



City of San Leandro

Meeting Date: December 18, 2017

Staff Report

File Number: 17-716

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Jeanette Dong
Recreation and Human Services Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution to Authorize the City Manager to Enter into a Lease Agreement with East Bay Municipal Utility District (EBMUD) for Chabot Park and for City Council Appropriation Approval of \$154,000 to Fund the Lease Agreement Requirements using the 2017-18 General Fund Economic Uncertainty Reserves (provides for ongoing operation and general maintenance of Chabot Park, maintenance of trees, and implementation of a Tree Hazard Evaluation Plan)

SUMMARY AND RECOMMENDATIONS

Staff recommends the approval of a lease with EBMUD that will allow the City of San Leandro to access Chabot Park. Staff further recommends City Council approve an appropriation of \$154,000 to fund the lease agreement requirements using the 2017-18 General Fund Economic Uncertainty reserves to meet the requirements of the new lease agreement.

BACKGROUND

The City of San Leandro entered into an agreement with East Bay Municipal Utility District (EBMUD) for the use of Chabot Park in June 1950. This agreement allowed the City and the community to use the Park for various recreational activities such as picnics, volleyball, barbeques, disc golf, and children's activities. Chabot Park is also the link to trails in the surrounding Lake Chabot area. During the summer, Chabot Park is the location of the City's Chabot Day Camp/Tiny Trees, Little Trees, and Big Trees. Generations of San Leandrans participated in these programs as participants and camp counselors.

The lease ended with EBMUD's retrofit of Chabot Dam in May 2016. As a result, the Recreation and Human Services Department (RHS) relocated summer camp to Roosevelt School and temporarily re-named the program to Camp Hooty-Hoo. The relocation of the camp from a natural park setting to a school required new programming to engage the children and youth. The

Camp was displaced for two summers (2016 and 2017). Staff was only able to accommodate 100 children during each summer instead of the usual 200, therefore enrollment was cut in half. The loss of revenue is \$110,589 for that duration.

Approval of the proposed lease will allow the summer camp to relocate back to Chabot Park beginning in the summer of 2018.

The City's adopted Capital Improvement Program budget also invests \$1.25 million in the park beginning in 2018. Staff will replace and upgrade two existing playgrounds with new equipment and locate the new playground where the current amphitheater is located, adjacent to the picnic area. Additionally, the City will demolish the current amphitheater and place a new one in a natural setting amongst the redwoods adjacent to and behind the restrooms. The play equipment will be updated, expanded, and located so that adults can keep an eye on the children while at play. The new amphitheater will be located in a setting that uses the redwood trees as a natural background for the stage.

Analysis

The most recent lease was executed in July of 2011 for a period of five years (2016). This lease required a payment of \$2,000. Approximately 2.5 months ago, the City was presented with a new lease from EBMUD. The terms were significantly different than the original lease. Staff from RHS and Public Works met with EBMUD and agreed on the following major terms of the 2017 lease:

2011

\$2,000 lease payments

5-year term

2017

\$4,000 annual lease payment with a 3.5% annual increase. A late fee payment (10 days beyond due date) of 10%.

20-year term.

City is responsible for maintenance of Chabot Park and to submit an operating plan for approval by EBMUD.

City must develop and submit a Tree-Hazard Evaluation Program and maintain trees in accordance therewith.

Maintenance Operating Plan

The City will be responsible for general maintenance of Chabot Park including the playground, field, bridge, road, restrooms, trashcans, horseshoe pits, fence and pathways. Additionally, staff will be responsible for adding gravel to the parking lot; clearing ivy off the trees, spreading woodchips; cutting down weeds and fallen tree limbs; inspecting and repairing irrigation, graffiti removal and inspecting the park for hazards.

Ongoing Tree Maintenance

The City will now be required to maintain the trees at Chabot Park. EBMUD will require the development and implementation of a Tree Hazard Evaluation Plan. Ongoing maintenance of the trees must be in accordance with the plan. Since this is a new requirement, Public Works must retain an arborist to develop such a plan. However, the fiscal impact of the ongoing maintenance of these trees is unknown until the evaluation is completed by Public Works. The trees at Chabot Park include extremely large trees and can be costly to trim, cut and/or remove. Public Works will develop and submit a plan to EBMUD within eight months, which is the time allotted under the proposed lease.

Next Steps

If the City Council elects to approve the lease agreement, it will subsequently be sent to the EBMUD Board of Directors for their approval. City staff estimates that the public can be re-opened for public access shortly after execution of the agreement.

Permits and/or Variances Granted

None at the moment, but staff anticipates that the requisite Building Permits will be obtained for the various structures and equipment to be constructed that require Building Permits.

Board/Commission Review and Actions

A General Plan Conformity Finding will be brought to the City of San Leandro Planning Commission in January 2018.

Legal Analysis

The City Attorney's Office reviewed, and assisted with the negotiations of the lease presented to the City Council.

Fiscal Impacts

The Tree Hazard Evaluation Plan will cost approximately \$50,000 to \$75,000. Public Works estimates the cost of the ongoing maintenance from \$50,000 to 100,000. These costs may differ from year-to-year as conditions in the park may change with the environment.

Budget Authority

The costs attached to this lease were unanticipated and therefore unbudgeted. Staff is

requesting the City Council approve an appropriation of funds from the 2017-18 General Fund economic uncertainty reserves of \$154,000 to the following accounts:

- Public Works 010-33-001 for \$150,000
- Recreation and Human Services 010-61-019-5630 for \$4,000

ATTACHMENT(S)

Attachment(s) to Staff Report

- None

Attachment(s) to Related Legislative Files

Attached to Resolution:

- Lease Agreement with East Bay Municipal Utility District (EBMUD)

PREPARED BY: Jeanette Dong, Director, Recreation & Human Services



City of San Leandro

Meeting Date: December 18, 2017

Resolution - Council

File Number: 17-717 **Agenda Section:** ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Jeanette Dong
Recreation and Human Services Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION to Authorize the City Manager to Enter into a Lease Agreement with East Bay Municipal Utility District (EBMUD) for Chabot Park (provides for the general maintenance of Chabot Park, tree maintenance, and implementation of a Tree Hazard Evaluation Plan) and for City Council Appropriation Approval of \$154,000 to Fund the Lease Agreement Requirements using the 2017-18 General Fund Economic Uncertainty Reserves

WHEREAS, an agreement between the City of San Leandro and East Bay Municipal Utility District (EBMUD), a copy of which is attached, was presented to this City Council; and

WHEREAS, the City Council is familiar with the terms of the agreement; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement in an amount not to exceed \$4,000 per year, plus 3.5% annual adjustment is hereby approved; and
2. That the terms of the agreement will be memorialized in writing by the City Manager, subject to the approval of the City Attorney; and
3. That the City Manager is authorized to execute said agreement; and
4. That an original executed agreement shall be provided to the City Clerk, and be attached to and made a part of this resolution.
5. That the City Council approves an appropriation of \$154,000 to fund the lease agreement requirements using the 2017-18 General Fund Economic Uncertainty Reserves

(\$150,000 in 010-33-001 and \$4,000 in 010-61-019-5630).

Park and Recreation Lease

THIS LEASE, made and entered into this ___ day _____, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation of the State of California, hereinafter called "Lessor" and THE CITY OF SAN LEANDRO, a Municipal Corporation, hereinafter called "Lessee",

WITNESSETH

WHEREAS, Lessor entered into a License Agreement ("License") with Lessee on June 1, 1950 to allow the Lessee to utilize the Premises as a public park; and

WHEREAS, the License was renewed eleven times to extend the term for Premises; and

WHEREAS, Lessor entered into a Lease Agreement ("First Lease") with Lessee for the Premises on August 1, 2007 that expired on June 30, 2011; and

WHEREAS, Lessor entered into a Lease Agreement ("Second Lease") with Lessee for the Premises on July 19, 2011 that expired on June 30, 2016; and

WHEREAS, Lessor terminated the Second Lease to commence a construction project to retrofit Chabot Dam; and

WHEREAS, the License, the First Lease and Second Lease have terminated and are now replaced by the terms, conditions, covenants, and promises set forth herein.

NOW THEREFORE, in consideration of faithful performance of the terms, conditions, covenants, and promises, the Parties hereinafter agree to:

1. PREMISES

Lessor is the owner of the real property located at Lake Chabot Filter Plant, 1698 Estudillo Ave, San Leandro, CA 94577 (APN: 48-5813-6), containing approximately 26 acres of land, hereinafter referred to as the "Property". Lessor hereby leases to Lessee that certain portion of the Property consisting of approximately 9.2 acres of ground space as depicted on Exhibits "A" and "B", attached hereto and made a part hereof, and identified herein as "Premises".

2. TERM

Lessee shall have and hold the described Premises for the Term of twenty (20) years (the "Term"), commencing on January 1, 2018, ("Commencement Date"), subject to renewal and termination rights as may be hereinafter set forth.

3. CONSIDERATION

- a. **Consideration.** Lessee agrees to pay Lessor as Consideration, the sum of Four Thousand Dollars (\$4,000.00) payable in advance on or before the Commencement Date and annually thereafter (Due Date). Lessee may prepay rent anytime without penalty. The payment is Consideration for Lessor's lease administration and staff time to inspect the Premises in accordance with Section 8 below.
- b. **Annual Consideration Adjustment.** The amount of Consideration payable hereunder shall be adjusted annually. On the anniversary date of the Commencement Date and annually thereafter, the Consideration shall increase by three and one half percent (3.5%) above the previous year's Consideration and be payable in advance on the Due Date.
- c. **Late Payment.** Should the annual Consideration not be paid in full within fifteen (15) days of the Due Date, a ten percent (10%) late fee shall be paid in addition to the Consideration due. Lessor's right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this agreement and by law.

4. RECOGNITION OF PARAMOUNT RESPONSIBILITY OF LESSOR

It is recognized by Lessee that the delineated Premises lie within the watershed of San Leandro Creek, which is connected to Lake Chabot and the Upper San Leandro Reservoir and Dam by San Leandro Creek. San Leandro Creek continues its flow downstream of Lake Chabot Reservoir which flows through the described Premises.

It is further recognized and understood by Lessee that Lessor will continue to own, operate, and maintain said reservoir and dam as an essential part of Lessor's public water system for the furnishing of water for municipal, domestic, industrial, and other uses to the customers of the East Bay Municipal Utility District, and that Lessor is charged with the responsibility of protecting said reservoir and dam, preserving the water-producing capabilities thereof, and to maintain said reservoir and dam free from contamination and pollution and deliver to the consumers of the East Bay Municipal Utility District pure, wholesome, and potable water.

Lessee further understands and agrees that Lessor, in order to carry out its responsibilities as herein above set forth, may allow the water from Upper San Leandro Dam and/or Lake Chabot Dam to spill or may make releases of water through the delineated Premises in the water course known as San Leandro Creek, as weather conditions dictate, and in accordance and compliance with orders from the State of California.

Lessee further understands that Lessor has entered into negotiations with the California Department of Fish and Wildlife to determine flow and non-flow measures for the improvement of fish and wildlife conditions in San Leandro Creek below Chabot Dam. Those negotiations may result in regulatory required actions within or adjacent to the Creek to improve and maintain

habitat. Portions of the Premises may be needed to facilitate that work, including both physical changes and changes to the size of the Premises. Lessor will keep Lessee apprised of those negotiations.

Therefore, it is understood, and hereby agreed upon, these Paramount Responsibilities supersede any and all terms, conditions, covenants, or promises of this lease, that no Lease provision shall diminish Lessor's rights to carry out its Paramount Responsibilities, and that Lessor shall not be in any respect liable to Lessee as a result of Lessor's exercise of these rights.

5. PERMITTED USE

The delineated Premises shall be used for public picnic grounds and public park purposes only and for no other purpose whatever. Lessee agrees that said picnic ground and public park uses shall be operated without profit to Lessee; however, Lessee may charge any reasonable fee deemed proper or necessary to recover the costs of the operation, maintenance, and supervision of said picnic area and its appurtenant facilities and equipment; provided, however, that any such fee shall be uniform in its operation as to all persons allowed to use said picnic grounds and area. Lessee further agrees that it will not give or lease to any person, firm, or corporation, any concession for the sale of food, beverages, services, amusements, or anything of like nature without first obtaining the written consent of Lessor.

6. SUBLETTING AND ASSIGNMENT

Lessee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises, without Lessor's prior written consent

7. MAINTENANCE AND OPERATING PLAN

- a. **Maintenance:** Lessee, at its sole cost and expense unless otherwise provided for in this Lease, shall maintain and keep the leased Premises in safe and good and clean condition and repair at all times during the Term.
- b. **Operating Plan:** Lessee has submitted to Lessor an operating plan (Operating Plan) as detailed in Exhibit "D", attached hereto and made a part hereof, which includes management principles, procedures, and practices to be followed by Lessee prior to allowing access to the Premises to the general public. The following items, at a minimum, are required to be covered in the Operating Plan: road maintenance; parking lot maintenance; bridge maintenance; facility maintenance; field maintenance, equipment maintenance, fencing maintenance, playground maintenance, security, and safety. Thereafter, and during the term of this Lease and any extensions, continuations, and renewals thereof, Lessee shall perform all work and conduct its operations upon the delineated Premises in accordance with such approved Operating Plan or such amendments thereof as may from time to time be mutually agreed upon by the parties

hereto, and no deviations therefrom shall be permitted unless first approved in writing by Lessor.

- c. **Ongoing Tree Maintenance:** Lessee agrees to maintain the trees within the Premises in accordance with the Tree Hazard Evaluation Program, as detailed in Exhibit "C", attached hereto and made a part hereof.
- d. **Riparian Area Tree Removal:** Lessee shall not remove any tree within fifty (50) feet of the creek or riparian area without prior written approval by Lessor.
- e. **Damage or Destruction of Improvements:** Should any of the Premises be damaged or destroyed, Lessee agrees that it is fully liable for the repair and/or replacement of all fixtures, improvements, facilities, structures, utilities, and park features within the leased Premises. The parties further recognize that Lessee will maintain insurance, at the levels detailed in Section 22.

8. INSPECTION BY LESSOR

Lessor will conduct a minimum of quarterly inspections of the Premises and all structures, facilities, and property thereon to ensure compliance with Lessee's Operation Plan; that all tree maintenance is completed as necessary under the Tree Hazard Evaluation Program; and that the provisions of this Lease are observed and performed by Lessee.

Lessor, at its sole determination, may determine more inspections are necessary if inadequate or unsafe conditions are discovered. Further, Lessor may issue a notice to cure default, in accordance with Section 23 below if it is determined Lessee is not adhering to the terms and conditions set forth within this Lease.

9. DEVELOPMENT AND OPERATING PLAN UPDATES

Prior to the commencement of any new work (e.g. new structures, trails, parking lots, or other proposed land changes) by Lessee upon the Premises, Lessee shall submit in writing to Lessor for review and approval, Lessee's development and operating plan for such improvements, including the management principles, procedures, and practices to be followed by Lessee in the development and operation of the improvements. Lessee shall not commence any work until Lessee's said program has been reviewed and approved in writing by Lessor.

10. UTILITIES

Lessee agrees to furnish at Lessee's sole cost and expense, all water, gas, heat, light, power, and all other utilities and operating infrastructure required at the Premises.

11. LESSOR'S RIGHTS TO USE OF PREMISES

- a. Lessor reserves the right to use the Property, including the area delineated on Exhibit A, at any and all times, for Lessor's operations and shall at all times during the Term of this

Lease have the right to enter upon the Premises for any purpose necessary in the conduct of the District's operations.

- b. It is understood that construction, reconstruction, maintenance, and use of the reservoir, dam, pumping plants, water treatment plants, filter plants, pipelines, and other facilities or improvements of Lessor, present or future, upon the Property shall at all times be paramount to any rights under this Lease. Lessee's construction, reconstruction, maintenance, and use of the facilities of Lessee, and all work upon or in connection therewith, shall at no time unreasonably interfere with the present or future operations of Lessor; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of Lessor.
- c. Lessor reserves the right to access, test, mitigate, complete erosion control, remove trees and hazards, or any other work in and adjacent to San Leandro Creek as deemed necessary by Lessor.

12. SANITATION

Lessee hereby agrees, at its expense to provide and maintain all necessary sanitary facilities in addition to present facilities at all times in a clean, safe, and sanitary condition free from waste and to permit no accumulation of waste waters, rubbish, or garbage thereon, all to the satisfaction of Lessor. Any additional sanitary facilities added by Lessee substantially different from the present facilities must be first approved in writing by Lessor.

13. HOURS OF USE

Operating hours for the Premises are specified in the San Leandro Administrative Code, as may be amended from time to time. Lessor, however, reserves the right to revoke the Lease if, after an investigation by Lessor, in Lessor's opinion, the grounds are operated so as to create a nuisance to adjacent residents and property owners and Lessee fails after thirty (30) days' notice to attempt to correct such nuisance.

14. ACCESS

Access to the Premises is obtained through a gated entrance located off Estudillo Avenue, a public road. The roads within the Premises are the responsibility of the Lessee except as otherwise detailed in this paragraph. Lessee agrees that except at easterly gates separating the Premises from Chabot Reservoir and Dam it will keep said roads open and unobstructed at all times and that it acknowledges Lessor and other parties authorized by Lessor the right to use the same freely for passage of personnel, vehicles, fire-fighting equipment, and other equipment. Lessee further agrees that Lessor and other persons authorized by Lessor may place their locks upon any gate within the Premises, but not in such a way as to prevent the use of such gates by Lessee or by others authorized by Lessee to use such gates and place locks thereon. Lessee

hereby agrees to promptly repair at its own expense any damage caused to said gate or bridge by the exercise of the rights herein given, and Lessee further agrees to share in the costs of the maintenance of said bridge in proportion to the use which is made of said bridge by Lessee, which the parties agree to be 70% Lessee and 30% Lessor. Except for emergency maintenance work or repairs to said bridge or damage done to same by Lessor, Lessor agrees to submit to Lessee in advance of performance an estimate of the cost of maintenance work proposed to be done upon said bridge and a statement of the estimated amount which shall be payable by Lessee hereunder.

15. PUBLIC SAFETY AND PATROLLING BY LESSEE

Lessee shall at its expense at all times provide adequate supervision, patrolling, inspection, and law enforcement on the Premises to ensure compliance with, and performance of, the terms and conditions of this Lease. Lessee shall provide peace officers trained in accordance with the training mandated by the California State Commission of Peace Officer Standards and training to perform law enforcement activities at the Premises.

16. EROSION CONTROL

Lessee shall operate the delineated Premises to not increase natural erosion thereon, and shall take all possible steps and precautions to reduce and prevent such erosion. Where improvements are made which cause an accumulation of water over and above that which now exists, Lessee shall construct at its expense whatever facilities are necessary, as first approved in writing by Lessor, to prevent erosion from exceeding that which now exists. Lessee shall also comply with such further reasonable requests as may be made by Lessor from time to time with respect to fire breaks, grades, slopes, and drainage of roads, trails, paths, parking, picnic and recreation areas, and the making of cuts or fills of excavations of any kind in connection therewith. Lessee acknowledges that San Leandro Creek will be maintained in a natural state with no improvements for flood control and therefore may experience flooding from time to time during high rainfall years. Repair or replacement of any of Lessee's facilities damaged by such flooding shall be solely at Lessee's expense. Lessee, at its expense, shall reasonably keep all constructed storm water improvements and natural water course within the leased area free of debris, brush, trees, or growth of any nature that will obstruct the free and natural flow of water or cause undercutting or erosion of banks. Under no circumstances shall top soil be moved or removed without the consent of Lessor having first been obtained in writing.

17. FIRE PREVENTION

Lessee shall use all reasonable precaution to prevent fires and shall maintain proper patrol and adequate personnel and equipment for the detection and suppression of fires on the delineated Premises, all at the expense of Lessee. All laws pertaining to fire prevention and control shall be strictly enforced by Lessee. Lessee shall keep all roads sufficiently clear of parked cars at all times so that there will be no impairment of their free use by mobile fire-fighting equipment.

Lessee further agrees that it will not permit the building of fires outside of designated day-use picnic areas or developed recreational areas. Barbeques are permitted in designated day-use picnic areas or developed recreational areas. Gas-fueled stoves are permitted in all areas as determined by Lessee. Lessee will post signs within the delineated Premises restricting smoking to specific areas or prohibit smoking at such times as weather and seasonal conditions warrant.

Lessee shall immediately notify Lessor of any wild land fires that are reported on the delineated Premises. Lessee will provide Lessor with a summary of wild land fires occurring on the delineated Premises which shall include date, time, acreage burned, number, and jurisdiction of units responding, for each fire. Summaries should be sent directly to the Lessor's Manager of Watershed and Recreation at 500 San Pablo Dam Road, Orinda, CA 94563.

18. LIENS

Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

19. GOVERNMENTAL APPROVALS

Lessee shall, at its sole cost and expense, comply with all applicable requirements, rules, regulations, and environmental documentation pertaining to facilities, equipment and operations to be conducted on the Premises, including all requirements imposed by the City of San Leandro, County of Alameda, the State of California, and the United States of America. Lessor agrees to cooperate with Lessee to obtain any required zoning or other governmental approvals or permits for the Premises and Lessee's facilities, including providing signatures where necessary on Lessee's governmental permit applications. Lessee acknowledges, however, that Lessor is not a permitting entity and shall not be responsible for obtaining or maintaining any necessary governmental approvals on behalf of Lessee.

20. INDEMNIFICATION AND DAMAGES

- a. Lessee expressly agrees to indemnify, defend and hold harmless Lessor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney's fees, arising out of Lessee's operation or performance under this Agreement, including all costs, claims, and damages (including property and personal injury) arising out of any Hazardous Materials as defined in section 21.C within the Property to the extent caused and/or released by Lessee's construction, reconstruction, maintenance, operation, use or removal of its facilities.
- b. Damages: Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities on the Property to the extent directly or indirectly contributed to or caused by Lessee's operation or performance under this Agreement, including, but not limited to, any damage or loss due to Lessee's deposit of Hazardous Materials as defined in section 21.C on the Property.

- c. Assumption of Risk: Lessee agrees to assume all risk of damage to any property of Lessee or any other property under the control or custody of Lessee while upon the Property or rights of way of Lessor or in proximity thereto, caused by or contributed to in any way by Lessor's construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

21. HAZARDOUS MATERIALS

- a. Representation: Lessor represents that it has conducted no site investigation(s) for hazardous materials and has no knowledge of any hazardous materials (as defined below) existing on or about the Premises in violation of any applicable law.
- b. Lessee represents and warrants to Lessor that Lessee will not generate, store or dispose of any hazardous materials on, under, or about the Premises in violation of any hazardous substance laws (as defined below).
- c. Definition of Hazardous Materials: In this Lease, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

22. INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Lease, and for any additional period of time as specified below, Lessee shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below. Lessee shall submit Certificates of Insurance (attached as Exhibit "E"), utilizing Lessor provided forms, for Lessor's review and acceptance.

Acceptance of the Certificates of Insurance by Lessor shall not relieve Lessee of any of the insurance requirements set forth herein, nor decrease liability of Lessee. Liability coverage provided by Lessee shall be primary and any insurance or self-insurance procured or maintained by Lessor shall not be required to contribute with it. Lessor reserves the right to require Lessee to

provide confidential copies of actual insurance policies and endorsements for review by Lessor. The Lessor may provide copies of the confidential policies to Lessor's legal counsel and/or Insurance Broker, as needed.

The Insurance Requirements under this Lease shall be the greater of (1) the minimum coverage and limits specified in this Lease; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these Insurance Requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the Lessee under this Lease.

Lessee shall provide a written request for authorization and the Lessor will consider self-insurance in lieu of the insurance requirements listed below.

Claims-Made Coverage

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified in this Lease):

- i. The retroactive date must be shown, and must be before the commencement of this Lease, and before the beginning of any Services related to this Lease.
- ii. Insurance must be maintained and Certificates of Insurance must be provided to Lessor for at least three (3) years after expiration of this Lease.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Lease or the start of any Services related to this Lease, Lessee must purchase an extended reporting period for a minimum of three (3) years after expiration of the Lease.
- iv. If requested by Lessor, a copy of the policy's claims reporting requirement must be submitted to the Lessor for review.

Workers' Compensation Insurance: Lessee shall take out and maintain during the life of the Lease Workers Compensation insurance for all of its employees on the Property. In lieu of evidence of Workers Compensation insurance, Lessor will accept a Self-Insured Certificate issued from the State of California. Lessee shall require any agent and/or consultant to provide it with evidence of Workers Compensation Insurance coverage.

Lessee and its Workers' Compensation insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

Commercial General, Automobile and Pollution Liability Insurance: Lessee shall take out and maintain during the life of the Lease Commercial General and Automobile, and Pollution Liability Insurance policies that provide protection from claims that may arise from operations or performance under this Lease. If Lessee elects to self-insure (self-fund) any liability exposure during the Lease period above \$50,000, Lessee is required to notify the Lessor immediately. Any request to self-insure must first be approved by the Lessor before the changed terms are accepted. Lessee shall require any agent and/or consultant to provide evidence of Automobile, Commercial General Liability Insurance Coverage, and Pollution Liability Insurance coverages for any work involving construction, excavation and/or the use or storage of any hazardous materials.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.

\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile Liability.

\$2,000,000/Occurrence/Claims Made, Bodily Injury, Property Damage – Pollution Liability

THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):

- A. The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. ___
- B. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
- C. The policy(ies) covers *contractual liability*.
- D. The policy(ies) is written on an *occurrence* basis.
- E. The policy(ies) covers District's Property in Consultant's care, custody and control.
- F. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
- G. The policy(ies) covers *explosion, collapse, and underground* hazards.
- H. The policy(ies) covers *products and completed operations*.
- I. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
- J. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the

environment arising out of or resulting from Consultant's performance under this agreement.

- K. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.
- L. The policy(ies) shall maintain the minimum coverage, terms and conditions as referenced in this Section, and pursuant to any and all requirements outlined in this Agreement/Lease. Without waiving any of the requirements of the Lease, Lessee shall not make any reductions in scope or limits of coverage that may affect Lessor's protection without the Lessor's prior written consent.

23. DEFAULT

It is understood and agreed that if Lessee fails to pay any installment of Consideration as it becomes due, or if Lessee defaults on any of the other covenants, agreements or terms of this Lease, and if upon receipt of ten (10) days' written notice in the case of a monetary default, or thirty (30) days' written notice in the case of a non-monetary default, Lessee shall fail or refuse to correct the default, Lessor at its option may re-enter the Premises and remove all improvements therefrom, and may terminate this Lease or take possession of the Premises as the agent and for the account of Lessee, and may lease or rent the whole, or any part of the Premises for the balance or any part of the Term of this Lease and retain all Consideration received and apply them in payment on any Consideration owed by Lessee. The performance of any or all of these acts by Lessor shall not release Lessee from the full and strict compliance with all of the terms, conditions and covenants of this Lease. If the nature of Lessee's default is such that more than thirty (30) days are reasonably required to cure the default, then Lessee shall not be in default if Lessee commences the cure within this thirty (30) day period and thereafter diligently prosecutes such cure to completion.

24. WAIVER

The waiver by Lessor of any breach of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of the term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition. Lessor's subsequent acceptance of Consideration shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than failure of Lessee to pay the particular Consideration so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of the Consideration.

25. REMEDIES

It is understood that the remedies provided for Lessor in case of a breach by Lessee are not exclusive, but are in addition to any remedies provided by law, any of which Lessor shall have the right to use at its option.

26. CONDEMNATION

If any part of the Premises is condemned for a public use and a part of the Premises remains that is capable of occupation and use as authorized under this Lease, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises is condemned or if such part is condemned so that there does not remain a portion capable of occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises is condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Lessee for loss of or damages to fixtures owned by Lessee, or business interruption or moving expenses, shall go to Lessor and Lessee shall have no claim thereto and Lessee irrevocably assigns and transfers to Lessor any and all rights to all other compensation or damages to which Lessee may become entitled during the Term of this Lease by reason of the condemnation.

27. TAXES AND ASSESSMENTS

The property interest created by this Lease may be subject to property taxation and the Lessee may be subject to the payment of property taxes levied on this interest. Lessee agrees to pay all lawful taxes, assessments, or charges which at any time may be levied by any tax or assessment levying body upon any interest in this Lease or any possessory right that Lessee may have in or to the Premises under this Lease.

28. TERMINATION (NONDEFAULT)

Lessor's Right to Terminate. Lessor may terminate this Lease by providing at least one (1) year written notice to Lessee.

Lessee's Right to Terminate. Lessee may terminate this Lease by providing at least one (1) year written notice to Lessor.

After expiration of Initial Term, if lease is in holdover, either party may terminate occupancy by providing at least thirty (30) days' notice.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Lessee's responsibility to remove all of Lessee's facilities from the Premises and restore the Premises to its original condition, as near as practicable in accordance with Section 32, below.

Upon any early termination of this Lease, any prepaid Consideration shall be prorated from the date of termination and returned to Lessee.

29. SURVIVAL

The provisions of Sections 20, 21, and 24 of this Lease will survive the expiration or termination of this Lease.

30. HOLD OVER

Any holding over after the expiration of the Term, with the consent of Lessor, shall be construed to be a tenancy from month to month. All terms and conditions of the Lease, excluding Consideration shall be in full force and effect during the Hold-Over.

During Hold-Over, the Consideration shall increase by one hundred percent (100%) above the previous year's Consideration paid by Lessee. The full Consideration shall be due and payable on the Due Date.

31. REMOVAL OF LESSEE'S FACILITIES UPON TERMINATION

In the event of the termination of this Lease by reason of the breach of this Lease by Lessee, or by Lessee electing to terminate Lease, or by the expiration of this Lease, all improvements constructed on the Premises shall become and remain the property of Lessor, at no cost to Lessor, except as otherwise provided by this section. If Lessor decides not to retain all or a portion of the buildings and improvements constructed by Lessee, upon termination of this Lease for any reason, Lessee shall remove all buildings and improvements as directed by Lessor within ninety (90) days following termination of this Lease. Lessee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond Lessee's control. Should Lessee fail to complete the removal of Lessee's facilities within thirty (30) days following termination of this Lease, Consideration shall accrue at Hold-Over rates until all improvements have been satisfactorily removed and the Premises have been left in satisfactory condition.

Within thirty (30) days following termination of this Lease, Lessee shall at Lessee's expense eliminate and pay in full any encumbrances, liens, and debts incurred by Lessee with respect to any improvements to remain on the property.

32. NOTICE

Any notice required or desired to be given or served under this Lease shall be deemed properly given or served if sent by registered mail, postage prepaid, addressed to Lessor at 375 11th Street, Oakland, California 94607 Attn: Manager of Real Estate Services MS# 903, or Lessee at _____ City Manager, City of San Leandro, 835 East 14th Street, San Leandro, CA, 94577 _____

_____ or at such other address as shall be last furnished in writing by one party to the other.

33. EXISTING CONDITION

This Lease is made subject to all existing liens, encumbrances, conditions, and restrictions of record affecting the Premises and is also subject to all existing rights, rights of way, licenses, leases, reservations, and easements by whomsoever held, in, and to the Premises which predate this Lease.

34. BINDING PROVISIONS

Lease shall be binding upon and inure to the benefit of the executors, administrators, and permitted assigns of the respective parties hereto.

35. TITLE AND QUIET POSSESSION

Lessor represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; and; (d) that Lessee is entitled access to the Premises at all times, and to the quiet possession of the Premises throughout the Term so long as Lessee is not in breach beyond the expiration of any cure period.

36. ENTIRE AGREEMENT

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

37. SEVERABILITY

If any provision of this Lease is held to be invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

38. ATTORNEYS FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is entitled to receive its reasonable attorneys' fees, limited to the rate of local independent counsel in Alameda County.

39. GOVERNING LAW

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

40. JURISDICTION

Lessor and Lessee agree that all disputes, disagreements, or claims arising in connection with this Lease shall be submitted to the exclusive jurisdiction of the state and federal courts of the State of California, with venue in Alameda County. This choice of venue is intended by the

parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to this Lease in any jurisdiction other than that specified in this Section.

41. NONDISCRIMINATION

There shall be no discrimination in the performance of this Lease against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Lessee shall not establish or permit any such practice(s) of discrimination with reference to the Lease or any part. Violation of this section shall be deemed to be in material breach of this Lease.

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Lease in duplicate, the day and year first above written.

LESSEE

By: _____
Name

Its: _____

APPROVED AS TO FORM:

City Attorney

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
MATT ELAWADY

Manager of Real Estate Services

APPROVED AS TO FORM:

General Counsel

2888359.1

EXHIBIT "A"
PREMISES

DRAFT

EXHIBIT "A"

That certain parcel of land situate in the City of San Leandro, County of Alameda, State of California, being a portion of the land described in the Quitclaim Deed from Mary A. Chabot to Contra Costa Water Company, recorded August 21, 1888 in Liber 351 of Deeds at Page 424, Alameda County Records, more particularly described as follows:

COMMENCING at a concrete monument in the right-of-way of Estudillo Avenue, adjacent to Lot 2 as shown in the Map of Tract 848, recorded March 29, 1948 in Book 27 of Maps at Pages 65 and 66, Alameda County Records, thence South $57^{\circ}58'30''$ East 134.99 feet to a concrete monument in said right-of-way adjacent to Lot 8 as shown on said map; thence southeasterly, parallel to the southwesterly line of said Lot 8, South $27^{\circ}13'30''$ East 123 feet, more or less to a point at the center line of San Leandro Creek, said point being the **POINT OF BEGINNING** for this description; thence southwesterly, southerly and southeasterly respectively along the center line of San Leandro Creek 1379 feet, more or less, approximately described by the following 34 courses: South $76^{\circ}11'19''$ West 24.22 feet; thence South $64^{\circ}43'00''$ West 24.53 feet; thence South $53^{\circ}53'12''$ West 12.19 feet; thence South $40^{\circ}24'34''$ West 16.66 feet; thence South $35^{\circ}31'01''$ West 14.48 feet; thence South $20^{\circ}50'59''$ West 24.27 feet; thence South $6^{\circ}55'13''$ West 33.37 feet; thence South $3^{\circ}58'06''$ East 26.62 feet; thence South $3^{\circ}58'06''$ East 6.12 feet; thence South $3^{\circ}46'23''$ East 45.28 feet; thence South $15^{\circ}27'47''$ East 57.39 feet; thence South $44^{\circ}01'11''$ East 48.73 feet; thence South $49^{\circ}51'50''$ East 21.96 feet; thence South $63^{\circ}46'18''$ East 12.02 feet; thence South $49^{\circ}53'25''$ East 16.32 feet; thence South $35^{\circ}04'06''$ East 17.38 feet; thence South $24^{\circ}10'34''$ East 18.03 feet; thence South $12^{\circ}36'16''$ East 12.92 feet; thence South $9^{\circ}39'47''$ East 26.07 feet; thence South $20^{\circ}39'51''$ East 25.21 feet; thence South $23^{\circ}38'49''$ East 28.94 feet; thence South $31^{\circ}32'23''$ East 40.22 feet; thence South $39^{\circ}59'50''$ East 44.17 feet; thence South $47^{\circ}58'42''$ East 90.82 feet; thence South $54^{\circ}05'19''$ East 164.72 feet; thence South $57^{\circ}12'31''$ East 154.13 feet; thence South $59^{\circ}50'34''$ East 28.37 feet; thence South $70^{\circ}34'46''$ East 21.60 feet; thence South $82^{\circ}55'18''$ East 33.37 feet; thence South $74^{\circ}00'51''$ East 96.16 feet; thence South $70^{\circ}47'19''$ East 59.98 feet; thence South $81^{\circ}42'52''$ East 71.06 feet; thence South $89^{\circ}34'45''$ East 42.36 feet; thence South $89^{\circ}34'45''$ East 18.97 feet to a point; thence leaving the center line of

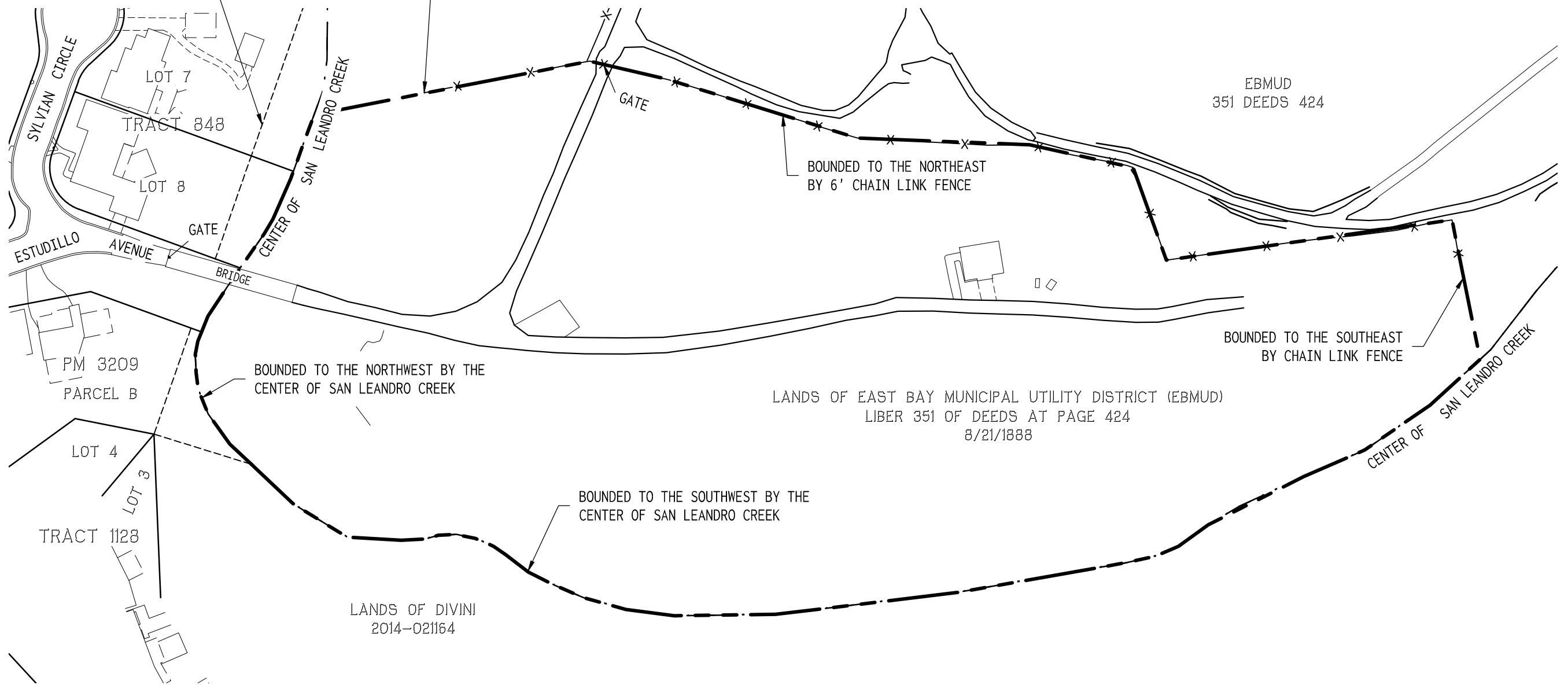
EXHIBIT "B"
PROPERTY

DRAFT

EXHIBIT "B"

POSSIBLE TRACT BOUNDARY PER DIMENSIONS SHOWN ON TRACT 848, PARCEL MAP 3209, AND TRACT 1128. SEE NOTE 1.

LEASE BOUNDARY CONTINUES FROM FENCE CORNER AT TOP-OF-BANK NORTHWESTERLY, IN A STRAIGHT LINE, TO THE CENTER OF SAN LEANDRO CREEK.



LANDS OF DIVINI
2014-021164

LANDS OF EAST BAY MUNICIPAL UTILITY DISTRICT (EBMUD)
LIBER 351 OF DEEDS AT PAGE 424
8/21/1888

EBMUD
351 DEEDS 424

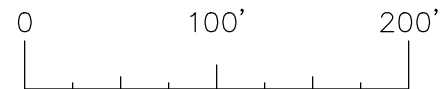
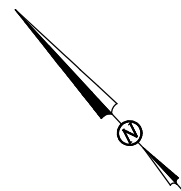
LEASE AREA = 9.4 ACRES +/-

LEGEND

- LEASE BOUNDARY
- FENCE
- CENTER OF CREEK

NOTE 1:

THE ADJACENT BOUNDARIES OF TRACT 1128, PM 3209, AND TRACT 848 ARE NOT DETERMINED BY THIS EXHIBIT, AND MAY OR MAY NOT EXTEND THE THE CENTER OF SAN LEANDRO CREEK. FURTHER TITLE ANALYSIS IS REQUIRED TO DETERMINE THE OWNER OF ADJOINING LANDS NORTHWESTERLY OF THE CENTER OF SAN LEANDRO CREEK.



EAST BAY MUNICIPAL UTILITY DISTRICT OAKLAND, CALIFORNIA
EXHIBIT "A"
CHABOT PARK LEASE BOUNDARY
ALAMEDA COUNTY, CALIFORNIA

DRAWING NAME: H:\00_job-2009\2009645\Chabot Dam Seismic Upgrade\DWG\Exhibits\Lease20171120.dwg
 PLOT DATE: 11-20-17
 PLOTTED BY: croberts

1
1

EXHIBIT "C"

TREE HAZARD EVALUATION PROGRAM

DRAFT

EXHIBIT “C”

TREE HAZARD EVALUATION PROGRAM

Program Objectives

The primary goal of the tree hazard evaluation program is to implement a hazardous tree reduction program (HTRP) that will reasonably protect visitors from unnecessary risks resulting from hazardous trees. An HTRP provides a systematic method for mitigating tree hazards to avert damage to people or property. The program will address the areas of visitor use, landscape management, interpretation and transportation corridors (such as parking lot, pathway, picnic grounds) which the public is openly invited or requested to use.

Definition of a Tree Hazard

A tree hazard refers to any potential tree failure due to a structural defect that may result in property damage or personal injury. Every tree may eventually fail; therefore, knowledge of each tree species, site characteristics, and local weather conditions is essential when evaluating tree hazards. In recreation areas the concern pertains to recreation facility visitors, employees, structures, vehicles or other property.

Site Considerations

While tree hazard evaluation focuses on identifying tree defects and targets, the influence of site factors on the development of tree hazards plays an important role in determining potential threats. Slope, topography, aspect, irrigation schedules, removal of adjacent trees, impacts from construction projects and crown density are all examples of site considerations. Most failures will occur during storm events with unusual winds and saturated soils. Knowledge of regional and local climate as well as soils and topography is invaluable in assessing failure potential.

Tree Hazard Evaluation Program Guidelines

Inspection

Periodically, any trees which stand within falling distance of public use areas and which might pose a hazard to the public or significant property should be systematically inspected for flaws. The form and frequency of routine inspection or surveillance will depend on the type of visitor use areas (defined below).

Tree Care

Any tree denoted as hazardous should be promptly cared for, using the best arboricultural techniques, to eliminate the hazardous status of the tree. If it cannot be made safe, or if the effort to make it safe would be too costly in terms of personnel time or dollars, then the tree may be removed.

Tree Hazard Evaluation

Identifying and managing the risks associated with trees is a subjective process. The evaluation involves examining a tree for structural defects and associating those defects with a known pattern of failure, factoring in site specific elements and rating the degree of risk. Tree hazard assessment involves three components: 1) a tree with the potential to fail, 2) an environment that may contribute to that failure and 3) a person or object (target) that would be injured or damaged. Trees grow in a generally predictable manner, based on a set of recurring themes and patterns. Structural defects and weakness may be the result of normal growth and development events such as re-sprouting from stumps, poor branch spacing and wound response.

Evaluation Cycle

Since site characteristics and tree development change over time hazard evaluation must occur annually on a regular basis.

Note: Deviations from the evaluation cycle may occur due to severe environmental changes i.e. storms and wild land fires. Also evaluator may determine in the field that based upon combined evaluation factors specific to the individual tree, it may be necessary to re-evaluate in between scheduled cycles.

Types of Inspections

Three levels of inspection have been identified for use in the recreation areas. They are defined based on existing use patterns and associated inspection intensity deemed appropriate.

- Individual Trees – Each tree in the specified area will receive a 360-degree visual inspection for defects. This means close visual evaluation, including tests with various tools as warranted. Facilities requiring individual tree inspection include parking areas, sports fields, playgrounds, day use areas, park maintenance facilities, and occupied structures.
- Walk Through – Includes a walk through of the specified area while visually scanning for potential hazards. Walk through inspections are performed in areas defined as frequently used paths or trails designated or undesignated.

Inspection Types Keyed to Use Areas or Management Zones

- Undeveloped Areas
 - Ordinarily no inspections are called for in these areas. Visitors are expected to know that they are responsible for their safety in such areas. Information pertaining to the safety and maintenance of these areas will be readily available to the public.

- Trails or Informal Activity Areas
 - A walk through inspection will be performed on hiking trails, both designated and undesignated within recreation areas.
- Developed Zones
 - Playgrounds, day use areas, parking lots, interpretive areas, transportation corridors and similar areas will be given individual inspection. All trees within falling distance of designated use space should be individually checked. In buffer, transition areas, or perimeter zones, inspections may be accomplished by walk-through procedures.

Documentation

A "Hazardous Tree Inspection Form" (Appendix A) will include the evaluator(s) performing the inspection, date(s) of inspection, the area covered, management zone, noted or suspected hazardous trees (include location, size, and species of tree), ratings, notes on inspections of individually checked trees found to have significant defects including description of the flaws (Appendix B), recommendations, and documentation of follow-up actions. The record of inspected trees from cycle to cycle can be useful to document whether a tree is declining, stable, or regaining vigor.

In order to effectively and efficiently locate a tree previously inspected the evaluator(s) must give the tree a location ID. This can be accomplished by identifying a fixed object within the inspection area (such as a fire ring set in concrete) from which a compass bearing and a distance measurement from the fixed object can be taken to the tree. Each completed tree evaluation will be given a hazard rating and a recommended abatement action. The evaluator(s) should note the date of the completed abatement action in the hazardous tree log.

Completed hazardous tree logs shall be retained by the City of San Leandro and reviewed each year prior to commencing current inspections. By doing so the evaluators can identify trees that may have been marked for a mid cycle evaluation. In this manner the hazardous tree log acts as another tool in prioritizing work schedules.

Identifying Defects

Examination of the entire tree structure for defects and hazards begins with an assessment of overall vigor and health. Upon completion of the initial assessment an examination of roots, root crown, trunk, branches and scaffold limbs follows (Appendix C). If during the inspection process, the evaluator identifies a tree in imminent danger of failing, immediate action must be taken. This includes informing appropriate personnel, excluding park visitors from the target area and implementing abatement treatments (pruning, removal, etc.).

Retention of hazard trees, even those with significant wildlife value, is not appropriate in public use areas where the likelihood of a target is highly probable.

Developing the Hazard Rating

The hazard rating is based on three components of the evaluation; failure potential, size of defective part and target rating. Each component is assigned a value of 1 to 4 and then totaled up. Generally speaking a tree hazard with a high rating will have a higher level of risk to activity in and around it than one that receives a lower rating. The hazard rating is one of the tools used to prioritize abatement treatments. The three components are as follows:

- **Failure Potential** (4 points) – identifies the most likely failure and rates the likelihood that the structural defect(s) will result in failure within the inspection period. Examples of ratings are:
 - 1 –Low; defects are minor (e.g. dieback of twigs, small wounds with good wound wood development).
 - 2 –Medium; defects are present and obvious (e.g. cavity encompassing 10-25% of the circumference of the trunk, co-dominant stems without included bark).
 - 3 –High; compounding and/or significant defects present (e.g. cavity encompassing 30-50% of the circumference of the trunk, multiple pruning wounds with decay along a branch).
 - 4 –Severe; defects are very severe (e.g. heart rot decay, conks along the main stem, cavity encompassing more than 50% of the trunk).

- **Size of Defective Part** (4 points) – rates the size of the part most likely to fail. The larger the part that fails, the greater the potential for damage. Examples are:
 - 1 –Most likely failure less than 6” in diameter.
 - 2 –Most likely failure 6-18” in diameter.
 - 3 –Most likely to failure 18-30” in diameter.
 - 4 –Most likely to failure greater 30” in diameter.

- **Target Rating** (4 points) – rates the use and occupancy of the area that would be struck by the defective part. Examples are:
 - 1 –Occasional use (e.g. hiking, jogging, cycling trail).
 - 2 –Intermittent use (e.g. picnic area, day-use parking, main roads).

3 –Frequent use, secondary structure (e.g. seasonal camp area, storage facilities, playgrounds).

4 –Constant use, facilities (e.g. year round use for a number of hours each day).

Hazard Abatement

A hazard rating defines the seriousness and extent of potential danger to site users. The greater the hazard rating, the greater the risk associated with the tree. Hazard ratings become a way to prioritize workloads. Trees with high hazard ratings should be treated before trees with low ratings. However, hazard ratings cannot strictly define a numerical line for action, between either removal and retention, or treatment.

Development of abatement options should be as systematic as development of the ratings, considering the nature of the site, tree and target. Treatment of hazard situations is framed by the nature of the individual situation. For example, trees in imminent danger of failure and targets that cannot be moved restrict the range of possible abatement options.

Treatment of tree hazards must reflect the overall rating and the individual components of the rating, within the program framework. Hazards which result from deadwood and hangers in the crown can be abated by crown cleaning. Alternatively, cable bracing may be required when the most likely failure is that of large scaffolds. Where the hazard is posed by a tree in decline, there may be few abatement options and removal may be the only option. After the treatments have been applied, a follow-up evaluation should occur.

EXHIBIT "C" - Appendix "A"

Hazard Tree Inspection Form

Recreation/ Area Site _____

Date _____

Evaluator _____

Management Zone _____

Site #	Species	DBH (in.)	Loc. I.D.	TC/D	Hazard Rating				Action			
					Failure Potential (+)	Size of Part (+)	Target Rating (+)	(=) Hazard Rating	Remarks	Recommended	Mid-Cycle Evaluation Needed	Date Completed
			Proximity to type of public activity									

TREE CHARACTER/ DEFECTS = TC/D

EXHIBIT “C” - Appendix “B”

Common Tree Characteristics/Defects

TC/D CODE#

#1 History of Failure- Trees that have failed in the past tends to do so again. This is true for individual trees, as well as for trees within a stand. On individual trees, Check for broken stubs, split out limbs; in stands, look for fallen trees.

#2 Recent Exposure- Trees that used to be protected by other vegetation or structures are more likely to fail if their neighbors are removed.

#3 Dead Branches- Dead branches quickly decay, making them more likely to break out of the tree.

#4 Limbs With Poor Taper/End Weight- These limbs tend to break.

#5 Cracks- Cracks in branches and trunks indicate areas of weakness.

#6 Bark- Loss of bark, esp. in non-uniform patterns; trunk injuries, buckled bark, horizontal cracks and “popping off” of pieces may indicate wood under tension or compression. Internal cracks may be indicated by bulges and ridges in the bark.

#7 Decay- Decayed wood is present. Look for discoloration, conks, mushrooms, cavities.

#8 Root Injury- Trees with root rot or severed roots (construction, sidewalk repair) are likely to fail.

#9 Crooks- Crooks are formed primarily as a result of pruning. Branches with crooks tend to break.

#10 Seams- A seam is a line formed by included bark at branch junctions, or when two edges of wound wood meet at the center of a wound (behind which there may be decay).

#11 Clustered Scaffold Branches (poor vertical distribution) - where several scaffold branches of similar size arise from one level.

#12 Poor Branch Attachment - Narrow Angles and Excessive Angles- Branches with narrow angles of attachment that do not form connective tissue between the branch and trunk tend to split out, or branches with excessive angles of attachment that have an inherit weakness due to crown weight. Also included are “water sprouts” that develop as a result of heading back.

#13 Lack of Basal Flare- Lack of flare may indicate fill soil has been placed around trunk. The tree should be checked further for decay in the buttress roots.

#14 Site Changes- Changes such as introduction of irrigation, or placement of fill soil, can increase the potential for a tree to fail.

#15 Lean- Natural lean that has other contributing factors such as; excessive top weight or unbalanced canopy, or decay may increase the likelihood of failure.

#16 Health and Vigor- Lack of general health and vigor may indicate tree defects.

EXHIBIT “C” - Appendix “C”

Assessing the Extent of Decay

Decay is a critical factor in the stability of the tree, and therefore in hazard evaluation. Specific characteristics of the trunk and canopy, as well as site conditions and management history conditions can indicate the potential for decay. The evaluator should look for:

1. wounds, cavities, dead and broken branches;
2. fruiting bodies of decay fungi (conks, bracts, mushrooms);
3. bleeding (oozing sap) through the bark;
4. borers, carpenter ants, termites;
5. nesting holes, bee hives;
6. seams, woundwood formation;
7. sloughing, cracked bark, change in bark texture;
8. site change, root injury, change in grade;
9. poor soil drainage, ponding, heavy irrigation;
10. intense and repeated pruning;
11. History of failure.

If decay indicators are present, the extent of decay should be evaluated. Methods include:

1. striking with mallet and listen for changes in tone
2. probing into exposed decay
3. exploratory digging when root rot is indicated
4. drilling to determine color, odor, penetration resistance, and extent of decay.

We rely most heavily on sounding to help locate major hollows, then drilling suspected areas with a 1/8” bit that is 10” long. The drill is pushed into the tree about 1-2 “and removed. The extracted wood is removed from the bit and examined. This is repeated until the appropriate sampling depth is reached. In this way the how much sound wood is present can be estimated.

When determining the number and location of borings, the inspector should estimate the size and conformation of the decay column based on external signs. Then drill to establish the limits of the column. Just as too many borings should be avoided, so should too few. Drilling in two or three places at one level on the trunk provides information at those sample locations only. It will not identify potential problems in the root crown, lower or higher on the trunk, or at branch attachments.

EXHIBIT "D"
OPERATING PLAN

DRAFT

Exhibit D
Chabot Park Operating Plan

The information contained in this exhibit includes routine maintenance work completed by the City of San Leandro’s Public Works Department. Chabot Park is open daily, based on hours established in the City’s Administrative Code (Article 3, §7.1.305), as follows:

January	7 AM – 6 PM
February – March	7 AM – 7 PM
April	7 AM – 8 PM
May – Labor Day	7 AM – 9 PM
Day after Labor Day to October	7 AM – 8 PM
October	7 AM – 7 PM
November – December	7 AM – 6 PM

Task	Daily	Weekly	Monthly	As Needed
Restroom Cleaning	✓			
Graffiti Removal	✓			
Trash Pick-up	✓			
Dumping Trash Cans	✓			
Painting Tables			✓	
Blowing Pathways		2X		
Cleaning BBQs		2X		
Inspect/Repair Irrigation		✓		
Cut Fallen Limbs				✓
Clean Pirate Trail				1x/year
Rake Horseshoe Pits		✓		
Cut Down Weeds				2x/year
Add Gravel to Parking Lot				2x/year
Service/Clean and Remove Bowl on Drinking Fountain		✓		
Spread Wood Chips			✓	
Clear Ivy off Trees				✓
Walk Park and Inspect for Hazards	✓		✓	
Road Maintenance (Pot Hole Repairs)				✓
Bridge Maintenance				✓
Field Maintenance			✓	✓
Playground Maintenance	✓		✓	
Fencing Maintenance				✓

Public Works staff perform nightly lock-up of the entrance gate (accessed from Estudillo Ave.), securing the premises until they are unlocked the following morning. San Leandro Police are available 24/7 to respond to calls for service to this property. Fire suppression services are provided by Alameda County Fire Department. The closest fire station is Station #9, located approximately 1 mile to the west, on Estudillo Avenue.

The City of San Leandro recognizes the natural environment of Chabot Park and therefore seeks to control pests without harming non-target organisms, or negatively affecting air and water quality and public health. The City employs Integrated Pest Management (IPM) practices when controlling pests. IPM uses cultural, mechanical, physical, and biological control methods before using pesticides. The City utilizes available non-pesticide alternatives when conducting pest management activities at Chabot Park. Chemical controls are only applied when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, the least toxic and the least persistent pesticide that will provide adequate pest control is applied. Pesticides are not applied on a prescheduled basis and are not applied within 25 feet of the top of the bank along San Leandro Creek.

The City abides by BAAQMD issued *Spare-the-Air* days, eliminating use of gasoline-powered equipment on declared days.

Personal property found at Chabot Park is turned into the Public Works Department on the same day that the property is found, where it is kept for 30 days.