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Approved as to Form and Legality

*Davis*

Introduced by Councilmember \_\_\_\_\_  
Oakland City Attorney's Office

**OAKLAND CITY COUNCIL**

**12718**

Ordinance No. \_\_\_\_\_ C.M.S.

**ORDINANCE AUTHORIZING A SUBLEASE AGREEMENT WITH BORDER TOWN SKATE PARK INC., FOR THE SOLE AND EXCLUSIVE PURPOSE OF OPERATING A SKATE BOARD PARK LOCATED UNDER STATE HIGHWAY 580 AT THE NORTH WESTERN END OF LOUISE STREET, OAKLAND, FOR \$100.00 FOR THE TERM OF THE LEASE, PLUS PROVISION OF REGULAR LITTER CLEANUP SERVICES FOR THE STATE DEPARTMENT OF TRANSPORTATION FOR A TERM OF THIRTY (30) MONTHS, WITH AN OPTION FOR ONE THIRTY (30) MONTH EXTENSION**

**WHEREAS**, the City of Oakland (the "City") desires to enhance and promote recreational opportunities in the City for the City's youth; and

**WHEREAS**, the State of California, Department of Transportation, ("Caltrans") agreed to lease space under Highway 580 to the City solely for the construction and operation of a skateboard park for recreation and enjoyment of Oakland youth; and

**WHEREAS**, the City has entered into an Airspace Rental Agreement, a 30-month lease with one 30-month lease renewal option , with Caltrans (the "Master Lease") for a parcel of land of approximately 10,000 square feet, below State Highway 580 at the foot of Louise Street, and shown on Exhibit "A" attached hereto (the"Property"); and

**WHEREAS**, the City of Oakland desires to sublease the entire Property described above to Border Town Skate Park Inc., a California not for profit corporation, ("Sub-Lessee") for the sole purpose of constructing and operating a skate board park in Oakland; and

**WHEREAS**, the Sublease is subject to and subordinate in all respects to the Master Lease and all of its terms, covenants, conditions and provisions; and

**WHEREAS**, Sub-Lessee, as a further condition of the Sublease, agrees that it shall be solely responsible for all costs and liabilities, with no recourse to City for all of City's obligations under the Master Lease and also for the additional obligations imposed on Sub-Lessee under the Sublease, but not limited thereto; and

**WHEREAS**, the Sub-Lessee shall assume all economic and financial risks and obligations of the City under the Sublease, so that City shall have no substantial fiscal impacts resulting from the Master Lease or the sublease; and

**WHEREAS**, the Property is being subleased to Sub-Lessee in an “AS-IS” condition and City makes no representations of any kind with respect to the Property; and

**WHEREAS**, the Property is a City real property interest that is not surplus property under Ordinance No. 10142 C.M. S. and may be subleased without competitive bidding when such sublease is in the best interest of the City; and

**WHEREAS**, the City may recognize and value in-kind services and approve provision of such in-kind services in lieu of fair market rent pursuant to Ordinance No. 11722 C.M.S. when such in-kind services are provided directly to City, or through City to another entity; and

**WHEREAS**, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby finds and determines that the Property is not surplus property, is not needed for City use, and may be subleased only for use as a skate board park, pursuant to terms of the Master Lease.

**SECTION 2.** The City Council hereby finds and determines that it is in the best interest of the City to sublease the Property to Sub-Lessee because Caltrans leased the Property to City solely for use as a skate board park after Sub-Lessee began construction of a skateboard structure on the Property without necessary permission, later requested that the City pursue lease negotiations with Caltrans, and now desires to construct a skateboard structure and operate and maintain a skate board park under an approved sub-lease.

**SECTION 3.** The City Administrator, or her designee, is authorized to execute a Sublease with Border Town Skate Park, Inc., which shall assume all economic and financial risk and obligations of the City contained in the Master Lease, plus any additional financial risks and obligations contained within the Sublease.

**SECTION 4.** The City Council authorizes Sub-lessee to provide services in lieu of rent directly to Caltrans and accepts Caltrans’ valuation of the services to be provided in lieu of rent as worth at least \$250 per month, the fair market monthly rental value. Caltrans shall have recourse only to Sub-Lessee in the event Sub-Lessee fails to perform required services.

**SECTION 5.** The services and functions of Sub-Lessee on the Property, or pursuant to the Sublease, are not governmental services or functions.

**SECTION 6.** The City Council has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because the project is exempt from CEQA pursuant to section 15301 (existing

facilities) and section 15061(b)(3) (general rule) of the CEQA Guidelines. The City Administrator is hereby directed to file a Notice of Exemption.

**SECTION 7.** The City Administrator, or her designee, is hereby authorized to take any and all actions necessary, consistent with this ordinance, to complete, implement, monitor, and amend this Sublease for the real property interest.

**SECTION 8** The Sublease shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

**SECTION 9.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes, otherwise it shall become effective upon the seventh day after final adoption.

Introduction Date: NOV 15 2005

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 06 2005, 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, ~~BROOKS~~, ~~REID~~, CHANG, AND PRESIDENT DE LA FUENTE - 6

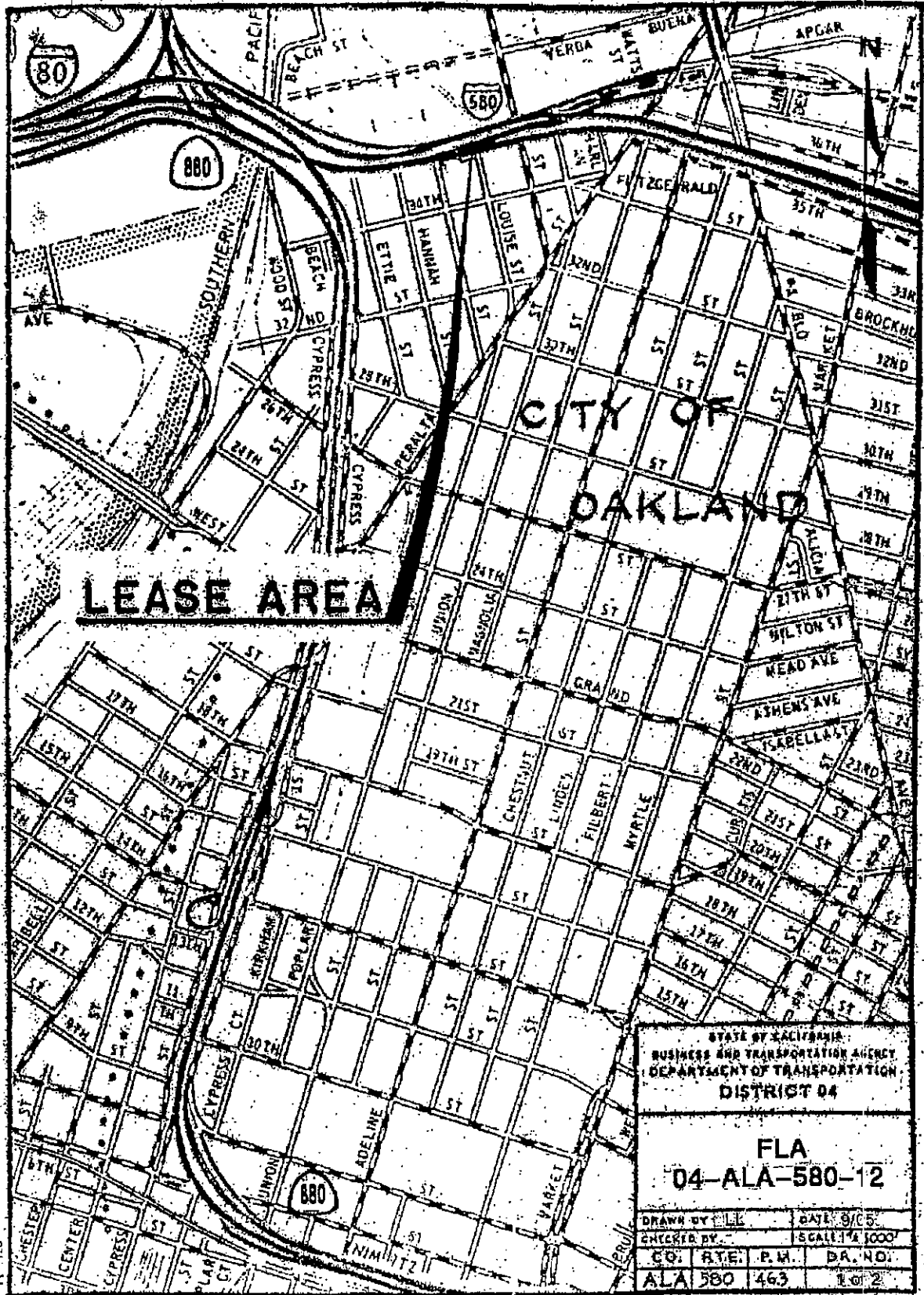
NOES - 0

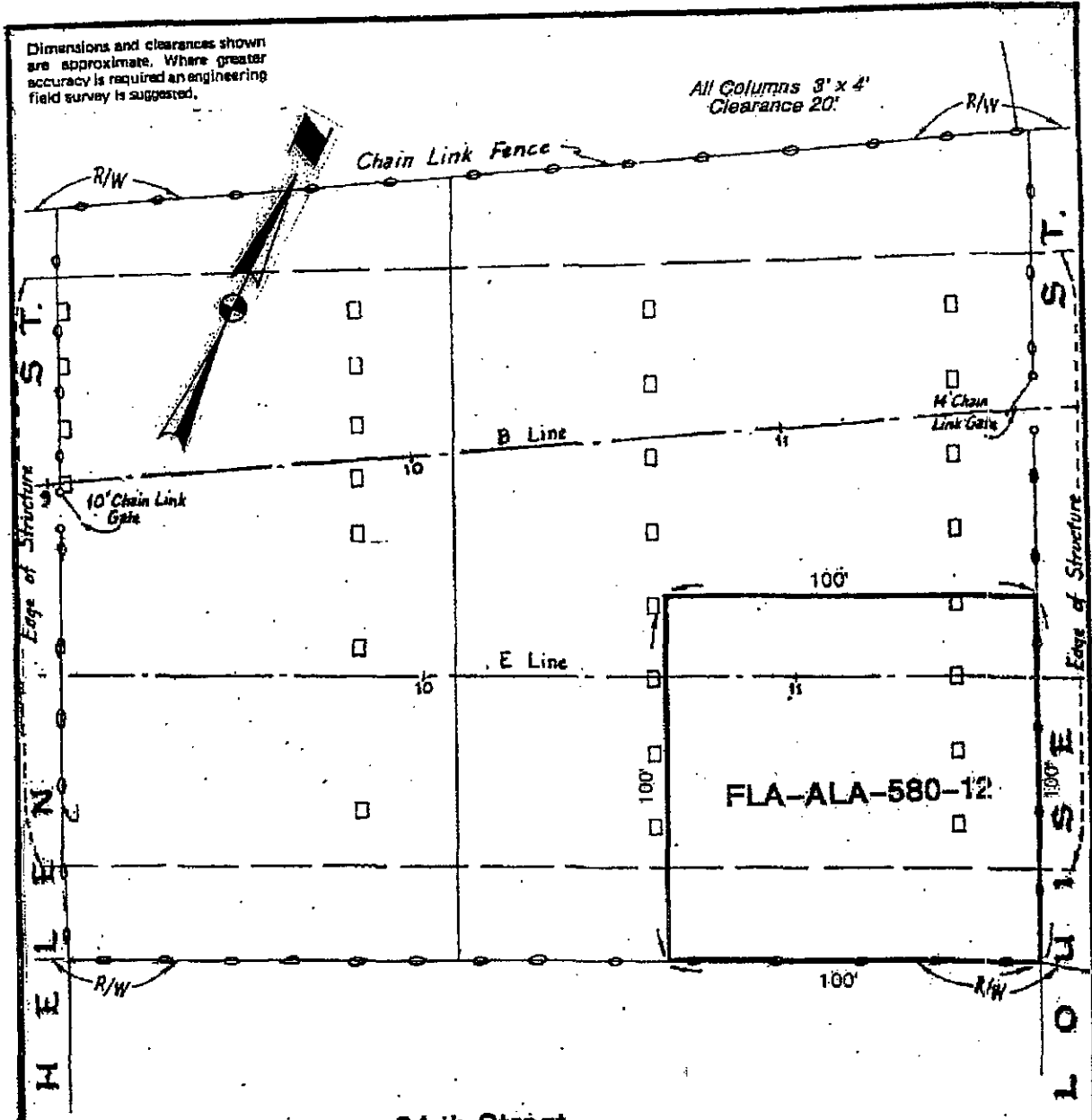
ABSENT - Reid - 1

ABSTENTION - 0

Excused - Brooks - 1

ATTEST: Latonda Simmons  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California





Gross Area ----- 10,000 Sq. Ft.  
 Area of Columns ----- 48 Sq. Ft.  
 Net Area ----- 9,952 Sq. Ft.  
 Area Under Structure ----- 7,500 Sq. Ft.



STATE OF CALIFORNIA  
 BUSINESS AND TRANSPORTATION AGENCY  
 DEPARTMENT OF TRANSPORTATION  
 DISTRICT 04

FLA  
 04-ALA-580-12

DRAWN BY LL	DATE 8/05
CHECKED BY	SCALE As Shown
CO. ALA.	RTL. 580
P.M. 463	DR. NO. 2 of 2

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