

File No. 230914

Committee Item No. 4

Board Item No. 21

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date October 11, 2023

Board of Supervisors Meeting Date October 17, 2023

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" 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
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

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

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning Project Summary and Draft Motion 7/13/2023</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning Commission Motion No. 21351 7/13/2023</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Notice of Special Restrictions 8/21/2023</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning General Plan Referral 10/2/2023</u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>

Completed by: Brent Jalipa Date October 5, 2023

Completed by: Brent Jalipa Date October 12, 2023

1 [Lease of City Property - Our Planet Recycling SF, LLC - Assessor's Parcel Block No. 5695,  
2 Lot No. 23 at Alemany Boulevard - Annual Base Rent of \$23,397.96]

3 **Resolution authorizing and approving the Lease of City-owned real property located at**  
4 **Assessor's Parcel Block No. 5695, Lot No. 23, adjacent to Alemany Boulevard in San**  
5 **Francisco, with Our Planet Recycling SF, LLC, a California corporation, doing business**  
6 **as Our Planet Recycling, for an initial five-year term at an annual base rent of**  
7 **\$23,397.96 (or the monthly amount of \$1,949.83); plus 3% annual increases to base**  
8 **rent; plus one additional five-year extension option to further extend the term of the**  
9 **Lease, subject to satisfaction of certain conditions and to be readjusted to then-fair**  
10 **market base rent; effective upon approval of this Resolution; finding the proposed**  
11 **transaction is in conformance with the General Plan, and the eight priority policies of**  
12 **Planning Code, Section 101.1; adopting California Environmental Quality Act (CEQA)**  
13 **findings; and to authorize the Director of Property to enter into amendments or**  
14 **modifications to the Lease that do not materially increase the obligations or liabilities**  
15 **to the City and are necessary to effectuate the purposes of the Lease or this**  
16 **Resolution.**

17  
18 WHEREAS, The City and County of San Francisco ("City") owns real property at  
19 Assessor's Parcel Block No. 5695, Lot No. 23, adjacent to right-of-way and Alemany  
20 Boulevard (the "Premises") near the Alemany Farmers' Market at Peralta and Tompkins  
21 Avenues; and

22 WHEREAS, On August 24, 2017, the Public Works Department ("PW") approved a  
23 Minor Sidewalk Encroachment Permit permitting Our Planet Recycling SF, LLC, ("Tenant") to  
24 occupy a portion of PW's vacant right-of-way adjacent to Alemany Boulevard and Assessor's  
25 Parcel Block No. 5695, Lot No. 23; and



1 WHEREAS, On November 17, 2017, the City entered into a year-to-year lease with  
2 Tenant for the Premises to use in relation to its recycling business on a nearby CalTrans'  
3 parcel on Bayshore Boulevard for employee parking and inventory storage, at an annual base  
4 rent of \$15,300 per year (\$1,275 per month), plus 3% annual increases to base rent; and

5 WHEREAS, The City, through its Real Estate Division, with consultation from the Office  
6 of the City Attorney, and Tenant have negotiated the proposed lease ("Lease"), which  
7 provides a base rent of \$23,397.96 per year (\$1,949.37 per month), plus an annual increase  
8 of 3%, a copy of the Lease is on file with the Clerk of the Board in File No. 230914; and

9 WHEREAS, Tenant will be responsible for providing, at Tenant's cost, any required  
10 services and utilities on the Premises; and

11 WHEREAS, During the term, Tenant shall be required to continue to maintain a valid  
12 Minor Sidewalk Encroachment Permit from PW and Conditional Use Authorization (No. 2021-  
13 007063CUA); and

14 WHEREAS, The initial term of the Lease shall be for five years, commencing upon  
15 approval by the Board of Supervisors and Mayor; and

16 WHEREAS, Under the proposed Lease, the City grants Tenant an option to extend the  
17 initial term by an additional five years, subject to conditions being met as prescribed under the  
18 Lease, with rent to be re-established at the then-fair market rental value as of the exercise  
19 date of the option, continuing to be subject to three-percent annual increases; and

20 WHEREAS, On July 13, 2023, the Planning Commission approved a Conditional Use  
21 Authorization, Record No. 2021-007063CUA, by Motion No. 21351, a copy of which is on file  
22 with the Clerk of the Board of Supervisors under File No. 230914, and has verified that the  
23 Lease is consistent with the General Plan, and the eight priority policies under Planning Code,  
24 Section 101.1, and that the project was determined to be exempt under CEQA, Class 3; now,  
25 therefore, be it

1           RESOLVED, That the Board of Supervisors finds the Lease is consistent with the  
2   General Plan, and the eight priority policies of Planning Code, Section 101.1 and adopts  
3   CEQA findings and hereby incorporates such findings by reference as though fully set forth in  
4   this Resolution: and, be it

5           FURTHER RESOLVED, In accordance with the recommendation of the Director of  
6   Property and the City Attorney, the Director of Property on behalf of the City, as Landlord, is  
7   hereby authorized to take all actions necessary to execute the Lease at Assessor's Parcel  
8   Block No. 5695, Lot No. 23, in San Francisco, at a base rent of \$23,397.96 per year, with an  
9   annual base rent escalation of 3%, for an initial five-year term, plus one five-year option to  
10   extend; and, be it

11          FURTHER RESOLVED, The Board of Supervisors approves the Lease in substantially  
12   the form in the Board's File and authorizes the Director of Property to take all actions, on  
13   behalf of the City to enter into any additions, amendments or other modifications (including  
14   without limitation, the exhibits) to the Lease that the Director of Property determines, in  
15   consultation with the City Attorney, are in the best interests of the City, do not materially  
16   increase the obligations or liabilities of the City, and are necessary or advisable to complete  
17   the transaction and effectuate the purpose and intent of this Resolution and are in compliance  
18   with all applicable laws, including City's Charter; and, be it

19          FURTHER RESOLVED, That the Lease contains language indemnifying and holding  
20   harmless the City from, and agreeing to defend the City against any and all claims, costs and  
21   expenses, including, without limitation, reasonable attorney's fees, incurred as a result of  
22   Tenant's use of the Premises, any default by the Tenant in the performance of any of its  
23   obligations under the Lease or any acts or omissions of Tenant or its agents, in, on or about  
24   the Premises or the property on which the Premises are located, except those claims, costs  
25

1 and expenses incurred exclusively as a result of active gross negligence or willful misconduct  
2 of City or its agents; and, be it

3 FURTHER RESOLVED, Due to the existing Minor Sidewalk Encroachment Permit  
4 issued to and maintained by the Tenant on the adjacent property, it is impractical to  
5 competitively bid the use of the Premises to anyone other than the Tenant, especially given  
6 the limited size of the Premises; and, be it

7 FURTHER RESOLVED, Because Tenant is a successful local small business, and  
8 Tenant has storage on the Premises related to said business, and if not leased to the Tenant,  
9 Tenant would then remove said storage and improvements from the Premises economically  
10 damaging the related recycling center, approving this Lease with Tenant is determined to be  
11 necessary and promote a public benefit; and, be it

12 FURTHER RESOLVED, That any action taken by the Director of Property and other  
13 officers of the City with respect to the Lease are hereby approved, confirmed and ratified; and,  
14 be it

15 FURTHER RESOLVED, That within thirty (30) days of the agreement being fully  
16 executed by all parties, the Director of Real Estate shall provide the agreement to the Clerk of  
17 the Board for inclusion into the official file.

18  
19 RECOMMENDED:  
20

21 /s/  
22 Andrico Q. Penick  
23 Director of Real Estate  
24  
25

OFFICE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

OUR PLANET RECYCLING SF, LLC,  
as Tenant

For the lease of  
the real property commonly known as Assessor's Block 5695, Lot 23  
San Francisco, California

August 1, 2023

## TABLE OF CONTENTS

	<u>Page</u>
1. BASIC LEASE INFORMATION .....	1
2. PREMISES; AS IS CONDITION .....	3
2.1. Lease Premises .....	3
2.2. Accessibility Disclosures .....	3
2.3. As Is Condition .....	3
2.4. Energy Consumption Disclosure .....	4
3. TERM .....	4
3.1. Lease Term.....	4
3.2. Confirmation of Commencement Date and Expiration Date.....	4
3.3 Termination.....	4
4. RENT .....	5
4.1. Base Rent .....	5
4.2. Adjustments in Base Rent.....	5
4.3. Additional Charges .....	5
4.4. Late Charges .....	5
4.5. Default Interest.....	5
4.6. Costs of Collection.....	6
5. USE .....	6
5.1. Permitted Use.....	6
5.2. No Unlawful Uses, Nuisances or Waste .....	6
6. TENANT IMPROVEMENTS .....	6
6.1. Tenant Improvement Work.....	7
6.2. Local Hiring Requirements.....	7
6.3. Prevailing Wages and Working Conditions.....	7
7. ALTERATIONS .....	8
7.1. Tenant's Alterations.....	8
7.2. Title to Improvements.....	8
7.3. Tenant's Personal Property .....	9
7.4. City's Alterations of the Building and Building Systems.....	9
8. REPAIRS AND MAINTENANCE .....	9
8.1. City's Repairs.....	9

8.2.	Tenant’s Repairs .....	9
9.	LIENS AND ENCUMBRANCES.....	9
9.1.	Liens.....	10
9.2.	Encumbrances .....	10
10.	UTILITIES AND SERVICES .....	10
11.	COMPLIANCE WITH LEGAL REQUIREMENTS AND RISK MANAGEMENT REQUIREMENTS.....	10
11.1.	Compliance with Legal Requirements.....	10
11.2.	Regulatory Approvals .....	11
11.3.	Compliance with City’s Risk Management Requirements .....	11
12.	SUBORDINATION.....	11
13.	INABILITY TO PERFORM .....	12
14.	DAMAGE AND DESTRUCTION.....	12
15.	EMINENT DOMAIN .....	13
15.1.	Definitions.....	13
15.2.	General .....	13
15.3.	Total Taking; Automatic Termination .....	13
15.4.	Partial Taking; Election to Terminate.....	13
15.5.	Termination of Lease; Rent and Award.....	14
15.6.	Partial Taking; Continuation of Lease .....	14
15.7.	Temporary Takings .....	14
16.	ASSIGNMENT AND SUBLETTING .....	14
16.1.	Restriction on Assignment and Subletting.....	14
16.2.	Notice of Proposed Transfer .....	15
16.3.	City’s Response .....	15
16.4.	City Sublease or Recapture Space .....	16
16.5.	Effect of Sublease or Assignment.....	16
16.6.	Assumption by Transferee .....	17
16.7.	Indemnity for Relocation Benefits.....	17
17.	DEFAULT; REMEDIES .....	17
17.1.	Events of Default .....	17
17.2.	Remedies .....	18
17.3.	Waiver of Redemption .....	20

17.4.	City's Right to Cure Tenant's Defaults .....	20
18.	WAIVER OF CLAIMS; INDEMNIFICATION .....	20
18.1.	Limitation on City's Liability; Waiver of Claims.....	20
18.2.	Tenant's Indemnity .....	20
19.	INSURANCE.....	21
19.1.	Tenant's Insurance .....	21
19.2.	Tenant's Personal Property .....	22
19.3.	City's Self Insurance.....	23
19.4.	Waiver of Subrogation.....	23
20.	ACCESS BY CITY.....	23
21.	CERTIFICATES.....	23
21.1.	Tenant's Estoppel Certificates .....	23
21.2.	City's Certificates .....	24
22.	SECURITY DEPOSIT.....	24
23.	SURRENDER OF PREMISES .....	25
24.	HAZARDOUS MATERIALS .....	26
24.1.	Definitions.....	26
24.2.	No Hazardous Materials .....	26
24.3.	Tenant's Environmental Indemnity .....	27
24.4.	Survival of Obligation.....	27
25.	SPECIAL PROVISIONS.....	27
25.1.	Extension Option .....	27
26.	GENERALLY APPLICABLE PROVISIONS.....	30
26.1.	Notices .....	30
26.2.	No Implied Waiver .....	30
26.3.	Amendments .....	31
26.4.	Authority .....	31
26.5.	Parties and Their Agents; Approvals .....	31
26.6.	Interpretation of Lease .....	31
26.7.	Successors and Assigns.....	32
26.8.	Brokers .....	32
26.9.	Severability .....	32
26.10.	Governing Law .....	32

26.11.	Entire Agreement .....	32
26.12.	Attorneys' Fees .....	33
26.13.	Holding Over .....	33
26.14.	Time of Essence .....	33
26.15.	Cumulative Remedies .....	34
26.16.	Survival of Indemnities .....	34
26.17.	Signs.....	34
26.18.	Relationship of the Parties .....	34
26.19.	Light and Air.....	34
26.20.	No Recording .....	34
26.21.	Options Personal .....	34
26.22.	Non-Liability of City Officials, Employees and Agents .....	34
26.23.	Cooperative Drafting .....	35
26.24.	Counterparts .....	35
26.25.	Effective Date .....	35
27.	CITY REQUIREMENTS .....	35
27.1.	Public Transit Information.....	35
27.2.	Taxes, Assessments, Licenses, Permit Fees and Liens .....	35
27.3.	Non-Discrimination in City Contracts and Benefits Ordinance .....	36
27.4.	No Relocation Assistance; Waiver of Claims.....	37
27.5.	MacBride Principles—Northern Ireland.....	37
27.6.	Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic .....	37
27.7.	Restrictions on the Use of Pesticides .....	37
27.8.	First Source Hiring Agreement.....	38
27.9.	Sunshine Ordinance .....	38
27.10.	Conflicts of Interest.....	38
27.11.	Charter Provisions.....	38
27.12.	Drug-Free Workplace .....	38
27.13.	Prohibition of Tobacco Sales and Advertising .....	38
27.14.	Prohibition of Alcoholic Beverage Advertising .....	39
27.15.	Requiring Health Benefits for Covered Employees.....	39
27.16.	Notification of Limitations on Contributions .....	40



<b>27.17.</b>	<b>Resource-Efficient City Buildings .....</b>	<b>40</b>
<b>27.18.</b>	<b>Food Service and Packaging Waste Reduction Ordinance.....</b>	<b>41</b>
<b>27.19.</b>	<b>San Francisco Packaged Water Ordinance .....</b>	<b>41</b>
<b>27.20.</b>	<b>Criminal History in Hiring and Employment Decisions.....</b>	<b>41</b>
<b>27.21.</b>	<b>Vending Machines; Nutritional Standards.....</b>	<b>42</b>
<b>27.22.</b>	<b>All-Gender Toilet Facilities .....</b>	<b>42</b>
<b>27.23.</b>	<b>Tenant’s Compliance with City Business and Tax Regulations Code .....</b>	<b>43</b>

#### LIST OF EXHIBITS

EXHIBIT A – Depiction of Premises  
EXHIBIT B – Notice of Commencement Date  
EXHIBIT C – Minor Sidewalk Encroachment Permit  
EXHIBIT D – Tenant’s Equipment  
EXHIBIT E – First Source Hiring Agreement  
EXHIBIT F - Sublease

## LEASE

THIS LEASE (this “**Lease**”), dated for reference purposes only as of August 1, 2023, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), and OUR PLANET RECYCLING SF, LLC, a California limited liability company (“**Tenant**”).

City and Tenant hereby covenant and agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the “**Basic Lease Information**”). Each item below incorporates all of the terms in this Lease related to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

Lease Reference Date:	August 1, 2023
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	OUR PLANET RECYCLING SF, LLC, a California limited liability company
Property ( <u>Section 2.1</u> ):	Approximately 4,250 square feet of land between a building located on [adjacent APN 5695, Lot 024] and Alemany Boulevard, including DPW right of way (APN 5695, Lot 23, San Francisco, California.
Premises ( <u>Section 2.1</u> ):	Assessor’s Parcel No. 5695, Lot 23 as shown on the attached <b><u>Exhibit A</u></b> .
Rentable Area of Premises:	Approximately 4,250 gross square feet
Term ( <u>Section 3.1</u> ):	Five years, commencing on the full execution of this Lease (“Commencement Date”) subject to prior Board of Supervisors’ and Mayor’s approval Estimated commencement date: October 1, 2023; Expiration date: Five years after the Commencement Date. Estimated Expiration Date: September 30, 2028
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$ 23,397.96 (\$5.50 per sq. ft.); Monthly payments: \$ 1,949.83 (\$0.46 per sq. ft.)
Rent Adjustment Dates ( <u>Section 4.2</u> ):	Annual three (3) percent adjustment each anniversary of the Commencement Date (Section 3.2).

Permitted Use ( <u>Section 5.1</u> ):	Access to adjacent CalTrans parcel; storage for Tenant's vehicles and equipment, trailer, storage and Tenant's employee's personal vehicles, and Security Guard shed, provided that Tenant may not use the Premises for access, parking, or storage of 18-wheel vehicles or other vehicles or equipment that are unable to access the Premises from Peralta Avenue.
Tenant Improvements ( <u>Section 6</u> ):	None
Utilities and Services ( <u>Section 10</u> ):	None. Tenant is solely responsible for the cost of all utilities and services, including installation, if any._
Security Deposit ( <u>Section 22</u> ):	\$2,550 (previously paid under prior lease)
City's Notice Address ( <u>Section 26.1</u> ):	Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: Our Planet Recycling Office No.: (415) 554 – 9850 Email: realestateadmin@sfgov.org
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate & Finance Group Re: Our Planet Recycling lease
Key Contact for City:	Claudia J. Gorham
Telephone No.:	415-554-9870
Alternate Contact for City:	Lesley Giovannelli
Telephone No.:	415.554-9850
Tenant's Notice Address ( <u>Section 26.1</u> ):	Our Planet Recycling 445 Bayshore Blvd., San Francisco, 94124 Email:
Key Contact for Tenant:	Ors Csaszar
Telephone No.:	415-866-6102; 415-246-5503 (c)

Alternate Contact for Tenant:	George Csaszar
Telephone No.:	415-410-5574
Brokers ( <u>Section 26.8</u> ):	None.
Other Noteworthy Provisions:	<p>Section 14: Tenant will continue to sublease, with City's consent, approximately 2,100 square feet of space to Morena Mendez and Jose Ortiz dba Express Service Auto Glass. Sublease attached as <b><u>Exhibit F</u></b>.</p> <p>Section 3.3: this Lease will automatically terminate upon termination of Minor Encroachment Permit 17MSE-0349 issued by San Francisco Public Works or should Tenant lose CUA No. 2021-007063CUA.</p>

## **2. PREMISES; AS IS CONDITION**

### **2.1. Lease Premises**

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City those premises identified in the Basic Lease Information and depicted on the attached **Exhibit A** (the "**Premises**"). The rentable area of the Premises specified in the Basic Lease Information will be conclusive for all purposes. The Premises shall include all improvements thereon and appurtenances thereto. The Premises, the land including the Premises, and all other improvements on and appurtenances to the land are referred to collectively as the "**Property**."

### **2.2. Accessibility Disclosures**

(a) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

### **2.3. As Is Condition**

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "**AS IS**" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LEGAL REQUIREMENTS (AS DEFINED IN **SECTION 11.1** (COMPLIANCE WITH LAWS) BELOW) GOVERNING THEIR USE, OCCUPANCY, AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF

THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. BASED SOLELY ON ITS OWN INVESTIGATION, TENANT HAS DETERMINED THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS (AS DEFINED IN SECTION 26.5 (PARTIES AND THEIR AGENTS, APPROVALS) BELOW) HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **2.4. Energy Consumption Disclosure**

Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

### **3. TERM**

#### **3.1. Lease Term**

The Premises are leased for a term (the "**Term**") commencing on the date the Lease is fully executed by all parties, subject to approval by resolution of City's Board of Supervisors and Mayor. The Term will end on the expiration date specified in the Basic Lease Information, unless sooner terminated as provided in this Lease. The Term may be extended as provided in in Section 25.1 (Extension Option). Tenant is currently in possession of the Premises under that certain Lease between Tenant and City dated as of November 14, 2017 (the "Original Lease"). The Original Lease will terminate upon the commencement of this Lease, and Tenant will remain in possession of the Premises pursuant to this Lease in its then existing as-is condition as provided above, with no obligation of City to make any improvements, repairs, or alterations.

#### **3.2. Confirmation of Commencement Date and Expiration Date**

The dates that the Term commences and terminates under this Lease are, respectively, the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than that specified in the Basic Lease Information as the estimated commencement date (the "**Estimated Commencement Date**"), then promptly following the Commencement Date, Tenant will deliver to City a notice substantially in the form attached as **Exhibit B**, confirming the actual Commencement Date, but Tenant's failure to do so will not affect the commencement of the Term.

#### **3.3 Termination**

If the Minor Sidewalk Encroachment Permit No. 17MSE-0349, issued to Tenant by San Francisco Public Works on August 24, 2017 and attached to this Lease as **Exhibit C** (the "Permit"), terminates at any time during the term of this Lease, this Lease shall automatically terminate without penalty on the date of such Permit termination. Tenant shall immediately notify the

Director of Property in writing as set forth in Section 27.1 (“Notices”) and the Basic Lease Information if the Permit Terminates.

The use of the Property contrary to the special restrictions set forth in the Conditional Use Authorization. No. 2021-007063CUA, approved on July 13, 2023, shall constitute a violation of the Planning Code and this Lease, and this Lease shall automatically terminate without penalty unless cured by Tenant within thirty (30) days of written notice from the City.

#### **4. RENT**

##### **4.1. Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant will pay to City the annual Base Rent specified in the Basic Lease Information, which will increase three percent (3%) annually under Section 4.2 (Adjustments in Base Rent) (the “**Base Rent**”). The Base Rent will be paid to City in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City must be paid in cash or by good funds to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by personal or business check and the check is not honored, then City may require Tenant to make all future payments in cash or by cashier’s check. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for the partial month will be prorated based on a thirty (30) day month. Within five (5) days after the parties execute this Lease, Tenant will pay to City the Base Rent for the first full month.

##### **4.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an “**Adjustment Date**”), the Base Rent payable under this Lease will be adjusted by three percent (3%).

##### **4.3. Additional Charges**

Tenant will pay to City all charges and other amounts required under this Lease as additional rent, whether or not those amounts are specifically characterized as rent (collectively, “**Additional Charges**”). All Additional Charges will be payable to City at the same place and the same manner as the Base Rent. City will have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The term “**Rent**” means Base Rent and Additional Charges.

##### **4.4. Late Charges**

Each time Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, the unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount. City and Tenant have agreed on the late payment charge, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur resulting from Tenant’s failure to timely pay Rent, the actual costs being extremely difficult if not impossible to determine. Tenant will pay the late charge to City together with the unpaid amount.

#### **4.5. Default Interest**

Any Rent, if not paid within five (5) days after the due date, will bear interest from the due date until paid the Prime Rate most recently announced by Bank of America, for the immediately preceding month, plus four percent (4%), which rate will automatically be reduced if it is higher than the rate an individual is permitted to legally charge (the “**Interest Rate**”). Interest will not be payable on late charges or on any amounts on which Tenant paid late charges to the extent this interest would cause the total interest to be more than lawfully permitted. Payment of interest will not excuse or cure any default by Tenant.

#### **4.6. Costs of Collection**

In addition to any interest or late charges under Section 4.4 and Section 4.5 above, if Tenant fails to pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), to the extent that the costs incurred by City because of Tenant’s failure exceed the late charges applicable to that failure, then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including dishonored check fees, increased staff time, and any costs of collection.

### **5. USE**

#### **5.1. Permitted Use**

Tenant will use and continuously occupy the Premises during the Term solely for the uses specified in the Basic Lease Information (the “**Permitted Use**”), and for no other purpose. Tenant acknowledges that this prohibition on the change in use is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable.

#### **5.2. No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant may not use, occupy, or permit the use or occupancy of any of the Premises in a manner that would violate any Legal Requirements or for any illegal purpose, or permit any offensive, noisy, or hazardous use or any waste on or about the Premises. Tenant will take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant may not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, Building, or on or about the Property except identification signs in a location and size and design approved by City in its sole discretion.

### **6. TENANT IMPROVEMENTS**

#### **6.1. Tenant Improvement Work**

Tenant is responsible, at no cost to City, for (a) performing any construction and installation of tenant improvements in the Premises (the “**Tenant Improvement Work**” or “**Tenant Improvements**”) in accordance with plans and specifications that are approved in advance by the Director of Property (“**Plans**”) and the standards contained in Section 7.1 (Tenant’s Alterations) below and (b) obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work may commence in the Premises unless and until this Lease is approved by City’s Board of Supervisors and Mayor as further provided in Section 26.25 (Effective Date) below and is fully executed. Tenant may not make any material change to the approved Plans or consent to any change order during the course of construction

without first obtaining City's written approval. Tenant will ensure that the Tenant Improvement Work does not obstruct access to or through the Building/Common Area and that it does not interfere with City's business being conducted in the Building, other tenant's use of their premises, or with any other work being done in the Building. On completion of the Tenant Improvements, Tenant will provide City a copy of the final as-built plans and specifications. No approval by City or any of its Agents of the Plans, any changes, or of any Alterations under this Lease will be deemed to constitute approval of any federal, state, or local regulatory authority with jurisdiction over the Premises or Tenant's use of the Premises, and nothing in this Lease limits Tenant's obligation to obtain all needed regulatory approvals at no cost to City.

## **6.2. Local Hiring Requirements**

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations (as defined in Section 7.1 (Tenant's Alterations)) are subject to the Local Hiring Requirements unless the cost for the work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

(b) In any contract for a Covered Project, Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements with specific reference to San Francisco Administrative Code Section 23.62. Each contract will name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

## **6.3. Prevailing Wages and Working Conditions**

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (A) pay workers performing that work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.



(b) Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call City's Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will also pay, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

## 7. ALTERATIONS

### 7.1. Tenant's Alterations

(a) **General.** Tenant will not make or permit any alterations, installations, additions, or improvements, structural or otherwise (collectively, "**Alterations**") (i) in, to or about the Premises without City's prior written consent in each instance. All Alterations will be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. Tenant will obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of the proposed alterations under City's Charter Section 5.103.

(b) **Asbestos.** Without limiting Section 24.2 (No Hazardous Materials) below, if it is determined that asbestos-containing materials ("**ACM**") exist in or about the Premises, Tenant will ensure that all Alterations and any asbestos-related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Legal Requirements relating to asbestos, including California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant will distribute notifications to all employees and contractors as required under California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work may be performed without City's prior written consent in each instance.

(c) **Prevailing Wage and Local Hiring Requirements.** Tenant and its subtenants will comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations.

## **7.2. Title to Improvements**

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including the Tenant Improvements and any Alterations, will be and remain, City's property. Tenant may not remove any City property at any time during or after the Term unless City so requests as further provided in Section 23 (Surrender of Premises) below.

## **7.3. Tenant's Personal Property**

All furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises, including the security guard shed, awning, storage unit, shed, and trailer installed by Tenant (collectively, "**Tenant's Personal Property**") will be and remain, Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 23 (Surrender of Premises) below. Tenant will pay any taxes or other impositions levied or assessed on Tenant's Personal Property, at least ten (10) days before delinquency, and, on request, deliver satisfactory evidence of that payment to City.

# **8. REPAIRS AND MAINTENANCE**

## **8.1. City's Repairs**

City shall have no obligation to maintain the Premises, any existing improvements or structure, any Tenant Improvements or Alterations or ensure access to, through, or from the Premises. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned thereby.

## **8.2. Tenant's Repairs**

At no expense to City, Tenant will maintain (and replace, if necessary) the Premises in good repair and working order and in a clean, secure, safe, and sanitary condition. Tenant will promptly make all repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the permitted use and adjacent parcels, and (e) in compliance with all applicable Legal Requirements (Section 11.1). If the cost of any those repairs or replacements is in excess of Five Thousand Dollars (\$5,000) in any instance and results from the acts or omissions of Tenant, its Agents, or Invitees, then Tenant will pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar Legal Requirements. Tenant will give to City at least

fifteen (15) days' prior written notice of commencement of any repair, replacement, or construction on the Premises.

## **9. LIENS AND ENCUMBRANCES**

### **9.1. Liens**

Tenant will keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within five (5) days after the imposition of any lien, Tenant does not cause the lien to be released of record by payment or posting a bond, then, in addition to all other remedies, City may, but is not obligated to, cause the lien to be released in any way it deems proper, including payment of the claim giving rise to the lien. All sums paid by City and all expenses incurred by it in connection with releasing the lien (including reasonable attorneys' fees) will be payable by Tenant to City on demand. City may post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building from mechanics' and material supplier's liens. Tenant will indemnify, defend, and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's, or other liens in connection with any Alterations, repairs, or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

### **9.2. Encumbrances**

Tenant may not create, permit, or suffer any liens or encumbrances affecting any portion of the Premises, the Property, or City's interest in the Property or under this Lease.

## **10. UTILITIES AND SERVICES**

Tenant acknowledges there are no utilities available to the Premises, and City shall have no obligation to provide for any utilities at the Premises.

## **11. COMPLIANCE WITH LEGAL REQUIREMENTS AND RISK MANAGEMENT REQUIREMENTS**

### **11.1. Compliance with Legal Requirements**

At no cost to City, Tenant will promptly comply with all present or future federal, state, local, and administrative laws, ordinance, resolution, regulation, requirement, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity (now or later in effect, collectively "**Legal Requirements**") relating to the Premises or the Property or the use or occupancy of the Premises and with any and all recorded covenants, conditions, and restrictions affecting all or any portion of the Property, whether in effect at the time of the execution of this Lease or adopted or recorded at any time later and whether or not they were considered by the parties in negotiating this Lease. It is Tenant's obligation, at no cost to City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access Legal Requirements. Tenant will not be required to make any structural Alterations in order to comply with disability access Legal Requirements unless the Alterations are required, in whole or in part,

directly or indirectly, by the Tenant Improvements or any other Alterations, Tenant's use of the Premises, or any act or omission of Tenant, its Agents, or Invitees. Any Alteration made by or on behalf of Tenant under the provisions of this Section will comply with the provisions of Section 8.2 (Tenant's Repairs) above. Tenant's obligation to comply with all Legal Requirements is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section includes its responsibility to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirements involved, and whether the Legal Requirements involved are related to Tenant's particular use of the Premises.

### **11.2. Regulatory Approvals**

(a) **Responsible Party.** Tenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including City agencies such as the Department of Public Works. Tenant is solely responsible for obtaining all regulatory approvals. Tenant may not seek any regulatory approval without first obtaining City's written consent. Tenant will bear all costs associated with applying for and obtaining any regulatory approval and is solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any condition that could affect use or occupancy of the Property or City's interest in the Property will first be approved by City in its sole discretion. Tenant will immediately pay and discharge any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval, and City will have no liability, monetary or otherwise, for any fines or penalties. Tenant will Indemnify City and the other Indemnified Parties (defined in Section 18.2 (Tenant's Indemnity) below) against all Claims arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents, or its Invitees to comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards, agencies, commissions, or other body having jurisdiction over the Premises. By entering into this Lease, City is not modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Legal Requirements.

### **11.3. Compliance with City's Risk Management Requirements**

Tenant will not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential premises liability. At no cost to City, Tenant will faithfully observe any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises.

## **12. SUBORDINATION**

This Lease is and will be subordinate to any reciprocal easement agreement, ground lease, facilities lease, or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements, and extensions of any of the foregoing, that

may now exist or later be executed by City affecting the Property or City's interest in the Property, without the necessity of executing any instrument to effectuate the subordination. Notwithstanding the foregoing, City or the holder will, in its respective discretion, may elect not to subordinate those interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant will attorn to City's successor-in-interest, if desired by the successor-in-interest. The provisions of this Section are self-operative and no further instrument will be required. On City's demand, however, Tenant will execute and deliver any additional documents in the form requested by City evidencing the priority or subordination of this Lease.

### **13. INABILITY TO PERFORM**

No actual or constructive eviction, in whole or in part, will entitle Tenant to any abatement or reduction of Rent or relieve Tenant from any of its obligations under this Lease. If City is unable to perform or is delayed in performing any of City's obligations under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials, or by any other reason beyond City's reasonable control, then that inability or delay will not constitute an eviction under this Lease, or impose any liability on City or its Agents because of the inconvenience, annoyance, interruption, injury, or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any other loss or damage due to City's inability or delay. Tenant waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar Legal Requirements.

### **14. DAMAGE AND DESTRUCTION**

If all or any portion of the Premises are damaged by casualty but the Premises remain tenantable for the Permitted Use, then the damage will be repaired in accordance with Section 8 (Repairs and Maintenance) above. If the Premises or any portion of it are completely destroyed by any cause, or are so damaged that the Premises are untenable, then, within forty-five (45) days after the date the destruction or damage, City will give Tenant written notice whether or not City will repair the Premises so that the Premises are in a tenantable condition for Tenant's Permitted Use (the "**Repairs**") within one hundred eighty (180) days after the date of the destruction or damage. If City's notice states that the Repairs will not be made within one hundred eighty (180) days after the date of the damage or destruction, then either City or Tenant may terminate this Lease by written notice given to the other within thirty (30) days after receipt of City's Repair notice. If neither party terminates this Lease, then, with due diligence, City will repair the Premises for the Permitted Use, and City will proportionally reduce the Base Rent (based upon the extent that the damage and the Repairs materially interferes with Tenant's Permitted Use of the Premises) that would be payable between the date of the damage and the date the repairs are substantially completed.

Notwithstanding anything to the contrary in this Lease, if the Premises are damaged or destroyed in the last twelve (12) months of the Term, then either party may terminate this Lease upon written notice to the other party given within thirty (30) days after the damage or destruction occurs; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date

of termination shall be specified in the notice of termination; which date shall not be more than thirty (30) days from the date of the notice.

City shall have no obligation to repair the Premises in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall City be required to repair any damage to Tenant's Personal Property or any Tenant Improvements or Alterations installed or made on the Premises by or at the expense of Tenant, including those existing on the Premises at the time of the Commencement of this Lease. In the event the Premises is substantially damaged or destroyed and City intends to repair for public purposes inconsistent with the Lease, City may terminate this Lease upon written notice to Tenant.

City and Tenant intend that in the event of any damage or destruction to the Premises that this Section 14 will govern the rights and obligation of the parties; accordingly, Tenant waives the provisions of Subdivision 2 of Section 1932 of the California Civil Code and the provisions of Subdivision 4 of Section 1933 of the California Civil Code, and all similar Legal Requirements.

## **15. EMINENT DOMAIN**

### **15.1. Definitions**

(a) **"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under any Legal Requirements. A Taking may occur under the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

(b) **"Date of Taking"** means the earlier of (i) the date that title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date that Tenant is dispossessed.

(c) **"Award"** means all compensation, sums or anything of value paid, awarded, or received for a Taking, whether under judgment, agreement, settlement, or otherwise.

(d) **"Improvements Pertaining to the Realty"** means machinery or equipment installed for use on the Property that cannot be removed without a substantial economic loss or without substantial damage to the Property, regardless of the method of installation. In determining whether particular machinery or equipment can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

### **15.2. General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties under this Lease will be determined under this Section. City and Tenant intend that the provisions of this Section 15 govern fully in the event of a Taking and accordingly, the parties each waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar Legal Requirements.

### **15.3. Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease will terminate as of the Date of Taking.

#### **15.4. Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for Tenant's continued use, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure the condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease will not terminate if Tenant agrees to, and does, pay full Rent, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(b) If there is a partial Taking of a substantial portion of the Building but not the Premises, City may terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15.4 will do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and this Lease will terminate on the later of the thirtieth (30th) day after the written notice is given or the Date of Taking.

#### **15.5. Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 15.3 (Total Taking; Automatic Termination), or under an election under Section 15.4 (Partial Taking, Election to Terminate) above, then: (a) Tenant's obligation to pay Rent will continue only up to date of termination, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty). Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses or the interruption of or damage to Tenant's business, or damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate), then this Lease will terminate as to the portion of the Premises taken, but will remain in full force and effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Base Rent will be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking; provided, that in no event will the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately before the Date of Taking, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses or the interruption of or damage to Tenant's business, or damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if there is a Taking of all or any part of the Premises for less than one hundred eighty (180) consecutive days, then (a) this Lease will not be affected by the temporary Taking; (b) Tenant will continue to pay Rent and perform all of the terms, conditions, and covenants of this Lease; (c) Tenant will be entitled to receive that portion

of any Award for the use or occupancy of the Premises up to the total Rent owing by Tenant for the period of the Taking; and (d) City will be entitled to receive the balance, if any, of the Award.

## **16. ASSIGNMENT AND SUBLETTING**

### **16.1. Restriction on Assignment and Subletting**

Other than the existing sublease attached hereto as **Exhibit F**, which was approved by the Director of Property on July 24, 2018 and may remain in effect during the Term, Tenant may not directly or indirectly (including by merger, acquisition, or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an “**Assignment**”), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, “**Sublease**”), without City’s prior written consent in each instance, as provided below. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant’s Affiliate (as defined below) without obtaining City’s consent by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of the transfer. As used in this Section, the term “**Tenant’s Affiliate**” means any of the following: (a) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an “**Owning Person**”), (b) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, (c) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant.

### **16.2. Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, it will give written notice (a “**Notice of Proposed Transfer**”) to City of its intention to do so. The Notice of Proposed Transfer will identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant will deliver to City with its request for City’s consent, the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly on City’s request, any additional documents or information reasonably related to the proposed transaction or Transferee.

### **16.3. City’s Response**

(a) Within twenty (20) business days after City’s receipt of the Notice of Proposed Transfer (the “**Response Period**”), by written notice to Tenant, City may elect to: (i) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in the notice, except as otherwise provided in Section 16.4 (City Sublease or Recapture Space) (a “**City Sublease**”), or (ii) terminate this Lease as to the portion of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a “**Recapture**”).

(b) If City declines to exercise either of its options under subsection (a) above, then Tenant will have ninety (90) days following the earlier of (i) City’s notice that it will not elect either option or (ii) the expiration of the Response Period, to enter into the Assignment or Sublease, subject to City’s prior written approval of the proposed assignee or subtenant (in either case, a “**Transferee**”) and the terms and conditions of the proposed Sublease or Assignment. Fifty



percent (50%) of any rent or other consideration realized by Tenant under any Assignment or Sublease in excess of the Base Rent and Additional Charges will be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with the Sublease or Assignment. Tenant will provide City with any information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City will not unreasonably withhold its approval of any proposed Transferee. If Tenant does not enter into the Assignment or Sublease within ninety (90) days after the earlier of the events described in clauses (i) or (ii) above, then Tenant will submit a new Notice of Proposed Transfer for any Assignment or Sublease.

(c) If, after City declines to exercise any of the options under subsection (a) above, Tenant desires to enter into an Assignment or a Sublease (i) on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or (ii) with a Transferee that is currently a tenant or other occupant of the Building, then Tenant will give City a new Notice of Proposed Transfer, which notice will state the terms and conditions of the Assignment or Sublease and identify the proposed Transferee, and City will again be entitled to elect one of the options provided in subsection (a) at any time within twenty (20) business days after City's receipt of the new Notice of Proposed Transfer.

(d) If City elects either of the options provided in subsection (a), City may enter into a lease, sublease, or assignment agreement for the Premises (or portion specified in the Notice of Proposed Transfer) with any party, including the proposed Transferee identified in Tenant's notice.

(e) Notwithstanding the foregoing, if any Event of Default by Tenant has occurred and is continuing at the time of Tenant's Notice of Proposed Transfer (or if any event occurs that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies or at law or in equity.

#### **16.4. City Sublease or Recapture Space**

If City elects to Sublease or Recapture from Tenant as described in Section 16.3 (City's Response), then the following apply:

(a) In the case of a City Sublease, (i) City may use the portion of the Premises covered by the Notice of Proposed Transfer (the "**City Sublease Space**") for any legal purpose, (ii) the rent payable by City to Tenant will be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the City Sublease (or, if the City Sublease is for less than the entire Premises, the amount proportionate to the City Sublease Space), (iii) City may make alterations and improvements to the City Sublease Space and may remove any alterations or improvements, in whole or in part, before or on the expiration of the City Sublease, provided that City will repair any damage or injury to the City Sublease Space caused by that removal, (iv) City will have the right to further sublease or assign the City Sublease Space to any party, without Tenant's consent, and (v) Tenant will pay to City on demand any costs incurred by City in physically separating the City Sublease Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Legal Requirements or regulations relating to the separation.

(b) In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "**Recapture Space**") will be deleted from the Premises for all purposes under this Lease, and Tenant and City will be relieved of all their rights and obligations under this Lease with

respect to the Recapture Space, unless those rights and obligations expressly survive the Expiration Date or other termination of this Lease, and (ii) City will pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Legal Requirements relating to the separation.

#### **16.5. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant or any consent by City will relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section will be void and, at City's option, will constitute a material default by Tenant under this Lease. City's acceptance of any Base Rent or other payments from a proposed Transferee will not constitute City's consent to any Sublease or Assignment or a recognition of any Transferee, or City's waiver of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, and a Transferee or any successor of Tenant defaults in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against the Transferee or successor.

#### **16.6. Assumption by Transferee**

Each Transferee (other than City) will assume all obligations of Tenant under this Lease and will be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all of Tenant's obligations under this Lease. No Assignment will be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the Transferee satisfactory in form and substance to City. Transferee's failure or refusal under an Assignment to execute the instrument of assumption, however, will not release the Transferee from its liability under this Lease, as set forth above. Tenant will reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **16.7. Indemnity for Relocation Benefits**

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant will cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant will Indemnify City for any and all Claims (as defined in Section (Tenant's Indemnity)) arising out of any relocation assistance or benefits payable to any Transferee. Tenant's obligation to Indemnify City will survive the expiration or termination of this Lease and any Assignment or Sublease.

### **17. DEFAULT; REMEDIES**

#### **17.1. Events of Default**

Any of the following will constitute an event of default (the "**Event of Default**") by Tenant under this Lease:

(a) a failure to pay Base Rent or Additional Charges when due that continues for three (3) days after the date of City's written notice, but City will not be required to provide notice more than twice during any twelve (12)-month period, and any failure by Tenant after

Tenant has received two (2) notices in a twelve (12)-month period will constitute an Event of Default by Tenant under this Lease without any further notice from City or opportunity for Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition, representation, or warranty made under this Lease that continues for fifteen (15) days after the date of written notice by City, provided that if the default is not capable of cure within the fifteen (15)-day period, Tenant will have a reasonable period to complete the cure if Tenant promptly undertakes action to cure the default within the fifteen (15)-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of City's notice of default. City will not be required to provide a written notice of default more than twice in any twelve (12)-month period for any material non-monetary defaults and after the second notice in any twelve (12)-month period, any subsequent failure by Tenant during that twelve (12)-month period will constitute an Event of Default;

(c) a vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

(d) an appointment of a receiver to take possession of all or substantially all of Tenant's assets, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if the receiver, assignment, or action is not released, discharged, dismissed, or vacated within sixty (60) days.

## **17.2. Remedies**

On the occurrence of an Event of Default City will have the following remedies, which are not exclusive but are cumulative and in addition to any other remedies now or later allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of a written notice from City, no other act of City, including its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise under Legal Requirements, will constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

(b) On a written termination of Tenant's right to possession of the Premises, this Lease will terminate and City will be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for a breach, including the following:

(i) The reasonable cost of recovering the Premises; plus

(ii) The reasonable cost of removing Tenant's Alterations, trade fixtures, and improvements; plus

(iii) All unpaid Rent due or earned under this Lease before the date of termination, less the proceeds of any reletting or any rental received from subtenants before the date of termination, together with interest at the Interest Rate, on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(v) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, for the remainder of the Term, after the date of the award of damages exceeds the amount the rental loss that Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Legal Requirements, including any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease that, in the ordinary course of things, would be likely to result therefrom.

(c) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due. After the occurrence of an Event of Default, City may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for a term (which may be a period beyond the remaining Term), at rents, and on other terms and conditions that City deems advisable. If City sublets, rents received by City from the subletting will be applied (i) first, to the payment of the costs of maintaining, preserving, altering, and preparing the Premises for subletting, the other costs of subletting, including brokers' commissions, attorneys' fees, and expenses of removal of Tenant's Personal Property, trade fixtures, and Alterations; (ii) second, to the payment of Rent then due and payable under this Lease; (iii) third, to the payment of future Rent as it becomes due and payable under this Lease; and (iv) fourth, the balance, if any, will be paid to Tenant on (but not before) expiration of the Term. If the rents received by City from any subletting, after application as provided above, are insufficient in any month to pay the Rent due under this Lease for the month, Tenant will pay the deficiency to City on demand. Notwithstanding any subletting for Tenant's account without termination, at any time thereafter, by written notice to Tenant, City may elect to terminate this Lease by virtue of a previous Event of Default.

(d) During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the rights granted to City under that Section, City will not unreasonably withhold its consent to an Assignment or Sublease of Tenant's interest in the Premises or in this Lease.

(e) During the continuance of an Event of Default, City may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations, and trade fixtures from the Premises and store them at Tenant's risk and expense. If City removes Tenant's Personal Property, Alterations, and trade fixtures from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of the removal and storage after written demand and/or to pay any Rent then due, then, after the property has been stored for a period of thirty (30) days or more, City may sell it at public or private sale, in the manner and at the times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and

place of the sale. The sale proceeds will be applied first to the payment of the expenses for removal and storage of the property, the preparation for and conducting of the sale, and for attorneys' fees and other legal expenses incurred by City, and the balance will be applied as provided in Section 17.2(b) above. Tenant waives all claims for damages that may be caused by City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property under this Section 17.2, and Tenant will Indemnify City for all Claims resulting from City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property. No reentry by City will constitute or be construed as a forcible entry by City.

(f) City may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after City's request, City may do so at Tenant's expense.

(g) City may cure the Event of Default at Tenant's expense, it being understood that City's cure will not waive or cure the Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant will reimburse City on demand for the amount of the payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant.

### **17.3. Waiver of Redemption**

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges that it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

### **17.4. City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then, at City's sole option, City may remedy the default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure the default (except that no prior notice will be required in the event of an emergency as determined by City). No City action to cure Tenant's default will be construed as a waiver of Tenant's default or any of City's rights or remedies, and nothing in this Section implies any duty on City to do any act that Tenant is obligated to perform. Tenant will pay to City on demand, as Additional Charges, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy the default. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

### **18.1. Limitation on City's Liability; Waiver of Claims**

City will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims for any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever including: (a) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises; (b) theft; (c) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination; and (d) any other acts, omissions, or causes. Nothing in this Section will relieve City from liability caused solely and directly by the active gross negligence or willful misconduct of City or its Agents, but City will not be liable under any circumstances for any consequential, incidental, or punitive damages.

## **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, will indemnify, defend, and hold harmless (“**Indemnify**”) City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the “**Indemnified Parties**”), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, “**Claims**”), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person (including Tenant’s employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant’s part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents, its Invitees, or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term; or (f) any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, in, on, or about the Premises or the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable Legal Requirements and further except only those Claims as are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City’s costs of investigating any Claim. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the Claim is tendered to Tenant by City and continues at all times thereafter. Tenant’s obligations under this Section will survive the expiration or termination of this Lease.

## **19. INSURANCE**

### **19.1. Tenant's Insurance**

(a) At no cost to City, Tenant will procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) 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 Fifty Thousand Dollars (\$50,000)), 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.

(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 Tenant uses automobiles in connection with its use of the Premises.

(iv) Business interruption insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Business Interruption Insurance will also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(v) Other insurance as is generally required by commercial owners of similar businesses, as may change from time to time.

(b) If any of the required insurance is provided under a claims-made form, Tenant will maintain the coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, if occurrences during the Term give rise to claims made after expiration or termination of this Lease, those claims will be covered by the claims-made policies. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

(c) If any of the required insurance is 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 the general annual aggregate limit, the general aggregate limit will be double the occurrence or claims limits specified above.

(d) All liability insurance policies will 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 the 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 under Section 19.1(a) above will 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) All insurance policies required to be maintained by Tenant will be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. If Tenant's insurer refuses to offer this endorsement, Tenant will promptly provide the thirty (30) day's prior written notice of cancellation, intended non-renewal, or reduction in coverage to City. Notice to City will be mailed to the addresses for City set forth in the Basic Lease Information.

(g) On or before the Commencement Date, Tenant will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required under this Lease, together with complete copies of the policies and at any other time promptly after City's request. During the Term, Tenant will provide City with certificates or policies at least thirty (30) days before the expiration dates of expiring policies. If Tenant fails to procure the required insurance, or to deliver the policies or certificates, then at its option and without waiving any rights or remedies that City may have for Tenant's default, City may procure the insurance for Tenant's account, and Tenant will pay the cost to City within five (5) days after delivery to Tenant of invoices therefor.

(h) On City's request, Tenant and City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in San Francisco

is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then, at City's request, Tenant will increase the amounts or coverage carried by Tenant to conform to the general commercial practice.

(i) Tenant's compliance with the provisions of this Section will in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(j) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease will terminate on three (3) days' notice to Tenant unless Tenant renews the insurance coverage within the notice period.

#### **19.2. Tenant's Personal Property**

At no cost to City, Tenant is responsible for separately insuring Tenant's Personal Property.

#### **19.3. City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage, and public liability risks and agrees that, at City's sole election (but without obligation to do so), City may carry any third party insurance coverage for the Building, the Premises, or otherwise.

#### **19.4. Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "**Waiving Party**") each waives any right of recovery against the other party for any loss or damage relating to the Building or the Premises or any operations or contents, whether or not the loss is caused by the fault or negligence of the other party, to the extent the loss or damage is covered by third-party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its Agents. Each Waiving Party will obtain a waiver of subrogation rights endorsements from applicable insurance carriers issuing policies relating to the Building or the Premises; provided, the failure to obtain the endorsement will not affect the above waiver.

### **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents the right to enter the Premises as follows: **(a)** on a regular basis without advance notice to supply any necessary or agreed-upon service provided by City under this Lease; **(b)** on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties; to post notices of non-responsibility; to conduct any environmental audit of Tenant's use of the Premises; and for any other lawful purpose; and **(c)** on an emergency basis without notice whenever City believes that emergency access is required. City will have the right to use any means that it deems proper to open doors or gates in an emergency to obtain access to any part of the Premises, and that entry will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion of the Premises. Tenant will not alter any lock or install any new or additional locking devices without City's prior written consent. Tenant shall provide City keys to open all locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any designated by Tenant in writing to City).



## **21. CERTIFICATES**

### **21.1. Tenant's Estoppel Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from City, Tenant will execute and deliver to City or to any party designated by City a certificate stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations under this Lease (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information that may be required.

### **21.2. City's Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from Tenant, City will execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any known defaults then existing under this Lease (and if so specifying the same), and (d) the dates, if any, to which the Base Rent and Additional Charges have been paid.

## **22. SECURITY DEPOSIT**

Tenant has paid to City the sum specified as the security deposit in the Basic Lease Information (the "**Security Deposit**"), as set forth in the Basic Lease Information, to secure Tenant's faithful performance of all terms, covenants, and conditions of this Lease. City may apply (but will not be required to apply) the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents, or its Invitees, or any failure of Tenant to perform any other terms, covenants, or conditions in this Lease (including the payment of Rent either before or after a default), without waiving any of City's other rights and remedies under this Lease or under applicable Legal Requirements. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar Legal Requirements now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate it for any foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents, or its Invitees. Without limiting the foregoing, City may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

If City uses any portion of the Security Deposit to cure any default by Tenant, Tenant will immediately replenish the Security Deposit to the original amount. If the Base Rent is increased under any of the provisions of this Lease, Tenant will increase the amount of the Security Deposit by the same percentage increase. City's obligations regarding the Security Deposit are solely that of debtor and not trustee. City will not be required to keep the Security Deposit separate from its general funds, and Tenant will not be entitled to interest on the Security Deposit. The amount of the Security Deposit will in no way limit the liabilities of Tenant under any provision of this Lease.

## **23. SURRENDER OF PREMISES**

On the Expiration Date or other termination of this Lease, Tenant will peaceably quit and surrender to City the Premises, together with the Tenant Improvements and all Alterations approved by City, in good order and condition, except for normal wear and tear (after Tenant has made the last necessary repair required under this Lease), and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible under this Lease. The Premises will be surrendered free and clear of all liens and encumbrances other than those existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant will remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, in City's sole discretion, City may reserve ownership of any telecommunications equipment, wire, cabling, and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. If the removal is not completed at the expiration or other termination of this Lease, City may perform the removal at Tenant's expense. Notwithstanding anything to the contrary in this Lease, at any time before the Expiration Date or within five (5) days after termination of this Lease, City may elect to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations, or other improvements or equipment constructed or installed by or at Tenant's expense, including any telecommunications equipment, wires, cabling, and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. Tenant will promptly remove those items and repair, at no cost to City, any damage to the Premises or the Building resulting from the removal, or if Tenant fails to repair, City may do so at Tenant's expense. Tenant's obligations under this Section will survive the expiration or sooner termination of this Lease. At City's option, any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Legal Requirements.

Concurrently with the surrender of the Premises, if requested by City, Tenant will execute, acknowledge, and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence the termination of Tenant's leasehold estate and to effect the transfer or vesting of title to the Tenant Improvements or other improvements or equipment that remain part of the Premises. The terms of this Section will survive the expiration or sooner termination of this Lease.

## **24. HAZARDOUS MATERIALS**

### **24.1. Definitions**

As used in this Lease:

(a) **"Environmental Laws"** means all present or future Legal Requirements relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, or storage), or to health and safety, industrial hygiene, or the environment, including soil, air, and groundwater conditions.

(b) **"Hazardous Material"** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time, now or later, deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance

defined as a “hazardous substance,” “pollutant,” or “contaminant” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25316 of the California Health & Safety Code; any “hazardous waste” listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

(c) **“Investigate”** and **“Investigation”** means undertaking any activities to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Property or that has been, are being or threaten to be Released into the environment; **“Remediate”** and **“Remediation”** means to clean up, remove, contain, treat, stabilize, monitor, or otherwise control the Hazardous Material.

(d) **“Release”** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under, or about any other part of the Property or into the environment.

#### **24.2. No Hazardous Materials**

Neither Tenant nor any of its Agents or Invitees will cause or permit any Hazardous Material to be brought on, kept, used, stored, generated or disposed of in, on, or about the Property, or transported to or from the Property,. Tenant will give City immediate written notice of: (a) any action, proceeding, or inquiry by any governmental authority (including the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management District, or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises, or Property relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Property that has occurred and may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice under Section 25359.7 of the California Health and Safety Code.

#### **24.3. Tenant’s Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents, or its Invitees results in any Release of Hazardous Material in, on, under, or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Tenant’s Indemnity contained in Section 18.2 (Tenant’s Indemnity), on behalf of itself and its successors and assigns, Tenant will Indemnify the Indemnified Parties, and each of them, from and against all Claims (including damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property, and sums paid in settlement of claims, attorneys’ fees, consultants’ fees, and experts’ fees and costs) arising during or after the Term and relating to the Release. The foregoing Indemnity includes costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under, or about the Premises or any other part of the Property, Tenant will immediately and at no expense to City take all

appropriate actions to return the Premises or the Property affected by the Release to the condition existing before the Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, and this obligation arises at the time the claim is tendered to Tenant by City and continues at all times thereafter. Tenant will afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **24.4. Survival of Obligation**

Tenant's obligations under this Section 24 will survive the expiration or earlier termination of this Lease.

### **25. SPECIAL PROVISIONS**

#### **25.1. Extension Option**

(a) **Option to Extend Term.** City grants to Tenant a one-time option to extend the Term as to the entire Premises only (the "**Extension Option**") for an additional five (5) years (the "**Extension Term**") commencing on the Expiration Date on the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but at least one hundred twenty (120) days before the Expiration Date by giving written notice to City. Once given, Tenant may not revoke its notice exercising the Extension Option. If any Event of Default by Tenant is outstanding either at the time Tenant exercises the Extension Option or at any time before the first day of the Extension Term (or if any event has occurred that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, in which case, the Extension Option will be null and void. City may also void Tenant's Extension Option if Tenant has assigned its interest under this Lease or sublet more than fifty percent (50%) of the Premises.

(b) **Base Rent and Other Terms.** If Tenant elects to exercise the Extension Option, then the lease for the Extension Term will cover the entire Premises and be on all of the terms, covenants, and conditions of this Lease, except that Base Rent will be adjusted to the Prevailing Market Rate (defined below) as follows:

(i) No later than one hundred fifty (150) days before commencement of the Extension Term, City will notify Tenant in writing of City's good faith determination of the Prevailing Market Rate for the Premises to be used to calculate the Base Rent for the Extension Term. "**Prevailing Market Rate**" for the Premises means the rent and all other payments and escalations, including consumer price indexing, that City could obtain from a third party desiring to lease the Premises for the Extension Term taking into account the age of the Building, the size, location, and floor levels of the Premises, the quality of construction of the Building and the Premises, the services provided under the terms of this Lease, the rent then being obtained for new leases of space comparable to the Premises in the same general area as the Building, and all other factors that would be relevant to a third party desiring to lease the Premises for the Extension Term in determining the rent the third party would be willing to pay; provided, however, no allowance for the construction of tenant improvements will be taken into account in determining Prevailing

Market Rate, except that there a reasonable allowance will be permitted for repainting and recarpeting the Premises, as determined by City.

(ii) Within fifteen (15) days after receiving City's determination of the Prevailing Market Rate, Tenant will notify City in writing either of (A) Tenant's acceptance of the determination, in which case that determination will constitute the new Base Rent as of the commencement of the Extension Term, or (B) Tenant's own good faith determination of the Prevailing Market Rate, including written justification for its determination.

(iii) If Tenant provides City with its determination of the Prevailing Market Rate under Section 25.1(b)(ii)(B) above, then within thirty (30) days after Tenant's notice to City, the parties will attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any disagreement on the Prevailing Market Rate. The parties may mutually agree in writing to extend the thirty (30) day consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within thirty (30) days.

(iv) If, within the consultation period, City and Tenant cannot reach agreement on the Prevailing Market Rate, then promptly after the end of then consultation period City and Tenant will have Prevailing Market Rate determined by appraisal as follows.

#### **(A) Appointment of Appraisers**

Each party will appoint one (1) appraiser within thirty (30) days after the end of then consultation period under Section 25.1(b)(iii) above. On selecting its appraiser, each party will promptly notify the other party in writing of the name of the appraiser selected. Each appraiser will be competent, licensed, qualified by training and experience in the City and County of San Francisco, and be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, will hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding those professional designations. Each MAI appraiser may have a prior working relationship with either or both of the parties, so long as the prior working relationship is disclosed to both parties. Without limiting the foregoing, each appraiser will have at least ten (10) years' experience valuing commercial real estate similar to the Premises in the City and County of San Francisco. If either party fails to appoint its appraiser within the thirty (30)-day period, the appraiser appointed by the other party will individually determine the Prevailing Market Rate in accordance with the provisions below.

#### **(B) Appraisal Instructions**

Each appraiser will make an independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Prevailing Market Rate. Neither of the appraisers may have access to the appraisal of the other (except for the sharing of objective information contained in the appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party may communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, the appraiser will use his or her own professional judgment and will make clear all assumptions on which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing him or her. There will not be any change to the appraisal instructions contained in this

Section. Each appraiser will complete, sign, and submit its written appraisal setting forth the Prevailing Market Rate (to the nearest half percentage point) to the parties within forty-five (45) days after the appointment of the last of the appraisers. If the higher appraised Prevailing Market Rate is not more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the Prevailing Market Rate will be the average of the two (2) Prevailing Market Rate figures (to the nearest half percentage point).

### **(C) “Baseball” Appraisal**

If the higher appraised Prevailing Market Rate is more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the first two appraisers will agree on and appoint an independent third (3<sup>rd</sup>) appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third (3<sup>rd</sup>) appraiser will have the minimum qualifications as required of an appraiser under Section 25.1(iv)(A) above, and also have experience acting as a third (3<sup>rd</sup>) appraiser of disputes involving commercial real estate or real estate development opportunities, including [ground] leases and rental valuation. The two appraisers will inform the parties in writing of their appointment of the third (3<sup>rd</sup>) appraiser at or before the end of the thirty (30)-day appointment period. Each party will have the opportunity to question the proposed third (3<sup>rd</sup>) appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal. By written notice to the other party and the two appraisers, either party may raise a good faith objection to the third (3<sup>rd</sup>) appraiser based on his or her failure to meet the requirements of this Section. In that event, if the two (2) appraisers determine that the objection was made in good faith, then the two (2) appraisers will promptly select another third (3<sup>rd</sup>) appraiser, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third (3<sup>rd</sup>) appraiser within ten (10) days after receiving written notice of his or her appointment, then each party will be deemed to have waived any issues or questions relating to the qualifications or independence of the third (3<sup>rd</sup>) appraiser or any other matter relating to the selection of the third (3<sup>rd</sup>) appraiser under this Lease. If, for any reason, the two appraisers do not appoint a third (3<sup>rd</sup>) appraiser within the thirty (30)-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third (3<sup>rd</sup>) appraiser meeting the minimum qualifications set forth in Section 25.1(b)(iv)(A) above. If the Court denies or otherwise refuses to act on the application within sixty (60) days from the date on which the party first applies to the Court for appointment of the third (3<sup>rd</sup>) appraiser, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of that organization of an independent third (3<sup>rd</sup>) appraiser meeting the minimum qualifications set forth in Section 25.1(b)(iv)(A) above.

The third (3<sup>rd</sup>) appraiser will consider the appraisals submitted by the first two (2) appraisers as well as any other relevant written evidence that the third (3<sup>rd</sup>) appraiser may request of either or both of the first two (2) appraisers. If evidence is requested by the third (3<sup>rd</sup>) appraiser, the other appraisers will deliver a complete and accurate copy to the other party its appraiser, at the same time it submits the evidence to the third (3<sup>rd</sup>) appraiser. Neither party, nor the appraisers they appoint, may conduct any ex parte communications with the third (3<sup>rd</sup>) appraiser. Within thirty (30) days after his or her appointment, the third (3<sup>rd</sup>) appraiser will select the appraised Prevailing Market Rate determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third (3<sup>rd</sup>) appraiser, to the actual Prevailing Market Rate. The

determination of the third (3<sup>rd</sup>) appraiser will be limited solely to the issue of deciding which of the appraisals of the two (2) appraisers is closest to the actual Prevailing Market Rate. The third (3<sup>rd</sup>) appraiser will have no right to propose a middle ground or to modify either of the two (2) appraisals, or any provision of this Lease.

#### **(D) Conclusive Determination**

Except as provided in California Code of Civil Procedure Section 1286.2 (as it may be amended from time to time), the determination of the Prevailing Market Rate by the accepted appraisal will be conclusive, final, and binding on the parties. Neither of the first two (2) appraisers nor the third (3<sup>rd</sup>) appraiser will have any power to modify any of the provisions of this Lease and will base their decision on the definitions, standards, assumptions, instructions, and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third (3<sup>rd</sup>) appraiser. The appraisers (but not the third (3<sup>rd</sup>) appraiser) can utilize the services of special experts, including experts to determine things such as property condition, market rates, leasing commissions, renovation costs, and similar matters. The appraisers and the third (3<sup>rd</sup>) appraiser will each produce their determination in writing, supported by the reasons for the determination.

#### **(E) Fees and Costs; Waiver**

Each party will bear the fees, costs, and expenses of the appraiser it selects under Section 25.1(b)(iv)(A) and of any experts and consultants used by that appraiser. The fees, costs, and expenses of the third (3<sup>rd</sup>) appraiser under Section 25.1(b)(iv)(C) will be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third (3<sup>rd</sup>) appraiser, for negligence, malpractice, or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(v) If, either by agreement of the parties or by the appraisal procedure provided above, the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, then Tenant will pay the Prevailing Market Rate determined by City until the Prevailing Market Rate is finally determined by agreement of the parties or by the appraisal procedure set forth in this Section, at which time City will refund any excess amount to Tenant or Tenant will pay any shortfall to City, as the case may be. No delay in the determination of Prevailing Market Rate will be deemed a waiver by either party of the adjustment of Prevailing Market Rate as provided in this Section.

## **26. GENERALLY APPLICABLE PROVISIONS**

### **26.1. Notices**

Any notice given under this Lease will be effective only if in writing and delivered in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant takes possession of the Premises, or (ii) at the Premises if sent on or after Tenant takes possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent after Tenant vacates, abandons, or surrenders the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to any other address that either City or Tenant designates as its new address by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of the change. A properly addressed notice transmitted by one of the

foregoing methods shall be deemed to have been given two (2) days after the date it is mailed by first class or certified mail, one day after the date it is deposited with an overnight courier for overnight delivery, or on the date of personal delivery. For convenience of the parties, copies of notices may also be given by email to the email address set forth in the Basic Lease Information or as may be provided from time to time; however, neither no official or binding notice may be given by email; a notice will only be deemed given and effective when sent as provided in the first two (2) sentences of this Section. Tenant will promptly provide City with copies of all notices received regarding any alleged violation of Legal Requirements or insurance requirements or any alleged unsafe condition or practice.

#### **26.2. No Implied Waiver**

No failure by City to insist on the strict performance of any obligation of Tenant under this Lease or to exercise any right, power, or remedy arising out of a breach, regardless of the length of time that the breach continues, no acceptance of full or partial Base Rent or Additional Charges during any breach, and no acceptance of the keys to or possession of the Premises before the expiration of the Term by any Agent of City, will constitute a waiver of the breach or of City's right to demand strict compliance with any term, covenant, or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease will affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Lease will not be deemed to be a waiver of a subsequent default or performance. Any City consent under this Lease will not relieve Tenant of any obligation to secure City's consent in any other or future instance as required by this Lease.

#### **26.3. Amendments**

Neither this Lease nor any of its terms or provisions may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought. Whenever this Lease requires or permits City's consent or approval, the Director of Property or his or her designee will be authorized to provide the consent or approval, except as otherwise provided by applicable Legal Requirements, including the Charter. Any amendments or modifications to this Lease, including amendments to or modifications to the exhibits to this Lease, are subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and **(e)** any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease may also require the approval of City's Board of Supervisors.

#### **26.4. Authority**

If Tenant signs as a corporation, a limited liability company, or a partnership, then each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing entity, Tenant has and is qualified to do business in California, Tenant has full right and authority to enter into this Lease, and each and all of the persons signing on behalf of Tenant are authorized to do so. On City's request, Tenant will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.



### **26.5. Parties and Their Agents; Approvals**

The words “**City**” and “**Tenant**” include the plural as well as the singular. If there is more than one entity that comprises Tenant, Tenant’s obligations and liabilities under this Lease are joint and several. The term “**Agents**” when used with respect to either party includes the agents, employees, officers, contractors, and representatives of the party, and the term “**Invitees**” when used with respect to Tenant includes the clients, customers, invitees, guests, licensees, assignees, or subtenants of Tenant. All approvals, consents, or other determinations permitted or required by City will be made by or through City’s Director of Property unless otherwise provided in this Lease, subject to applicable Legal Requirements.

### **26.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and in no way define or limit the scope or intent of any provision of this Lease. Provisions in this Lease relating to number of days are calendar days, unless otherwise specified, but if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day. Use of the word “**including**” or similar words will not be construed to limit any general term, statement, or other matter in this Lease, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

### **26.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants, and conditions contained in this Lease will bind and benefit City and Tenant and their successors and assigns; provided, however, that on any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) will be relieved from all obligations and liabilities arising under this Lease after the sale, assignment, or transfer.

### **26.8. Brokers**

Neither party has had any contact or dealings regarding leasing the Premises to Tenant, or any communication in connection that leasing, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the lease contemplated in this Lease except as identified in the Basic Lease Information, whose commission, if any is due, will be paid under a separate written agreement between the broker and the party through which the broker contracted. If any broker or finder perfects a claim for a commission or finder’s fee based on a contact, dealings, or communication, then the party through whom the broker or finder makes a claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the broker’s or finder’s claim. The provisions of this Section will survive the expiration or any earlier termination of this Lease.

### **26.9. Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is invalid or unenforceable, then the remainder of this Lease, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Lease will be valid and enforceable to the fullest extent permitted by Legal Requirements, except to the extent that enforcement of this Lease

without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

#### **26.10. Governing Law**

This Lease will be construed and enforced in accordance with the Legal Requirements of the State of California and City's Charter.

#### **26.11. Entire Agreement**

This Lease, including its attached exhibits, which are made a part of this Lease by this reference, contains the entire agreement between the parties and all prior written or oral negotiations, understandings, and agreements are merged into this Lease. The parties intend that this Lease constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever (including prior drafts and changes) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease. Tenant acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Building, or this Lease except as expressly set forth in this Lease, and no rights, easements, or licenses are or will be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease.

#### **26.12. Attorneys' Fees**

If either City or Tenant fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the non-prevailing party in the dispute, as the case may be, will pay the prevailing party's reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of the action and enforcing or establishing its rights under this Lease (whether or not the action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" means the fees and expenses of counsel to the party, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" also includes all fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

#### **26.13. Holding Over**

(a) If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant will pay City, on a month-to-month basis, Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant before the expiration or termination of the Lease, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand by City, will constitute continuing possession for purposes of this Section. Tenant acknowledges that the foregoing provisions do not serve as permission for the

Tenant to hold over, or serve to extend the Term. Any holding over without City's consent will constitute a default by Tenant and entitle City to exercise any or all of its remedies, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not the amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

(b) Any holding over after the expiration of the Term with City's express written consent will be construed to automatically extend the Term on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant before the expiration, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and any Extension Options).

(c) Tenant's obligations under this Section will survive the expiration or termination of this Lease.

#### **26.14. Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

#### **26.15. Cumulative Remedies**

All rights and remedies set forth in this Lease of either party to this Lease will be cumulative, except as may otherwise be provided in this Lease.

#### **26.16. Survival of Indemnities**

Termination of this Lease will not affect the either party's right to enforce any indemnities and representations and warranties given or made to the other party under this Lease, or affect any provision of this Lease that expressly states it will survive expiration or termination of the Lease.

#### **26.17. Signs**

Tenant will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics on or about the Premises that are visible in or from public corridors or other portions of any Common Areas of the Building or from the exterior of the Premises without City's prior written consent, which City may withhold, grant, or condition in its sole discretion.

#### **26.18. Relationship of the Parties**

City is not, and none of the provisions in this Lease will be deemed to render City, a partner in Tenant's business, or a member in any joint enterprise or venture with Tenant. Neither party may act as the agent of the other party for any purpose under this Lease. This Lease is not intended and it will not be construed to create any third-party beneficiary rights in any party, unless otherwise expressly provided.

#### **26.19. Light and Air**

No diminution of light, air, or view by any structure that may later be erected (whether or not by City) will entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any City liability to Tenant, or in any other way affect this Lease or Tenant's obligations under the Lease.

#### **26.20. No Recording**

Tenant may not record this Lease or any memorandum of this Lease in the public records.

### **26.21. Options Personal**

Any right or option to extend the Term or renew this Lease is personal to the original named Tenant and may be exercised only by the original named Tenant while occupying the Premises without the intent of then making an Assignment of this Lease or Subletting of all or any portion of the Premises. No right or option to extend the Term or renew this Lease may be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than the original named Tenant. The options, if any, granted to Tenant are not assignable separate and apart from this Lease, and no option may be separated from this Lease in any manner, either by reservation or otherwise.

### **26.22. Non-Liability of City Officials, Employees, and Agents**

No elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Tenant or its successors and assigns for any City default or breach or for any amount that may become due to Tenant or its successors and assigns, or for any City obligation under this Lease.

### **26.23. Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

### **26.24. Counterparts**

This Lease may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

### **26.25. Effective Date**

This Lease will be effective on the date on that (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Legal Requirements and (b) this Lease is duly executed and delivered by the parties.

## **27. CITY REQUIREMENTS**

### **27.1. Public Transit Information**

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Premises and encouraging use of them.

### **27.2. Taxes, Assessments, Licenses, Permit Fees, and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on its possessory interest.

(b) Tenant will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Premises and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

### **27.3. Non-Discrimination in City Contracts and Benefits Ordinance**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant will not discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes.

(b) **Subleases and Other Subcontracts.** Tenant will include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to the Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant will incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under the Legal Requirements authorizing that registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **CMD Form.** As a condition to this Lease, Tenant will execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth in this Lease. Tenant will comply fully with and be bound by all of the provisions that apply to this Lease under those Chapters of the Administrative Code, including the remedies provided in those Chapters. Without limiting the foregoing, Tenant understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which the person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

#### **27.4. No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Legal Requirements, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Legal Requirements (including California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.5. MacBride Principles—Northern Ireland**

The provisions of San Francisco Administrative Code Section 12F are incorporated by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **27.6. Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic**

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant will be liable for liquidated damages for each violation in any amount equal to Tenant’s net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment.

## **27.7. Restrictions on the Use of Pesticides**

(a) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Tenant may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet City’s IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant’s primary IPM contact person with City. Tenant will comply, and will require all of Tenant’s contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (iii) impose certain notice requirements, and (iv) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant’s staff or contractors.

(b) If Tenant or Tenant’s contractor would apply pesticides to outdoor areas at the Premises, Tenant will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

## **27.8. First Source Hiring Agreement**

Tenant and City are parties to the First Source Agreement attached to this Lease as **Exhibit E** under San Francisco Administrative Code, Chapter 83 (the “**First Source Agreement**”). Any default by Tenant under the First Source Agreement will be a default under this Lease.

## **27.9. Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors’ bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.

## **27.10. Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and

California Government Code Section 87100 et seq. and Section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Tenant becomes aware of any violation during the Term, Tenant will immediately notify City.

#### **27.11. Charter Provisions**

This Lease is governed by and subject to the provisions of City's Charter.

#### **27.12. Drug-Free Workplace**

Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal Legal Requirements is prohibited on City premises. Any violation of this prohibition by Tenant, its Agents, or assigns will be a material breach of this Lease.

#### **27.13. Prohibition of Tobacco Sales and Advertising**

No advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

#### **27.14. Prohibition of Alcoholic Beverage Advertising**

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

#### **27.15. Requiring Health Benefits for Covered Employees**

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. City may notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure



to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract entered into by Tenant will require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **27.16. Notification of Prohibition on Contributions**

By executing this Lease, Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Tenant acknowledges that the foregoing restriction applies only if

the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Tenant; any subtenant listed in the lease; and any committee that is sponsored or controlled by Tenant; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Tenant is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

#### **27.17. Resource-Efficient City Buildings**

Tenant acknowledges that City has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant will comply with all applicable provisions of those code sections.

#### **27.18. Food Service and Packaging Waste Reduction Ordinance**

Tenant will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) for the first breach, Two Hundred Dollars (\$200.00) for the second breach in the same year, and Five Hundred Dollars (\$500.00) for subsequent breaches in the same year is a reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Lease was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Lease, at law, or in equity.

#### **27.19. San Francisco Packaged Water Ordinance**

Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

#### **27.20. Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and require all subtenants to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants will post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

#### **27.21. Vending Machines; Nutritional Standards**

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional

Standards Requirements or to otherwise comply with this Section 27.21 will be a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

**27.22. All-Gender Toilet Facilities**

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

**27.23. Tenant's Compliance with City Business and Tax and Regulations Code**

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO CITY OFFICER OR EMPLOYEE HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY CITY OBLIGATIONS OR LIABILITIES UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY CITY DEPARTMENT, COMMISSION, OR AGENCY WILL NOT BE DEEMED TO IMPLY THAT A RESOLUTION WILL BE ENACTED, AND NO APPROVAL WILL CREATE ANY BINDING CITY OBLIGATIONS.

*SIGNATURES ON FOLLOWING PAGE*

City and Tenant have executed this Lease as of the date first written above.

**TENANT:**

OUR PLANET RECYCLING, LLC,  
a California limited liability company

By: \_\_\_\_\_  
ORS CSASZAR

Its: Manager

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Andrico Q. Penick  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between Our Planet Recycling, LLC (Tenant), and the City and County of San Francisco (Landlord), for the Premises located at Block 5695, Lot 023

Dear Mr. Penick:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2023.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Dated: \_\_\_\_\_

**EXHIBIT C**

**MINOR ENCROACHMENT PERMIT**



**EXHIBIT D**  
**TENANT'S EQUIPMENT**

**EXHIBIT E**

**FIRST SOURCE HIRING AGREEMENT**

**EXHIBIT F**

**SUBLEASE**

# Our Planet Recycling SF LLC



## COMMERCIAL SUBLEASE AGREEMENT

This Sublease is dated on 2023 3 day of July between:

Sublandlord: **Our Planet Recycling SF LLC (First Party)**  
and

Subtenant: **Morena Mendez and Jose Ortiz DBA Express Service Auto Glass (Second Party)**

### Background

This agreement (the "Sublease") sublets real property under the terms specified below.

Master Lease: Dated November 11, 2017, between City and County of San Francisco (the "Landlord") and Sublandlord for Premises at Alemany and Tompkins Avenues.

Subtenant undertakes obligations from the Master Lease.

The Sublandlord hereby subleases to the Subtenant, and the Subtenant hereby subleases from the Sublandlord approximately 2100 square feet of unimproved land located at the intersection of Alemany and Tompkins Avenues, APT 5695 Lot 023, as described in Exhibit (the "Subleased Premises"). The Subtenant is obligated to maintain the layout shown in Exhibit V throughout the term of this sublease.

### Terms

Subleased Premises defined.

Term: Periodic tenancy starting June 1, 2018, continuing year-to-year until terminated.

The subtenant

**Rented area:** Commencing July 1, 2023, the leased premises encompass a comprehensive 2,788 square feet, including an office, awning area, storage space, and an additional car parking zone.

**Rent:** \$1,280.00 per month, effective from July 1, 2023. Effective January 1, 2024, annually, a 3% increment in rent ensures a balanced approach to maintaining equitable property values."

### Use of Subleased Premises:

The Subtenant and its agents and employees shall use the Subleased Premises only for a purpose consistent with the permitted use outlined in the Master Lease. The Subtenant agrees to comply with all provisions of the Master Lease and refrain from any activity that would constitute a breach of the Master Lease.

445 Bayshore Blvd  
San Francisco, CA 94124  
Phone: 415.866.6102  
Fax: 415.901.0035

E-Mail: Bernadette@ourplanetsf.com

1. Maintenance and Repairs:

The Subtenant shall return the Subleased Premises, including any furniture and decorations within it, in the same condition as at the beginning of the term, subject to reasonable wear and tear. The Subtenant shall be responsible for damages caused by the Subtenant or their guests. The Subtenant shall promptly report maintenance issues and needed repairs to the Sublandlord and the Landlord.

2. Alterations and Improvements:

The Subtenant is granted the right to make alterations and improvements to the Subleased Premises as permitted by the Master Lease. All alterations and improvements must adhere to relevant construction laws and regulations.

3. Event of Default:

The Subtenant shall be deemed in default of this Sublease Agreement if any of the following events occur, including but not limited to failure to pay Rent, failure to perform obligations, insolvency, bankruptcy, and unauthorized use of the Subleased Premises.

4. Remedies:

Upon the occurrence of an Event of Default, the Sublandlord has the right to terminate the Sublease, perform Subtenant's obligations, reenter the Subleased Premises, and seek other remedies as outlined in this Sublease and the Master Lease.

5. Surrender of Premises:

At the end of the Term, the Subtenant shall return the Subleased Premises in the same condition as at the commencement of the Sublease, except for reasonable wear, tear, and damages by the elements.

6. Governing Law:

This Sublease Agreement shall be governed by and interpreted in accordance with the laws of California.

7. Assignment and Subletting:

The Subtenant shall not assign, transfer, or sublet the Subleased Premises without the prior written consent of the Sublandlord and the Landlord.

8. Notices:

All notices under this Sublease Agreement shall be in writing and served or sent by certified or registered mail.

9. Entire Agreement:

This Sublease Agreement, along with the Master Lease, constitutes the entire agreement between the parties and supersedes any prior understandings or agreements.



IN WITNESS WHEREOF, the parties have executed this Sublease Agreement as of the date first above written..

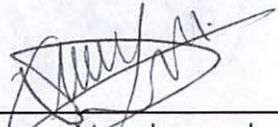
Signatures

Witnessed signatures of Sublandlord and Subtenant.

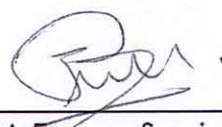
San Francisco, August 16, 2023



Our Planet Recycling SF LLC  
(Seal and Signature)



Morena Mendez and  
(Seal and Signature)



Jose Ortiz DBA Express Service Auto Glass

Attachments:

1. Master lease
2. Exhibit





## LANDLORD'S CONSENT AND AGREEMENT

### (Sublease)

The City and County of San Francisco, a municipal corporation ("Landlord"), and Our Planet Recycling SF, LLC, a California limited liability company ("Sublandlord"), are parties to a lease dated as of November 14, 2017 (the "Master Lease"), for premises located at the intersection of Alemany and Tompkins Avenues in San Francisco, California, and commonly known as APN 5695-023 (the "Premises").

This Landlord's Consent and Agreement (the "Consent") is to that certain Commercial Sublease Agreement by and between Morena Mendez and Jose Ortiz, dba Express Service Auto Glass (together, "Subtenant") and Sublandlord, dated as of May 10, 2018 (the "Sublease"), for a portion of the Premises. Unless otherwise defined herein, terms used in this Consent shall have the meaning set forth in the Sublease.

Landlord hereby consents to the subletting described in the Sublease on the following express terms and conditions:

1. Subtenant and Sublandlord represent and warrant (i) a true, correct and complete copy of the Sublease is attached to this Consent as Exhibit A, (ii) the Sublease is the only agreement, oral or written, between Subtenant and Sublandlord with respect to the Subleased Premises, and (iii) Subtenant's possession of the Subleased Premises will commence as of July 1, 2018.

2. Subtenant and Sublandlord agree City shall be a third party beneficiary to the Sublease, and the Sublease is subject and subordinate to the Master Lease and its terms, covenants, and conditions. Unless earlier terminated, the Sublease shall automatically terminate on the termination of the Master Lease.

3. Subtenant shall comply with and be bound by all of the terms, covenants, and conditions of the Master Lease, to the extent applicable to the Subleased Premises, for the term of the Sublease. If there is any conflict between the terms of the Master Lease and the terms of the Sublease, the terms of the Master Lease shall control.

4. Neither the Sublease nor this Consent shall:

(a) operate as Landlord's consent to, or approval of, any of the terms, covenants, or conditions of the Sublease, and Landlord shall not be bound thereby;

(b) release or discharge Sublandlord from any obligation or liability under the Master Lease;

(c) be construed to modify, waive or affect any of the terms, covenants, or conditions of the Master Lease, waive any breach thereof or any of Landlord's rights thereunder, or modify any of Landlord's obligations thereunder;

(d) be construed as Landlord's consent to any improvements or alterations performed or to be performed in the Subleased Premises; or

(e) be construed as Landlord's consent to any further subletting of the Premises or any assignment of the Master Lease, and without limiting the generality of the foregoing, both Sublandlord and Subtenant agree Subtenant has no right to assign the Sublease, sublet or encumber any portion of the Subleased Premises, or permit any portion of the Subleased Premises to be used or occupied by any other party.



5. This Consent is not assignable, nor shall this Consent be a consent to any amendment or modification of the Sublease.

6. Sublandlord and Subtenant covenant and agree that Landlord shall not be liable for any brokerage commission or other charge or expense in connection with the Sublease. Sublandlord and Subtenant each agree to indemnify Landlord against same and against any cost or expense (including but not limited to reasonable attorneys' fees) incurred by Landlord in connection with any such brokerage commission or other charge or expense.

7. Notwithstanding any provision of the Sublease or this Consent to the contrary, Subtenant agrees that Landlord shall not be (i) liable for any act or omission of Sublandlord under the Sublease, (ii) subject to any offsets or defenses which Subtenant may have against Sublandlord, (iii) bound by any payment of rent or other sums made by Subtenant, or (iv) bound by any security deposits which Subtenant might have paid to Sublandlord or any other party.

8. Subtenant agrees not to discriminate against any employee, any Landlord employee working with Subtenant, or applicant for employment with Subtenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes in Subtenant's performance of the Sublease or use of the Subleased Premises. In addition, the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code are hereby incorporated by reference, and Subtenant agrees to comply with such provisions.

9. Subtenant agrees to comply with the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), as may be amended from time to time, which are incorporated herein, in its use of the Subleased Premises. Unless exempt, Subtenant agrees to comply with and be bound by all of such provisions with respect to applicants and employees of Subtenant who would be or are performing work at the Subleased Premises.

10. Subtenant recognizes and understands (a) the Sublease may create a possessory interest subject to property taxation, (b) Subtenant may be subject to the payment of property taxes levied on such interest, and (c) San Francisco Administrative Code Sections 23.38 and 23.39 require that Landlord report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of the Sublease to the San Francisco County Assessor within sixty (60) days after any such transaction, and that Subtenant report certain information relating to such matters to Landlord within thirty (30) days after the applicable transaction. Subtenant agrees to provide such information as may be requested by Landlord to enable it to comply with this requirement.

11. Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO) with respect to the Subleased Premises, as set forth in Section 27.37 of the Master Lease and San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Consent as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>.

12. Subtenant agrees to assume all obligations of Sublandlord under the Master Lease to the extent applicable to the Subleased Premises and shall be liable jointly and severally with

Sublandlord for the payment of the base rent and additional charges owed, and for the performance of all the terms, covenants and conditions to be performed on Sublandlord's part, under the Master Lease with respect to the Subleased Premises.

13. Subtenant expressly waives entitlement to any and all relocation assistance and benefits in connection with the Master Lease.

14. Sublandlord and Subtenant agree to the terms and conditions of this Consent, and a default hereunder by either party shall be deemed a Sublandlord default under the Master Lease.

15. This Consent shall for all purposes be construed in accordance with and governed by the laws of the State of California.

16. This Consent shall not be effective until executed by all the parties hereto.

17. If any one or more of the provisions contained in this Consent shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Consent shall not in any way be affected or impaired thereby.

*[SIGNATURES ON FOLLOWING PAGE]*

The execution of a copy of this Consent by Sublandlord and by the Subtenant indicates their respective confirmation of the foregoing conditions and of their agreement to bound thereby, and shall further constitute Subtenant's acknowledgment that it has received a copy of the Master Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of June \_\_\_\_\_, 2018.

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

Andrico Q. Penick  
Acting Director of Property

Date: \_\_\_\_\_

SUBLANDLORD:

OUR PLANET RECYCLING, LLC,  
a California limited liability company

By: \_\_\_\_\_

Ors Csaszar  
Manager

Date: 06.21.2018

SUBTENANT:

\_\_\_\_\_  
Morena Mendez, an individual

Date: 06.21.2018

\_\_\_\_\_  
Jose Ortiz, an individual

Date: 06.21.2018

## COMMERCIAL SUBLEASE AGREEMENT

THIS SUBLEASE dated this \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:**

Our Planet Recycling SF LLC  
(the "Sublandlord")

**OF THE FIRST PART**

**-AND-**

Morena Mendez and Jose Ortiz DBA  
Express Service Auto Glass  
(the "Subtenant")

**OF THE SECOND PART**

### **Background**

- A. This is an agreement (the "Sublease") to sublet real property according to the terms specified below.
- B. The master lease (the "Master Lease") is dated November 11, 2017 and is between City and County of San Francisco (the "Landlord") and the Sublandlord with respect to the following lands and any improvements on those lands (the "Premises"): Approximately 2100 square feet of unimproved land located at the intersection of Alemany and Tompkins Avenues, APT 5695 Lot 023.
- C. The Subtenant is willing to undertake certain obligations of the Master Lease.

,"

**IN CONSIDERATION OF** the Sublandlord subletting and the Subtenant renting the Subleased Premises, both parties agree to keep, perform and fulfill the promises, conditions and agreements below:

### **Subleased Premises**

- I. The Sublandlord leases to the Subtenant the portion of the Premises (the "Subleased Premises") described as follows:

**EXHIBIT A**

**COMMERCIAL SUBLEASE AGREEMENT**

**[see attached]**

Small Portion of unimproved property at the intersection of Alemany and Tompkins Avenues that is run by the City of San Francisco  
Subtenant understands that they must keep the same layout that is designed and shown in exhibit V.

---

---

---

---

**Term**

2. The term (the "Term") of the Sublease is a periodic tenancy commencing at 12:00 noon on June 1, 2018 and continuing on a year-to-year basis until the Sublandlord or the Subtenant terminates the tenancy.
3. The provisions of this Sublease are subject to the terms and restrictions of the Master Lease.

**Rent**

4. Subject to the provisions of this Sublease, the rent for the Subleased Premises is \$1,250.00 (the "Rent") per month.
5. The Subtenant will pay the Rent to the Sublandlord at  
\_\_\_\_ Our Planet Recycling SF LLC \_\_\_\_\_ or at such other place  
as the Sublandlord may later designate, on or before the first of each and every month.

**Use of Subleased Premises**

6. Except as otherwise provided in this Sublease, the Subtenant and the agents and employees of the Subtenant will only use the Subleased Premises for a purpose consistent with the permitted use allowed in the Master Lease. Further, the Subtenant agrees to comply with all other applicable provisions of the Master Lease, and will not do anything that would constitute a violation of any part or condition of the Master Lease.

**Maintenance and Repairs**

7. The Subtenant agrees to surrender and deliver to the Sublandlord the Subleased Premises and all furniture and decorations within the Subleased Premises in as good a condition as they were at the beginning of the Term, reasonable wear and tear excepted. The Subtenant will be liable to the Sublandlord and the Landlord for any damages occurring to the Subleased Premises or the contents of the Subleased Premises or to the building which are done by the Subtenant or the Subtenant's guests.

8. The Subtenant will immediately report all general maintenance issues and needed repairs to the Sublandlord and the Landlord.

**Alterations and Improvements**

9. The Subtenant will have the same right to make such alterations and improvements to the Subleased Premises as the Sublandlord is allowed in the Master Lease.
10. Any alterations and improvements must comply with all applicable construction laws and regulations regarding property improvements.
11. The Subtenant will ensure that the Subleased Premises remain free and clear of any and all liens arising out of the work performed or materials used in making such improvements to the Subleased Premises.

**Taxes**

12. The Subtenant will pay any privilege, excise and other taxes duly assessed against the business of the Subtenant, the Subleased Premises and any personal property on or about the Subleased Premises. The Subtenant will avoid the assessment of any late fees or penalties.

**Event of Default**

13. The Subtenant will default under this Sublease if any one or more of the following events (the "Event of Default") occurs:
  - a. The Subtenant fails to pay the Rent to the Sublandlord or any amount of it when due or within any grace period, if any.
  - b. The Subtenant fails to perform any of its obligations under this Sublease or any applicable obligation under the Master Lease.
  - c. The Subtenant becomes insolvent, commits an act of bankruptcy, becomes bankrupt, takes the benefit of any legislation that may be in force for bankrupt or insolvent debtors, becomes involved in a voluntary or involuntary winding up, dissolution or liquidation proceeding, or if a receiver will be appointed for the affairs of the Subtenant.
  - d. The Subtenant abandons the Subleased Premises or any part of the Subleased Premises.

- e. The Subtenant uses the Subleased Premises for any unpemitted or illegal purposes.
- f. The Subtenant fails to commence, diligently pursue, and complete the Subtenant's work to be performed pursuant to this Sublease pertaining to the Subleased Premises.
- g. The Subleased Premises, or any pmt of the Subleased Premises is completely or pmtially damaged by fire or other casualty that is due to the Subtenant's negligence, willful act, or that of the Subtenant's employee, family, agent, or guest.
- h. Any other event of default provided in the Master Lease or the Act.

**Remedies**

- 14. Upon the occmTence of any Event of Default, the Sublandlord has any or all of the following remedies:
  - a. Terminate the Sublease upon the greater of any notice required in the Master Lease or the Act and the Telm will then immediately become forfeited and void.
  - b. The Sublandlord may, but is not obligated to, perform on behalf of the Subtenant, any obligation of this Sublease or the Master Lease which the Subtenant has failed to perform. The Sublandlord may seek redress from the Subtenant for such performance.
  - c. The Sublandlord may reenter the Subleased Premises or any part of the Subleased Premises and in the name of the whole repossess and enjoy the same as of its fomler state anything contained within the Subleased Premises.
  - d. Any other remedy provided in the Master Lease or the Act.
- 15. No reference to or exercise of any specific right or remedy by the Sublandlord will prejudice or preclude the Sublandlord from any other remedy whether allowed at law or in equity or expressly provided for in this Sublease or the Master Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Sublandlord may from time to time exercise any one or more of such remedies independently or in combination.
- 16. Upon the expiration, tennination or cancellation of the Master Lease or this Sublease, all obligations of the pmties under this Sublease will be extinguished.



17. Any improvements remaining on the Subleased Premises upon termination will revert to the Sublandlord and will be free of any encumbrance at the time of such reversion.

**Surrender of Premises**

18. At the expiration of the Term of this Sublease, the Subtenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

**Governing Law**

19. It is the intention of the parties to this Sublease that the tenancy created by this Sublease and the performance under this Sublease, and all suits and special proceedings under this Sublease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of California, without regard to the jurisdiction in which any action or special proceeding may be instituted.

**Severability**

20. If there is a conflict between any provision of this Sublease and the applicable legislation of California (the "Act"), the Act will prevail and such provisions of the Sublease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Sublease.
21. In the event that any of the provisions of this Sublease will be held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Sublease and the remaining provisions had been executed by both parties subsequent to the implementation of the invalid provision.

**Assignment and Subletting**

22. The Subtenant will not assign, transfer or further sublet the Subleased Premises or any part of the Subleased Premises without the prior written consent of the Sublandlord and the Landlord.

**Notices**

23. Unless otherwise specifically provided in this Sublease, all notices from the Subtenant to the Sublandlord will be served or sent to the Sublandlord at the following address:
- \_\_\_\_\_

24. Unless otherwise specifically provided in this Sublease, all notices from the Sublandlord to the Subtenant will be served or sent to the Subtenant at the following address:

\_\_\_\_\_

25. All notices to be given under this Sublease will be in writing and will be served personally or sent by certified or registered mail using the United States Postal Service.

**Master Lease**

26. Except as otherwise expressly provided in this Sublease, the Subtenant will perform all applicable duties and obligations of the Sublandlord under the Master Lease from June 1, 2018 until the end of the Term of this Sublease.
27. Except as otherwise expressly provided in this Sublease, the Sublandlord will have, as to the Subtenant, all applicable rights and remedies that the Landlord has with respect to the Sublandlord in the Master Lease.
28. This Sublease contains all of the conditions and terms made between the parties to this Sublease, and may not be modified orally or in any other manner other than by agreement in writing signed by all parties to this Sublease or their respective successors in interest.
29. This Sublease incorporates and is subject to the Master Lease, a copy of which has been or will be later provided to the Subtenant, and which is incorporated as if it were set out in this Sublease.

**General Provisions**

30. In the event of any legal action concerning this Sublease, the losing party will pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court and such judgment will be entered.
31. The Sublandlord may enter the Subleased Premises upon 24 hours notice for any of the following reasons:
- a. to inspect the Subleased Premises;
  - b. to maintain the Subleased Premises; or

- c. to make repairs that the Sublandlord is obligated to perform.
32. This Sublease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Sublease. All covenants are to be construed as conditions of this Sublease.
33. All sums payable by the Subtenant to the Sublandlord under any provision of this Sublease will be deemed to be Additional Rent and will be recovered by the Sublandlord as rental arrearages.
34. Where there is more than one Subtenant executing this Sublease, all Subtenants are jointly and severally liable for each other's acts, omissions and liabilities under this Sublease.
35. The Subtenant will be charged an additional amount of \$25.00 for each N.S.F. check or check returned by the Subtenant's financial institution.
36. All schedules to this Sublease are incorporated into and form an integral part of this Sublease.
37. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Sublease. Words in the singular mean and include the plural and vice versa. Words in the masculine include the feminine and vice versa. The words "Sublandlord" and "Subtenant" as used in this Sublease include the plural as well as the singular; no regard for gender is intended by the language in this Sublease.
38. This Sublease may be executed in counterparts.
39. Time is of the essence in this Sublease.
40. The Sublandlord and the Subtenant have no interest or other rights of ownership in each other. The parties to this Sublease are not agents for each other. Under no circumstances will this Sublease be construed as creating a partnership or joint venture between the parties to this Sublease.
41. Each signatory to this Sublease acknowledges receipt of an executed copy of this Sublease.
42. This Sublease will not be valid and binding on the Sublandlord and Subtenant unless and until it has been completely executed by and delivered to both parties and the Landlord has consented to

this Sublease.

IN **WITNESS WHEREOF** the Sublandlord and the Subtenant have duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

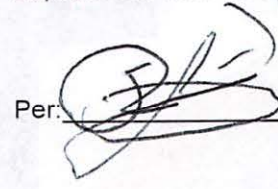
\_\_\_\_\_  
Witness

Our Planet Recycling SF LLC

Per:  (SEAL)

Morena Mendez and Jose Ortiz DBA  
Express Service Auto Glass

\_\_\_\_\_  
Witness

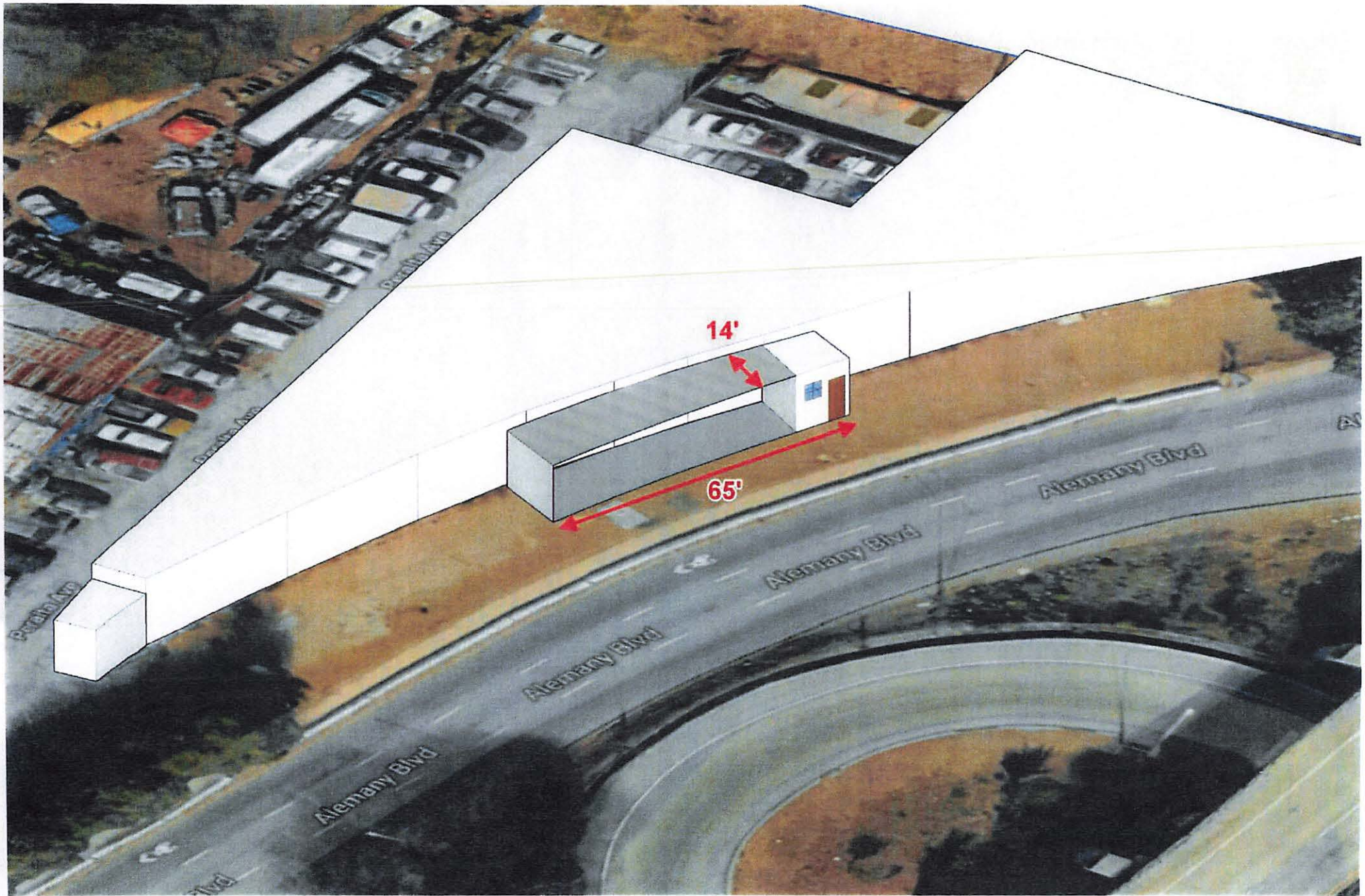
Per:  (SEAL)













# PLANNING COMMISSION PROJECT SUMMARY AND DRAFT MOTION

**CONTINUED FROM: MARCH 30, 2023 and MAY 4, 2023**

**HEARING DATE: JULY 13, 2023**

<b>Record No.:</b>	<b>2021-007063CUA</b>
<b>Project Address:</b>	<b>0 ALEMANY BOULEVARD/ TOMPKINS AVENUE</b>
<b>Zoning:</b>	P (PUBLIC) Zoning District 40-X Height and Bulk District
<b>Cultural District:</b>	N/A
<b>Block/Lot:</b>	5695 / 023
<b>Project Sponsor:</b>	Rick Bradford Our Planet Recycling SF 445 Bayshore Boulevard San Francisco, CA
<b>Property Owner:</b>	City and County of San Francisco San Francisco, CA
<b>Staff Contact:</b>	Gabriela Pantoja– 628-652-7380 <a href="mailto:Gabriela.Pantoja@sfgov.org">Gabriela.Pantoja@sfgov.org</a>
<b>Environmental Review:</b>	Categorical Exemption

## Project Description

The proposal is to establish a Community Recycling Collection Center Use (DBA “Our Planet Recycling SF”) within the Public (P) Zoning District and 40-X Height and Bulk District. Our Planet Recycling SF operates a Community Recycling Collection Center at the adjacent property, 445 Bayshore Boulevard, and will utilize the subject property to provide vehicular access to their main site location and for storage. The main operation of the recycling center will remain at their existing 445 Bayshore Boulevard location. The City has executed a year-to-year lease since 2017 with the listed business to occupy and utilize the subject property. The listed business now seeks a long-term lease with the City, and the City has granted the business consent to seek the listed Conditional Use Authorization.

## Required Commission Action

In order for the Project to proceed, the Commission must grant a Conditional Use Authorization, pursuant to Planning Code Sections 211.2 and 303 to establish a Community Recycling Collection Center use (DBA “One Planet Recycling SF”) within the Public (P) Zoning District and 40-X Height and Bulk District.

## Environmental Review

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 3 Categorical Exemption.

## Decision

Based upon information set forth in application materials submitted by the project sponsor and available in the case file (which is incorporated herein by reference as though fully set forth) and based upon the findings below, the Commission hereby **APPROVES Conditional Use Authorization (CUA) No. 2021-007063CUA** subject to conditions contained in the attached “EXHIBIT A” and in general conformance with plans on file, dated August of 2022, and stamped “EXHIBIT B.”

Additional Information	
Notification Period	March 10, 2023 to March 30, 2023 (20 days mailing, newspaper, online, and posted).
Number and Nature of Public Comments Received	To date, the Department has received a total of four correspondence regarding the Project. All public members have expressed concerns with regards to the listed business use and maintenance of the subject property.

Generalized Basis for Approval
<p>The Commission finds that this Project is necessary, desirable for, and compatible with the surrounding neighborhood as follows, and as set forth in Planning Code Sections 211.2 and 303(c), and findings submitted as part of the application. The Project will support the continued viability of an established Community Recycling Collection Center use (DBA “Our Planet Recycling SF”) within the Public (P) Zoning District which aligns with the General Plan’s Environmental Protection Element’s objectives and policies. The Project will help maintain a recycling facility within the City, continue to encourage responsible and effective recycling, and eliminate waste from the City.</p> <p>Department staff believes the Project would be desirable for and compatible with the surrounding neighborhood and recommends Approval with Conditions.</p>

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 13, 2023.

AYES:

NAYS:

ABSENT:

RECUSED:

ADOPTED: July 13, 2023

---

Jonas P. Ionin  
Commission Secretary

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors.



**PROTEST OF FEE OR EXACTION:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development. If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

## Attachments:

Exhibit A – Conditions of Approval  
Exhibit B – Plans  
Exhibit C – Lease  
Exhibit D – Environmental Determination  
Exhibit E – Maps and Context Photos  
Exhibit F – Conditional Use Authorization Application

## EXHIBIT A

### Authorization

This authorization is for a conditional use to allow the establishment of a Community Recycling Collection Center use (DBA "Our Planet Recycling SF") located at 0 Alemany Boulevard/ Tompkins Avenue, Block 5695 Lot 023 pursuant to Planning Code Sections 211.2 and 303 within the Public (P) Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated August of 2022, and stamped "EXHIBIT B" included in the docket for Record No. **2021-007063CUA** and subject to conditions of approval reviewed and approved by the Commission on July 13, 2023 under Motion No. XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### Recordation of Conditions of Approval

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 13, 2023, under Motion No. XXXXXX.

### Printing of Conditions of Approval on Plans

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### Severability

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### Changes and Modifications

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## CONDITIONS OF APPROVAL, COMPLIANCE, MONITORING, AND REPORTING

### Performance

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

## Monitoring - After Entitlement

- 6. Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

- 7. Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

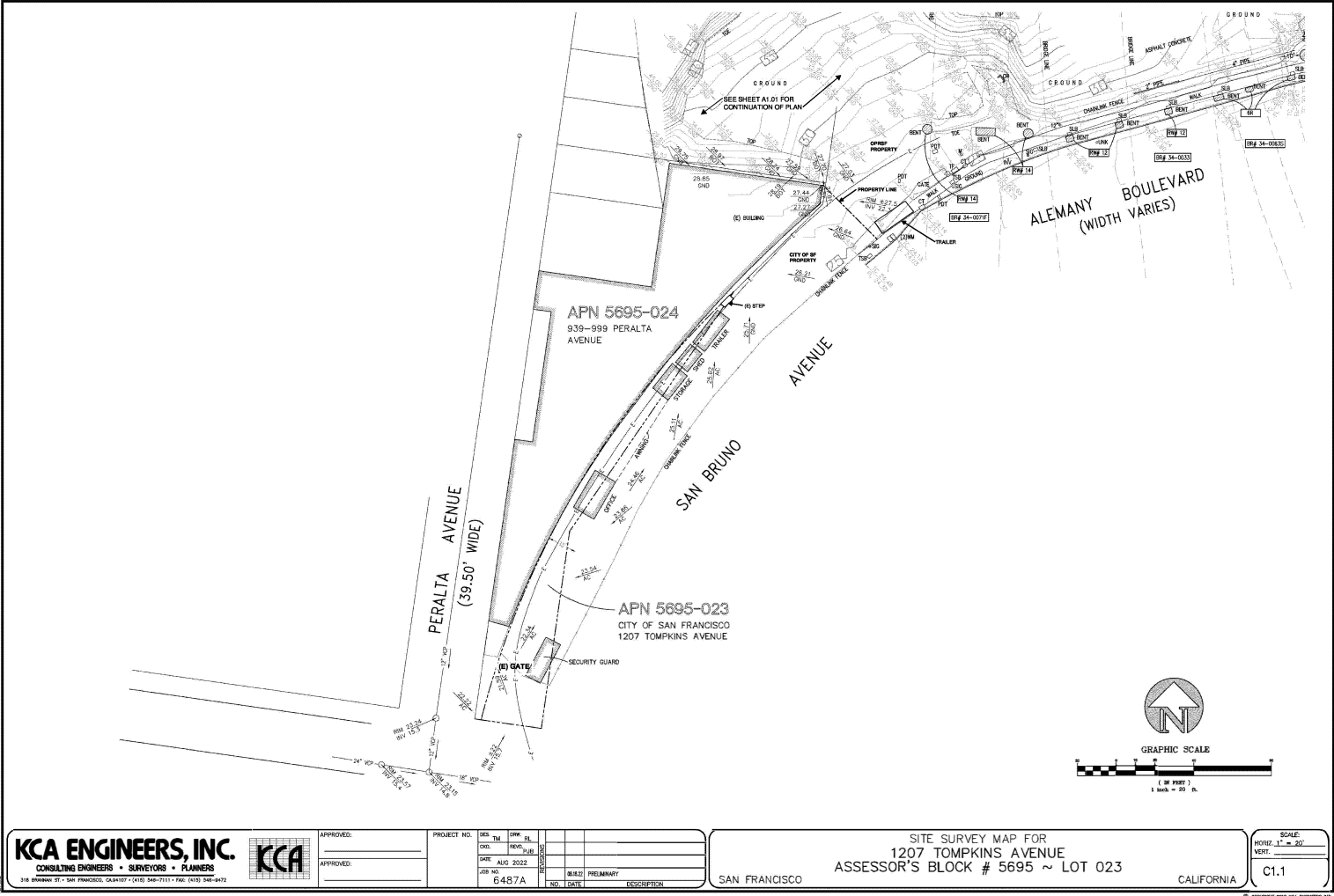
## Operation

- 8. Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 628.271.2000, [www.sfpublishworks.org](http://www.sfpublishworks.org).*

- 9. Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*



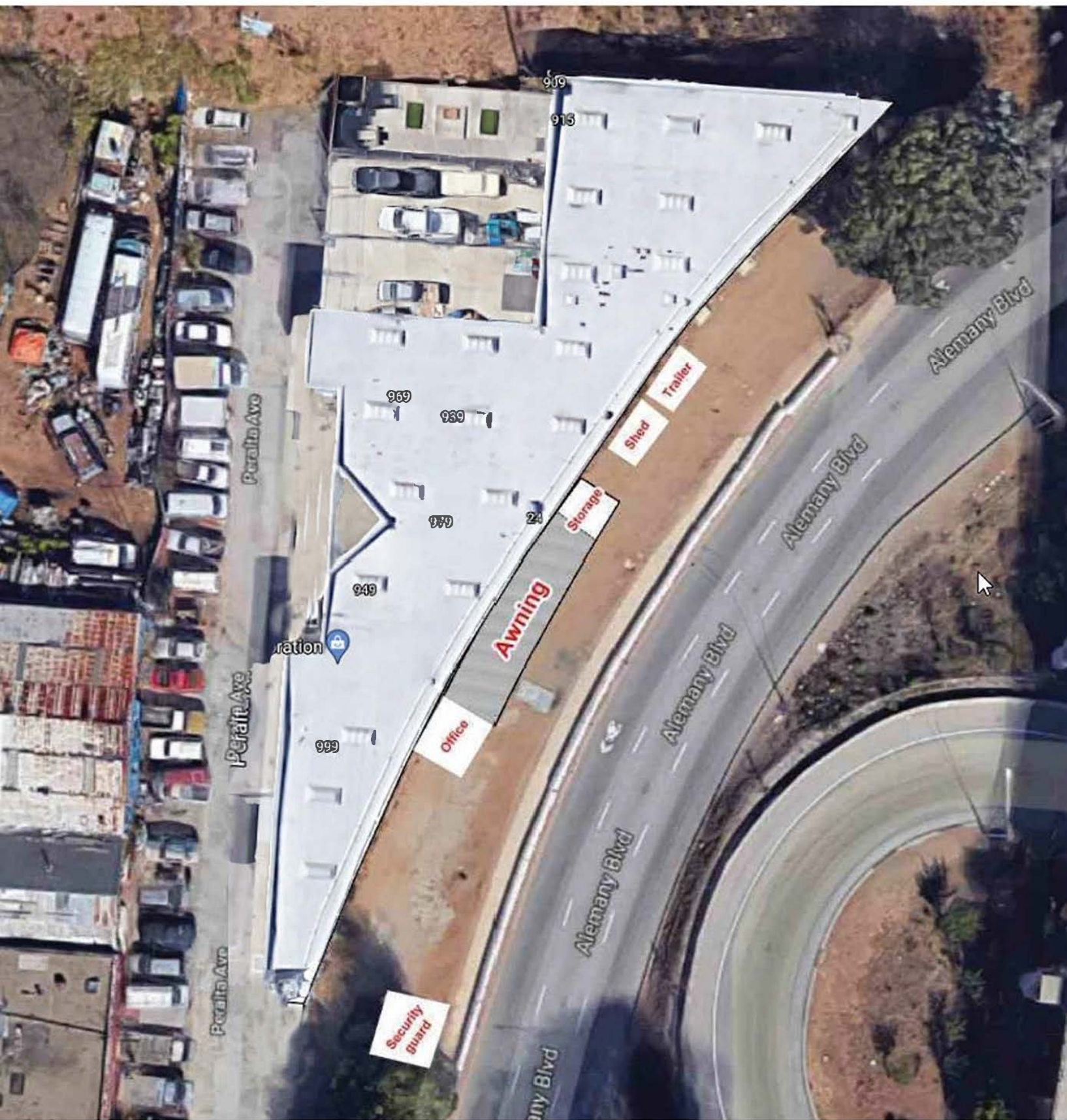
**KCA ENGINEERS, INC.**  
CONSULTING ENGINEERS • SURVEYORS • PLANNERS



APPROVED:	PROJECT NO.	DES. TM.	DRW. RL.
APPROVED:	6487A	DATE: AUG 2022	NO. 1
		JOB NO.	PRELIMINARY
		NO. DATE	DESCRIPTION

SITE SURVEY MAP FOR 1207 TOMPKINS AVENUE ASSESSOR'S BLOCK # 5695 ~ LOT 023	
SAN FRANCISCO	CALIFORNIA





**City & County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Andrico Q. Penick, Director of Real Estate

July 14, 2021

Location: APN 5695-023  
In the vicinity of Alemany Boulevard  
and Tompkins Avenue  
City and County of San Francisco

### **CONSENT AND APPROVAL**

The undersigned, the City and County of San Francisco ("City"), is the "Owner" of the real property commonly known as Assessor's Block 5695, Lot 023 ("City-owned parcel"), in the vicinity of Alemany Boulevard and Tompkins Avenue, San Francisco, San Francisco, consented to Orz Csaszar, owner and operator of "Our Planet Recycling SF, LLC" (Tenant) to proceed with a Minor Sidewalk Permit Application for the public right of way adjacent to APN 5695-023 (see attached exhibits) for the purpose of obtaining access and leasing parcels owned by the California Department of Transportation ("CalTrans") and the City and County of San Francisco. Tenant's Minor Sidewalk Permit Application was approved in or about August 2017 and still remains in effect.

Tenant has been occupying and using both the CalTrans' parcel and the City-owned parcel since 2017 through leases with Caltrans, and a year to year lease with the City. Tenant now has a long-term lease with CalTrans and seeks a long-term lease with the City.

City consents to Tenant proceeding to obtain a special use permit (or conditional use permit) for APN 5694-023 to continue to use the City's parcels and obtain access to Caltrans' parcel.

City and County of San Francisco  
Real Estate Division

A handwritten signature in blue ink, appearing to read "Andrico Q. Penick".

Andrico Q Penick  
Director of Real Estate

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

Our Planet Recycling SF, LLC,  
as Tenant

For the lease of  
the real property commonly known as Assessor's Block 5695, Lot 023  
San Francisco, California

November 14, 2017



## LIST OF EXHIBITS

EXHIBIT A --Depiction of Premises  
EXHIBIT B -- Minor Sidewalk Encroachment Permit  
EXHIBIT C -- Tenant Equipment  
EXHIBIT D -- Tenant Improvement Plan  
EXHIBIT E -- First Source Hiring Agreement

## LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of November 14, 2017, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and OUR PLANET RECYCLING SF, LLC, a California limited liability company ("Tenant").

City and Tenant hereby covenant and agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	October 17, 2017
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	OUR PLANET RECYCLING SF, LLC, a California limited liability company
Premises ( <u>Section 2.1</u> ):	Approximately 4,250 square feet of unimproved land located at the intersection of Alemany and Tompkins Avenues, as further depicted on the attached <u>Exhibit A</u> .
Term ( <u>Section 3.1</u> ):	1 year, commencing on the full execution of this Lease ("Commencement Date") and continuing on a year to year basis, subject to termination pursuant to <u>Section 3.3</u>
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$15,300 (\$3.60 per sq. ft.) Monthly payments: \$1,275 (\$0.30 per sq. ft.)
Rent Adjustment Dates ( <u>Section 4.2</u> ):	Each anniversary of the Commencement Date
Use ( <u>Section 5.1</u> ):	Inventory storage and employee parking only.
Tenant Improvements ( <u>Section 6.1</u> ):	Fencing and grading, to be done by Tenant at its sole cost
Utilities and Services ( <u>Section 10.1</u> ):	None
Security Deposit ( <u>Section 23</u> ):	\$2,550
Notice Address of City ( <u>Section 28.1</u> ):	Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property

Re: APN 5695, Lot 023  
Fax No.: (415) 552-9216

with a copy to: San Francisco Public Works  
Bureau of Street Use and Mapping  
1155 Market Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Attn: Brent Cohen  
Fax No.: (415) 554-6161

and to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Carol Wong  
Deputy City Attorney  
Re: APN 5695, Lot 023  
Fax No.: (415) 554-4757

Key Contact for City: Marta A. Bayol  
Telephone No.: 415-554-9865  
Address for Tenant  
(Section 28.1): 531 Bayshore Blvd., San Francisco. CA 94124  
Key Contact for Tenant: Ors Csaszar  
Telephone No.: 415-866-6102  
Alternate Contact for Tenant: George Csaszar  
Telephone No.: 415-410-5574  
Brokers (Section 28.8): None.  
Other Noteworthy Provisions  
(Section 3.3): This Lease will automatically terminate as of any  
termination of Minor Sidewalk Encroachment  
Permit (17MSE-0349) was issued by San  
Francisco Public Works in connection in leasing  
of Premises.

## **2. PREMISES; AS IS CONDITION**

### **2.1 Lease Premises**

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City those premises identified in the Basic Lease Information and depicted on the attached Exhibit A (the "Premises"). The rentable area of the Premises specified in the Basic Lease Information shall be conclusive for all purposes hereof. The Premises shall include all improvements thereon and appurtenances thereto.

### **2.2 Accessibility Disclosures**

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist

("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

### **2.3 As Is Condition**

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **3. TERM**

### **3.1 Lease Term**

The Premises are leased for a term (the "Term") commencing on the date this Lease is fully executed. The Term of this Lease shall continue on a year to year basis, unless sooner terminated pursuant to the provisions of this Lease. City shall deliver the Premises to Tenant on the Commencement Date in their then existing as is condition as further provided above, with no obligation of the City to make any improvements, repairs or alterations.

### **3.2 Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

### **3.3 Termination**

Each party shall have the right to terminate this Lease at any time after the three (3) month anniversary of the Commencement Date by delivering no less than thirty (30) days written notice of such termination to the other party (a "Termination Notice"). In addition, if Minor Sidewalk Encroachment Permit No. 17MSE-0349, issued to Tenant by San Francisco Public Works on August 24, 2017, and attached to this Lease as Exhibit B (the "Permit"), terminates at any time during the term of this Lease, this Lease shall automatically terminate on the date of such Permit termination. Tenant shall immediately notify City in writing if the Permit terminates.

#### **4. RENT**

##### **4.1 Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant shall pay to City the annual Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to Section 4.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. Within five (5) days after the parties execute this Lease, Tenant shall pay to City the Base Rent for the first full month.

##### **4.2 Adjustments in Base Rent**

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "Adjustment Date"), the Base Rent payable under this Lease shall be adjusted as follows:

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date ("Beginning Index").

If the Adjustment Index has increased over the Beginning Index, the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. However, in no event shall the monthly Base Rent on or after the Adjustment Date be less than one hundred and three percent (103%) nor more than one hundred and six percent (106%) of the monthly Base Rent in effect immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

##### **4.3 Additional Charges**

Tenant shall pay to City any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to City at the same place and the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent, Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

##### **4.4 Late Charges**

If Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

#### **4.5 Default Interest**

Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

### **5. USE**

#### **5.1 Permitted Use**

Tenant shall use and continuously occupy the Premises during the Term solely for employee parking and storing the equipment listed on Exhibit C, and for no other purpose.

#### **5.2 No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas or on or about the Premises except identification signs in a location and size and design approved by City in its sole discretion.

### **6. TENANT IMPROVEMENTS**

#### **6.1 Tenant Improvement Work**

Tenant shall install security fencing and grade the Premises pursuant to the plan attached hereto as Exhibit D (such work is referred to as the "Tenant Improvement Work" or "Tenant Improvements" and such plans are referred to as the "Plans"). Tenant shall be responsible, at no cost to the City, for performing the Tenant Improvement Work in accordance with the approved Plans and the standards contained in Section 7.1 (Tenant's Alterations) below. Tenant shall further be responsible, at no cost to the City, for obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work shall commence in the Premises unless and until this Lease is fully executed. Tenant shall not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining City's written approval. No approval by City or any of its Agents of the Plans, any changes thereto or of any Alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant's use hereunder, and nothing herein shall limit Tenant's obligation to obtain all such regulatory approvals at no cost to the City.

#### **6.2 Local Hiring Requirements**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations (as defined in Section 7.1) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

### **6.3 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call the City's Office of Labor Standards Enforcement at 415-554-6235.

Tenant shall also pay, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special

Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

## **7. ALTERATIONS**

### **7.1 Tenant's Alterations**

#### **(a) General**

Except for the Tenant Improvements, Tenant shall not make any Alterations (defined as follows) without the City's prior written consent. "Alterations" shall mean the construction or installation of any temporary or permanent structures or improvements on the Premises and any alteration of the Tenant Improvements or any existing structures or improvements on the Premises. All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. Tenant shall further obtain the prior written approval of City's Arts Commission to any Alteration to the extent the Arts Commission has jurisdiction over the design of such proposed Alteration under City's Charter Section 5.103.

#### **(b) Asbestos**

Without limiting Section 26.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

#### **(c) Prevailing Wage and Local Hiring Requirements**

Tenant and its subtenants shall comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations.

### **7.2 Title to Improvements**

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 24 (Surrender of Premises) below.



### **7.3 Tenant's Personal Property**

All furniture, trade fixtures, equipment and articles of movable personal property installed at the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises) below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

## **8. REPAIRS AND MAINTENANCE**

### **8.1 City's Repairs**

City shall have no obligation to maintain the Premises, any existing improvements or structures at the Premises, the Tenant Improvements, or any Alterations.

### **8.2 Tenant's Repairs**

Tenant shall maintain, at no expense to City, the Premises, the Tenant Improvements, and any Alterations in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by City, and (c) so that the same shall be at least equal in quality, value and utility to the original work or installation. If the cost of any such repairs or replacements is in excess of Five Thousand Dollars (\$5,000) and is due to acts or omissions of Tenant, its Agents or Invitees, then Tenant shall pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

## **9. LIENS AND ENCUMBRANCES**

### **9.1 Liens**

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises from mechanics' and material supplier's liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

### **9.2 Encumbrances**

Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises or City's interest therein or under this Lease.

## **10. UTILITIES**

Tenant acknowledges there are no utilities available to the Premises, and City shall have no obligation, nor shall Tenant have the right, to provide for any utilities at the Premises.

## **11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **11.1 Compliance with Laws**

Tenant shall promptly comply, at no cost to the City, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Premises or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access laws. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.2 (Tenant's Repairs) above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Premises.

### **11.2 Regulatory Approvals**

#### **(a) Responsible Party**

Tenant understands and agrees that Tenant's use of the Premises and construction of the Tenant Improvements and any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of City under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Premises or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 18.2 (Tenant's Indemnity) below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

**(b) City Acting as Owner of Real Property**

Tenant further understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable laws, as provided further above.

**11.3 Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential premises liability. Tenant shall faithfully observe, at no cost to the City, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

**12. SUBORDINATION**

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by City affecting the Premises, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon City's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by City evidencing such subordination in the manner requested by City. Notwithstanding the foregoing, City or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

**13. INABILITY TO PERFORM**

No actual or constructive eviction, in whole or in part, shall entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

## **14. DAMAGE AND DESTRUCTION**

### **14.1 Damage and Destruction**

If the Premises is damaged by fire or other casualty, then City shall repair the same provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

City shall use reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, City shall have the option to notify Tenant of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent shall be reduced as provided above, and Tenant shall pay such reduced Base Rent up to the date of termination.

If at any time during the last twelve (12) months of the Term of this Lease, the Premises is damaged or destroyed, then either City or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination; which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents or Invitees. In no event shall City be required to repair any damage to Tenant's Personal Property or any paneling, decorations, railings, floor coverings, or any Tenant Improvements or Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Lease, City may terminate this Lease upon written notice to Tenant.

### **14.2 Waiver**

City and Tenant intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, City and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

## **15. EMINENT DOMAIN**

### **15.1 Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A

Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(d) "Improvements Pertaining to the Realty" means machinery or equipment installed for use on the Premises that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

## **15.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

## **15.3 Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

## **15.4 Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If there is a partial Taking of a substantial portion of the Premises, City shall have the right to terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

### **15.5 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to Section 15.3 (Total Taking; Automatic Termination), or pursuant to an election under Section 15.4 (Partial Taking; Election to Terminate) above, then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

### **15.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate) above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

### **15.7 Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **16. ASSIGNMENT AND SUBLETTING**

### **16.1 Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent in each instance, as provided hereinbelow. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant's Affiliate (as defined below) without obtaining the consent of City by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer. As

used in this Section, the term "Tenant's Affiliate" shall mean, any of the following: (a) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "Owning Person"), (b) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, (c) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant.

## **16.2 Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to City with its request for City's consent the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly upon City's request for same, any additional documents or information reasonably related to the proposed transaction or Transferee.

## **16.3 City's Response**

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period"), City may elect, by written notice to Tenant, to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 (Sublease or Recapture Space), or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of (i) City's notice that it will not elect either such option or (ii) the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, "Transferee") and the terms and conditions of the proposed Sublease or Assignment. However, fifty percent (50%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with such Sublease or Recapture. Tenant shall provide City with such information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer.

In the event City elects either of the options provided in clauses (a) or (b), City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.



Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

#### **16.4 Sublease or Recapture Space**

If City elects to Sublease or Recapture from Tenant as described in Section 16.3 (City's Response) the following shall apply:

(a) In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Space if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable laws or regulations relating to such separation.

(b) In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Space") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all their rights and obligations hereunder with respect to the Recapture Space except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental laws or regulations relating to such separation.

#### **16.5 Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

#### **16.6 Assumption by Transferee**

Each Transferee (other than City) shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable



form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **16.7 Indemnity for Relocation Benefits**

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

### **17. DEFAULT; REMEDIES**

#### **17.1 Events of Default**

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) a failure to pay Base Rent or Additional Charges when due, and such failure continues for three (3) days after the date of written notice by City. However, City shall not be required to provide such notice more than twice during any twelve (12)-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12)-month period shall constitute a default by Tenant hereunder without any further action by City or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such fifteen (15)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15)-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice more than twice in any twelve (12)-month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12)-month period shall constitute an Event of Default hereunder;

(c) a vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

(d) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

## 17.2 Remedies

Upon the occurrence of an Event of Default City shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from City, no other act of City, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

Upon such termination in writing of Tenant's right to possession of the Premises, this Lease shall terminate and City shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 (Additional Charges) above, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 (Additional Charges) above, as reasonably estimated by City, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus
- (vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover

rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, City may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as City deems advisable. In the event of any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to City thereunder, City shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

(c) During the continuance of an Event of Default, City may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense. If City removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more City may sell such property at public or private sale, in the manner and at such times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by City in connection therewith, and the balance shall be applied as provided in Section 17.2(b) above.

Tenant hereby waives all claims for damages that may be caused by City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property pursuant to this Section 17.2, and Tenant shall indemnify, defend and hold City harmless from and against any and all Claims resulting from any such act. No reentry by City shall constitute or be construed as a forcible entry by City.

(d) City may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after City's request, City may do so at Tenant's expense.

(e) City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder.

### **17.3 Waiver of Redemption**

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

### **17.4 City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at its sole option, remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon demand, as additional rent, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

### **18.1 Limitation on City's Liability; Waiver of Claims**

City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (a) any act or omission of persons occupying adjoining City property, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, and (d) any other acts, omissions or causes. Nothing in this Section shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

### **18.2 Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused

exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of this Lease.

## **19. INSURANCE**

### **19.1 Tenant's Insurance**

(a) Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) 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 Fifty Thousand Dollars (\$50,000)), 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.

(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 Tenant uses automobiles in connection with its use of the Premises.

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(v) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, 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 19.1(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) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

(g) Tenant 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 Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant 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 Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

(h) Upon City's request, Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then Tenant shall, at City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(i) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(j) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease shall terminate upon three (3) days' notice to Tenant, unless Tenant renews the insurance coverage within notice period.

## **19.2 Tenant's Personal Property**

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

## **19.3 City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Premises or otherwise.

## **19.4 Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "Waiving Party") hereby waives any right of recovery against the other party for any loss or damage relating to the Premises or any operations or contents therein, whether or not such loss is caused

by the fault or negligence of such other party, to the extent such loss or damage is covered by third party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its agents. Each Waiving Party agrees to obtain a waiver of subrogation rights endorsements from applicable insurance carriers issuing policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents, the right to enter the Premises as follows: (a) on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by City hereunder; (b) on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Premises, to repair, alter or improve any part of the Premises, and for any other lawful purpose; and (c) on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. Tenant shall provide City with a key to open all locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City).

## **21. CERTIFICATES**

### **21.1 Tenant's Estoppel Certificates**

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information that may be required.

### **21.2 City's Certificates**

City, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (d) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (e) any other information that may be required.



22. [Intentionally deleted]

**23. SECURITY DEPOSIT**

Upon execution of this Lease, Tenant shall deposit with City the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit"), in cash, to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder 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. Tenant 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 Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the Security Deposit accordingly. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

**24. SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with the Tenant Improvements and all Alterations approved by City in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, City in its sole discretion shall have the right to reserve ownership of any telecommunications equipment, wire, cabling and/or conduit installed in the Premises by or on behalf of Tenant. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations or other improvements or equipment constructed or installed by or at the expense of Tenant including, but not limited to, any telecommunications equipment, wires, cabling and/or conduit installed in the Premises by or on behalf of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to the City, any damage to the Premises resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in



accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

## **25. HAZARDOUS MATERIALS**

### **25.1 Definitions**

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Premises or into the environment.

### **25.2 No Hazardous Materials**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises. Tenant shall give immediate written notice to City of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises or

the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Premises has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

### **25.3 Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Premises in violation of any applicable Environmental Laws, then, without limiting Tenant's Indemnity contained in Section 18.2 (Tenant's Indemnity), Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Premises, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Premises to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Premises affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

### **25.4 Survival of Obligation**

Tenant's obligations under this Section 26 shall survive the Expiration Date or other termination of this Lease.

26. [Intentionally deleted]

## **27. GENERAL PROVISIONS**

### **27.1 Notices**

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by

notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

#### **27.2 No Implied Waiver**

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

#### **27.3 Amendments**

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors.

#### **27.4 Authority**

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

## **27.5 Parties and Their Agents; Approvals**

The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law.

## **27.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

## **27.7 Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

## **27.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **27.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **27.10 Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

### **27.11 Entire Agreement**

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

### **27.12 Attorneys' Fees**

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

### **27.13 Holding Over**

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis Base Rent equal to two hundred percent

(200%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease.

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

#### **27.14 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

#### **27.15 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

#### **27.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

#### **27.17 Signs**

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises without City's prior written consent, which City may withhold or grant in its sole discretion.

#### **27.18 Relationship of the Parties**

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

#### **27.19 Light and Air**

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

#### **27.20 No Recording**

Tenant shall not record this Lease or any memorandum hereof in the public records.

#### **27.21 [Intentionally deleted]**

#### **27.22 Public Transit Information**

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

#### **27.23 Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to such matters to City within thirty (30) days after the applicable transaction. Tenant agrees to provide such information as may be requested by City to enable it to comply with this requirement.

#### **27.24 Non-Liability of City Officials, Employees and Agents**

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.



## **27.25 Non-Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Tenant agrees not to discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### **(b) Subleases and Other Subcontracts**

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

### **(c) Non-Discrimination in Benefits**

Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

### **(d) CMD Form**

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

### **(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty



Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

#### **27.26 No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.27 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **27.28 Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

#### **27.29 Restrictions on the Use of Pesticides**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most

current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

### **27.30 First Source Hiring Agreement**

Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit E pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

### **27.31 Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

### **27.32 Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City.

### **27.33 Charter Provisions**

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

### **27.34 Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

### **27.35 Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### **27.36 Effective Date**

This Lease shall become effective on the date upon which this Lease is duly executed and delivered by the parties hereto.

### **27.37 Requiring Health Benefits for Covered Employees**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **27.38 Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of each person, entity or committee described above.

#### **27.39 Preservative-Treated Wood Containing Arsenic**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **27.40 Resource-Efficient City Buildings**

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

#### **27.41 Food Service and Packaging Waste Reduction Ordinance**

Tenant agrees to comply fully with and be bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

#### **27.42 San Francisco Packaged Water Ordinance**

Tenant agrees to comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Tenant shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Tenant obtains a waiver from the City's Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

#### **27.43 Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such

provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

#### **27.44 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

#### **28.48 Vending Machines; Nutritional Standards**

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 28.48 shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

#### **28.49 All-Gender Toilet Facilities**

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

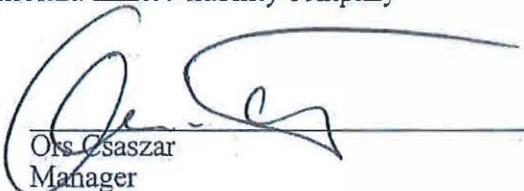
*[SIGNATURES ON FOLLOWING PAGE]*

City and Tenant have executed this Lease as of the date first written above.

**TENANT:**

OUR PLANET RECYCLING, LLC,  
a California limited liability company

By: \_\_\_\_\_

  
Ors Saszar  
Manager

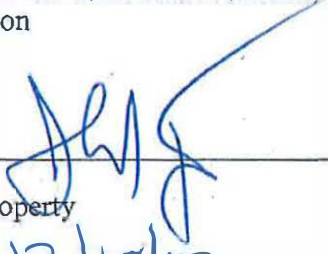
Date: \_\_\_\_\_

12/14/2017

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

  
John Updike  
Director of Property

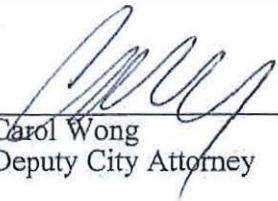
Date: \_\_\_\_\_

12/18/17

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_

  
Carol Wong  
Deputy City Attorney





**EXHIBIT A**

**Depiction of Premises**

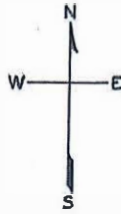
[see attached]



© COPYRIGHT SAN FRANCISCO  
CITY & COUNTY ASSESSOR 1995

GIFT MAP NO. 2  
LOTS 1431-1450

Lot 2/7 Merged into Lot 1 '1950'  
" 10/11 " " " 1 '1950'

[illegible]



**EXHIBIT B**

**PERMIT**



Exhibit B



City and County of San Francisco  
San Francisco Public Works · Bureau of Street Use and Mapping  
1155 Market Street, 3<sup>rd</sup> Floor · San Francisco, CA 94103  
sfpublicworks.org · tel 415-554-5810 · fax 415-554-6161

## EXHIBIT "A"



17MSE-0349

### Minor Sidewalk Encroachment Permit

Address : 915 PERALTA AVE

Cost: \$1,208.50

Block:5695 Lot: 023 Zip: 94110

Pursuant to Article 15, Section 723.2 of the Public Works Code, permission revocable at the will of the Director of Public Works to occupy a portion of the public right-of-way is granted to Permittee.

#### Applicant/Agent of Owner

Name: Our Planet Recycling

**MANDATORY COORDINATION WITH CONFLICTING PERMITS IS REQUIRED. PERMIT HOLDER SHALL NOT COMMENCE WORK WITHOUT FIRST PROPERLY COORDINATING WITH EXISTING PERMIT HOLDERS AS NOTED ON THE EXCEPTION PAGE(S) OF THIS PERMIT. IF THIS PERMIT CONFLICTS WITH A CITY PROJECT OR OTHER APPROVED PERMIT, THE PERMIT HOLDER OF THIS PERMIT SHALL, WHEN LISTED, CONTACT THE INSPECTOR LISTED ON THIS PERMIT TO ACTIVATE THE PERMIT PRIOR TO COMMENCING WORK.**

#### Conditions

This permit shall only remain valid so long as the Permittee is in contract with the City (Department of Real Estate) for the leasing of the City owned parcel (Block 5695 Lot 023) adjacent to the Alemany Blvd right-of-way ("ROW").

This permit and any subsequent permits that have been approved and issued to the Permittee are at the will of the Director of Public Works and may be revoked at any time for any reason.

By accepting and obtaining this permit and any subsequent permits, the Permittee agrees to the following conditions:

- 1) Permittee shall not construct any structures or perform any excavation work in the public ROW without approval from Public Works, and shall obtain all required permits from Public Works and any other City department with jurisdiction.
- 2) Permittee acknowledges the existing condition of the Occupied Area and shall hold harmless, protect, and defend the City from any and all claims as a result of the condition of the Occupied Area and area of responsibility.
- 3) Permittee shall be responsible for the maintenance and liability of the Occupied Area and area of

"IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO" We are dedicated individuals committed to teamwork, customer service and continuous improvement in partnership with the community.

Customer Service

Teamwork

Continuous Improvement



responsibility, reference Exhibit 1. "Maintenance" shall mean and include, but not be limited to the following, and as determined by the Public Works Director: sidewalk concrete repair and replacement, repair and patching of asphalt or landscaping behind the concrete sidewalk, landscape and tree maintenance and trimming, clearing and removal/disposal of trash and debris, and removal of graffiti and cleaning of the existing concrete barriers along the responsible pedestrian path of travel.

4) Permittee shall accept responsibility for maintaining a continuous, clear, and accessible pedestrian path of travel (minimum 4ft wide continuous path) on or adjacent to the existing concrete sidewalk, as determined by the Public Works Director, along the western curb line of the Alemany Blvd ROW (southbound) from the Caltrans ROW (Highway 101 to the north) all the way to the southernmost extension of Tompkins Avenue ROW boundary.

5) Permittee shall maintain liability insurance consistent with Public Works standard permit requirements for occupancy of the ROW, and agree to protect and defend the City against any and all claims as a result of the occupation and maintenance responsibilities for the portion of Alemany Blvd described above in Condition 4 and as described as the Occupied Area.

6) Permittee shall provide and not obstruct access to all areas of the public ROW along Alemany Blvd, including the Occupied Area, for all City or government agencies and public utility companies to install, maintain, access, repair, etc infrastructure facilities or perform other required work at all times with little or no notice.

7) In the event the Permittee does not comply with the above conditions and the Public Works receives complaints and/or claims with regards to the Occupied Area and area of responsibility, Public Works may alter the permit conditions and /or terms, which may require additional fees be paid to Public Works. If following any corrective action by Public Works and additional complaints or claims are received, Public Works may revoke the permit.

**Construction Date**

**Business Nature:**

**Recorded Square Footage**

0

Occupy, construct and maintain  
encroachment(s)

Occupancy and responsibility for maintenance and liability of a portion of the Alemany Boulevard right-of-way bounded by the western curb line of Alemany Blvd (southbound) to the east, Tompkins Avenue to the south, City owned parcel (Block 5695 Lot 023) to the west, and Caltrans right-of-way (Highway 101) to the north. The boundary of the area may be referred to as the "Occupied Area".

Permit Construction End Date

Assessed Square Footage

0

Permit Landscape Type

Type/Description

Others

Landscape Dimensions

Inspection

Work shall not commence until this permit has been activated by Public Works. The permittee shall contact Public Works at (415) 554-7149 to activate the permit and schedule inspection at least 72 hours prior to work. Failure to follow the activation process prior to commencing work may result in a correction notice and possible notice of violation.

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

Approved Date : 08/24/2017

  
Applicant/Permittee

08.25.2017  
Date

Approved Director of Public  
Works By: \_\_\_\_\_

Printed : 8/24/2017 9:32:06 PM

Plan Checker

Brent Cohen

EXHIBIT "A"

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall verify the locations of any City or public service utility company facilities and shall assume all responsibility for any damage to such facilities due to the work authorized under this permit.
2. The construction and maintenance shall be where and as shown on the plans submitted, revised and filed in the Department of Public Works.
3. The permittee shall obtain a building permit at the Department of Building Inspection, 1660 Mission Street for the construction or alteration of any building.
4. The permittee shall contact the Street Improvement Inspectors, 554-7149, at least 48 hours prior to starting work to arrange an inspection schedule.
5. The permittee shall submit to the Bureau of Street-Use and Mapping a non-refundable fee as set forth in DPW Fee Schedule for processing and inspection, made payable to the Department of Public Works. All Minor Sidewalk Encroachment Permits shall be notarized and recorded at the County Recorder's Office, City Hall, Room 190.
6. Pursuant to Ordinance No. 57-06, Minor Sidewalk Encroachment Permits may be subject to an annual assessment fee as set forth by the Board of Supervisors.
7. The permittee or subsequent owner or owners recognize and understand that this permit may create a possessory interest subject to property taxation and that the permittee or subsequent owner or owners may be subject to the payment of such taxes.
8. The permittee shall acknowledge his obligation to inform subsequent owners or owner of the responsibilities of this permit.
9. The permission granted by this order is merely a revocable license. The Director of Public Works may revoke said permission at will, and upon revocation thereof, the undersigned permittee, subsequent owners, or their heirs and assignees will within 30 days remove or cause to be removed the encroachment and all the materials used in connection with its construction, without expense to the City and County of San Francisco, and restore the area to a condition satisfactory to the Department of Public Works.
10. The permittee or subsequent owner or owners recognize the recordation of this permit.
11. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.
12. Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facilities or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, good will, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and (iv) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee in, under, on or about the property subject to this Permit or into the environment. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.
13. Permittee must hold harmless, indemnify and defend the City regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.
14. Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.
15. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
16. Pursuant to state law, all survey monuments must be preserved. No work (including saw cutting) may commence within 10' of a survey monument until an application for Monument Referencing has been approved and notification of monument referencing has occurred. Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or Record of Survey if any construction will take place within 10 ft. of a monument. For any questions please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument is a crime. Not all survey monuments are visible.

## Permit Addresses

17MSE-0349

\*RW = RockWheel, SMC = Surface Mounted Cabinets, S/W = Sidewalk Work, DB = Directional Boring,  
BP= Reinforced Concrete Bus Pad, UB = Reinforced Concrete for Utility Pull Boxes and Curb Ramps

Number of blocks: 3    Total repair size:0 sqft    Total Streetspace:0    Total Sidewalk: sqft

ID	Street Name	From St	To St	Sides	*Other	Asphalt	Concrete	Street Space Feet	Sidewalk Feet
3	ALEMANY BLVD	INDUSTRIAL ST \ INDUSTRIAL ST OFF RAMP	ALEMANY BLVD OFF RAMP	West	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
Total						0	0	0	
2	INDUSTRIAL ST	HWY 101 S ON RAMP	ALEMANY BLVD \ INDUSTRIAL ST OFF RAMP	West	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
Total						0	0	0	
4	TOMPKINS AVE	CRESCENT AVE \ PERALTA AVE	Intersection	East	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
Total						0	0	0	

No Coordination Needed

## Exceptions

17MSE-0349

Street Name	From St	To St	Message	Job	Contact	Dates
ALEMANY BLVD						
	INDUSTRIAL ST \ INDUSTRIAL ST OFF RAMP	ALEMANY BLVD OFF RAMP - NORTH	Banners are allowed on this street			
	INDUSTRIAL ST \ INDUSTRIAL ST OFF RAMP	ALEMANY BLVD OFF RAMP - NORTH	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			
CRESCENT AVE						
	PERALTA AVE \ TOMPKINS AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		
	PERALTA AVE \ TOMPKINS AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		
INDUSTRIAL ST						
	HWY 101 S ON RAMP	ALEMANY BLVD \ INDUSTRIAL ST OFF RAMP - NORTH	Banners are allowed on this street			
	HWY 101 S ON RAMP	ALEMANY BLVD \ INDUSTRIAL ST OFF RAMP - NORTH	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			



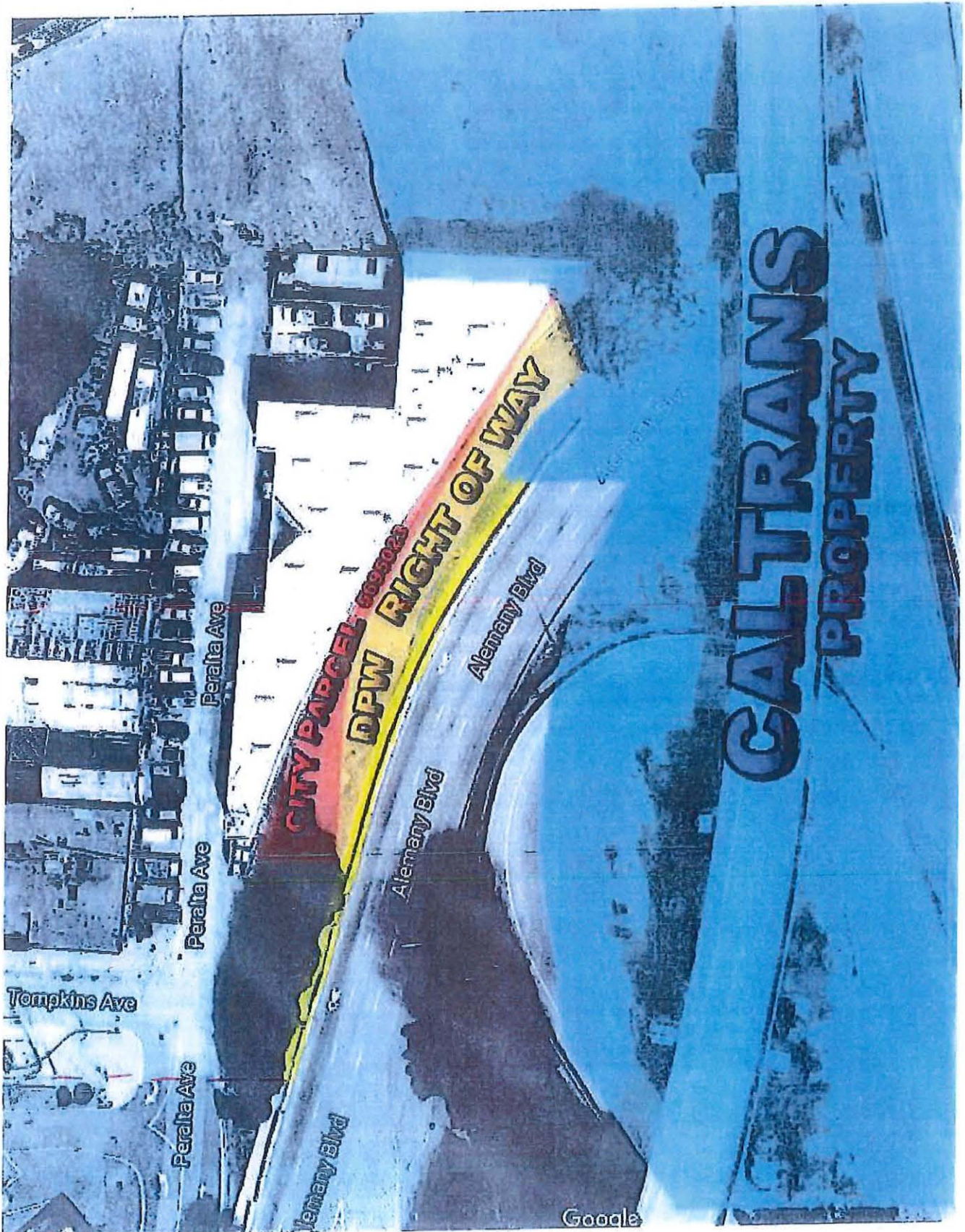
Street Name	From St	To St	Message	Job	Contact	Dates
PERALTA AVE						
	CRESCENT AVE \ TOMPKINS AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		
	CRESCENT AVE \ TOMPKINS AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		
TOMPKINS AVE						
	CRESCENT AVE \ PERALTA AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		
	CRESCENT AVE \ PERALTA AVE	Intersection	Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or a Record of Survey if any construction will take place within 10 ft of a monument. For any questions, please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument may be a crime.	Unknown		

# No Diagram submitted



EXHIBIT 1

**SITE PLAN EXPLAINED 1/2**







## TENANT AND EQUIPMENT

- 
- This aerial photograph shows a property with a large white building footprint. The building is divided into several sections, each labeled with a red text box: "Security Guard", "Office", "Awning", "Storage", "Shed", and "Trailer". The property is bordered by "Peralta Ave" on the left and "Alemany Blvd" on the right. A parking lot with numerous vehicles is visible to the left of the building. The road "Alemany Blvd" curves around the bottom right of the property.

**EXHIBIT D**

**APPROVED TENANT'S PLANS AND SPECIFICATIONS**

[see attached]

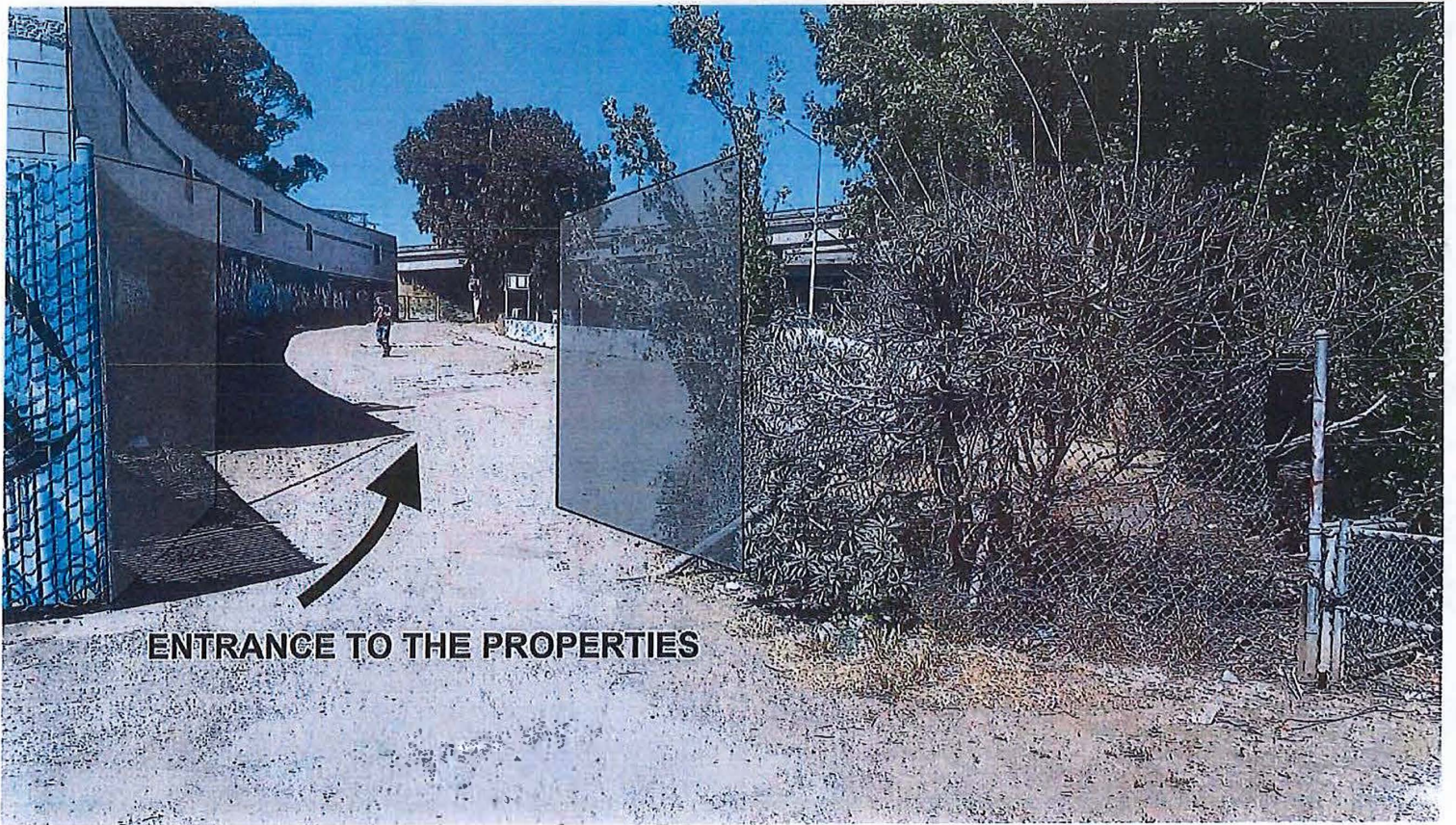


## FENCE PROJECT EXPLAINED

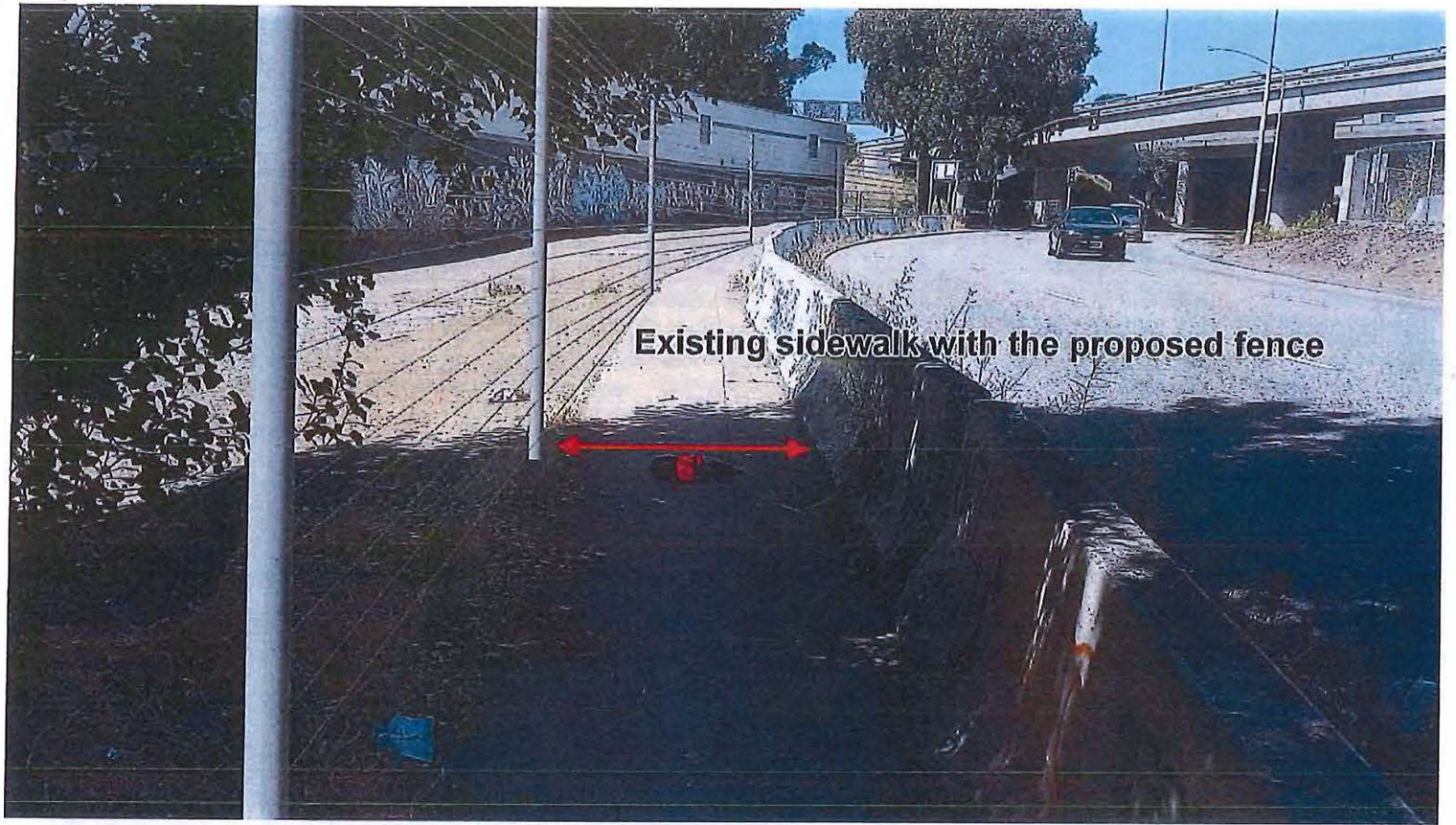




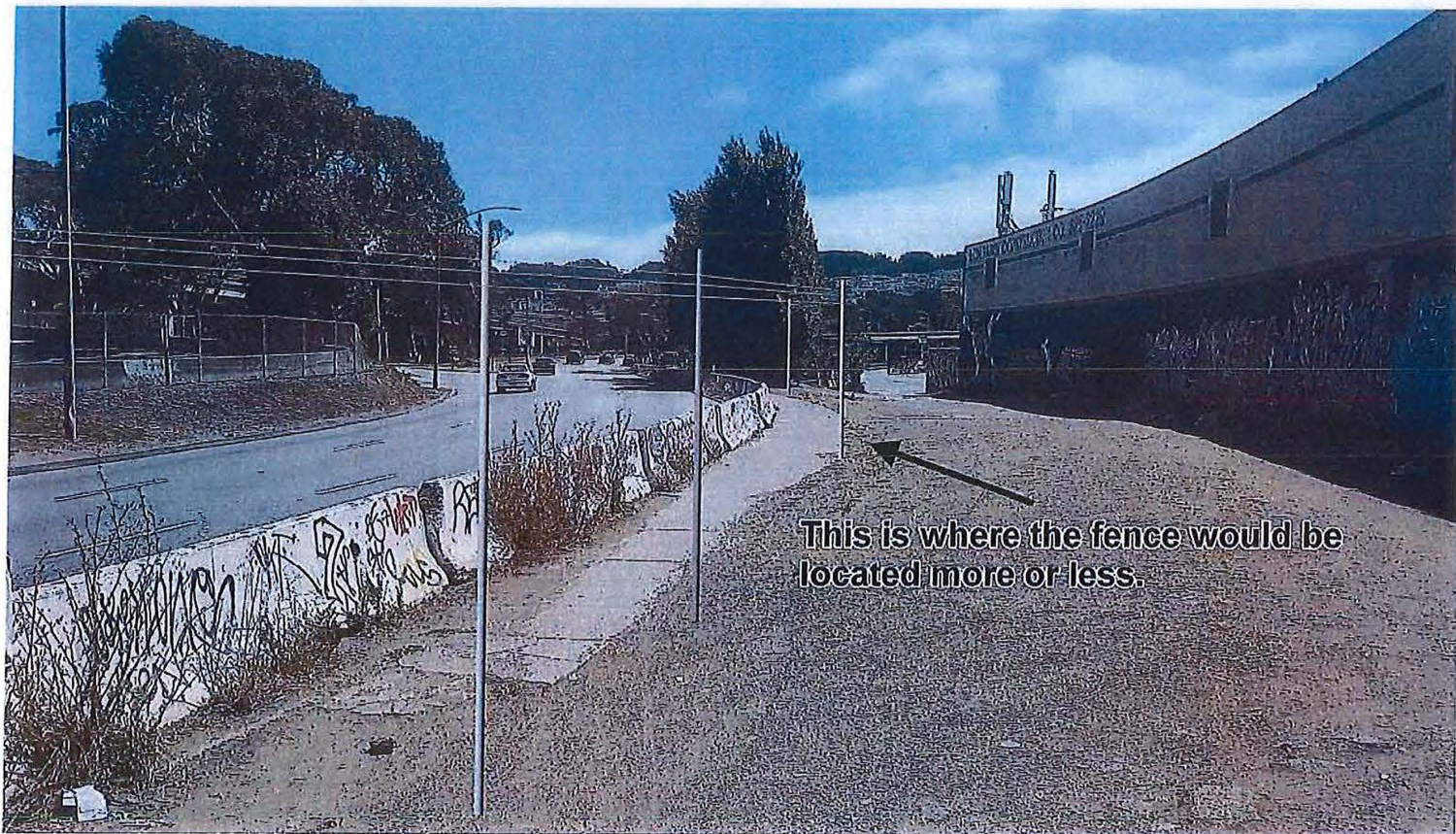




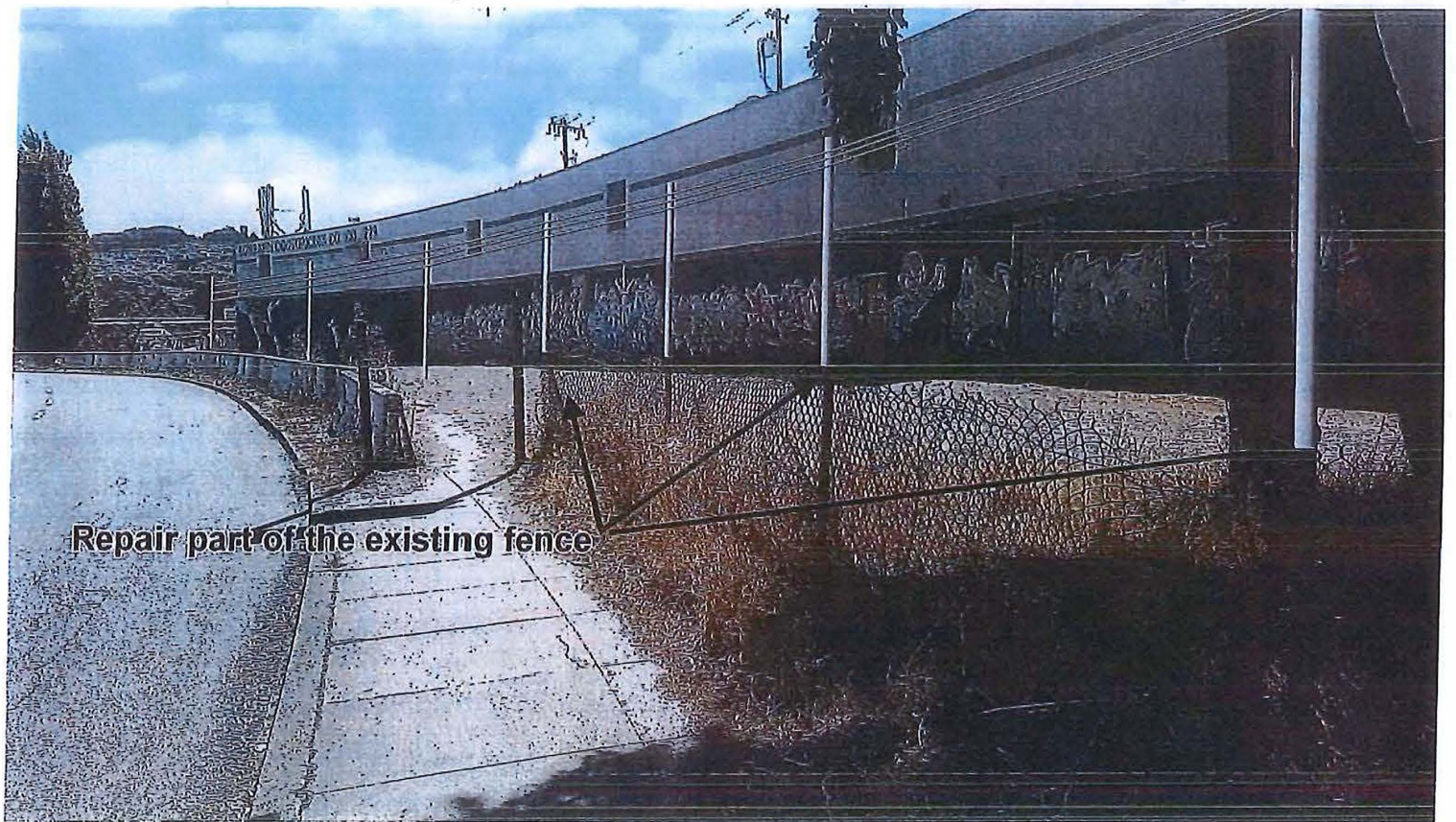












Repair part of the existing fence

**EXHIBIT E**

**FIRST SOURCE HIRING AGREEMENT**



City and County of San Francisco

First Source Hiring Program



Edwin M. Lee, Mayor

Form B: First Source Hiring Agreement  
For Tenant/Concessionaire/Franchisee/Easement Holder of City Property

This First Source Hiring Agreement (this "Agreement"), is made as of 12/06/2017, by and between Our Planet Recycling SF LLC (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee plans to occupy the property owned or controlled by the City and County of San Francisco ("City") at Albany & Tompkins Ave ("Premises") pursuant to a lease between Lessee and City dated November 14, 2017 ("Lease") which requires a First Source Hiring Agreement between Lessee and FSHA; and,

WHEREAS, as a material part of the consideration given by Lessee under the Lease, Lessee has agreed to execute this Agreement and the First Source Employer's Projection of Entry-Level Positions form attached to this Agreement as *Exhibit A* (the "Projection Form") and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83"); and

WHEREAS, Lessee is required to provide notice of the requirements of Chapter 83 in leases, subleases and other occupancy contracts for use of the Premises;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. Entry Level Position: Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. Workforce System: The First Source Hiring Administrator established by the City and managed by OEWD.
- c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.



## 2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.
- b. This Agreement shall be in full force and effect throughout the term of the Lease.

## 3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following:

- a. Lessee will execute and deliver this Agreement and the Projection Form to OEWD upon entering into the Lease. Lessee will also accurately complete and submit the Projection Form annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.
- d. If Lessee's operations create Entry Level Positions, Lessee will use good faith efforts to meet the hiring goals established by the FSHA for filling open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- e. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith" and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in Chapter 83. Lessee agrees to review Chapter 83, and execution of this Agreement denotes that Lessee agrees to its terms and conditions.

## 4. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:


ATTN: Business Services, Office of Economic and Workforce Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103  
Email: [Business.Services@sfgov.org](mailto:Business.Services@sfgov.org)

## 5. MISCELLANEOUS

This Agreement contains the entire agreement between the parties as to the subject matter hereof and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: 12/06/2017

Signature: 

Name of Authorized Signer: Ors Csaszar

Company: Our Planet Recycling SF LLC

Address: 531 Bayshore Blvd SF CA 94124

Phone: 415-866-6102

Email: Bernadette@ourplanetsf.com





## CEQA Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b>		<b>Block/Lot(s)</b>
Alemany Blvd/Tompkins Ave		5695023
<b>Case No.</b>		<b>Permit No.</b>
2021-007063PRJ		
<input checked="" type="checkbox"/> <b>Addition/ Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<p><b>Project description for Planning Department approval.</b></p> <p>The proposal is for a Conditional Use Authorization pursuant to Planning Code Sections 211.2 and 303 to establish a Community Recycling Collection Center use (DBA "One Planet Recycling SF") within the Public (P) Zoning District and 40-X Height and Bulk District. The business is established at the adjacent properties and will utilize the subject lot to provide vehicular access and storage.</p>		

### STEP 1: EXEMPTION TYPE

<b>The project has been determined to be exempt under the California Environmental Quality Act (CEQA).</b>	
<input type="checkbox"/>	<b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input checked="" type="checkbox"/>	<b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p><b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p>
<input type="checkbox"/>	<b>Other</b> _____
<input type="checkbox"/>	<p><b>Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).</b> It can be seen with certainty that there is no possibility of a significant effect on the environment. <b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p>

## STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT

### TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>)</p>
<input type="checkbox"/>	<p><b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><b>Note that a categorical exemption shall not be issued for a project located on the Cortese List if box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant. (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>)</b></p>
<input type="checkbox"/>	<p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>
<input type="checkbox"/>	<p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Average Slope of Parcel = or &gt; 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area:</b> Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? (refer to <i>The Environmental Planning tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic Hazard:</b> <input type="checkbox"/> <b>Landslide or</b> <input type="checkbox"/> <b>Liquefaction Hazard Zone:</b></p> <p>Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? (refer to <i>The Environmental tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<p><b>Comments and Planner Signature (optional):</b> Gabriela Pantoja</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE**  
**TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> <i>(refer to Property Information Map)</i>	
<input type="checkbox"/>	<b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>
<input checked="" type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b>

**STEP 4: PROPOSED WORK CHECKLIST**  
**TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input checked="" type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input checked="" type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>
<input checked="" type="checkbox"/>	Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: ADVANCED HISTORICAL REVIEW**  
**TO BE COMPLETED BY PRESERVATION PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Reclassification of property status.</b> <i>(Attach HRER Part I)</i> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <input type="checkbox"/> Reclassify to Category A  a. Per HRER  b. Other <i>(specify)</i>: </div> <div style="width: 45%;"> <input type="checkbox"/> Reclassify to Category C  <i>(No further historic review)</i> </div> </div>
<input type="checkbox"/>	2. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	3. <b>Interior alterations to publicly accessible spaces that do not remove, alter, or obscure character defining features.</b>
<input type="checkbox"/>	4. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	5. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.

<input type="checkbox"/>	6. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	7. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	8. <b>Work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (Analysis required):
<input type="checkbox"/>	9. <b>Work compatible</b> with a historic district (Analysis required):
<input type="checkbox"/>	10. <b>Work that would not materially impair</b> a historic resource (Attach HRER Part II).
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b>	
<input type="checkbox"/>	<b>Project can proceed with exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with exemption review. <b>GO TO STEP 6.</b>
Comments (optional):	
Preservation Planner Signature:	

**STEP 6: EXEMPTION DETERMINATION**  
**TO BE COMPLETED BY PROJECT PLANNER**

	No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: Planning Commission Hearing	Signature: Gabriela Pantoja
		03/22/2023
<p>Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a>. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link.</p> <p>Once signed and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the SF Admin Code. Per Chapter 31, an appeal of an exemption determination to the Board of Supervisors shall be filed within 30 days after the Approval Action occurs at a noticed public hearing, or within 30 days after posting on the Planning Department's website a written decision or written notice of the Approval Action, if the approval is not made at a noticed public hearing.</p>		

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

### MODIFIED PROJECT DESCRIPTION

Modified Project Description:

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?

**If at least one of the above boxes is checked, further environmental review is required**

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

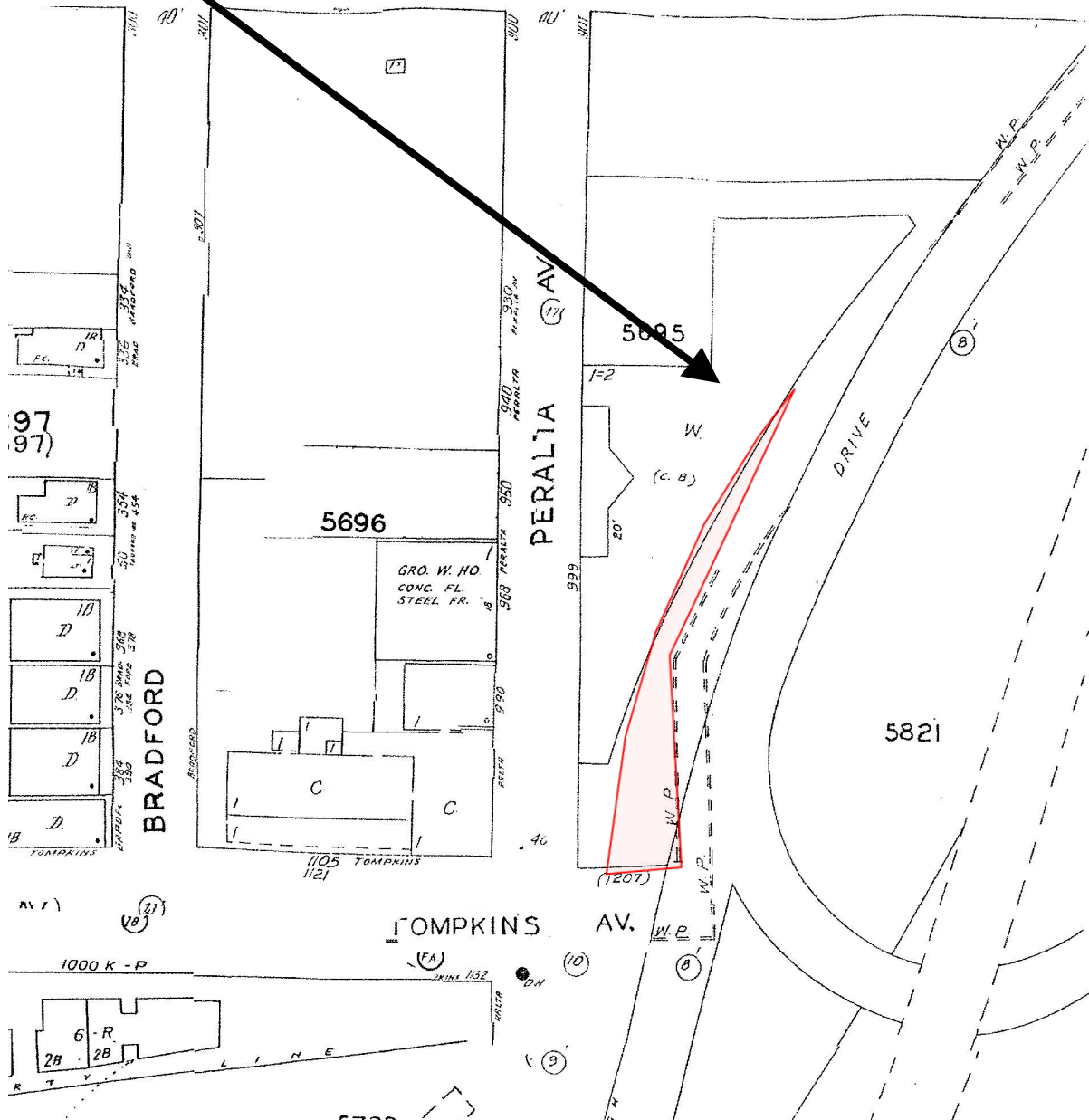
<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed to the Environmental Review Officer within 10 days of posting of this determination.	
<b>Planner Name:</b>	<b>Date:</b>



**San Francisco  
Planning**

# SANBORN MAP\*

SUBJECT PROPERTY



\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Conditional Use Authorization  
Case Number 2021-007063CUA  
0 Alemany Blvd./Tompkins Ave.  
(Block 5695, Lot 023)

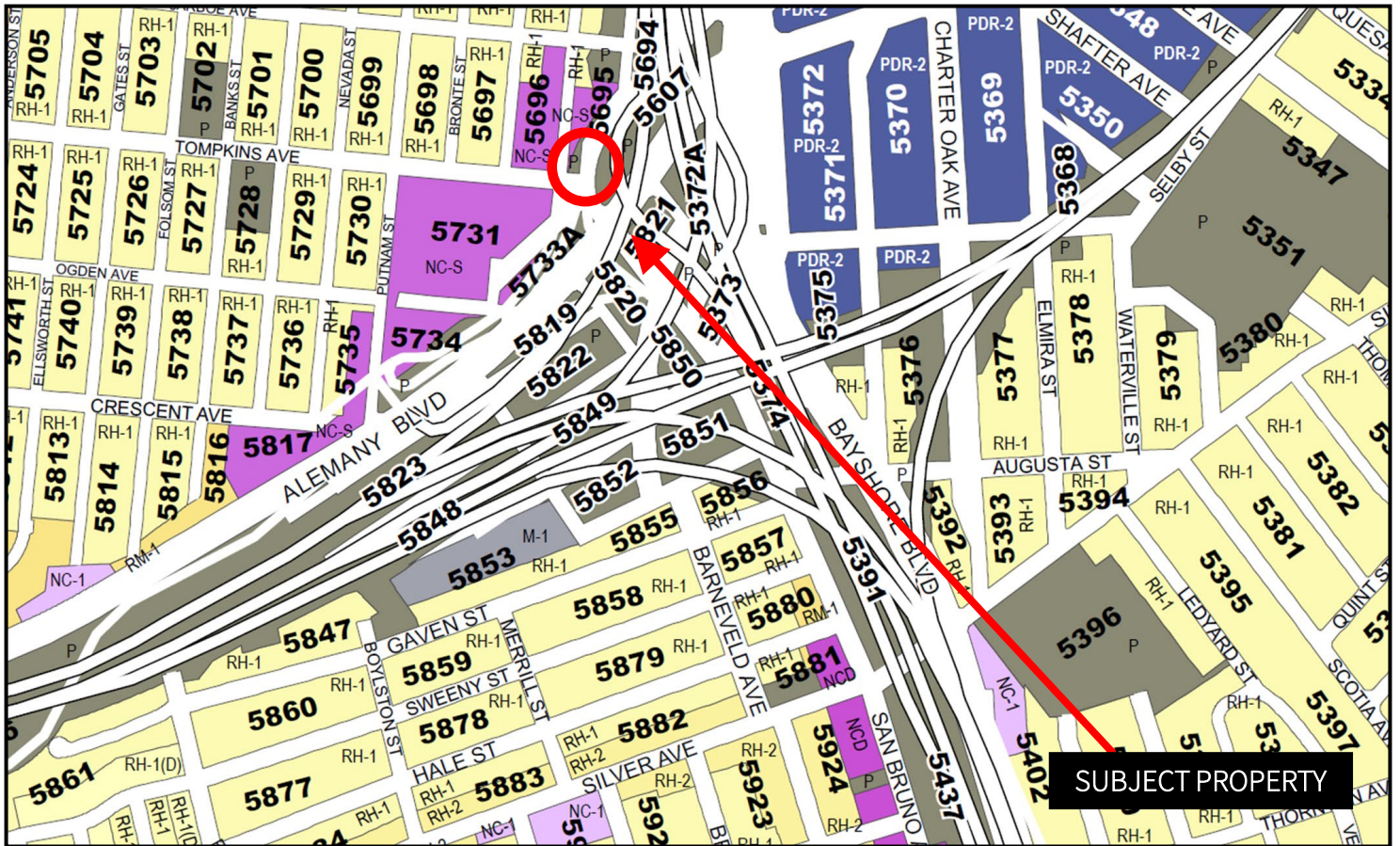


# AERIAL PHOTO





# ZONING MAP



# SITE PHOTO- VIEW FROM ALEMANY BLVD.



Conditional Use Authorization  
**Case Number 2021-007063CUA**  
0 Alemany Blvd./Tompkins Ave.  
(Block 5695, Lot 023)





## CONDITIONAL USE AUTHORIZATION

### INFORMATIONAL AND SUPPLEMENTAL APPLICATION PACKET

**ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the [Project Application](#) for instructions.**

Pursuant to Planning Code Section 303, the Planning Commission shall hear and make determinations regarding Conditional Use Authorization applications.

For questions, you can call the Planning counter at 628.652.7300 or email [pic@sfgov.org](mailto:pic@sfgov.org) where planners are able to assist you.

**Español:** Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

**中文:** 如果您希望獲得使用中文填寫這份申請表的幫助, 請致電628.652.7550。請注意, 規劃部門需要至少一個工作日來回應。

**Filipino:** Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

### WHAT IS A CONDITIONAL USE AUTHORIZATION?

A Conditional Use refers to a use that is not principally permitted in a particular Zoning District. Conditional Uses require a Planning Commission hearing in order to determine if the proposed use is necessary or desirable to the neighborhood, whether it may potentially have a negative effect on the surrounding neighborhood, and whether the use complies with the San Francisco General Plan. During this public hearing the Planning Commission will “condition” the use by applying operational conditions that may minimize neighborhood concerns as well as other conditions that may be required by the Department and the Planning Code. Conditional Use Authorizations are entitlements that run with the property, not the operator.

### WHEN IS A CONDITIONAL USE AUTHORIZATION NECESSARY?

For each Zoning District, the Planning Code contains use charts that list types of uses and whether each is permitted as of right (P), conditionally permitted (C), or not permitted (NP or blank). In addition to those particular uses, the Conditional Use Authorization process is utilized for various other applications included but not limited to dwelling unit removal, Planned Unit Developments (PUD's), and for off-street parking in certain Zoning Districts. Please consult a planner at the Planning counter at the Permit Center for additional information regarding these applications.

### FEES

Please refer to the [Planning Department Fee Schedule](#) available at [www.sfplanning.org](http://www.sfplanning.org). For questions related to the Fee Schedule, you can call the Planning counter at 628.652.7300 or email [pic@sfgov.org](mailto:pic@sfgov.org) where planners are able to assist you.

Fees will be determined based on the estimated construction costs. Should the cost of staff time exceed the initial fee paid, an additional fee for time and materials may be billed upon completion of the hearing process or permit approval. Additional fees may also be collected for preparation and recordation of any documents with the San Francisco Assessor-Recorder's office and for monitoring compliance with any conditions of approval.



# CONDITIONAL USE AUTHORIZATION

## SUPPLEMENTAL APPLICATION

### Property Information

Project Address:

Block/Lot(s): **5695-023**

### Action(s) Requested

Action(s) Requested (Including Planning Code Section(s) which authorizes action)

**We have a lease with the City Real Estate division since 2017 month to month base along with the encroachment permit. This property gives us access to our main yard and we are requesting for a long term lease with the City.**

### Conditional Use Findings

Pursuant to Planning Code Section 303(c), before approving a conditional use authorization, the Planning Commission needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding.

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community. If the proposed use exceeds the non-residential use size limitations for the zoning district, additional findings must be provided per Planning Code Section 303(c)(1)(A-C).

**We are only using the land to access our main lot which is land locked by this property. There is no development proposed or planned.**

2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
  - a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
  - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

**There aren't features that would be detrimental to the surrounding areas as we are using the land to access our property and using to store some of our items.**

3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.

**Anything that has been done or will be done has gotten permission from the City or the correct department. Also the understanding is that the City Real Estate is happy with the current situation as the land is better maintained now.**

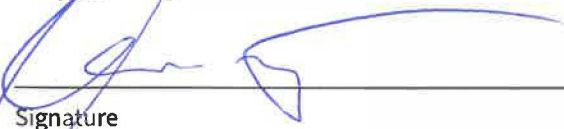
4. The use or feature satisfies any criteria specific to the use of features listed in Planning Code Section 303(g), et seq.

**There is no new building or structures proposed as the land is being used for access to our current property.**

# APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a) The undersigned is the owner or authorized agent of the owner of this property.
- b) The information presented is true and correct to the best of my knowledge.
- c) Other information or applications may be required.
- d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.
- e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

  
\_\_\_\_\_  
Signature

Ors Csaszar

\_\_\_\_\_  
Name (Printed)

5/18/2021

\_\_\_\_\_  
Date

Owner

415-246-5503

bernadette@ourplanetsf.com

\_\_\_\_\_  
Relationship to Project  
(i.e. Owner, Architect, etc.)

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

For Department Use Only

Application received by Planning Department:

By: \_\_\_\_\_

Date: \_\_\_\_\_





# PLANNING COMMISSION MOTION NO. 21351

**HEARING DATE: JULY 13, 2023**

**Record No.:** 2021-007063CUA  
**Project Address:** 0 Alemany Boulevard/ Tompkins Avenue  
**Zoning:** P (PUBLIC) Zoning District  
40-X Height and Bulk District  
**Cultural District:** N/A  
**Block/Lot:** 5695 / 023  
**Project Sponsor:** Rick Bradford  
Our Planet Recycling SF  
445 Bayshore Boulevard  
San Francisco, CA  
**Property Owner:** City and County of San Francisco  
San Francisco, CA  
**Staff Contact:** Gabriela Pantoja– 628-652-7380  
[Gabriela.Pantoja@sfgov.org](mailto:Gabriela.Pantoja@sfgov.org)

## Project Description

The proposal is to establish a Community Recycling Collection Center Use (DBA “Our Planet Recycling SF”) within the Public (P) Zoning District and 40-X Height and Bulk District. Our Planet Recycling SF operates a Community Recycling Collection Center at the adjacent property, 445 Bayshore Boulevard, and will utilize the subject property to provide vehicular access to their main site location and for storage. The main operation of the recycling center will remain at their existing 445 Bayshore Boulevard location. The City has executed a year-to-year lease since 2017 with the listed business to occupy and utilize the subject property. The listed business now seeks a long-term lease with the City, and the City has granted the business consent to seek the listed Conditional Use Authorization.

## Required Commission Action

In order for the Project to proceed, the Commission must grant a Conditional Use Authorization, pursuant to Planning Code Sections 211.2 and 303 to establish a Community Recycling Collection Center use (DBA “One Planet Recycling SF”) within the Public (P) Zoning District and 40-X Height and Bulk District.

## Environmental Review

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 3 Categorical Exemption.

## Decision

Based upon information set forth in application materials submitted by the project sponsor and available in the case file (which is incorporated herein by reference as though fully set forth) and based upon the findings below, the Commission hereby **APPROVES Conditional Use Authorization (CUA) No. 2021-007063CUA** subject to conditions contained in the attached "EXHIBIT A" and in general conformance with plans on file, dated August of 2022, and stamped "EXHIBIT B."

Additional Information	
Notification Period	March 10, 2023 to March 30, 2023 (20 days mailing, newspaper, online, and posted).
Number and Nature of Public Comments Received	To date, the Department has received a total of four correspondence regarding the Project. All public members have expressed concerns with regards to the listed business use and maintenance of the subject property.

Generalized Basis for Approval
The Commission finds that this Project is necessary, desirable for, and compatible with the surrounding neighborhood as follows, and as set forth in Planning Code Sections 211.2 and 303(c), and findings submitted as part of the application. The Project will support the continued viability of an established Community Recycling Collection Center use (DBA "Our Planet Recycling SF") within the Public (P) Zoning District which aligns with the General Plan's Environmental Protection Element's objectives and policies. The Project will help maintain a recycling facility within the City, continue to encourage responsible and effective recycling, and eliminate waste from the City.
Department staff believes the Project would be desirable for and compatible with the surrounding neighborhood and recommends Approval with Conditions.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 13, 2023.

AYES: Braun, Ruiz, Diamond, Imperial, Koppel, Tanner  
NAYS: None  
ABSENT: Moore  
ADOPTED: July 13, 2023



Jonas P. Ionin  
Commission Secretary

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors.

**PROTEST OF FEE OR EXACTION:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development. If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

# EXHIBIT A

## Authorization

This authorization is for a conditional use to allow the establishment of a Community Recycling Collection Center use (DBA “Our Planet Recycling SF”) located at 0 Alemany Boulevard/ Tompkins Avenue, Block 5695 Lot 023 pursuant to Planning Code Sections 211.2 and 303 within the Public (P) Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated August of 2022, and stamped “EXHIBIT B” included in the docket for Record No. **2021-007063CUA** and subject to conditions of approval reviewed and approved by the Commission on July 13, 2023 under Motion No. 21351. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

## Recordation of Conditions of Approval

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 13, 2023, under Motion No. 21351.

## Printing of Conditions of Approval on Plans

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 21351 shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

## Severability

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. “Project Sponsor” shall include any subsequent responsible party.

## Changes and Modifications

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

# CONDITIONS OF APPROVAL, COMPLIANCE, MONITORING, AND REPORTING

## Performance

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

## Monitoring - After Entitlement

- 6. Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

- 7. Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

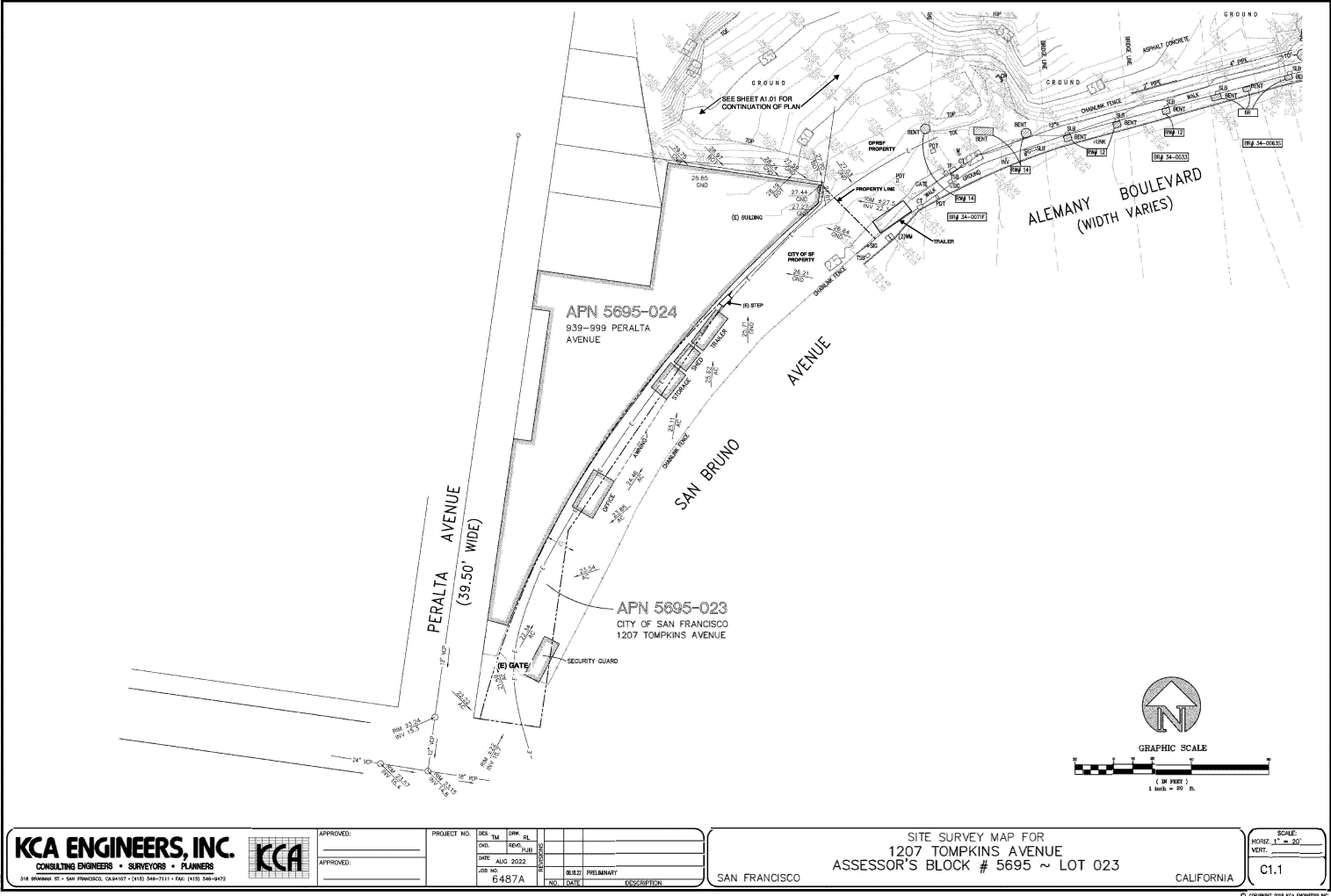
## Operation

- 8. Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

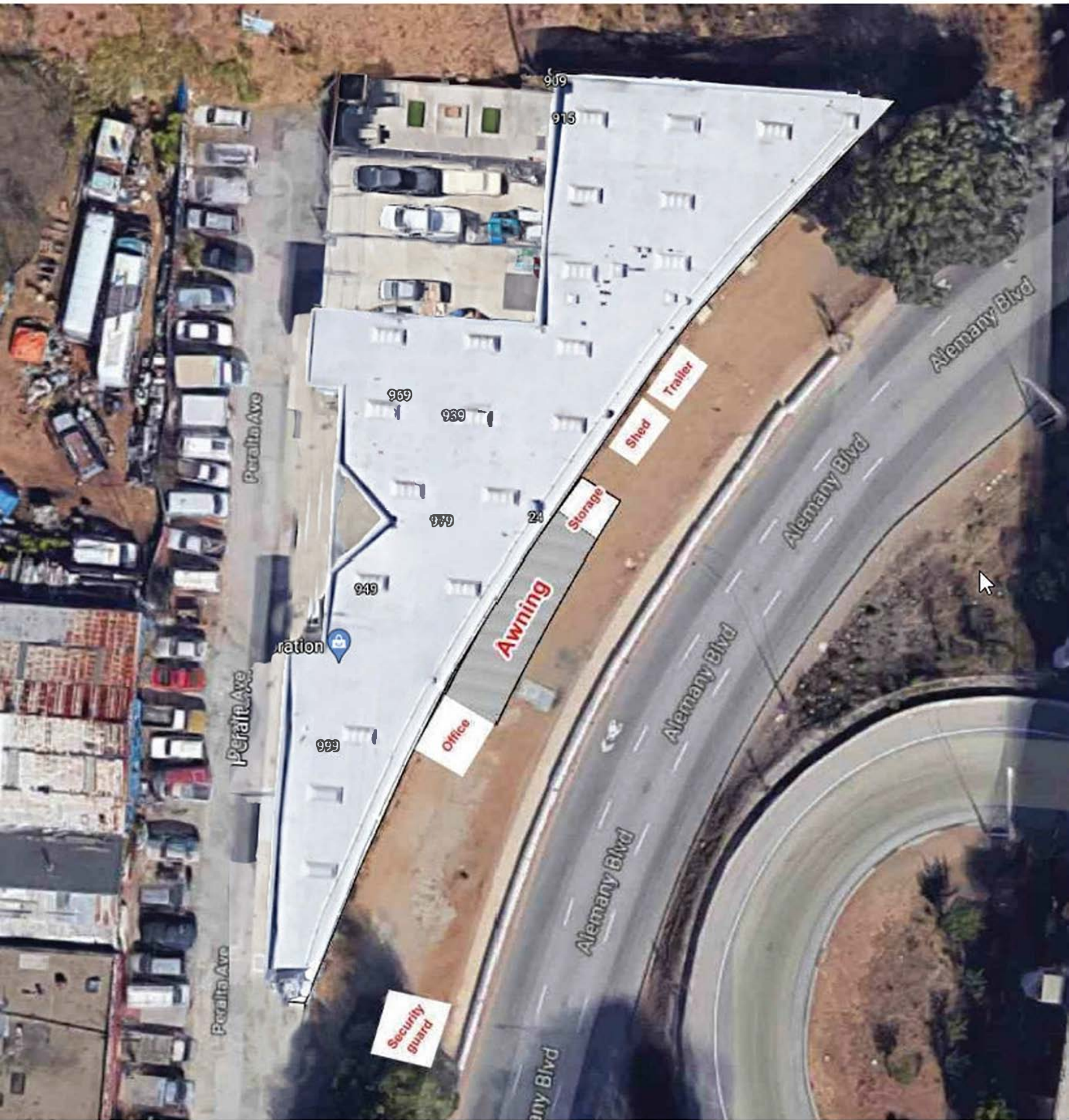
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 628.271.2000, [www.sfpublishworks.org](http://www.sfpublishworks.org).*

- 9. Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*









# NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

## RECORDING REQUESTED BY

### And When Recorded Mail To:

**Name:** Director of Property  
Real Estate Division  
**Address:** 25 Van Ness, Ste 400  
**City:** San Francisco, CA 94102



**Doc # 2023061683**

**City and County of San Francisco**  
**Joaquin Torres, Assessor – Recorder**  
8/21/2023 12:00:40 PM **Fees** \$0.00  
**Pages** 8 **Title** 394 **AM** **Taxes** \$0.00  
**Customer** 035 **Other** \$0.00  
**SB2 Fees** \$0.00  
**Paid** \$0.00

**State:** **ZIP:**

(Space Above This Line For Recorder's Use)

I (We) City & County of San Francisco, the owner(s)  
of that certain real property situated in the City and County of San Francisco, State of California more  
particularly described as follows: (or see attached sheet marked "Exhibit A" on which property is more  
fully described):

**BEING ASSESSOR'S BLOCK: 5695 LOT: 023;**

**COMMONLY KNOWN AS: 0 ALEMANY BLVD/TOMPKINS AVE;**

hereby give notice that there are special restrictions on the use of said property under the Planning Code.

Said Restrictions consist of conditions attached to **Conditional Use Authorization No.**  
**2021-007063CUA** authorized by the Planning Commission of the City and County of San Francisco  
on July 13, 2023, as set forth on Planning Commission Motion No. 21351. This authorization is for a  
conditional use to allow the establishment of a Community Recycling Collection Center use (DBA "Our  
Planet Recycling SF") located at 0 Alemany Boulevard/ Tompkins Avenue, Block 5695 Lot 023 pursuant  
to Planning Code Sections 211.2 and 303 within the Public (P) Zoning District and a 40-X Height and Bulk  
District.

**The restrictions and conditions of which notice is hereby given are:**

## **NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE**

### **AUTHORIZATION**

This authorization is for a conditional use to allow the establishment of a Community Recycling Collection Center use (DBA "Our Planet Recycling SF") located at 0 Alemany Boulevard/ Tompkins Avenue, Block 5695 Lot 023 pursuant to Planning Code Sections 211.2 and 303 within the Public (P) Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated August of 2022, and stamped "EXHIBIT B" included in the docket for Record No. **2021-007063CUA** and subject to conditions of approval reviewed and approved by the Commission on July 13, 2023 under Motion No. **21351**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **Recordation of Conditions of Approval**

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 13, 2023, under Motion No. **21351**.

### **Printing of Conditions of Approval on Plans**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **21351** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **Severability**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **Changes and Modifications**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

# NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

## NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

### MONITORING - AFTER ENTITLEMENT

6. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

7. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

### OPERATION

8. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 628.271.2000, [www.sfpublishworks.org](http://www.sfpublishworks.org).*

9. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

## NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco.

Claudia J. Gorham  
(Signature)

Claudia J. Gorham  
(Printed Name)

Dated: August 16, 2023 at San Francisco, California.  
(Month, Day) (City)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Dated: \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, California.  
(Month, Day) (City)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Dated: \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, California.  
(Month, Day) (City)

Each signature must be acknowledged by a notary public before recordation; add Notary Public Certification(s) and Official Notarial Seal(s).



## **EXHIBIT A**

### **Legal Description of Property**

Located at 0 Alemany Boulevard/ Tompkins Avenue, Block 5695 Lot 023 pursuant to Planning Code Sections 211.2 and 303 within the Public (P) Zoning District and a 40-X Height and Bulk District.





EXHIBIT A-1

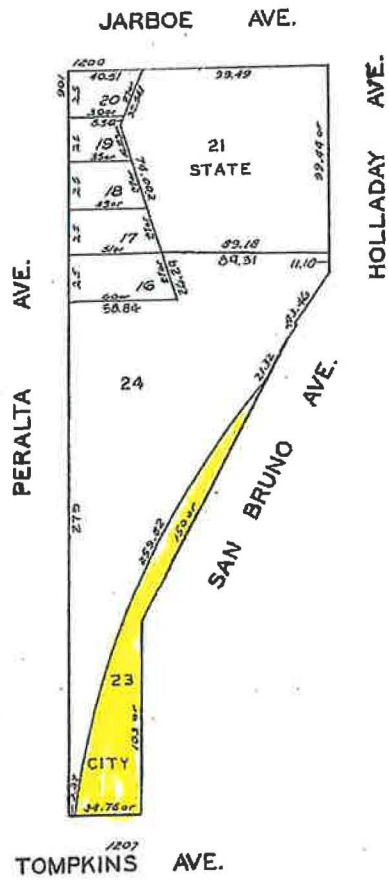
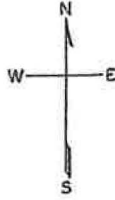
© COPYRIGHT SAN FRANCISCO  
CITY & COUNTY ASSESSOR 1995

Lot 277 Merged into Lot 1 '1950'  
" 10/11 " " " 1 '1950'

5695

GIFT MAP NO. 2  
LOTS 1431-1450

REVISED '73  
" '88





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )  
On 8/16/23 before me, Lauren Skellen, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Claudia J. Gorham  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

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

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

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

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

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

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

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

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

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

RECEIVED  
JAN 25 1962  
U.S. DEPT. OF AGRICULTURE  
WASHINGTON, D.C.



## GENERAL PLAN REFERRAL

October 2, 2023

**Case No.:** 2021-001605GPR  
**Block/Lot No.:** Block 5695, Lot 23  
**Project Sponsor:** City and County of San Francisco, Real Estate Division  
**Applicant:** Claudia J. Gorham – (415) 554-9871  
claudia.gorham@sfgov.org  
Real Estate Division  
25 Van Ness, Suite 400  
San Francisco, CA 94102  
**Staff Contact:** Danielle Ngo – (628) 652-7591  
daniellengo@sfgov.org  
**Recommended By:**   
Rich Hillis, Director of Planning

**Recommendation:** Finding the project, on balance, is **in conformity** with the General Plan

### Project Description

The property owner, Real Estate Division (RED), is leasing with Our Planet Recycling SF, LLC. The lease began in 2017 on a year-to-year basis. The property is at the intersection of Peralta Avenue and Alemany Blvd. Our Planet Recycling desired to use the vacant space between Alemany Blvd and the adjacent parcel on the other side, for employee parking, storage, and access to a Caltrans' parcel it desired to lease for its recycling business. Our Planet Recycling obtained, and still has, a Public Works' Minor Sidewalk Encroachment Permit to occupy a small portion of right-of-way (ROW) adjacent to the sidewalk and RED's parcel. Our Planet Recycling put up fencing, a gate, a moveable trailer, and storage sheds. These are the same previous and present uses allowed under the current zoning, P-Public.

Our Planet Recycling now has a long-term lease with Caltrans for its parcel and still needs the parking area and storage area on RED's parcel in order to conduct its recycling business.

Our Planet Recycling and RED have negotiated a 5-year lease with one 5-year option, which requires the lease to go to the Board of Supervisors.

RED requests this General Plan Referral to be granted for this real estate transaction.

## Environmental Review

This is a real estate transaction only. It is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

## General Plan Compliance and Basis for Recommendation

As described below, the proposed real estate transfer is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

### AIR QUALITY ELEMENT

#### OBJECTIVE 6

**LINK THE POSITIVE EFFECTS OF ENERGY CONSERVATION AND WASTE MANAGEMENT TO EMISSION REDUCTIONS.**

##### Policy 6.2

Encourage recycling to reduce emissions from manufacturing of new materials in San Francisco and the region.

*The project will provide a local business and recycling center to continue operations, providing the neighborhood and city with opportunities to recycle and reduce emissions from waste disposal.*

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 4

**IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.**

##### Policy 4.1

Maintain and enhance a favorable business climate in the city.

*The project will provide a local business and recycling center to continue operations, and it is one of the few remaining local businesses in the neighborhood. Our Planet Recycling is coordinating with multiple City agencies to receive the proper permits and understanding to operate, and this project facilitates their provision of recycling services to the neighborhood and city.*

##### Policy 4.6

Assist in the provision of available land for site expansion.

*The project will provide a local business and recycling center to use parcels of land owned by the City and CalTrans that were otherwise vacant. Our Planet Recycling is coordinating with multiple City agencies to receive the proper*



*permits and understanding to operate, and this project facilitates their provision of recycling services to the neighborhood and city.*

## ENVIRONMENTAL PROTECTION ELEMENT

### OBJECTIVE 21

#### CONTROL ILLEGAL DISPOSAL AND ELIMINATE LAND DISPOSAL OF UNTREATED WASTE.

##### Policy 21.1

Prevent illegal disposal.

*The project will provide a local business and recycling center to continue operations, allowing the opportunity for neighborhood and city residents to properly dispose of waste and limit illegal disposal.*

## URBAN DESIGN ELEMENT

### OBJECTIVE 4

#### IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

##### Policy 4.6

Emphasize the importance of local centers providing commercial and government services.

*The project will provide a local business and recycling center to continue operations, supplementing city-provided recycling and waste disposal services and allowing the opportunity for local residents to support a local business.*

## Planning Code Section 101 Findings

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The Project would not have a negative effect on existing neighborhood-serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail. Our Planet Recycling is one of the few remaining small, local businesses, and thus enhances opportunities for resident employment and ownership of such businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The Project would not have a negative effect on housing or neighborhood character. It offers the*

*opportunity for local residents to walk or drive to a nearby recycling center.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The Project would not have an adverse effect on the City's supply of affordable housing. The parcel is too small to be used for affordable housing, and it is used with the Minor Encroachment Permit.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The Project would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking. The parcel is used for employee parking and some of the Our Planet Recycling business trucks.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The Project would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The Project would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*N/A – There are no landmarks or historic buildings on the parcel. The Project would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The Project would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

**Recommendation: Finding the project, on balance, is in conformity with the General Plan**



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 230914

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Claudia Gorham	415-554-9871
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Our Planet Recycling SF, LLC a California corporation	<b>TELEPHONE NUMBER</b> 415-246-5503
<b>STREET ADDRESS (including City, State and Zip Code)</b> 60 29th Street #432 San Francisco, CA 94110	<b>EMAIL</b> info@ourplanetsf.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 230914
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$23,397.96		
<b>NATURE OF THE CONTRACT (Please describe)</b> Five year term with one five-year extension to recycling business. Location of business is at 445 Bayshore Blvd., San Francisco, CA 94124		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Csazar	Ors	COO
2	Csazar	Ors	other Principal Officer
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

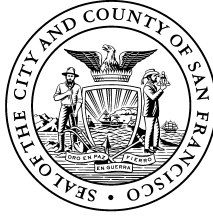
**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

**SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK**

**DATE SIGNED**

BOS Clerk of the Board





August 11, 2023

Through Carmen Chu,  
City Administrator

Honorable Board of Supervisors  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 224  
San Francisco, CA 94102

**Re: Our Planet Recycling SF, LLC – Block 5695, Lot No. 23,  
Near Alemany Farmers' Market**

Dear Board Members:

Attached for your consideration is a Resolution approving and authorizing the Director of Property to renew a lease with Our Planet Recycling SF, LLC ("Tenant") for approximately 4,250 square feet of an irregular shaped previously unused and vacant City parcel ("Parcel") immediately adjacent to Alemany Boulevard (a portion of the right of way) and its recycling center business located on Caltrans' property. The lease is for five years with one five-year extension option. Initial base rent is \$1,949.83 per month or \$23,397.96 per year with a three (3) percent annual adjustment. The option would be renewed at the then fair market rental value based upon an appraisal.

### Background

In late 2017, the Real Estate Division ("RED") entered into a one-year lease with the Tenant for use of the real property (Parcel) for inventory storage and parking for its recycling business which is immediately adjacent to the City's property. At the time, the parcel – which is largely the Department of Public Works' ("DPW") right of way that is not used for Alemany Boulevard or the sidewalk – was vacant and unused right of way. Tenant was attempting to enter into a lease with Caltrans' for use of Caltrans' property as the recycling center, and desired to enter into a Minor Sidewalk Encroachment Permit with the DPW for use of DPW's ROW and potentially construct an entrance from Alemany Blvd. into the City's parcel. Tenant obtained the Encroachment Permit, installed a fence and made other improvements as required by the Permit (removal of vegetation). At the end of the one-year term, the lease became a month to month tenancy under the same terms and conditions. (See attached map of the site.)

Tenant has now entered into a long-term lease (20 years) with Caltrans for the recycling center next door and would like to enter into a longer-term lease with the City so that it is assured of the space it needs for its inventory, trucks and employee parking.

### Proposed Lease

The proposed lease is for five years with one five-year renewal. The fair market rental amount does not require an appraisal as set forth under Chapter 23. Review of several vacant parcels, with limited access and irregular shape on which nothing can be constructed, supports the rental amount [\$23,397.96 per year or \$1,949.83 monthly (approximately \$5.50 per square foot)].

Our Planet Recycling is the last or one of the last recycling centers within the City that remains open. Given the small size and configuration of the property, the adjacent ROW and location of Tenant's recycling business on Caltrans' property, the Encroachment Permit, and unique and needed use, it is impractical to competitively bid the use of the Parcel to anyone other than the Tenant.

The Tenant also has a sublease with another small business which will continue occupying a portion of the site for a small storage area for its inventory.

This matter was originally submitted in 2021 but was delayed due to the Planning Department, upon review of the General Plan Application for approval of the lease, determined Tenant needed a conditional use authorization for the non-public use. Tenant immediately applied for same in mid-2021 and it was just approved on July 13, 2023. A Notice of Restrictions has been recorded against the property.

Should you have any questions, please contact Claudia J. Gorham of our office at 415.554.9871.

Respectfully,

Andrico Q. Penick  
Director of Property