

File No. 170008 Committee Item No. 7  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date January 19, 2016

Board of Supervisors Meeting Date \_\_\_\_\_  
Cmte Board

- Motion
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- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

**OTHER (Use back side if additional space is needed)**

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Completed by: Erica Major Date January 13, 2016  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Settlement of Lawsuit - ACS Marketing Inc., dba S.F. Foliage Inc. - \$110,000]

2  
3 **Ordinance authorizing settlement of the unlawful detainer lawsuit filed by the City and**  
4 **County of San Francisco against ACS Marketing Inc., dba S.F. Foliage Inc. (S.F.**  
5 **Foliage), by S.F. Foliage's agreement to surrender possession no later than**  
6 **March 31, 2017, S.F. Foliage's execution of a Stipulation for Entry of Judgment and a**  
7 **Writ of Possession, and San Francisco Public Utilities Commission (SFPUC) agreement**  
8 **to provide S.F. Foliage 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 June 1,**  
14 **2004, between the SFPUC and Decorative Plant Services Inc., and sublease to ACS**  
15 **Marketing, dba S.F. Foliage, for 127,300 square feet at the Southeast Community**  
16 **Facility at 1150 Phelps Avenue.**

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


19 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby  
20 authorizes the City Attorney to settle the unlawful detainer action entitled City and County of  
21 San Francisco, through the Public Utilities Commission (PUC) v. Decorative Plant Services  
22 Inc., ACS Marketing Inc. dba S.F. Foliage, Inc., Goldman Enterprises dba Sunborne Nursery  
23 Inc., San Francisco Superior Court, Case No. CUD-16-657190 according to the terms of the  
24 Settlement Agreement on file with the Clerk of the Board, in File No. 170008. This lawsuit  
25 involves termination of the lease agreement entered into in June 2004 between the San

1 Francisco Public Utilities Commission (SFPUC) and Decorative Plant Services Inc. and  
2 sublease to ACS Marketing dba S.F. Foliage Inc. and vacation of the premises by ACS  
3 Marketing Inc. dba S.F. Foliage Inc. The Settlement Agreement provides that the SFPUC will  
4 reimburse ACS Marketing dba S.F. Foliage Inc. or costs associated with relocation if it  
5 vacates the premises by March 31, 2017, among other terms of the Settlement Agreement.

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

11 APPROVED AS TO FORM AND  
12 RECOMMENDED:

13 DENNIS J. HERRERA  
14 City Attorney

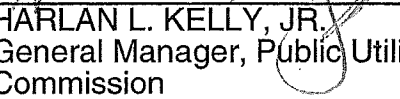
15   
16 NOREEN AMBROSE  
17 Utilities General Counsel

18 FUNDS AVAILABLE:

19   
20 BEN ROSENFELD  
21 Controller

RECOMMENDED:

Public Utilities Commission

22   
23 HARLAN L. KELLY, JR.  
24 General Manager, Public Utilities  
25 Commission

APPROVED:

26   
27 DONNA HOOD  
28 Secretary, Public Utilities Commission

29 n:\it\l\2016\161140\01155263.docx

## SETTLEMENT and RELEASE AGREEMENT

This Settlement and Release Agreement ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by and between A.C.S. MARKETING INC., a California corporation, doing business as "S.F. Foliage" (collectively "**S.F. Foliage**"), 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. City owns the real property in San Francisco, California, consisting of approximately 127,300 square feet at the Southeast Community Facility at 1150 Phelps Avenue, including a greenhouse, offices, warehouse space and parking space (the "**Master Premises**").

B. City, as landlord, and Decorative Plant Service Inc., a California corporation ("**Decorative Plant**"), as tenant, entered into a lease agreement, dated June 1, 2004 ("**2004 Lease**"), for the permitted use of the Master Premises for maintaining a greenhouse, offices, and warehouse space for a plant rental business. The 2004 Lease replaced a pre-existing agreement between City and Decorative Plant.

C. Under the terms of the 2004 lease, Decorative Plant waived any rights to relocation assistance benefits.

D. Pursuant to a Sublease dated December 1, 2004 ("**S.F. Foliage Sublease**"), Decorative Plant sublet to S.F. Foliage a portion of the Master Premises, as further described and depicted in the S.F. Foliage Sublease (the "**S.F. Foliage Premises**"). Under the S.F. Foliage Sublease, S.F. Foliage agreed to be bound by the terms of the 2004 Lease. S.F. Foliage continues to occupy the S.F. Foliage Premises.

E. Under the terms of the S.F. Foliage Sublease, S.F. Foliage waived any rights to relocation assistance benefits.

F. Pursuant to a separate sublease ("**Sunborne Sublease**"), Decorative Plant sublet another portion of the Master Premises to a California corporation, "Goldman Enterprises," doing business as Sunborne Nursery (herein referred to as "**Sunborne**"). The S.F. Foliage Sublease and the Sunborne Sublease are sometimes collectively referred to herein as the "**Subleases**."

G. The 2004 Lease and the S.F. Foliage Sublease expired on June 30, 2010. Decorative Plant remained on the Master 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. As Decorative Plant's subtenant, S.F. Foliage continued to occupy the S.F. Foliage Premises on a

holdover month-to-month basis, subject to termination of Decorative Plant's holdover tenancy on 30 days' notice from City.

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

I. 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 Master 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 Master Premises to address these issues requires that the Master Premises be vacant.

J. In April 2015, the SFPUC met with Decorative Plant, Sunborne and S.F. Foliage to share the details of the Due Diligence Report. Among other raised concerns, the Due Diligence Report revealed that the Master Premises lacks the minimum space required for emergency egress, fire lane, and turning radius; the Master Premises has inadequate fire sprinkler/suppression systems and lacks a comprehensive fire alarm system; and the buildings on the Master 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 Master Premises will need to be vacant to either retrofit or replace the existing facilities.

K. On May 20, 2016, Decorative Plant, Sunborne and S.F. Foliage 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.

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

M. Authorized representatives of S.F. Foliage 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.

N. 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, and Sunborne's and S.F. Foliage's holdover tenancies under their respective Subleases, are 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 S.F. Foliage may continue to occupy the S.F. Foliage Premises beyond June 30, 2016, provided that S.F. Foliage satisfies all of its obligations under this Agreement. Such occupancy shall be on the same terms and conditions as the S.F. Foliage Sublease, and the terms and conditions of the 2004 Lease insofar as they apply to the S.F. Foliage 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 S.F. Foliage Sublease 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 S.F. Foliage vacates the Master Premises, S.F. Foliage shall pay an amount equivalent to the Base Rent under the S.F. Foliage Sublease that would have been due had the 2004 Lease not been terminated, in the amount of Seven Thousand Two Hundred Twenty-Six Dollars and Four Cents (\$7,226.04) per month. In addition, S.F. Foliage shall pay to the SFPUC its pro-rata share of water and power charges for such period. S.F. Foliage's pro-rata share is 40.16%, based on its continuing occupancy of 51,120 square feet of the total 127,300 square feet of the original premises. The terms and conditions of the S.F. Foliage Sublease and 2004 Lease are incorporated herein by reference as if fully set forth herein, and shall govern S.F. Foliage'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. S.F. Foliage agrees to vacate and remove its personal property and materials, if any, from the portions of the Master Premises other than the S.F. Foliage Premises, on or before June 30, 2016.

b. On or before March 31, 2017, S.F. Foliage agrees to vacate the S.F. Foliage Premises, remove from the S.F. Foliage Premises all personal property, and leave the S.F. Foliage Premises in a broom-clean condition, free of abandoned material and trash.

c. ~~If S.F. Foliage does not fully vacate the Master Premises and the S.F. Foliage Premises on or before March 31, 2017, City shall have the right to take all actions necessary to gain possession of the S.F. Foliage Premises, including filing the Stipulation for Entry of Judgment for Possession attached as Exhibit A to this Agreement and executed by S.F. Foliage, and obtaining a writ of possession for the S.F. Foliage Premises. If S.F. Foliage vacates the S.F. Foliage 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, S.F. Foliage shall pay to the SFPUC the amount equivalent to the rent that would have been owed for the S.F. Foliage Premises under the S.F. Foliage Sublease 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, S.F. has been notified to implement the following actions, completion of which must be confirmed no later than September 30, 2016, to improve the adverse safety and operating condition of the S.F. Foliage Premises:

- S.F. Foliage shall notify all of its employees of the material adverse safety and operating conditions identified in the Due Diligence Report with respect to the S.F. Foliage Premises;
- S.F. Foliage shall post signs on the S.F. Foliage 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 S.F. Foliage Premises;
- S.F. Foliage shall prohibit general public access to the S.F. Foliage Premises; and discontinue and prevent any monthly, quarterly, or other periodic community plant sales within any greenhouses located on the S.F. Foliage Premises;
- S.F. Foliage shall remove any items stored or placed on the S.F. Foliage Premises that block or materially impede access to or visibility of emergency egress, emergency eye wash area(s), and emergency exit signs;
- S.F. Foliage shall install additional smoke detectors and provide additional fire extinguishers on the S.F. Foliage Premises;
- S.F. Foliage shall remove any flammable shade cloth installed or placed on the S.F. Foliage Premises; and
- S.F. Foliage 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 and the S.F. Foliage Sublease has expired, S.F. Foliage was holding over on a month-to-month basis, Decorative Plant waived the right to relocation assistance under the 2004 Lease, S.F. Foliage waived the right to relocation assistance under the S.F. Foliage Sublease, and City is under no obligation to pay such amounts, City will nevertheless reimburse S.F. Foliage for certain relocations costs as provided below in this paragraph, if, and only if, S.F. Foliage satisfies its obligations under this Agreement to City's reasonable satisfaction ("the "Reimbursement Payment"). If S.F. Foliage satisfies such obligations, City shall reimburse S.F. Foliage 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 B**. Payments will be made on a reimbursement basis and S.F. Foliage 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 under the 2004 Lease ("**Security Deposit**"). S.F. Foliage paid to Decorative Plant a security deposit in the amount of Five Thousand Four Hundred Nine and 07/100 Dollars (\$5,409.07) under the S.F. Foliage Sublease. Notwithstanding that the City was not a party to the S.F. Foliage Sublease and has no responsibility or liability for performance of Decorative Plant's obligations under the S.F. Foliage Sublease, including without limitation, return of any security deposit or unearned, prepaid rent under the terms of the S.F. Foliage Sublease, Decorative Plant has agreed that a portion of the Security Deposit in the amount of \$5,409.07 will serve as a security deposit to secure S.F. Foliage's performance of its obligations under this Agreement ("**S.F. Foliage Security Deposit**"). S.F. Foliage agrees that City may (but shall not be required to) apply the S.F. Foliage Security Deposit in whole or in part to remedy any damage to the S.F. Foliage Premises caused by S.F. Foliage, its agents or invitees, or any failure of S.F. Foliage to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of sums payable by S.F. Foliage under this Agreement either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. S.F. Foliage waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that City may retain any portion of S.F. Foliage Security Deposit reasonably necessary to compensate City for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of S.F. Foliage, its agents or invitees. Should City use any portion of the S.F. Foliage Security Deposit to cure any default by S.F. Foliage hereunder, S.F. Foliage shall immediately replenish the S.F. Foliage Security



Deposit to the original amount. City's obligations with respect to the S.F. Foliage Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the S.F. Foliage Security Deposit separate from its general funds, and S.F. Foliage shall not be entitled to interest on the S.F. Foliage Security Deposit. The amount of the S.F. Foliage Security Deposit shall in no way limit the liabilities of S.F. Foliage under any provision of this Agreement.

City will return to S.F. Foliage the remaining balance of the S.F. Foliage Security Deposit upon vacation of the S.F. Foliage Premises in compliance with this Agreement, provided that: (i) the S.F. Foliage Premises is in substantially the same condition when S.F. Foliage vacates the S.F. Foliage Premises that existed as of the date that the SFPUC recommends the Settlement Agreement to the Board of Supervisors; (ii) the S.F. Foliage Premises is left vacant, in a broom clean condition, free of any personal property or abandoned material or trash; and (iii) S.F. Foliage is not in default of its obligations to pay rent under the S.F. Foliage Sublease; and (iv) S.F. Foliage is not in default of its obligation to pay any sums owing pursuant to Sections 2 and 3 above.

5. **S.F. Foliage's Insurance**

a. Commencing on S.F. Foliage's execution of this agreement and continuing until S.F. Foliage vacates the S.F. Foliage Premises, S.F. Foliage, 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 the S.F. Foliage, 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 S.F. Foliage uses or causes to be used any vehicles in connection with its use of the S.F. Foliage Premises.

b. Should any of the required insurance be provided under a claims-made form, S.F. Foliage shall maintain such coverage continuously throughout S.F. Foliage's occupancy under this Agreement, without lapse, for a period of three (3) years beyond S.F. Foliage's surrender of the S.F. Foliage Premises to City, to the effect

that, should occurrences during the period of S.F. Foliage's occupancy give rise to claims made after its surrender of the S.F. Foliage 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 Agreement, 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(a) 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. S.F. Foliage 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 S.F. Foliage's execution of this Agreement, together with complete copies of the policies promptly upon City's request, and S.F. Foliage shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event S.F. Foliage 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 S.F. Foliage's default hereunder, the same for the account of S.F. Foliage, and the cost thereof shall be paid from the S.F. Foliage Security Deposit.

g. Notwithstanding anything to the contrary in this Agreement, if any of the required insurance coverage lapses prior to S.F. Foliage's surrender of the S.F. Foliage Premises in accordance with this Agreement, and S.F. Foliage fails to reinstate the coverage within three (3) days' after City's notice to S.F. Foliage, the City may declare S.F. Foliage'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 S.F. Foliage Premises..

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

6. **Notification.** S.F. Foliage acknowledges receipt of a copy of the notice terminating the Master Lease effective at 5:00 p.m. on June 30, 2016, consistent with the requirements of the Master Lease, and waives the right to object to adequacy of the notice.

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

a. S.F. Foliage 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 S.F. Foliage has or have full power and authority to bind S.F. Foliage.
- b. S.F. Foliage represents to City that it has not (i) entered into any amendment of the S.F. Foliage Sublease or expanded its occupancy beyond the S.F. Foliage sublease premises shown and described in the S.F. Foliage Sublease, (ii) assigned to any other party any of its interest in the S.F. Foliage Sublease or S.F. Foliage Premises, (iii) entered into other agreements with third parties who could claim a right to possession or use of the S.F. Foliage Premises or any other portion of the Master Premises, or (iv) authorized another party to use any portion of the Master Premises, whether in writing, orally, or through acquiescence.
- c. S.F. Foliage 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 S.F. Foliage of this Agreement or (ii) the inaccuracy or breach of any of the representations, warranties, and covenants made by S.F. Foliage pursuant to this Agreement.
- d. City is entering into this Agreement in its capacity as a landlord with a proprietary interest in the Master 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 Master Premises or S.F. Foliage, or any other user or occupier of the Master 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 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.

*[Remainder of page intentionally blank]*

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

A.C.S. MARKETING INC., DBA S.F.  
FOLIAGE, a California corporation

Date: 11/4/ \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: Siri Datta S Khalsa  
Title: President

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

By: \_\_\_\_\_  
Mary Holing  
Deputy City Attorney

**EXHIBIT A**  
**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  
Fox Plaza  
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Telephone: (415) 554-3972  
Facsimile: (415) 554-3837  
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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.

A.C.S MARKETING INC., DBA S.F.  
FOLIAGE,

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 A.C.S Marketing Inc., dba S.F. Foliage enter into this Stipulation for Entry of Judgment for Possession:

1. THE CITY AND COUNTY OF SAN FRANCISCO AND A.C.S MARKETING INC., DBA S.F. FOLIAGE HEREBY STIPULATE that, upon submittal of a declaration under penalty of perjury that defendant A.C.S. Marketing Inc., dba S.F. Foliage. 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 127,300 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 A.C.S. MARKETING INC., DBA S.F. FOLIAGE. HEREBY STIPULATE that, upon submittal of a declaration under penalty of perjury that defendant A.C.S. Marketing Inc., DBA S.F. Foliage 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 A.C.S. MARKETING INC., DBA S.F. FOLIAGE 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 "1", effective March 31, 2017, or on a date thereafter determined by the City in its sole discretion, and an eviction of defendant A.C.S. Marketing Inc., DBA S.F. Foliage 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 A.C.S. Marketing Inc., DBA S.F. Foliage 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

A.C.S. MARKETING INC., DBA S.F. FOLIAGE, a California corporation

Dated: 11/04, 2016

By: \_\_\_\_\_  
Name: Siri Datta S Khalsa

President, A.C.S. Marketing Inc., DBA S.F. Foliage

## EXHIBIT B

### **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:




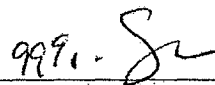


- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.
- Modifications to the replacement real property to accommodate the business operation or to make the replacement structures suitable for the operation.
- Construction and installation 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.

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EXHIBIT C

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	10/17/16	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	10/17/16	Required, please attach	
Ensure Clear Path of Egress	Remove any stored items blocking exists, emergency egress, emergency eye wash area and emergency exit signs	5/27/15	Required, please attach	
Remove all flammable shade cloth	Remove and dispose of all flammable shade cloth in the greenhouses	9/30/16	Required, please attach	9991- 
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	10/19/16	Required, please attach	
Emergency Evacuation Plan	Implement an emergency evacuation plan and perform practice evacuation drills with employees	5/20/15	N/A	

Date 12/29/16 File Number (if applicable) 170008

- Legislation for Introduction (NEW)                      ▶▶▶ Legislative Clerk
- Legislation Pending in Committee (AMENDED)        ▶▶▶ Committee Clerk
- Legislation for Board Agenda (AMENDED)            ▶▶▶ 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  
 LEGISLATION  
 CLERK'S OFFICE

**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