Standard: areas are free of excess water.*

*Quality Standard: lights are functional.*

## **TENNIS AND BASKETBALL COURTS**

Tennis and basketball courts are maintained through combined operational and capital efforts. Court surfaces are sealed and striped periodically and staff provides the all important task of litter removal, net repair/replacement and court washing on a routine basis. The following Quality Standards assist staff in meeting the City Council established Outcomes for these facilities.

### **ATTRACTIVE**

*Quality Standard: areas are free of litter and debris.*

*Quality Standard: areas are free of vandalism and graffiti.*

*Quality Standard: Surfaces are painted where applicable.*

### **USABLE**

*Quality Standard: areas are smooth without large cracks.*

*Quality Standard: have clearly visible and well-defined lines.*

*Quality Standard: nets, rims and backboards are set at the proper height and/or tension.*

*Quality Standard: areas are clean.*

*Quality Standard: lights are functional.*

## **PAR COURSES**

Par (exercise) courses are located at many Park/School sites and serve the needs of local neighbors and students as well. These par courses consist of walking/jogging tracks with occasional simple exercise stations, including signage to instruct participants of the most beneficial exercise program for that particular station.

### **ATTRACTIVE**

*Quality Standard: are free of litter and debris.*

*Quality Standard: are free of vandalism and graffiti.*

*Quality Standard: surfaces are painted where applicable.*

### **USABLE**

*Rating Criteria : are in good repair.*

*Quality Standard: are clean.*

*Quality Standard: functional according to their intended purpose.*



## **PLAYGROUNDS**

The relatively high standards by which we judge the quality of our playgrounds is a reflection of their importance in several respects. First, they are depended on by both children and guardians on a regular basis. It should be kept in mind that while one inoperative piece of play equipment may seem to you a minor problem when compared to your total park responsibilities, to any number of children it may be a catastrophic loss as their scope of concern is extremely narrow and tends to focus on immediate gratification.

Second, related safety issues become paramount when one considers that while children are among our most precious natural resources, they cannot be expected to search for or to recognize many threats to their own well-being. For this, they are largely dependent on you.

The quality of playgrounds and tot lots (defined below) shall be judged on the basis of their safety, utility, and attractiveness, with the following description serving as the general quality standard:

Designated playgrounds and tot lots shall be maintained to be safe and attractive, and to provide school-age children with a variety of skill and sensory activity opportunities, such that the qualities of safety, aesthetics, and utility are in superior condition throughout the year.

### **DEFINITIONS**

#### **Tot Lots**

Designed with very young children in mind. Base material is generally washed plaster sand, which serves as the primary medium for tot activity. There are few, if any, fixtures or structures, and those that do exist present rounded edges and limited moving parts (save for guardian-supervised activities such as tot swings).

#### **Playgrounds**

Designed with older children in mind. Base material is generally a soft decorative bark capable of withstanding heavy foot traffic and cushioning minor falls. Fixtures/structures are planned to stimulate children's imagination and to provide a variety of skill and sensory experiences.

#### **Safety**

Safety is by far the most important standard by which we evaluate the quality of our playgrounds. It is expected that safety will always be the Parks Worker's highest priority, and that he/she will pay close and special attention to areas frequented by children.

Informal (unscheduled) safety inspections of playground areas should be performed often by the Parks Worker, and hazards identified should be eliminated immediately (within 48 hours). Equipment which cannot be repaired immediately should be removed from service whenever possible, thus rendering them safe. **Please note that all safety hazards must be communicated to the main Park's Office (730-7506) and documented on the Hazard/Vandalism Log Sheet as well.**

The following list of quality standards should be used as a general guide during playground safety inspections. They are meant to serve as basic foundations on which to build - they are not substitutes for close scrutiny or common sense.

## **ATTRACTIVE**

Beauty, as the saying goes, is in the eye of the beholder. Thus, this particular rating of playground equipment requires a certain amount of subjectivity. The intent, however, is not to judge the appeal of a structure's design, or the choice of color for a particular piece of equipment; rather, the intent is to judge the appearance of each piece of play equipment as compared to its original appearance (e.g., Is the paint peeling? Does it appear to be in "very used" or "like new" condition?).

Playgrounds, and activity centers in particular, will never be fully functional if they are not attractive to those intended to use them. In general, children prefer new things to old, shiny objects instead of dull, and bright colors as compared to faded. Playground apparatus should be maintained and rated with this in mind.

***Quality Standard: are free of litter and debris.***

***Quality Standard: are free of vandalism and graffiti.***

***Quality Standard: surfaces are bright and colorful.***

## **USABLE**

Playground utility refers to the ability of individual pieces of equipment to perform their intended function.

***Rating Criteria : apparatus serve their intended purpose.***

***Quality Standard: surfaces are clean.***

***Quality Standard: surface material is adequate.***

## **PICNIC SITES**

Neighborhood parks attract thousands of picnickers each year. Companies and residents use these facilities extensively in the warm season. It is essential that staff prepare picnic sites for this intense use and hold to the Quality Standards noted below so the picnic users experience will be positive and memorable.

### **ATTRACTIVE**

*Quality Standard: are free of litter and debris.*

*Quality Standard: are free of vandalism and graffiti.*

*Quality Standard: surfaces are painted where applicable.*

### **USABLE**

*Quality Standard: are functional according to their intended purpose.*

*Quality Standard: are clean.*

## **MULTI-PURPOSE BUILDINGS**

Parks buildings are used for a variety of functions and purposes, hence the common reference; multi-purpose buildings. Park staff's responsibilities, in terms of buildings, are primarily limited to those of custodial nature. While staff do monitor general building conditions and report obvious problems to the Facilities Management Division. Facilities Management has responsibility to inspect and maintain the structural integrity of all buildings. This includes responsibility not only for such problems as leaking roofs and termite damage but for preventative maintenance designed to prolong the structural integrity of the building (e.g., painting)\* The quality standards listed below, speak to the custodial responsibilities of Park staff. For more information regarding other areas of responsibility, contact the Facilities Management Division.

\* In addition, various user groups are expected to provide for and maintain special building features provided primarily or exclusively for their use.

### **ATTRACTIVE**

*Quality Standard: are free of litter and debris.*

*Quality Standard: are free of vandalism and graffiti.*

### **USABLE**

*Quality Standard: are functional according to their intended purpose.*

*Quality Standard: are free of litter, debris and clean*

## **OTHER RECREATIONAL FACILITIES**

Other Recreational Facilities include the bowling green, handball, horseshoe, shuffleboard and volleyball courts. Many of these facilities may go unused several days per week or during off-season months. These facilities have proven valuable to park visitors over past decades. User groups tend to be tightly focused on their particular activity. Therefore, staff should take the time to learn about the games/sports that are played in these facilities and maintain them in accordance with the following Quality Standards.

### **ATTRACTIVE**

*Quality Standard: are free of litter and debris.*

*Quality Standard: are free of vandalism and graffiti.*

### **USABLE**

*Quality Standard: are functional according to their intended purpose.*

*Quality Standard: are free of litter, debris and clean*

## **RESTROOMS**

While ornamental turf areas are key to the public's general perception of park conditions, the condition of Park restrooms can destroy even the most positive opinions of park conditions. Properly or poorly maintained restrooms are both noted by park visitors. Many visitors use the restroom condition as their criteria for which park to visit. Few tasks provide staff an opportunity (when properly done) to make such a positive impact on the perception of Sunnyvale's parks. The restroom Quality Standards are as follows:

### **ATTRACTIVE**

*Quality Standard: toilets, urinals, sinks and partitions are clean.*

*Quality Standard: toilets, urinals, sinks and partitions are free of graffiti.*

*Quality Standard: are odor free.*

### **USABLE**

*Quality Standard: are clean.*

*Quality Standard: are odor free.*

*Quality Standard: are functional.*

## **HARDSCAPES**

Park hardscapes facilitate many activities throughout the parks system. Movement from one park activity center (building, sports field, etc.) to another is just one purpose of hardscapes. Other important uses include parties on patios near buildings and leisure strolls. And, no other portion of the parks systems holds as great a potential for visitor injury. It is critical that staff familiarize themselves with, and provide support actions for the following hardscape Quality Standards.

### **ATTRACTIVE**

***Quality Standard: are free of weeds, graffiti and debris.***

### **USABLE**

***Quality Standard: Are free of obstructing debris.***

***Quality Standard: Displaced hardscapes should not have unintended differentials greater than one-half inch in height.***

***Quality Standard: Hardscapes should be free of severe cracking and/or unintended separations greater than one-half inch wide.***

## STRUCTURES AND FIXTURES

Our ability to accurately assess the quality of our maintenance efforts is dependent on comprehensive inventories of those items entrusted to our care. "Structures and Fixtures" groups together a large number of physical park features not addressed by more specific objectives, including everything from waste containers to flag poles. Therefore, while a list of items covered by this objective will be generated for every park, each will be unique and site-specific.

Each item shall be observed and judged relative to its ability to meet all the quality standards listed on the following checklist. An item which does not meet all the listed criteria is counted as such, whether it fails to meet just one or all of the quality standards listed.

NOTE: All hazardous conditions and/or acts of vandalism shall also be reported as soon as possible to the Main Parks Office (730-7506).

Backflow prevention devices, backstops (portable), benches, bike racks, bleachers, bollards, cigarette butt cans, drinking fountains, dumpsters and their enclosures, fences and gates, flagpoles, light standards and fixtures, pay phones, planter boxes, raised beds, container plants, signage, statues, sculptures, art work, trellises, arbors, utility boxes, and waste containers should be:

### ATTRACTIVE

***Quality Standard: clean and free of debris.***

***Quality Standard: free of vandalism and graffiti.***

***Quality Standard: clean and free of debris.***

***Quality Standard: painted/sealed where applicable.***

### USABLE

***Quality Standard: secure and stable.***

***Quality Standard: have visible signage.***

***Quality Standard: functional according to their intended purpose.***



EXHIBIT G

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

County of Santa Clara  
Parks and Recreation Department  
298 Garden Hill Drive  
Los Gatos, CA 95032  
Attention: Real Estate Services

**CONFIRMED COPY:** This document has  
not been compared with the original.  
SANTA CLARA COUNTY CLERK-RECORDER

Doc#: 20661694  
3/30/2010 3:38 PM

Record without fee under Section 6103 California Government Code

MEMORANDUM OF LEASE

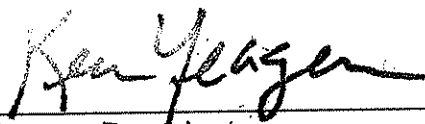
This Memorandum of Lease ("**Memorandum**") is made as of MAR 02 2010, 2010  
by and between the County of Santa Clara ("**Landlord**") and City of Sunnyvale, a  
municipal corporation of the State of California ("**Tenant**").


1. For good and valuable consideration, receipt of which is hereby acknowledged, Landlord hereby leases to Tenant and Tenant hires from Landlord certain improved real property described on Exhibit 1 hereto ("**Premises**"). The terms and conditions of this lease are more particularly set forth in an unrecorded Lease (the "**Lease**") between Landlord and Tenant dated as of MAR 02 2010, which is hereby incorporated herein by this reference.
2. The primary term of the Lease ("**Lease Term**") is twenty five years, commencing on the date fully executed by the parties.
3. Lessee has the option, subject to the terms and conditions of the Lease, to extend the Lease Term for one additional period of ten (10) years.
4. This Memorandum has been executed, acknowledged and recorded solely for the purpose of providing constructive notice of the Lease. If any inconsistency or conflict exists between the provisions of this Memorandum and the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum as of the day and year first written above.

COUNTY OF SANTA CLARA

CITY OF SUNNYVALE

  
Ken Yeager, President  
Board of Supervisors

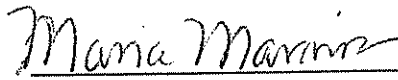
  
Gary M. Luebbers  
City Manager

Date: MAR 02 2010

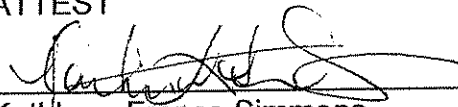
Date: 3-17-10

Signed and certified that a copy of this document has been delivered by electronic or other means to the Chair, Board of Supervisors

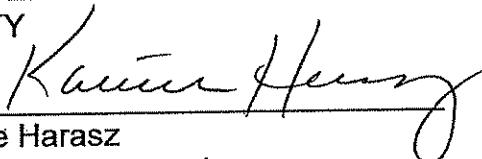
ATTEST

  
Maria Marinos, Clerk  
Board of Supervisors

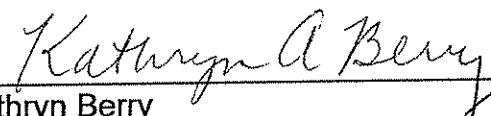
ATTEST

  
Kathleen Franco Simmons  
City Clerk

APPROVED AS TO FORM AND  
LEGALITY

  
Katherine Harasz  
Deputy County Counsel

APPROVED AS TO FORM

  
Kathryn Berry  
Senior Assistant City Attorney

[SIGNATURES MUST BE ACKNOWLEDGED]

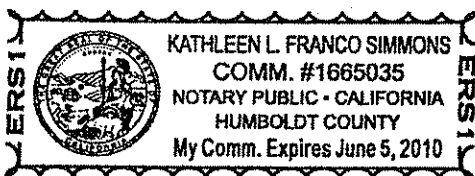
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On March 18, 2010 before me, Kathleen L. Franco Simmons, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Gary M. Luebbers  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Form of Memorandum of Lease

Document Date: March 2, 2010 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Gary M. Luebbers

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☒ Other: City Manager

Signer Is Representing: \_\_\_\_\_

City of Sunnyvale

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Santa Clara

On 3.4.10 before me, Melissa G. Miller, Notary Public  
(Here insert name and title of the officer)

personally appeared Maria Marinos

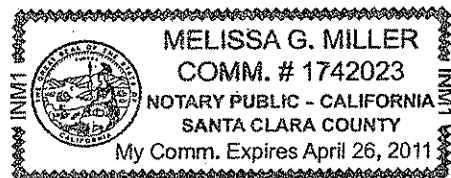
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Melissa G. Miller

Signature of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_


=====

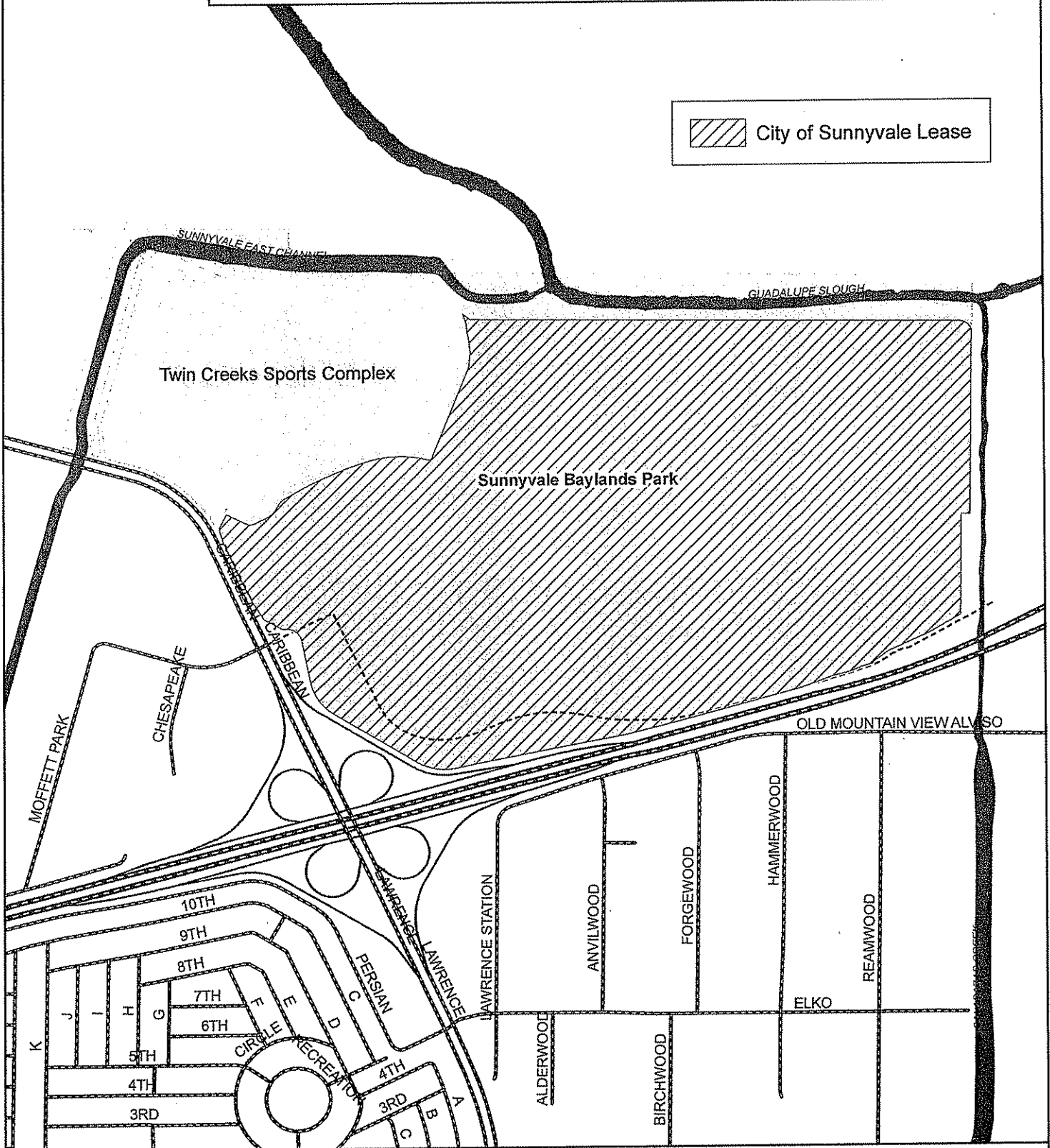
State of California                    )  
County of Santa Clara                )     ss.

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_ a Notary  
Public in and for said State, personally appeared \_\_\_\_\_ who proved to me on  
the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and  
acknowledged to me that he executed the same in his capacity, and that by his signature on the  
instrument, the person or the entity upon behalf of which the person acted executed the instrument.

\_\_\_\_\_  
Notary Public

# EXHIBIT 1 TO MEMORANDUM OF LEASE (MAP OF PREMISES)

 City of Sunnyvale Lease



**SANTA CLARA  
COUNTY PARKS**

This map generated by the County of Santa Clara Department of Parks and Recreation. The GIS files were compiled from various sources. While deemed reliable, the Department assumes no liability.

Title: City of Sunnyvale - Lease

Date: April 3, 2009

Comments:

Created By:

Scale:

0 162.5 325 650 975 1,300 Feet



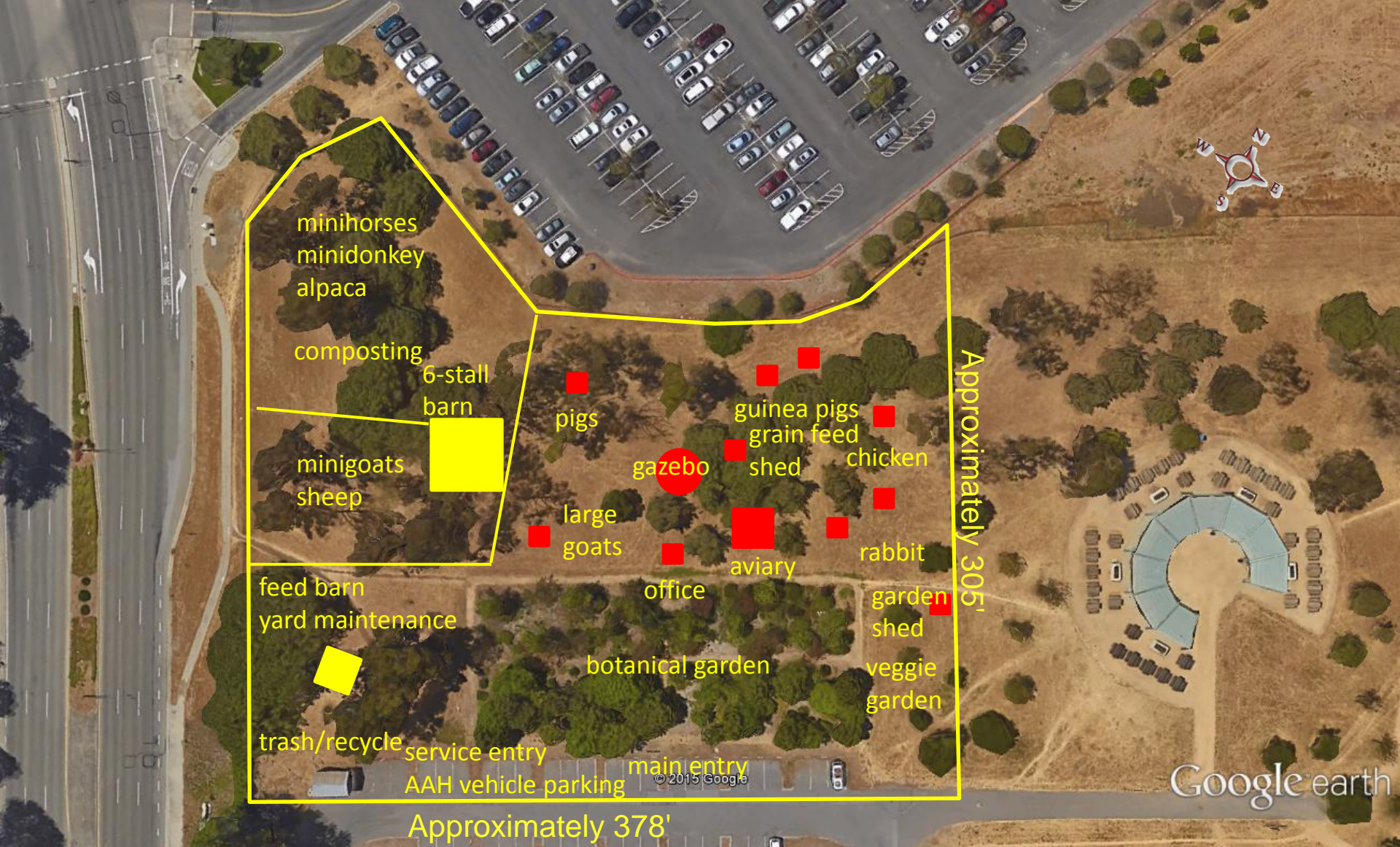


Exhibit B



## Exhibit C



kids crooked house  
International

# Animal Assisted Happiness SmileFarm Concept Design

in partnership with

## The City of Sunnyvale

(revised Feb 26 2016)



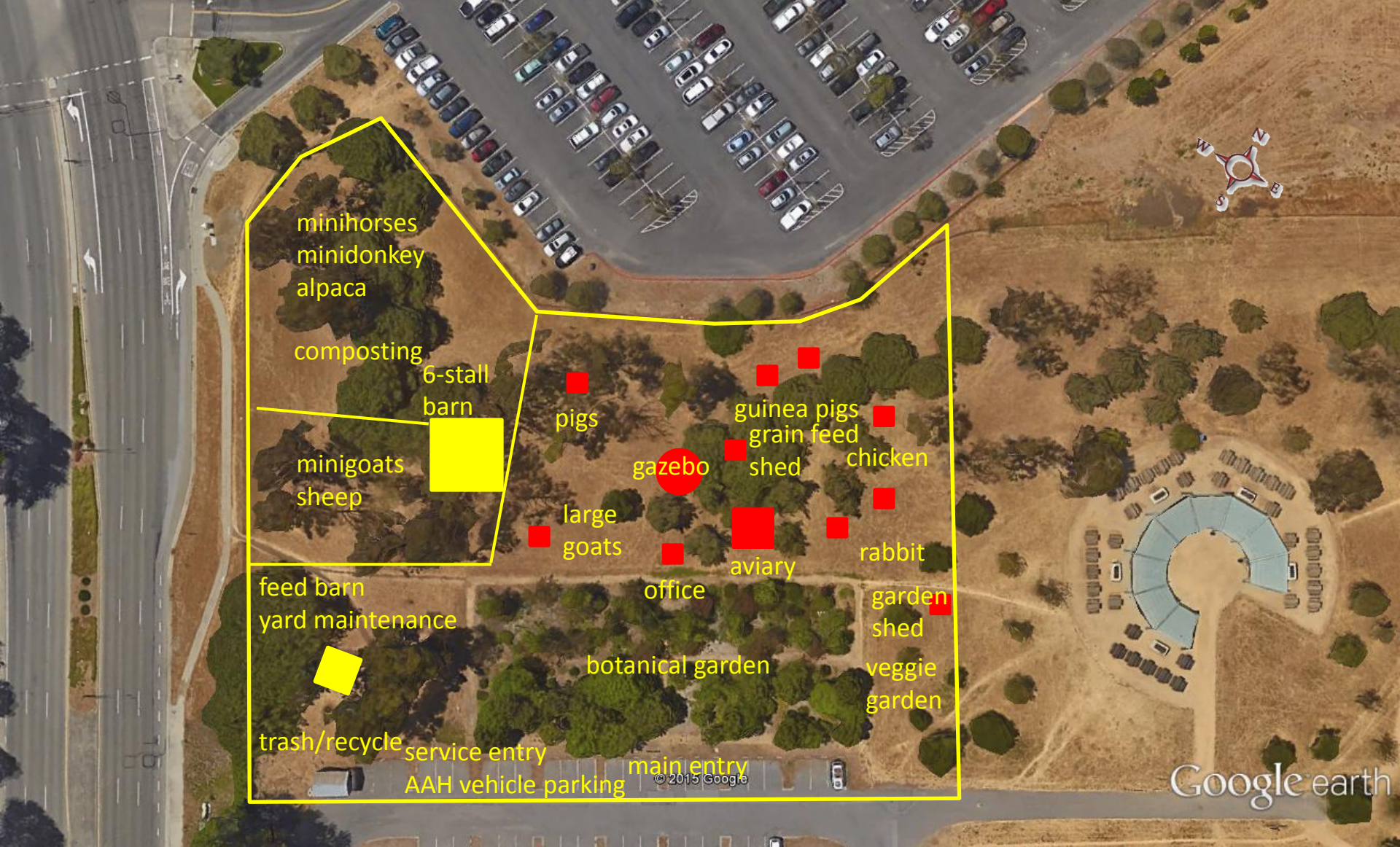


# Overall Design Concepts

- Preserve existing plant habitat; leverage and incorporate what's there.
- Re-purpose the “recycle water test garden” into AAH’s program where clients and volunteers can adopt and care for the botanical garden. In addition, AAH will provide a separate “AAH Garden Farm” where clients and volunteers can grow food for the animals.
- Despite a perimeter fence, allow the public to view inside which should provide continuity with Bayland Parks scenery.
- Provide a whimsical adventure for AAH’s clients that allow children with special needs to take a special walking journey through AAH’s site and interact with the animals. The walkway should be wheel chair accessible.
- Make the experience so positive and memorable such that AAH clients want to return and make it their favorite place to go.

# Baylands Park Permitted Use Amendment

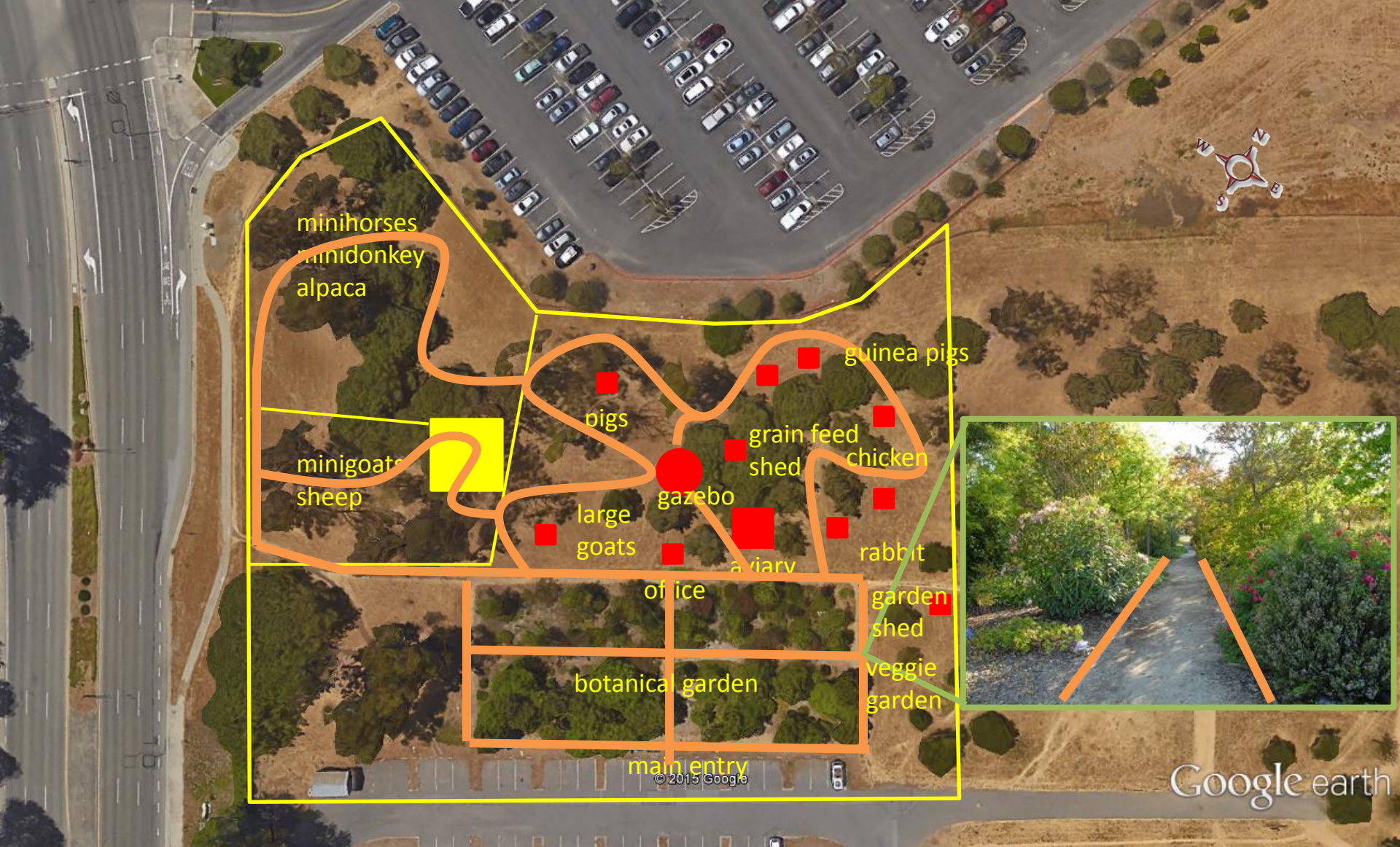
- a. **Permitted Use.** The County leases Baylands Park ("Premises") to the City of Sunnyvale ("City") and the City subleases a portion of the premises to Animal Assisted Happiness ("AAH") for the purpose of AAH providing barnyard animal interaction services open to children and families with special needs.
- b. **Minimum Program Services.** AAH shall provide its services on the Premises, the time, location, and scope of which will be mutually agreed upon between the City of Sunnyvale and AAH. In general the AAH use shall include animal interaction for children and families with special needs and organizations serving the communities of special needs, according to the Minimum Program Services as defined below:
  - (i) **Continuous Operation** – Provide year round barnyard animal interaction services on the Premises for private family, school groups, classes and organizations for their benefit. Provide outbound mobile visits where small barnyard animals are taken from the Premises to families, school groups, classes and organizations for their benefit.
  - (ii) **Volunteers**- Provide youth and adults within the community the opportunity to volunteer to deliver AAH services, thereby teaching, educating, and providing experience to learn the value of giving back and living in an inclusionary community. AAH reserves the right to modify the scope and services, provided they obtain approval from the City of Sunnyvale of any modifications.
  - (iii) **Non-Fee & Reduced Fee Programs.** AAH shall establish, maintain, and implement a year-round free or nominal fee barnyard animal interaction service to families, school groups, classes and organizations serving the special needs community. The scope, timing, fee structure, extent and services development will be mutually agreed upon by AAH and the City of Sunnyvale.
  - (iv) **Special Events.** AAH shall provide at least two events annually for the general public, such as an inclusionary open house hosted by the special needs community that allows the general public to visit, be educated by the special needs hosts and interact with the barnyard animals.
  - (v) **Public Hours.** AAH shall establish times, at least one weekday per week and one weekend day per month for a minimum of 4 hours each day, that members of the public may drop-in for a guided tour to view facilities and animals (no direct interaction) and learn about AAH and animal care.



# Overall Design:

- 6' perimeter fencing
- Northern section: animal interaction area
- SW section: ingress/egress for feed and yard maintenance equip
- SE section: expand AAH program services to include
  - Botanical garden interaction
  - Veggie garden for animals (lettuce, carrot, apple, orange) interaction





## Magical Walk:

- The walkway should provide a magical journey for AAH clients. As they take the journey, whether by walking or wheelchair, and make a turn, another surprise awaits them. AAH clients can decide which animal pens and areas they want to enter to interact with the animals in the animal environment.
- The gazebo serves as a central rest spot. In addition, animals can be brought to the gazebo should clients prefer to interact in that way.
- The walkway will be constructed decomposed granite or equivalent.





### 6-Stall Barn:

- The 6-stall barn will be an MD Barn, an industry leading barn structure manufacturer.

### Whimsical Animal Structures:

- The animal structures will be whimsical to evoke the “fairy tale” in all the kids.





## Waste Management:

- Trash, recycle and organic yardwaste will be serviced by Waste Management services.
- Trash, recycle and yardwaste bins will be located next to the parking lot where service trucks can access it but not block access to the existing storage shed.
- Alternative location would be to the left of the shed.





### **Feed Storage:**

- Feed storage shed (16'x18') to be located close to the parking lot so hay can be loaded off the trucks and hauled into the shed easily
- (note: shed structure is for illustrative purposes only, this is not the actual shed nor is it to scale)





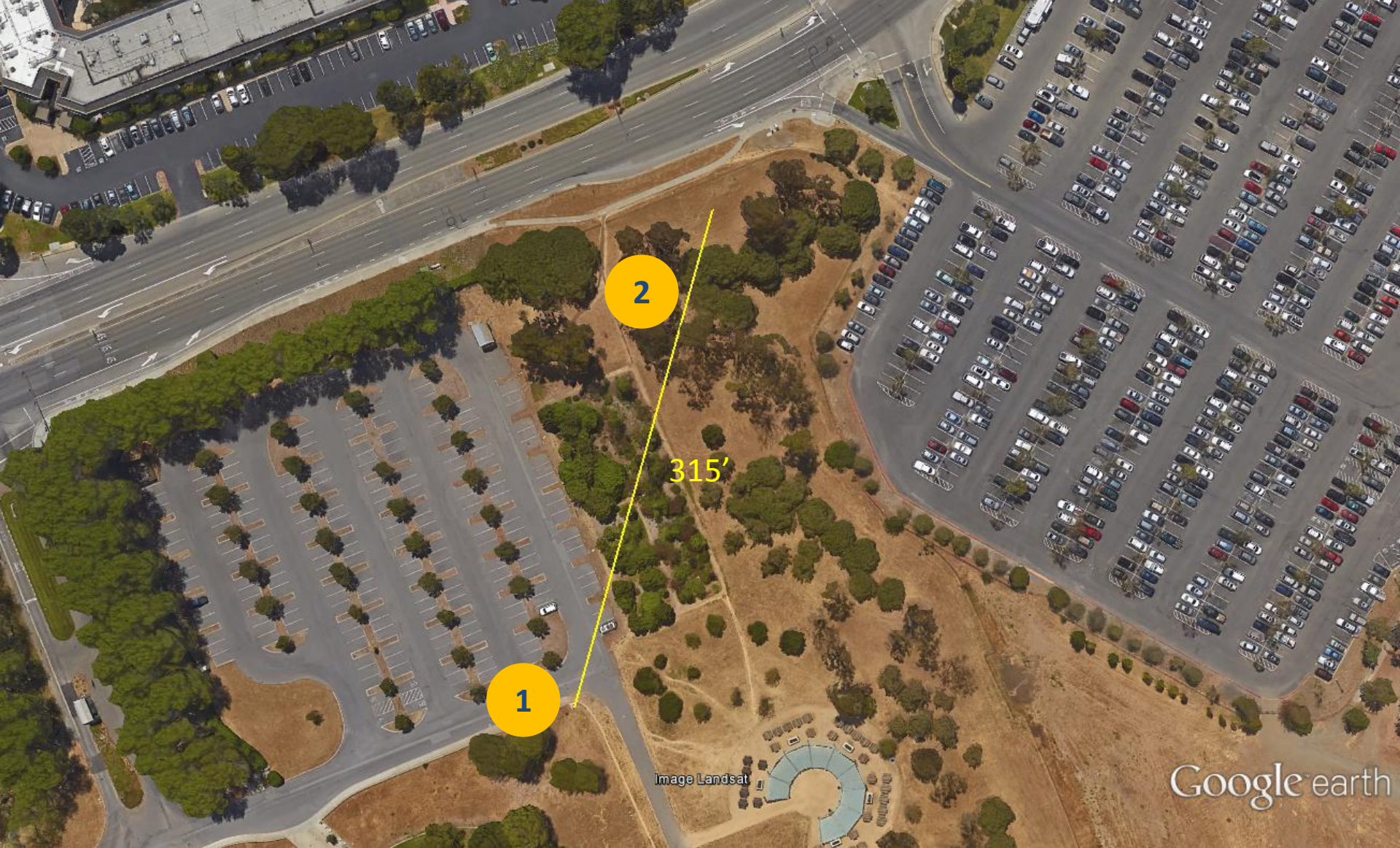
1

2

## Parking:

- AAH would like to have area #1 as a designated area for AAH vehicle parking only
  - 1 van (vehicle used to take animals out on mobile visits)
  - 1 horse trailer (transport of large animals and emergency evacuation vehicle)
  - 1 VIP client
  - 2 employees
  - 1 future mobile visit vehicle
- AAH would like section #2 to be a “preferred”, but not exclusively AAH client/volunteer parking
  - We understand when the park is heavily used, such as on weekends or during events, then parking spaces are limited, in which case these parking spaces should be used for such cases.





**Fire:**

- There is a fire hydrant on the corner designate #1. The distance to the furthest structure, the 6-stall barn is 430'.
- Alternatively, there appears to be a water main on the street at #3. Distance from this to the main barn is 240'.





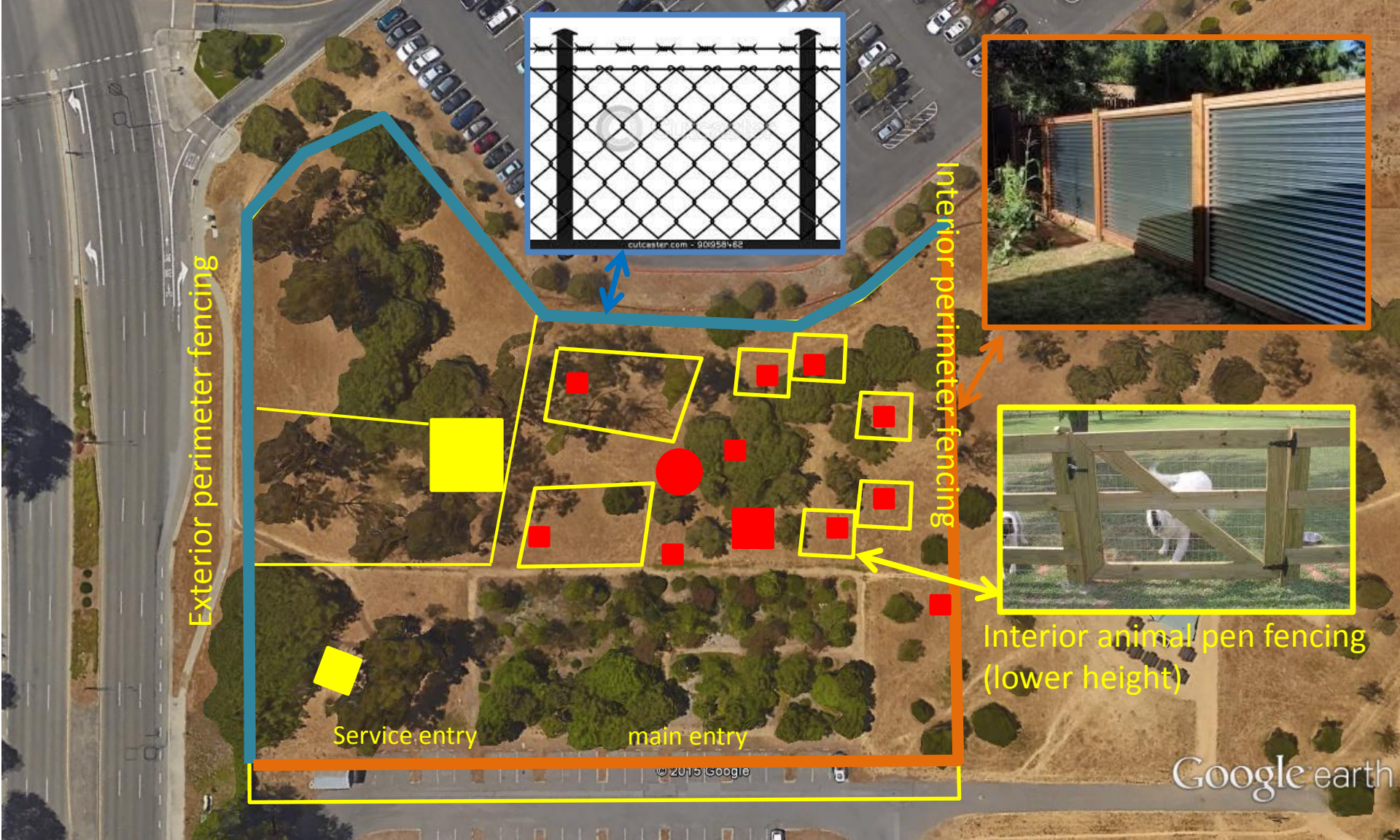
## Water:

- The “Recycle Water Test Garden” has existing irrigation.
- AAH will provide a dedicated water line for the primary purpose of:
  - Continued Botanical garden watering
  - Animal drinking water
  - ~2X per year mini-horse bathing
  - Animal garden watering

## Electricity:

- AAH to provide a dedicated electrical line for the primary purpose of:
  - LED interior lightning for barn, feed shed, office and animal structures.
  - Internet security cameras (details to be shared with the City of Sunnyvale).
  - Occasional power tool use.
  - Charging of electric golf cart.





## Security and fencing:

- For exterior perimeter fencing, we intend to use 6' cyclone fencing with barbwire on the top.
- For interior perimeter fencing, aesthetics becomes more important and we plan to use 6' 4x4 post with steel gauge wire.
- Main and service entry gates will have locks.
- We will use web-based security cameras located in various locations.
- Animals will have an interior animal pen fence which will be ~3-4' high varying on the animals with the wire mesh gauge also varying depending on the animal.





**Moving public entrance:**

- The existing public opening will be moved from #1 to #2 which is approximately 125' south of the existing gate.

appendix

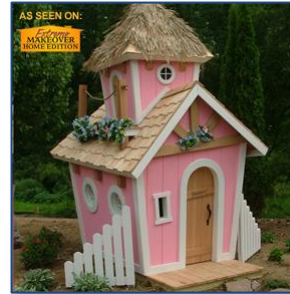
# Crooked House Order

## (~4'x8' shed-size structures)

| Animal      | Qty | Crooked House              | Wheelchair Version? |
|-------------|-----|----------------------------|---------------------|
| Large goat  | 1   | D                          | N                   |
| Pigs        | 1   | D                          | N                   |
| Guinea pigs | 2   | D                          | Y                   |
| Chickens    | 1   | A                          | N                   |
| Rabbits     | 2   | D                          | Y                   |
| Aviary      | 1   | C                          | N/A                 |
| Office      | 1   | F (if back door full size) | N                   |
| Grain shed  | 1   | E (if F doesn't work)      | N                   |
| Garden shed | 1   | E                          | N                   |
| Gazebo      | 1   | N/A                        | Y                   |
| Total       | 12  |                            |                     |

A

\$4699  
4X8



B

\$4099  
4X8



D

\$2149  
4X8X7



E

\$1449  
4X6X6



F

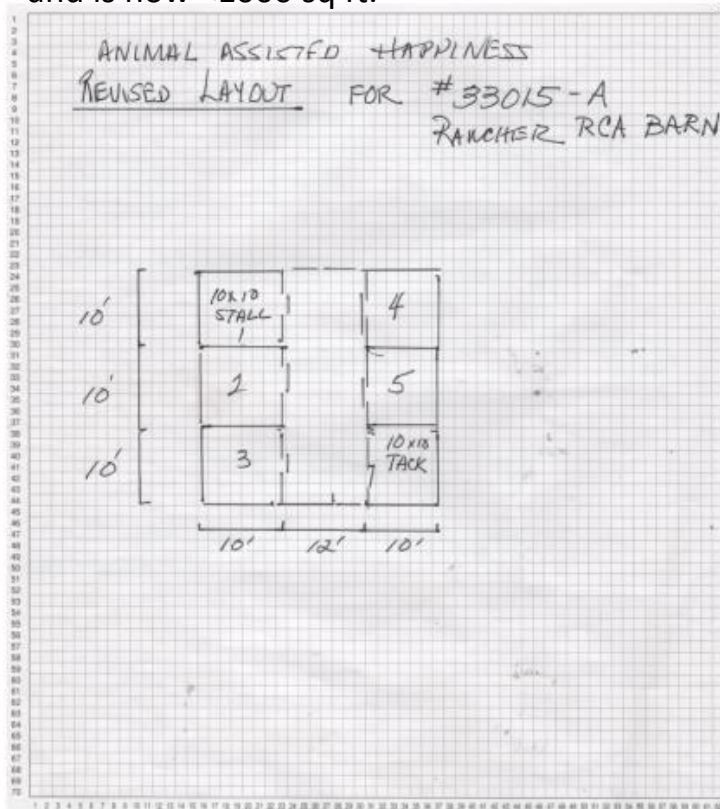
\$4449  
4X8 + 4X4





# 6-Stall Barn

Barn specs were revised with smaller stalls and is now <1000 sq ft.



ANIMAL ASSISTED HAPPINESS  
CUPERTINO CA 95014

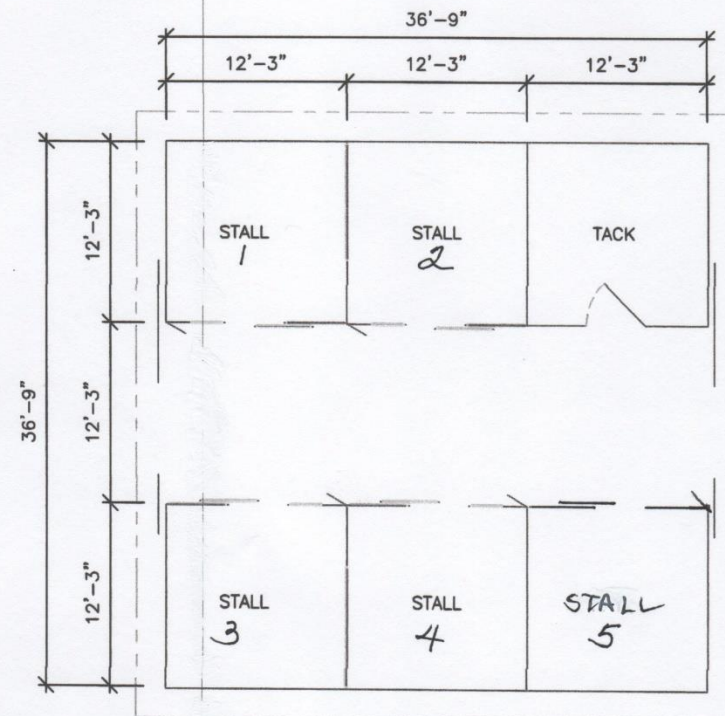
Single Breezeway

**Five Stall with Tack**


351 SQ FT. 14' PEAK HT.

Base Description:

- 3/12 roof pitch
- 9' eave height
- 18" overhang at eaves and gable ends
- Painted steel roofing and fascia
- 5- 12'x12' stalls with 2/3 grill divider wall
- 1 - 12'x12' tack with 4070 steel entry door
- 26 ga. roofing, fascia + 4 downspouts
- 12' breezeway with doors



# Hay Barn

| Gilroy, CA 95020   |  | HAY BUILDING REVISED |       |         |
|--|--|----------------------|-------|---------|
| Dealer:  | TWIN OAKS RANCH BARN & BLDGS   |                      | Date: | 3-24-15 |
| Cust. Name:  | ANIMAL ASSISTED HAPPINESS  |                      |       |         |
| Address:   | 13851 STEVENS CANYON RD. CUPERTINO 95014                               |                      |       |         |
| Phone:   | VICKI 650-714-2388 CELL  |                      |       |         |
| Email:   | VICKI@qmon-nlga.net  |                      |       |         |
| Description:   | MO BARNMASTER HAY STORAGE 18' W x 16' DEEP<br>290 SQ FT. x 10' EAVE HT |                      |       |         |
|  | FRONT SOLID W/ PAIR OF 4' SLIDING DOORS 10' HIGH                       |                      |       |         |
|  | REAR & SIDES SOLID TO 10' EAVE HT SOLID GABLE PANELS                   |                      |       |         |
|  | ROOFLINE   |                      |       |         |
|  | • GABLE PEAKED 3/12 PITCH  |                      |       |         |
|  | • 26 GA SHEETS STEEL FOREST GREEN                                      |                      |       |         |
|  | • TRIM & MOLDED FACIA ALL 4 SIDES FOREST GREEN                         |                      |       |         |
|  | • DOWNSPOUTS   |                      |       |         |
|  | INTERIOR PAINTED SANDSTONE   |                      |       |         |
|  | EXTERIOR PAINTED COLONIAL RED  |                      |       |         |
|  | BREEZEWAY DOORS PAINTED FOREST GREEN                                   |                      |       |         |
|  |  |                      |       |         |
|  |  |                      |       |         |
| Materials:   | # 10,764   |                      |       |         |
| Sales Tax:   | EXEMPT   |                      |       |         |
| Engineering:   | 750  |                      |       |         |
| Forklift:  | N/C  |                      |       |         |
| Building Labor:  | # 1480   |                      |       |         |
| Freight:   | N/C  |                      |       |         |
| Subtotal:  | # 12,994   |                      |       |         |
| Pad Prep:  | ESTIMATED  |                      |       |         |
| Concrete:  | ALONG WITH   |                      |       |         |
| Plumbing:  | BARN   |                      |       |         |
| Electrical:  | AT SAME TIME   |                      |       |         |
| Quote Total:   |  |                      |       |         |

HAY STORAGE  
FREESPAN  
BUILDING  
18' W x 16' DEEP  
x 10' HIGH

ALONE WITH  
BARN



# Impervious Surface

| Animal       | Qty | Sq Ft |
|--------------|-----|-------|
| 6-Stall barn | 1   | 1351  |
| Hay barn     | 1   | 288   |
| Large goat   | 1   | 32    |
| Pigs         | 1   | 32    |
| Guinea pigs  | 2   | 64    |
| Chickens     | 1   | 32    |
| Rabbits      | 2   | 32    |
| Aviary       | 1   | 32    |
| Office       | 1   | 100   |
| Grain shed   | 1   | 32    |
| Garden shed  | 1   | 32    |
| Gazebo       | 1   | 100   |
| Total        |     | 2127  |

Pathway Surface Area (5'-6' wide): 8640 sq ft

— Existing: 3840 sq ft @ 4' wide

— New: ~6000 sq ft @ 5'-6' wide

To be ADA compliant, AAH to widen paths to 4'-5'.







Top aerial view





Top isometric view





Isometric view from east view



Ground level view





Ground level view from Carribean





Ground level view from Twin Creeks



## County of Santa Clara

### Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX 355-2290  
Reservations (408) 355-2201  
[www.parkhere.org](http://www.parkhere.org)



December 15, 2016

City of Sunnyvale  
c/o Craig M. Mobeck  
Assistant Director/City Engineer  
Department of Public Works  
456 W. Olive Ave  
Sunnyvale, CA 94086

RE: Sublease approval, City of Sunnyvale and Animal Assisted Happiness

Dear Mr. Mobeck:

The County staff appreciates the park and recreational amenities and services the City of Sunnyvale (City) has provided to our community over the years at Sunnyvale Baylands Park. The Parks and Recreation Department (Parks) received the City's request to sublease a portion of the City's leasehold (of County-owned parkland) to Animal Assisted Happiness (AAH) in order to provide recreational/educational services to special needs populations within the park. Parks staff subsequently worked with the City to establish the draft sublease attached in substantial form. This letter constitutes approval of the attached sublease and exhibits provided to the County on January 20, 2016.

Under terms of the current Lease, dated March 2, 2010, between the City and County, the Parks Director is authorized to approve the sublease prior to the City staff obtaining approval from the City Council. If there are to be any modifications to the attached sublease prior to submitting to the City Council, please contact our real estate team at your earliest convenience so that they can expedite review of any proposed changes as you continue to move your sublease forward for City Council consideration.

As outlined in the attached sublease, the City's current lease of County parkland remains the governing agreement; the sublease will be conditional to continuance of the existing City/County lease.

Our staff looks forward to the City and its partners continuing to provide a valuable recreational service to the community at Sunnyvale Baylands Park. We appreciate this mutually beneficial partnership. Please provide our real estate staff with your proposed schedule and final sublease following City Council action. Please let me know if our staff or I can be of assistance in your approval process.

Sincerely,

Robb Courtney  
Director

Cc: Don Rocha, Deputy Director  
Tim Heffington, Principal Real Estate Agent  
Elizabeth Trigos-Salinas

**Board of Supervisors:** Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian

**County Executive:** Jeffrey V. Smith

