

File No. 170006 Committee Item No. 5
Board Item No. 5

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date January 19, 2017

Board of Supervisors Meeting Date February 7, 2017

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Erica Major Date January 13, 2017
Completed by: JM Date 01/20/2017

1 [Settlement of Lawsuit - Decorative Plant Services Inc. - \$110,000]

2
3 **Ordinance authorizing settlement of the unlawful detainer lawsuit filed by the City and**
4 **County of San Francisco against Decorative Plant Services Inc. (Decorative Plant), by**
5 **Decorative Plant's agreement to surrender possession no later than March 31, 2017,**
6 **Decorative Plant's execution of a Stipulation for Entry of Judgment and a Writ of**
7 **Possession, and San Francisco Public Utilities Commission (SFPUC) agreement to**
8 **provide Decorative Plant a payment not to exceed \$110,000 for reimbursement of**
9 **expenses related to relocation; the lawsuit was filed on November 28, 2016, in San**
10 **Francisco Superior Court, Case No. CUD-16-657190; entitled City and County of San**
11 **Francisco, through the Public Utilities Commission (PUC) v. Decorative Plant Services**
12 **Inc., ACS Marketing Inc. dba S.F. Foliage, Inc., Goldman Enterprises dba Sunborne**
13 **Nursery Inc., related to the termination of the lease agreement entered into**
14 **June 1, 2004, between the SFPUC and Decorative Plant Services Inc., for 127,300**
15 **square feet at the Southeast Community Facility at 1150 Phelps Avenue.**

16
17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby
19 authorizes the City Attorney to settle the unlawful detainer action entitled City and County of
20 San Francisco, through the Public Utilities Commission (PUC) v. Decorative Plant Services
21 Inc., ACS Marketing Inc. dba S.F. Foliage, Inc., Goldman Enterprises dba Sunborne Nursery
22 Inc., San Francisco Superior Court, Case No. CUD-16-657190 according to the terms of the
23 Settlement Agreement on file with the Clerk of the Board, in File No. 170006. This lawsuit
24 involves termination of the lease agreement entered into in June 2004 between the San
25 Francisco Public Utilities Commission (SFPUC) and Decorative Plant Services Inc. and

1 vacation of the premises by Decorative Plant Services Inc. The Settlement Agreement
2 provides that the SFPUC will reimburse Decorative Plant for costs associated with relocation if
3 it vacates the premises by March 31, 2017, among other terms of the Settlement Agreement.

4 Section 2. The above-named action was filed in San Francisco Superior Court on
5 November 28, 2016 as an unlawful detainer action and the following parties were named in
6 the lawsuit: Decorative Plant Services Inc., and two subtenants, ACS Marketing Inc. dba S.F.
7 Foliage, Inc., Goldman Enterprises dba Sunborne Nursery Inc.

8
9
10 APPROVED AS TO FORM AND
RECOMMENDED:

11 DENNIS J. HERRERA
12 City Attorney

13 
14 NOREEN AMBROSE
Utilities General Counsel

15 FUNDS AVAILABLE:

16 
17 BEN ROSENFELD
18 Controller

RECOMMENDED:

Public Utilities Commission

19 
20 HARLAN L. KELLY, JR.
21 General Manager, Public Utilities
22 Commission

APPROVED:

23 
24 DONNA HOOD
25 Secretary, Public Utilities Commission

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SETTLEMENT and RELEASE AGREEMENT

This Settlement and Release Agreement ("**Agreement**") is made and entered into this day of _____ 2016 by and between DECORATIVE PLANT SERVICE INC., a California corporation ("**Decorative Plant**"), and THE CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), acting through its San Francisco Public Utilities Commission ("**SFPUC**") and San Francisco City Attorney Dennis J. Herrera.

I. RECITALS

The parties enter into this Agreement with reference to the following facts and understandings:

A. Pursuant to a lease agreement, dated June 1, 2004 ("**2004 Lease**") City leased to Decorative Plant approximately 127,300 square feet of space at the Southeast Community Facility at 1150 Phelps Avenue, San Francisco ("**Premises**") for the permitted use of maintaining a greenhouse, offices, and warehouse space. The 2004 Lease replaced a pre-existing agreement between the parties.

B. The 2004 Lease expired on June 30, 2010. Decorative Plant remained on the Premises on a holdover month-to-month basis under the terms and conditions specified in the 2004 Lease, subject to termination on 30 days' notice.

C. Under the terms of the 2004 lease, Decorative Plant assumed full and sole responsibility for the condition, operation, maintenance, and management of the Premises and waived any rights to relocation assistance benefits.

D. Decorative Plant had two subtenants – ACS Marketing Inc., a California corporation doing business as "San Francisco Foliage," and Goldman Enterprises, a California corporation, doing business as "Sunborne Nursery" (each, a "**Subtenant**" and together, the "**Subtenants**") – who occupied different portions of the Premises pursuant to sublease agreements ("the "**2004 Subleases**") pursuant to which each Subtenant agreed to be bound by the terms of the 2004 Lease. Decorative Plant represents that it has not entered into other agreements with any other third party who could claim a right to possession or use of the Premises.

E. In January 2015, the SFPUC requested a due diligence study to assess the Premises' structural, electrical, plumbing, fire protection, ADA compliance and non-structural roof components.

F. In February 2015, the SFPUC's consultant, AECOM, released the initial findings of the due diligence study in a report entitled *AECOM Due Diligence Report February 2015* (the "**Due Diligence Report**") and concluded that \$11 million in immediate repairs are required in order for the Premises to meet current fire/life safety, American Disabilities Act (ADA), and security requirements. AECOM also concluded that an additional \$1.8 million is required to address deferred maintenance issues and functional inefficiencies of building systems and that

construction of the all necessary improvements to the Premises to address these issues requires that the Premises be vacant.

G. In April 2015, the SFPUC met with Decorative Plant and both Subtenants to share the details of the Due Diligence Report. Among other raised concerns, the Due Diligence Report revealed that the Premises lacks the minimum space required for emergency egress, fire lane, and turning radius; the Premises has inadequate fire sprinkler/suppression systems and lacks a comprehensive fire alarm system; and the buildings on the Premises contain flammable shade cloth and unsafe electrical circuits and wiring. In order to provide adequate emergency vehicle access, a minimum of twenty percent (20%) of the existing buildings will require demolition. The Due Diligence Report concluded that the Premises will need to be vacant to either retrofit or replace the existing facilities.

H. On May 20, 2016, Decorative Plant, and both Subtenants received notice from the City terminating the holdover tenancy under the 2004 Lease, effective as of 5:00 p.m. on June 30, 2016, in accordance with its terms.

I. On November 28, 2016, SFPUC filed an unlawful detainer lawsuit in the San Francisco Superior Court, Case No. CUD-16-657190.

J. Authorized representatives of Decorative Plant and the City are executing this Agreement on the dates next to their signatures below, subject to the understanding and agreement that this Agreement, and all of its terms, are contingent upon the conditions precedent to effectiveness of this Agreement, as described herein.

K. The parties desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions, and promises contained herein, the parties agree as follows:

II. AGREEMENT

1. **Conditions Precedent.** This Agreement shall take effect on the last date on which all of the following events have occurred, to be acknowledged promptly by the parties in writing ("**Effective Date**"):

- a. The San Francisco Board of Supervisors and Mayor, acting their respective sole discretion, adopt legislation approving this Agreement, and the legislation becomes effective pursuant to applicable law; and
- b. City's Controller certifies that sufficient unencumbered balances are available to meet the payments under this Agreement; and
- c. This Agreement has been executed and delivered by both parties.

This Agreement shall have no force or effect until each of the foregoing conditions precedent (the "Conditions") is satisfied.

2. **Termination of Holdover Tenancy and Terms of Occupancy.** The parties acknowledge that Decorative Plant's holdover tenancy under the 2004 Lease is fully and finally terminated as of 5:00 p.m. on June 30, 2016. Notwithstanding such termination, as of the Effective Date, City agrees that Decorative Plant may continue to occupy the portion of the Premises shown outlined on attached **Exhibit A** (the "DP Premises") beyond June 30, 2016, provided that Decorative Plant satisfies all of its obligations under this Agreement. City and Decorative Plant agree that for purposes of this Agreement the DP Premises shall be deemed to contain 34,060 square feet of space. Such occupancy shall be on the same terms and conditions as the 2004 Lease, insofar as they apply to the DP Premises, except as otherwise provided in this Settlement Agreement and provided that Sections 5.6, 5.7, 7.1(b), and 9.1(b) of the 2004 Lease and the provisions relating to the term of the 2004 Lease and holding over shall not apply. Such occupancy shall not extend beyond 5:00 p.m. on March 31, 2017. From the Effective Date until Decorative Plant vacates the Premises, Decorative Plant shall pay an amount equivalent to the Base Rent under the 2004 Lease for the DP Premises that would have been due had the 2004 Lease not been terminated, in the amount of Four Thousand Eight Hundred Fourteen Dollars and Fifty-Three Cents (\$4,814.53) per month. In addition, Decorative Plant shall pay to the SFPUC its pro-rata share of water and power charges for such period. Decorative Plant's pro-rata share is 26.76%, based on its continuing occupancy of 34,060 square feet of the total 127,300 square feet of the original Premises. The terms and conditions of the 2004 Lease are incorporated herein by reference as if fully set forth herein, and shall govern Decorative Plant's occupancy, except to the extent that they are inapplicable to, inconsistent with, or modified by the terms of this Settlement Agreement.

3. **Tenant Obligations.**

- a. Decorative Plant agrees to vacate and remove its personal property and materials, if any, from the portions of the Premises other than the DP Premises, on or before June 30, 2016.
- b. On or before March 31, 2017, Decorative Plant agrees to vacate the DP Premises, remove from the DP Premises all personal property, and leave the DP Premises in a broom-clean condition, free of abandoned material and trash.
- c. If Decorative Plant does not fully vacate the Premises on or before March 31, 2017, City shall have the right to take all actions necessary to gain possession of the Premises, including filing the Stipulation for Entry of Judgment for Possession attached as **Exhibit B** to this Agreement and executed by Decorative Plant, and obtaining a writ of possession for the Premises. If Decorative Plant vacates the Premises and complies with the terms of this Agreement, the City will dismiss the unlawful detainer lawsuit, provided each party will waive costs.
- d. Within five (5) business days after the Effective Date, Decorative Plant shall pay to the SFPUC the amount equivalent to the rent that would have been owed under the 2004 Lease for the DP Premises had the holdover tenancy not terminated, for the time

from July 1, 2016 to the Effective Date (the "Back Rent"), as determined by the SFPUC as of that date.

e. In order to address the deficient conditions and safety concerns identified in the Due Diligence Report, Decorative Plant has been notified to implement the following actions, completion of which must be confirmed no later than September 30, 2016 (whether or not City has yet executed and delivered this Agreement), to improve the adverse safety and operating condition of the DP Premises:

- Decorative Plant shall notify all of its employees of the material adverse safety and operating conditions identified in the Due Diligence Report with respect to the DP Premises;
- Decorative Plant shall post signs on the DP Premises in a prominent location that warn its wholesale customers and invited visitors of the material adverse safety and operating conditions identified in the Due Diligence Report with respect to the DP Premises;
- Decorative Plant shall prohibit general public access to the DP Premises; and discontinue and prevent any monthly, quarterly, or other periodic community plant sales within any greenhouses located on the DP Premises;
- Decorative Plant shall remove any items stored or placed on the DP Premises that block or materially impede access to or visibility of emergency egress, emergency eye wash area(s), and emergency exit signs;
- Decorative Plant shall install additional smoke detectors and provide additional fire extinguishers on the DP Premises;
- Decorative Plant shall remove any flammable shade cloth installed or placed on the DP Premises; and
- Decorative Plant shall devise and implement an appropriate emergency evacuation plan and perform practice evacuation drills with employees.

4. **City's Obligation to Pay**

a. **Relocation Costs.** Notwithstanding that the term of the 2004 Lease has expired, Decorative Plant was holding over on a month-to-month basis, Decorative Plant waived the right to relocation assistance under the 2004 Lease, and City is under no obligation to pay such amounts, City will nevertheless reimburse Decorative Plant for certain relocation costs as provided below in this paragraph, if, and only if, Decorative Plant satisfies its obligations under this Agreement to City's reasonable satisfaction (the "Reimbursement Payment"). If Decorative Plant satisfies such obligations, City shall reimburse Decorative Plant for (i) its actual, reasonable, and necessary relocation costs up to an aggregate amount that shall not exceed One Hundred Thousand Dollars (\$100,000), and (ii) up to Ten Thousand Dollars (\$10,000) in business reestablishment expenses, consistent with the Reimbursement Program Invoice Requirements attached as **Exhibit C.** Payments will be made on a reimbursement basis and Decorative Plant shall provide City with adequate proof of all reimbursable expenses, including paid invoices for all qualified relocation and business reestablishment expenses incurred. In addition to any other remedies

available under this Agreement or at law or in equity, the City will deduct from the first Reimbursement Payment any unpaid Back Rent or other payments due to the City under this Agreement.

b. **Security Deposit.** Currently, the City holds a security deposit of \$31,000 for the Premises under the 2004 Lease (“**Original Security Deposit**”). Decorative Plant collected security deposits in the amounts of \$4,456.77 under the Sunborne Nursery Sublease and \$5,409.07 under the San Francisco Foliage Sublease (each, a “**Sublease Security Deposit**”). Decorative Plant hereby waives its interest in that portion of its Original Security Deposit equal to the combined Sublease Security Deposits, in the total amount of \$9,865.84, and waives the right to receive the return of any balance of such sum under the 2004 Lease. Notwithstanding that the City was not a party to the 2004 Subleases and has no responsibility or liability for performance of Decorative Plant’s obligations under those subleases, including without limitation, return of any security or unearned, prepaid rent under the terms of the 2004 Subleases, City agrees to assume responsibility for holding, accounting for, and applying the Sublease Security Deposits and returning any balance remaining of either Sublease Security Deposit to the appropriate Subtenant following such Subtenant’s surrender of its premises, in accordance with the terms of the Settlement Agreement between City and such Subtenant. The balance of Decorative Plant’s Original Security Deposit, in the amount of \$21,134.16 (the “**DP Premises Security Deposit**”) shall serve as security for Decorative Plant’s performance of its obligations under this Agreement. The terms of Section 23 of the 2004 Lease, as incorporated into this Agreement under **Section 2** above, shall govern City’s and Decorative Plant’s rights and obligations with respect to the DP Premises Security Deposit. City will return to Decorative Plant the remaining balance, if any, of the DP Premises Security Deposit upon Decorative Plant’s vacation of the Premises in compliance with this Agreement, provided that: (i) the Premises is in substantially the same condition when Decorative Plant vacates the Premises that existed as of the date that the SFPUC recommends the Settlement Agreement to the Board of Supervisors; (ii) the Premises is left vacant, in a broom clean condition, free of any personal property or abandoned material or trash; and (iii) Decorative Plant is not in default of its obligations to pay rent, including holdover rent, under the 2004 Lease; and (iv) Decorative Plant is not in default of its obligation to pay any sums owed pursuant to **Sections 2** and **3** above.

5. **Tenant’s Insurance**

a. Commencing on Decorative Plant’s execution of this Agreement and continuing until Decorative Plant vacates the DP Premises, Decorative Plant, at no cost to the City, shall procure and keep in effect at all times insurance as follows:

- i. Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than One Million Dollars (\$1,000,000)),

personal injury, products and completed operations, and explosion, collapse and underground (XCU).

ii. Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness. The Workers' Compensation policy shall be endorsed with a Waiver of Subrogation in favor of the City for all work performed by Decorative Plant, its employees, agents and any subcontractors.

iii. Business Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Decorative Plant uses or causes to be used any vehicles in connection with its use of the Premises.

b. Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout Decorative Plant's occupancy of the DP Premises under this Agreement and, without lapse, for a period of three (3) years beyond Decorative Plant's surrender of the DP Premises to City, to the effect that, should occurrences during the period of such occupancy by DP Premises give rise to claims made after its surrender of the DP Premises, such claims shall be covered by such claims-made policies.

c. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

d. All liability insurance policies shall be endorsed to provide the following:

i. Name as additional insured the City and County of San Francisco, its officers, agents and employees.

ii. That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

e. Each insurance policy required pursuant to Section 5 above shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

f. Decorative Plant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required hereunder, on or before the Effective Date, together with complete copies of the policies promptly upon City's request and Decorative Plant

shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Decorative Plant shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, without waiving any rights or remedies which City may have for Decorative Plant's default hereunder, the same for the account of Decorative Plant, and the cost thereof shall be paid from the DP Premises Security Deposit.

g. Notwithstanding anything to the contrary in this Agreement, if any of the required insurance coverage lapses prior to Decorative Plant's surrender of the DP Premises in accordance with this Agreement, and Decorative Plant fails to reinstate the coverage within three (3) days' after City's notice to Decorative Plant, City may declare Decorative Plant's occupancy under this Agreement terminated, in which event City may file a Stipulation for Entry of Judgment for Possession in substantially the form attached as Exhibit A to this Agreement, and obtain a writ of possession for the DP Premises.

h. Personal Property Insurance: Tenant shall be responsible, at no cost to the City, for separately insuring Tenant's Personal Property.

6. **Notification.** Decorative Plant acknowledges receipt of a notice terminating the Lease effective at 5:00 p.m. on June 30, 2016, consistent with the requirements of the 2004 Lease, and waives the right to object to adequacy of the Notice.

7. **Representations, Warranties, and Indemnification.**

a. Decorative Plant represents and warrants that:

i. it has the full right and authority to enter into this Agreement; and

ii. the person or persons signatory to this Agreement and any document executed pursuant to this Agreement on behalf of Decorative Plant has or have full power and authority to bind Decorative Plant.

b. Decorative Plant represents that it has not (i) entered into any amendment of either of the 2004 Subleases or agreed to expand the premises under either 2004 Sublease beyond the sublease premises shown and described in the either 2004 Sublease, (ii) assigned to any other party any of its interest in the Premises or the 2004 Subleases, (iii) entered into other agreements with other third parties who could claim a right to possession or use of any portion of the Premises, or (iv) authorized another party to use any portion of the Premises, whether in writing, orally, or through acquiescence, excepting only the existing 2004 Subleases to the Subtenants referenced in **Recital D**.

c. Decorative Plant shall indemnify, protect, and defend City against and hold it harmless from any and all claims, liabilities, losses, damage, costs, and expenses, including all reasonable attorney fees, asserted against or suffered by it resulting from (i) any breach by Decorative Plant of this Agreement or (ii) the inaccuracy or breach

of any of the representations, warranties, and covenants made by Decorative Plant pursuant to this Agreement.

d. City is entering into this Agreement in its capacity as a landlord with a proprietary interest in the Premises and not in its capacity as a governmental entity or agency with certain regulatory or police powers. Accordingly, there is no guarantee, nor any presumption, that City's status as governmental entity or agency limits any of City's rights, acting in its governmental or regulatory capacity, with respect to the Premises or Decorative Plant, or any other user or occupier of the Premises.

8. **Exercise of Independent Judgment.** Each party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment informed by its legal counsel. Each party acknowledges having read this Agreement and having been advised by its attorney as to its meaning and effect. Each party acknowledges and warrants that its execution of this Agreement is free and voluntary.

9. **Entire Agreement.** Each party acknowledges that this Agreement contains and constitutes the entire agreement between the parties with respect to the obligations contained in this Agreement. The terms of this Agreement are contractual and not a mere recital. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Agreement, other than as expressly set forth in this Agreement.

10. **No Admission.** No aspect of this Agreement is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either party of liability, or wrongful actions, for any purpose.

11. **Severability.** If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect consistent with the overall objectives without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

12. **Interpretation of Agreement.** For purposes of interpreting this Agreement, the parties hereto shall be deemed to have participated equally in its drafting. This Agreement and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

13. **Time of the Essence.** Time is of the essence of this Agreement and each of its provisions.

14. **Recitals and Exhibits.** The Recitals set forth above and the exhibits referenced in and attached to this instrument are incorporated into and made a part of this Agreement.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, all of which counterparts shall be deemed originals. This Agreement will be considered signed by a party when a counterpart bearing the original signature of an authorized signing officer of such party, is delivered to the other party or when a copy of such a signed counterpart is delivered to

IN WITNESS WHEREOF, the parties hereto and their respective attorneys of record have approved and executed this Agreement on the dates specified below:

CITY AND COUNTY OF SAN FRANCISCO

Dated: _____, 2016

By: _____

Harlan L. Kelly Jr.
General Manager
San Francisco Public Utilities
Commission

DECORATIVE PLANT SERVICE INC. a
California corporation

Date: _____, 2016

By: _____

Name: Bryan Rathburn

Title: CFO

APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: _____

Mary Holing
Deputy City Attorney

the other party in an Adobe .pdf file by email transmission. Such electronic signature shall be treated in all respects as having the same effect as an original signature.

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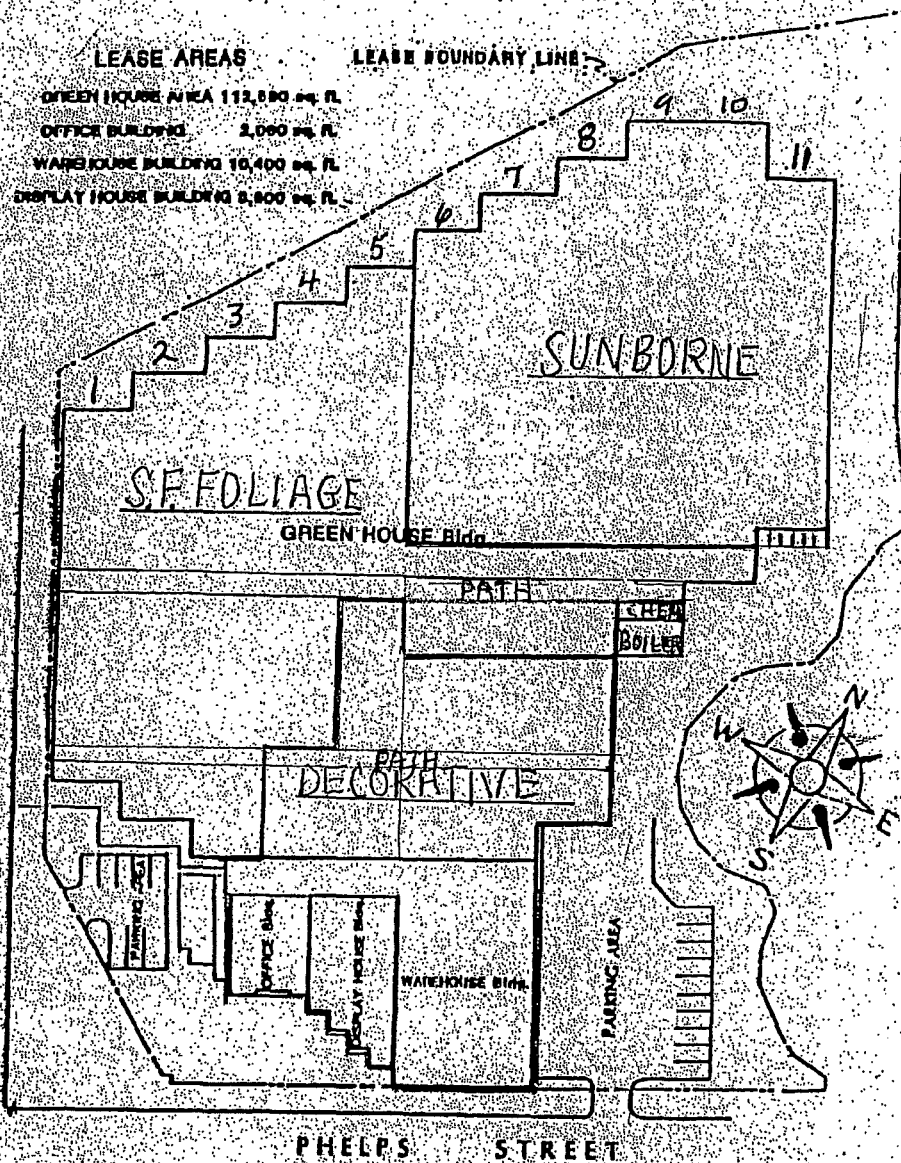
EXHIBIT A

**Outline of DP Premises
(Per Section 2)**

VICINITY MAP

EXHIBIT A

4-1-04



**CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION**

Lease to Decorative Plant Services, Inc.
Portion of SFPUC - SECF located at 1150 Phelps Street

SCALE
DATE

DRAWING NO.

B-4789

EXHIBIT B
FORM OF
STIPULATION FOR ENTRY OF JUDGMENT OF POSSESSION

(See next page)

DENNIS J. HERRERA, State Bar #139669
City Attorney
CHERYL ADAMS, State Bar #164194
Chief Trial Deputy
RICK SHEINFIELD, State Bar #142256
Deputy City Attorney
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Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO
by and through its Public Utilities Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO
BY AND THROUGH ITS PUC,

Plaintiff,

vs.

DECORATIVE PLANT SERVICES INC.,

Defendants.

Case No. CUD-16-657190

**STIPULATION FOR ENTRY OF JUDGMENT
OF POSSESSION**

Pursuant to settlement of the issue of the right to possession of the premises in the above-captioned lawsuit under the Settlement Agreement between these parties, plaintiff City and County of San Francisco and defendant Decorative Plant Services Inc., enter into this Stipulation for Entry of Judgment for Possession:

1. THE CITY AND COUNTY OF SAN FRANCISCO AND DECORATIVE PLANT SERVICES INC. HEREBY STIPULATE that, upon submittal of a declaration under penalty of perjury that defendant Decorative Plant Services Inc. has failed to vacate the premises as of 5 p.m. March 31, 2017 as described in the Settlement Agreement attached as Exhibit "1",

the City and County of San Francisco is entitled to recover possession of the Premises, comprising 128,740 square feet located at the Southeast Community Facility at 1150 Phelps Avenue in the City and County of San Francisco, effective March 31, 2017.

~~2. THE CITY AND COUNTY OF SAN FRANCISCO AND DECORATIVE~~

PLANT SERVICE INC. HEREBY STIPULATE that, upon submittal of a declaration under penalty of perjury that defendant Decorative Plant Service Inc. has failed to maintain insurance coverage during its occupancy as required under Section 5 of the Settlement Agreement, the City and County of San Francisco is entitled to recover possession of the Premises, comprising 128,740 square feet located at the Southeast Community Facility at 1150 Phelps Avenue in the City and County of San Francisco.

3. THE CITY AND COUNTY OF SAN FRANCISCO AND DECORATIVE

PLANT SERVICE INC. FURTHER STIPULATE that upon submittal of the aforementioned declaration, the City and County of San Francisco shall be entitled to a writ of possession in the form attached hereto as Exhibit "B", effective March 31, 2017, or on a date thereafter determined by the City in its sole discretion, and an eviction of defendant Decorative Plant Service Inc. by the San Francisco Sheriff's Department from the Premises.

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4. In the event that the writ of possession is issued, defendant Decorative Plant Service Inc. waives any right to seek a stay of the writ of possession or a stay of any method of enforcement of the judgment.

SO STIPULATED.

CITY AND COUNTY OF SAN FRANCISCO

Dated: _____, 2016

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

DECORATIVE PLANT SERVICE INC.

Dated: 11/8 2016

By: _____

Name: Bryan Rathbun

President, Decorative Plant Service Inc.

EXHIBIT C

Reimbursement Program Invoicing Requirements

You may request reimbursement on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if you move yourself. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

You must provide the SFPUC with an inventory of the personal property to be moved and advance notice of the approximate date of the move. SFPUC will need to inspect the personal property and to monitor the move in order to assess your eligibility for certain move related payments.

SFPUC will pay approved actual reimbursable expenses within 45 days of final approval.

Actual, Reasonable and Necessary Moving Costs

You may be paid the actual, reasonable and necessary cost of your move up to One Hundred Thousand Dollars (\$100,000.00) when the move is performed by a professional mover or when you elect to move yourself, however, all your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property. Other expenses such as professional services necessary for planning and carrying out the move, and the cost of licenses, permits and certifications may also be reimbursable. Such costs may include:

- Transportation of persons and property not to exceed a distance of 50 miles from the existing greenhouse, except where a move beyond 50 miles is justified and preapproved by the SFPUC;
- Packing, crating, unpacking and uncrating personal property;
- Insurance of personal property while in transit;
- The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment, substitute personal property, and other personal property (including goods and inventory kept for sale) and connection to utilities available within the building; it also includes modification to personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, replacement site or the utilities at the replacement site and modification necessary to adapt the utilities at the replacement site to the personal property.
- Reimbursement of up to \$10,000 for the cost of any license, permit, fee or certification that is required to the extent such cost is necessary to the

reestablishment of the operation at a new location. However, payment shall be based on the remaining useful life of the existing license, permit or certification.

- The reasonable cost of professional services (including, but not limited to, architects', attorneys' or engineers' fees, or consultants' charges) up to \$5,000 that are necessary for the planning of the move of personal property, moving the personal property, or installation of relocated personal property at the replacement site. These expenses must be preapproved by the SFPUC and your Advisor.
- Professional services up to \$5,000 which are necessary in connection with the purchase or lease of a replacement site, including feasibility surveys, soil testing and marketing studies.
- Reimbursement of up to \$10,000 for impact fees or one-time assessment for anticipated heavy utility usage related to moved personal property.

All costs claimed under this section must be reasonable and necessary. The costs will only be considered if the costs could not have been avoided or substantially reduced at an alternate available site. All costs claimed must be fully documented with proper receipts proving invoices were paid in full. In some cases, several bids may be required to justify the expense claimed. SFPUC will advise you when this is necessary.

This is not an inclusive list of moving related expenses. SFPUC can provide you with a complete explanation of reimbursable expenses. However, in no event shall the reimbursements provided for in this section "Actual, Reasonable and Necessary Moving Costs" exceed a total of \$100,000.00.

Estimated Cost Move

If you agree to take full responsibility for all or part of the move of your operation, the SFPUC may approve a payment not to exceed the lower of two acceptable bids or estimates obtained from qualified moving firms, or moving consultants. A low cost or uncomplicated move may be based on a single bid or estimate at the SFPUC's discretion. The advantage of this moving option is that it relieves you from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate. The SFPUC may make the payment without additional documentation.

Direct Loss of Tangible Personal Property

You may request a payment for the actual direct loss of tangible personal property. This payment is based on the lesser of (1) the value of the item for continued use at the Lease Premises less the proceeds from its sale, or (2) the estimated reasonable cost of moving the item.

Substitute Personal Property

Where an item of personal property which is used in connection with your business is not moved but is replaced with a comparable item, you may request reimbursement in an amount not to exceed the lesser of (1) the replacement cost, minus any net proceeds from its sale, or (2) the estimated cost of moving the original item.

Low Value High Bulk Property

If the SFPUC considers a personal property item to be of low value and high bulk, and moving costs are disproportionate to its value (such as minerals, metals, rock, or topsoil), the allowable moving cost payment shall not exceed the lesser of the amount which would be received if the personal property were sold at the site, or, the replacement cost of a comparable quantity delivered to the new business location.

Searching Expenses for Replacement Property

You are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$1,000. Expenses may include transportation, meals, and lodging when away from home; the reasonable value of the time spent during the search. Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, related time obtaining permits and attending zoning hearing, and time spent negotiating of the rent/purchase of replacement site and other expenses determined to be reasonable and necessary by the SFPUC. Paid receipts for any expenses claimed will be required.

Commission and fees related to the purchase of a replacement site are not eligible expense and will not be reimbursed.


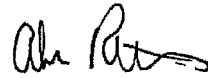






Reestablishment Expenses

You may request a payment not to exceed \$10,000 for expenses actually incurred in reestablishing your business. Reestablishment expenses may include, but are not limited to:

- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.
- Modifications to the replacement real property to accommodate the business operation or to make the replacement structures suitable for the operation.
- Construction and installation costs of exterior signs to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site such as painting, wallpapering, paneling, or carpeting.
- Advertising the replacement location.
- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges (excluding impact fees).
- Other items that the SFPUC considers essential for reestablishment.

EXHIBIT D

CHECKLIST OF REQUIRED TENANT ACTIONS

ACTION ITEM	DESCRIPTION	DATE COMPLETED	PHOTO DOCUMENTATION	TENANT SIGNATURE
Employee Notification	Ensure all employees are notified of the current condition of their workplace; see sample employee notification letter		N/A	
Post Warning Sign	Post a sign at each entry to your place of business warning invitees and licensees of the current condition of the greenhouses; see sample warning sign language		Required, please attach	
Ensure Clear Path of Egress	Remove any stored items blocking exists, emergency egress, emergency eye wash area and emergency exit signs		Required, please attach	
Remove all flammable shade cloth	Remove and dispose of all flammable shade cloth in the greenhouses	N/A 	Required, please attach	
Fire Detection and Prevention	Ensure current smoke detectors are functioning; install additional smoke detectors in occupied areas such as offices, storage areas; conference rooms and/or classrooms; provide additional fire extinguishers in occupied areas		Required, please attach	
Emergency Evacuation Plan	Implement an emergency evacuation plan and preform practice evacuation drills with employees		N/A	

LEGISLATION RECEIVED CHECKLIST

Date 12/29/16 File Number (if applicable) 170006

- Legislation for Introduction (NEW)
Legislation Pending in Committee (AMENDED)
Legislation for Board Agenda (AMENDED)
Legislative Clerk
Committee Clerk
Deputy Clerk

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation: Original, 1 hard-copy, and 1 electronic copy in Word format.
Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
Supporting documents: 1 full set, and separate pdf copies of each in email
Cover letter (original)
Grant budget/application
Grant information form, including signed disability checklist
Letter of Intent or grant award letter from funding agency
Contract, Leases/Agreements (if applicable)
Ethics Form 126 (if applicable) in Word format
Other support documents as identified in the cover letter and legislation
E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

2016 DEC 29 AM 10:15
RECEIVED
BOARD OF SUPERVISORS
S.M. FRANKLIN

Ordinance

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
Signature: City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
Supporting documents: 1 full set, and separate pdf copies of each in email
Cover letter (original)
Settlement Report/Agreement (for settlements)
Other support documents as identified in the cover letter and legislation
E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Grant Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
Supporting documents: 1 full set, and separate pdf copies of each in email
Cover letter (original)
Grant budget/application
Grant information form, including signed disability checklist
Letter of Intent or grant award letter from funding agency
Contract, Leases/Agreements (if applicable)
Ethics Form 126 (if applicable) in Word format
Other support documents as identified in the cover letter and legislation
E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
Signature: None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
Supporting documents: 1 full set, and separate pdf copies of each in email
Cover letter (original)
Settlement Report/Agreement (for settlements)
Other support documents as identified in the cover letter and legislation
E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Joy Perez 554-3869
Name and Telephone Number

City Attorney
Department

Clerk's Office/Forms/Legislation Received Checklist (1/2015) for more help go to: sfbos.org/about the board/general/legislative process handbook