

ZERO WASTE PROJECT

GROUND LEASE

between

THE CITY OF SAN JOSE

"Landlord"

and

ZERO WASTE ENERGY DEVELOPMENT COMPANY

"Tenant"

Council Agenda: 6-21-11

Item No.: 7.2(b)

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

LEASE

THIS LEASE (this "Lease") is entered into as of July 1, 2011, by and between the City of San Jose, a municipal corporation ("Landlord") or ("City"), and Zero Waste Energy Development Company, a California Limited Liability Company ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. Landlord and Tenant have negotiated the terms of a ground lease for use of the "Nine Par Site" (site) designed to convert waste products to usable energy and such other ancillary uses listed as Permitted Uses in Section 4 of this Lease.
- B. Landlord recognizes that the proposed project will provided non-monetary benefit to the City's long term sustainability goals by diverting waste from landfills and converting it into a new energy source. In addition, the proposed project will result in improvement of City property to a leasable condition. The layout of the facility respects the Plant's need to access its facilities and will retain access to the remaining acreage not included in the Lease.
- C. Landlord also recognizes that the proposed project will provide benefit to Tenant by providing a convenient location adjacent to existing waste handling operations and the ability to generate renewable energy sources being utilized to offset requirements of adjacent uses.
- D. Tenant and Landlord have negotiated the terms of the Lease to allow the Landlord to receive sufficient consideration in the form of improvements to the Landlord's property and potential revenue in the form of rent.
- E. On June 21, 2011, the San Jose City Council considered and adopted a Mitigated Negative Declaration in compliance with the California Environmental Protection Act and approved this Lease subject to the approval of the Santa Clara City Council.
- F. On July __, 2011, the Santa Clara City Council approved this Lease.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. PREMISES

1.1 Premises.

(a) Lease of Premises; Description. For the rent described in Section 3 and subject to the terms and conditions of this Lease, City hereby leases to Tenant, and Tenant hereby leases from City, the real property in the City of San Jose, California, located on Los Esteros Road, as more particularly described on Exhibit A attached hereto (the "Property").

The Property contains three parcels: Phase I Parcel, Phase II Parcel, and Phase III Parcel as more particularly described in Exhibit A, together with all rights, privileges and licenses appurtenant to the Property and owned by City, and the Improvements hereafter constructed on the Property, more fully described in Exhibit B (subject to Section 9.2). The Property is shown generally on the Site Plan attached hereto as Exhibit C. The Property and all other Improvements now and hereafter located on the Property are referred to in this Lease as the "Premises."

(b) Permitted Title Exceptions. The interests granted by City to Tenant pursuant to Subsection 1.1(a) are subject to (i) the matters reflected in Exhibit D (the "Permitted Title Exceptions"), (ii) any Regulatory Approvals required by law to be recorded against the Property as a result of the development and activities permitted by this Lease; and (iii) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

(c) "AS IS WITH ALL FAULTS". SUBJECT TO THE PROVISIONS OF SECTION 39 HEREOF, TENANT AGREES THAT THE PREMISES ARE BEING LEASED BY CITY, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE, WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT OR ANY APPURTENANCES TO THE PREMISES.

As part of its agreement to accept the Property in its "As Is With All Faults" condition, effective upon delivery of the Property, the Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, or above, or about the Premises (including, but not limited to, soils and groundwater conditions) and (ii) any Laws applicable to such conditions, including without limitation, Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

Initials: _____

1.2 Grant of Foundation Easement.

City hereby grants to Tenant an easement in City's property located underneath the Premises for the purpose of installation, repair and maintenance of foundation pilings and other structural support elements which are part of the Improvements to be constructed by Tenant on the Premises. Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease. Tenant shall ensure that any contaminated soil or groundwater that is excavated, disturbed or uncovered during the installation of any foundation pilings or other structural support elements pursuant to this easement shall be managed and disposed of off-site in accordance with applicable provisions of local, state and federal law, including implementing as necessary special handling procedures and disposal offsite of excavated, disturbed or uncovered soil classified as hazardous waste as applicable.

Section 2. TERM

2.1 Phase I Term.

(a) Term. The term of this Lease for the Phase I Parcel (the "Phase I Term") shall be from July 1, 2011 until June 30, 2042. The Phase I Term and all terms described in this Section 2 are represented in Exhibit E. In the event that Exhibit E and this Section 2 are in conflict, the language of this Section 2 shall control.

2.2 Phase II Term.

(a) Initial Term. The initial term of this Lease for the Phase II Parcel (the "Phase II Initial Term") shall be seven (7) years from the Effective Date.

(b) Initial Term Extension. Tenant shall have the right to extend, up to three times, the Phase II Initial Term for one (1) year if Tenant pays the City one hundred thousand dollars (\$100,000) prior to the end of the Phase II Initial Term, such that Tenant may extend the Phase II Initial Term for up to three (3) years for \$300,000. Tenant is not obligated to extend

the Phase II Initial Term, and Tenant is free to choose how many times, up to three (3), that Tenant will extend the Phase II Initial Term.

(c) Renewal Term. If, prior to the end of the Phase II Initial Term and any of its extensions, the Tenant has completed its Phase II Renewal, then the Phase II Term shall be extended until June 30, 2042 (the "Phase II Renewal Term"). Phase II Renewal means that Tenant has submitted a complete building permit application for all Phase II Construction Improvement Work, as more fully described in Exhibit B.2, and paid appropriate application fees to the City.

2.3 Phase III Term.

(a) Initial Term. The initial term of this Lease for the Phase III Parcel (the "Phase III Initial Term") shall be seven (7) years from the Effective Date

(b) Initial Term Extension. If Tenant elects to extend the Phase II Initial Term pursuant to Section 2.2(b), then the Phase III Initial Term shall be automatically extended for the amount of time the Phase II Initial Term is extended.

(c) First Renewal Term. If, at the end of the Phase III Initial Term and any of its extensions, Tenant has exercised the Phase II Renewal Term, then Tenant shall have the right to renew this Lease for the Phase III Parcel for five (5) years (the "Phase III First Renewal Term").

(d) First Renewal Extension. Tenant shall have the right to extend, up to three times, the Phase III First Renewal Term for one (1) year if Tenant pays the City one hundred thousand dollars (\$100,000) prior to the end of the Phase III First Renewal Term, such that Tenant may extend the Phase III First Renewal Term for up to three (3) years for \$300,000. Tenant is not obligated to extend the Phase III First Renewal Term, and Tenant is free to choose how many times, up to three (3), that Tenant will extend the Phase III Initial Term.

(e) Second Renewal Term. If, prior to the end of the Phase III Initial Term and any of its extensions, the Tenant has completed its Phase III Renewal, then the Phase III Term shall be extended until June 30, 2042 (the "Phase III Second Renewal Term"). Phase III Renewal means that Tenant has submitted a complete building permit application for all Phase III Construction Improvement Work, as more fully described in Exhibit B.2, and paid appropriate application fees to the City.

2.4 Failure to Meet Term Conditions. At any time, if this Lease is terminated for any of the Parcels, the City shall have the right to take possession of the Parcel whose Lease has been terminated and all the improvements and fixtures thereon. The termination of this Lease for a Parcel does not change any of the Tenant's rights or obligations in regards to those Parcels for which the Lease is still in effect; however, it may change the value of the contribution by Tenant for ongoing Monitoring and Maintenance on the Parcel whose lease has been terminated, as more fully described in Exhibit B.3., as Tenant will not have any

rights nor responsibilities to Monitor or Maintain a parcel whose Lease has been terminated. The termination of this Lease for a Parcel does not change the valuation for the Site Improvement Work completed on the Parcel whose Lease has been terminated, as more fully described in Exhibit B.1.

2.5 Option to Extend. If Tenant has exercised the Phase II Renewal Term and the Phase III Second Renewal Term, Tenant shall have the option to extend this Lease for ten (10) years for all three Parcels at the termination of the Phase I Term.

(a) Notice. Tenant shall give written notice to the City of its intention to exercise the option in this Section 2.5 prior to twelve (12) months before the end of the Phase I Term.

(b) Rate. If Tenant provides notice to the City pursuant to this Section 2.5, the rent for the Premises for this ten (10) year extension shall be market rate less 10% as determined by an independent appraiser mutually selected by Landlord and Tenant.

Section 3. RENT

3.1 Tenant's Covenant to Pay Rent.

(a) Phase I Annual Rent.

(i) Base Rent. The annual rent due to the City for each year of the Phase I Term shall be eight hundred fifty thousand dollars (\$850,000) per year (the "Base Rent."). The Base Rent payable pursuant to this Lease shall be paid annually in arrears and will not be adjusted during the Lease Term. The City shall credit the sum of \$850,000 per year against Tenant's Base Rent obligation. The Base Rent shall be payable as an annual payment in accordance with Exhibit F, subject to the following conditions:

(A) If Tenant expends more than Ten Million Eight Hundred Thousand Dollars (\$10,800,000) on Site Improvement Work, as more fully described in Exhibit B.1, during the Site Improvement Period, Landlord shall credit Tenant Eight Hundred Fifty Thousand Dollars (\$850,000) per year against Tenant's Base Rent obligation for the entire term of the Lease.

(B) If Tenant has not expended more than Ten Million Eight Hundred Thousand Dollars (\$10,800,000) on Site Improvement Work, as more fully described in Exhibit B.1, within the Site Improvement Period, Landlord shall credit Tenant in accordance with the provisions of Exhibit F.

(ii) Per Unit Rent. Tenant shall additionally pay to the City annually for the entire Phase I Term, four dollars and thirty-five cents (\$4.35) for every Ton of Organic Waste Processed on the Phase I Parcel over seventy-five thousand (75,000) tons in the previous year (the "Phase I Per Unit Rent"). The Per Unit Rent rate shall be periodically adjusted relative to a CPI-U adjustment factor that shall equal one plus the Annual Percentage

Change in the CPI-U. The CPI-U adjustment factor shall be rounded to the nearest thousandth. Upon the commencement of the Phase II Renewal Term, i.e. when the first ton enters the Phase II portion of the facility, the Per Unit Rent Rate shall be increased by 10%.

(b) Phase II Rent. At the earlier of (i) eighteen (18) months after the start of the Phase II Renewal Term or (ii) the completion of Phase II Construction Improvement Work, as described in Exhibit B.2, the annual rent for the Phase II Parcel shall be the higher of four dollars and thirty five cents (\$4.35) for sixty percent (60%) of the 75,000 organic tons expected to be processed on the Phase II Parcel or four dollars and thirty five cents (\$4.35) for every organic ton of waste over seventy-five thousand (75,000) tons Processed on the Phase II Parcel in the previous year ("Phase II Rent"). Rent shall be paid monthly for the actual Tons received and processed each month and any additional rent due pursuant to the Lease will be paid at the end of the year and will be trued-up against the actual rental paid for the year.

(c) Phase III Rent. At the earlier of (i) eighteen (18) months after the start of the Phase III Second Renewal Term or (ii) the completion of Phase III Construction Improvement Work, as described in Exhibit B.2, the annual rent for the Phase III Parcel shall be the higher of four dollars and thirty five cents (\$4.35) for sixty percent (60%) of the 75,000 organic tons expected to be processed on the Phase II Parcel or four dollars and thirty five cents (\$4.35) for every organic ton of waste over seventy-five thousand (75,000) tons Processed on the Phase III Parcel in the previous year ("Phase III Rent"). Rent shall be paid monthly for the actual Tons received and processed each month and any additional rent due pursuant to the Lease will be paid at the end of the year and will be trued-up against the actual rental paid for the year.

3.2 Books and Records. Tenant shall keep Books and Records according to generally accepted accounting principles consistently applied.

(a) Definition. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating only to Site Improvement costs and tonnage received and processed at the facility. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(b) Audit. Tenant agrees to make its Books and Records available to the City, or to any City auditor, or to any auditor or representative designated by the City (hereinafter collectively referred to as "**City Representative**"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting requirements under this Lease for a period of three (3) years after such report was delivered to the City. If the City wishes to audit Tenant's records, the City shall give Tenant thirty (30) days' written notice of its intention to audit. The City shall complete its audit as soon as reasonably possible. Tenant shall cooperate with the City Representative during the course of any audit. Any audit by the City shall be at Landlord's expense and shall not be done more frequently than annually. Tenant shall keep such Books and Records for seven (7) years and maintain them and/or make them

available in San Jose to the City's representative. All accounting by Tenant shall be deemed conclusively approved by Landlord after the expiration of the three (3) year period following delivery of such reports and/or accountings, unless an audit is made within said three-year period and the City claims that errors or omissions have occurred. In such event, Tenant shall retain the Books and Records and make them available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant shall require such Subtenant or Agent to provide the City with the foregoing audit right with respect to the Books and Records of such Subtenant or Agent. If an audit reveals that Tenant has understated the amount of waste Processed on the Premises, Tenant shall pay the City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City during the period in which the understatement was revealed and as further subject to interest as set forth in Section 3.5. Any overpayments revealed by an audit shall be credited towards future payments due under this Section subsequent to the audit until credited in full.

3.3 Manner of Payment.

Tenant shall pay all Rent to Landlord in lawful money of the United States of America at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such payments shall be due thirty (30) business days following the giving by the City of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.4 No Abatement or Setoff.

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as explicitly provided for in this Lease.

3.5 Interest on Delinquent Rent.

If any payment under this Section 3 is not paid within thirty (30) days following the date it is due, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay reasonable attorneys' fees and costs incurred by the City by reason of Tenant's failure to make any payments under this Section 3 within the time periods described above.

3.6 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to the City pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of any other payments under this Section.

3.7 Public Disclosure.

Tenant acknowledges that under the California Public Records Act and the City's Sunshine Policy (collectively, the "Disclosure Laws"), all Books and Records and documents maintained by Tenant (or maintained for Tenant by Tenant's agents) relating only to Site Improvement costs and tonnage received and processed at the facility (excluding legally privileged materials such as attorney-client communications), may be considered public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. The City shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of San Jose Sunshine Policy, or any law hereafter enacted as an amendment or supplement thereto or in lieu thereof. Notwithstanding the foregoing, the City agrees that the organizational documents of Tenant and its constituent members or partners as the case may be, and the partnership or entity financial records, tax returns or privileged materials and information of Tenant, its constituent partners or members, and any financial or personal identifying information with respect to tenants of the Property are not subject to disclosure hereunder.

Section 4. USES

4.1 Uses within Premises.

Tenant shall use and operate the Premises substantially in accordance with the project parameters set forth in the Construction Improvements attached hereto as Exhibit B.2. In furtherance thereof, Tenant shall use the Premises for the following uses (collectively, the "Permitted Uses"), and Tenant shall not use the Premises for anything other than the Permitted Uses without the prior written consent of the Landlord, not to be unreasonably withheld or delayed:

- (a) The construction and operation of a facility designed to convert waste products to usable energy, using any of the following methods:
 - (i) Processing of organic waste
 - (ii) Anaerobic digestion/aerobic composting

- (iii) Compost screening and storage
- (iv) Gas purification, compression and storage
- (v) Power generation

(b) Vehicle and equipment parking, maintenance shop, office and related uses.

(c) The construction and operation of facilities designed to convert waste products to usable energy using other technology, including ancillary uses such as those described above.

(d) The pursuit of activities in support of the City's Green Goals.

The list of Permitted Uses does not supersede requirements of local ordinances or laws in respect to legal uses.

Prior to the Phase II or Phase III renewal, Tenant shall be allowed to use the Phase II and Phase III site for the temporary storage of materials, equipment and supplies to facilitate operations on the Sites, but in no case for operations other than those directly supporting the Permitted Uses hereunder.

4.2 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(i) Any activity not necessary for the permitted uses that is ancillary to Tenant's use of its adjacent parcel(s)

(ii) any activity that creates a public or private nuisance but without limitation on any right given to Tenant to alter, modify, repair, restore or construct the improvements and fixtures on the Premises in accordance with all relevant laws and ordinances;

(iii) any activity that is not a Permitted Use or approved by the City in writing;

(iv) any activity that will cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(v) except for the construction work allowed pursuant to this Lease, any activity or object that will materially overload or cause damage to the Premises;

(vi) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties. Such prohibited activities do not include activities that are necessary

and integral to the Permitted uses, but otherwise include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal drug distribution, the preparation, or the use of amplified music, sound or light apparatus (other than customary indoor lighting) with such intensity as to constitute a nuisance. This section shall not be construed to limit any right given Tenant to alter, modify, repair, Restore, or construct improvements and fixtures in accordance with all relevant laws and ordinances;

(vii) any activity that will in any way unlawfully injure, obstruct or interfere with the rights of owners or occupants of adjacent properties, including rights of ingress and egress; and

(viii) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord.

(ix) any activity in violation of law.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on the City's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for uses other than the Permitted Uses, in each instance without the City's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 5. TAXES AND ASSESSMENTS

5.1 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 5.1(c)). In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 6.

Tenant specifically recognizes that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental Assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a

reassessment of any possessory interest created hereunder in accordance with applicable Law.

(b) Other Impositions. Without limiting the provisions of Section 5.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 5.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Section 6, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "**Impositions**" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character. The foregoing or any other provision in this Lease notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Landlord's fee ownership interest in the Property or Premises (including, without limitation, any real property taxes or assessments), the Landlord's interest as landlord under this Lease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Landlord's fee interest or a transfer thereof.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and Landlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

5.2 Landlord's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 6.1, if Tenant fails to pay and discharge any Impositions (including

without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 6.1, then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten (10) business days following demand.

Section 6. CONTESTS

6.1 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Property may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Property, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Property. Except as provided in the preceding

sentence, Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Section 17 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Landlord may be legally obligated to pay.

6.2 Landlord's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Landlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

Section 7. COMPLIANCE WITH LAWS

7.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Subject to the provisions of Section 39 hereof, during the Term, Tenant shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals), and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Section 17 of this Lease. The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises.

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 7.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises or the Improvements, 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 Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the

relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Section 12 or 13, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Section 13, or Sections 21.1 or 21.2.

(c) Proof of Compliance. Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section.

7.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a City. Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining regulatory approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires Landlord's approval under Section 10, Tenant shall not apply for any regulatory approvals (other than a building permit from the Landlord) without first obtaining the approval of Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any regulatory approval, Tenant shall consult and coordinate with Landlord in Tenant's efforts to obtain such regulatory approval, and Landlord shall cooperate reasonably with Tenant in its efforts to obtain such regulatory approval, provided that Landlord shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency than Landlord, if Landlord is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by

Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Landlord shall join, where required, in any application by Tenant for a required regulatory approval, and in executing such permit, provided that Landlord shall have no obligation to join in any such application or execute the permit if the Landlord does not approve the conditions imposed by the regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary regulatory approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Landlord or the City, with any and all conditions imposed by any regulatory agency as part of a regulatory approval. With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such regulatory approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any regulatory approval for Subsequent Construction activities and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 17, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any regulatory approval.

Section 8. MANAGEMENT; REPAIR AND MAINTENANCE

8.1 Management and Operating Covenants.

Following Completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of a waste handling facility. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Initial Improvements.

8.2 Tenant's Duty to Maintain.

Except as otherwise provided in this Article 8, and Sections 12 and 13 hereof, throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 8.1, and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Landlord under this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements.

8.3 Costs of Repairs, Etc.

(a) No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Initial Improvements, from and after July 1, 2011. Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Initial Improvements or any portion thereof. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Landlord's expense, or (except as provided in Section 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated. The foregoing or any other provisions of the Lease notwithstanding, Tenant shall not be required to maintain, operate or repair any matters referred to in Section 39.

(b) Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than Landlord) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Section 17, asserting that the requirements of such insurance policy or policies are not being met.

Section 9. IMPROVEMENTS

9.1 Tenant's Obligation to Construct the Initial Improvements.

Tenant shall construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions contained within the regulatory approvals for the proposed development. Landlord's issuance and recordation of a Certificate of Completion, shall conclusively establish Tenant's satisfactory completion of such construction. Any Subsequent Construction shall be performed in accordance with Section 10.

9.2 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Landlord), will vest in Landlord without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right

at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

9.3 Certification of Total Site Improvement Costs.

Tenant shall keep accurate books and records of all Site Improvement Costs incurred during the Site Improvement Period in accordance with accounting principles generally accepted in the construction industry. Site Improvement Costs incurred prior to June 15, 2011, as described and further itemized in Exhibit B.1, totaling \$770,165.83, and shall be credited toward Tenant's annual Base Rent obligation as described in Section 3 hereof. Tenant shall keep accurate books and records of all Site Improvement Costs incurred following June 15, 2011 and through the balance of the Site Improvement Period in accordance with accounting principles generally accepted in the construction industry.

Within ninety (90) days following the Site Improvement Period, Tenant shall furnish Landlord with an itemized statement of the total Site Improvement Costs certified as true and accurate by Tenant ("Site Improvement Cost Certification").

Within ninety (90) days after receipt of the Site Improvement Cost Certification, Landlord shall have the right to inspect Tenant's records regarding the Site Improvement Costs. If Landlord disagrees with the Site Improvement Cost Certification, Landlord may request that such records be audited by an independent certified public accounting firm mutually acceptable to Landlord and Tenant, provided that such request is made within ninety (90) days after expiration of the 90-day period following Landlord's receipt of the Site Improvement Cost Certification. If the Parties are unable to agree on an auditor, either Party may apply to the Superior Court of the State of California in and for the County of Santa Clara for appointment of an auditor meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application, 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 such organization of an independent auditor. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. The cost of the audit shall be paid by Landlord unless the audit discovers that Tenant has overstated the Site Improvement Costs by more than three percent (3%), in which case Tenant shall pay the entire cost of the audit. Upon delivery of the Certification of Site Improvement Costs (and completion of any audit conducted pursuant to this Section 9.3) the parties shall execute an acknowledgement of total Site Improvement Costs in a form reasonably acceptable to Landlord and Tenant, which shall be final and binding in the Parties for all purposes of this Lease.

Section 10. SUBSEQUENT CONSTRUCTION

10.1 Landlord's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Section 10, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed) do any of the following:

(i) Construct additional buildings or other additional structures, other than to replace or restore those previously existing;

(ii) Increase the bulk or height of any Construction Improvements beyond the bulk or height approved for the then-existing Construction Improvement (other than changes in the bulk or height of equipment penthouses);

(iii) Materially alter the exterior architectural design of any Construction Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Materially increase the Gross Building Area of the Premises; or

(v) Perform Subsequent Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Construction Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which in Tenant's good faith judgment, requires Landlord's approval, Tenant shall notify Landlord of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires Landlord's approval.

(c) Permits. Tenant acknowledges that Landlord's approval of Subsequent Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all regulatory approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Landlord itself in its regulatory capacity, including, without limitation, building permits.

10.2 Minor Alterations.

Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative Construction Improvements or repair or replacement of worn out or obsolete components of the Construction Improvements which do not materially affect the structural integrity of the Construction Improvements unless

otherwise required under Section 10.1(a)(i)-(vi), (b) recarpeting, repainting the interior or exterior of the Premises, groundskeeping, or similar alterations, or (c) any other Subsequent Construction which does not require a building permit (collectively, "Minor Alterations").

10.3 Construction Documents in Connection with Subsequent Construction.

With regard to any Subsequent Construction that requires Landlord's approval under this Section 10, Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings, Preliminary and Final Construction Documents are referred to as "Construction Documents"). Landlord may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Landlord shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Construction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Landlord notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Landlord disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 10.4, Landlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Landlord's previous notice of rejection, and Landlord shall approve or disapprove the completeness of the revisions to the Construction Documents within fifteen (15) days after resubmission. If Landlord fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 10.4, such failure shall not constitute an Event of Default under this Lease on the part of Landlord, but such Construction Documents shall be deemed approved by the Landlord in its proprietary capacity, provided that Tenant first provides Landlord with at least ten (10) days prior written notice, no fewer than five (5) days after resubmission, that Tenant intends to deem said Construction Documents so approved if Landlord fails to approve or disapprove the revisions by the fifteenth day.

(a) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration.

10.4 Landlord Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 10.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

10.5 Construction Schedule.

- (a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.
- (b) Reports and Information. During periods of construction, Tenant shall submit to Landlord written progress reports when and as reasonably requested by Landlord.

10.6 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by Landlord:

- (i) Landlord shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which Landlord has an approval right under Section 10.1);
- (ii) Tenant shall have obtained all permits and other regulatory approvals necessary to commence such construction in accordance with Section 10;

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with similar construction projects. In addition, in the case of Subsequent Construction which begins after the Initial Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain

them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Landlord shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, Landlord and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees to comply with the Landlord's prevailing wage policy attached hereto as Exhibit I only for any construction work on the Premises relating to Construction Improvements and Site Improvements; however, nothing herein shall require Tenant to pay Prevailing Wages for Tenant's on-going operation and maintenance of the facility or the Premises. Tenant shall also comply with any applicable, mandatory prevailing wage law of the State of California.

10.7 Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Subsequent Construction, maintenance or repair work.

10.8 As-Built Plans and Specifications.

With respect to any Subsequent Construction costing One Hundred Thousand and No/100 Dollars (\$100,000.00) as Indexed, or more, for which Landlord's approval was required under Section 10, Tenant shall furnish to Landlord one set of as-built plans and specifications with respect to such Subsequent Construction within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Landlord in its regulatory capacity.

Section 11. UTILITY SERVICES

11.1 Utility Services.

Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain public utility services). Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises. Notwithstanding the provisions hereof, Tenant shall include in its Site Improvement Costs the cost of bringing utilities to the Premises.

Section 12. DAMAGE OR DESTRUCTION

12.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Initial Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section 12.

(b) Notice. If there is any damage to or destruction of the Premises or of the Initial Improvements thereon or any part thereof, which (i) could materially impair use or operation of any material portion of the Initial Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of _____ or aggregate amount of _____. Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or

destruction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, Landlord and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such Sections may from time to time be amended, replaced, or restated.

12.2 Rent after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Initial Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 12.4. In the event of any damage or destruction to the Initial Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

12.3 Tenant's Obligation to Restore.

If all or any portion of the Initial Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 12.4, then Tenant shall, subject to Section 12.4 hereof, within a reasonable period of time (allowing for securing necessary Regulatory Approvals), commence and diligently, subject to Force Majeure, Restore the Initial Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 10 relating to Subsequent Construction and shall be at Tenant's sole expense. If insurance proceeds are available for such Restoration and Tenant is obligated under this Section 12.3 to Restore, or elects to Restore in accordance with the provisions of Section 12.4, then, subject to the rights of any Mortgagee under any Mortgage permitted in accordance with Section 36 hereunder, Tenant shall have the sole right to negotiate an insurance settlement for all claims related to the casualty, provided however, that Tenant shall use commercially reasonable efforts to insure that such settlement does not materially interfere with or delay Tenant's obligation and ability to pay Rent to Landlord or otherwise meet its obligations hereunder.

12.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate.

(i) Uninsured Casualty or Major Damage or Destruction. If an event of Major Damage or Destruction occurs during the last ten (10) years of the Term (excluding any unexercised Option to Extend), or if an event of Uninsured Casualty occurs at any time during the Term, then at the time Tenant provides Landlord with the ninety (90) day report described in Section 12.1(b) above, Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to the conditions of Section 12.4(b)). For purposes hereof, "Uninsured Casualty" will mean an event of damage or destruction for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Million and No/100 Dollars (\$1,000,000.00), as Indexed, plus, in all cases, the amount of any applicable policy deductible (except in the case of damage or destruction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Section 17.1(a)(ii), the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 17.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Section 17 hereof (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder). Proceeds of insurance shall not be deemed "available" for purposes of this Section 12 to the extent that a Mortgagee, pursuant to the terms of its Mortgage if approved by Landlord under Section 36, retains or requires the application of such proceeds for purposes other than Restoration. Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 10 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction.

(ii) Other Circumstances Allowing Termination. Notwithstanding the foregoing or subsequent provisions of this Section 12, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Section 12 if: (A) the Laws then existing would not allow Tenant to Restore the Improvements; (B) all necessary governmental approvals required for the Restoration of the Improvements cannot be obtained, within eighteen months (18) from the date of the damage or destruction; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time; or (C) in the case of Major Damage and Destruction occurring prior to the last ten (10) years of the Term (excluding any unexercised Option to Extend), if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with a licensed general contractor experienced in similar construction projects in San Jose and approved by Landlord, that at the time of completion of the Restoration, less than ten (10) years would remain in the Term (excluding any unexercised

Option to Extend). If Tenant elects to terminate based on any of the immediately foregoing determinations and Landlord reasonably disputes Tenant's determination, Landlord may submit the matter to arbitration, as set forth in Section 12.9 hereof.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 12.4(a) above, Tenant shall do all of the following:

(i) Tenant in its election to terminate described in Section 12.4(a) shall provide Landlord with a statement of the cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 12.4(a)(i) above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to Landlord, such as at least two (2) bids from experienced general contractors, and supporting documentation from Tenant's insurer as to the amount of the policy deductible, and the coverage available for the event of damage and destruction; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(A) first, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(B) second, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor;

(C) third, to Landlord in the amount equal to all accrued and unpaid amounts owed by Tenant to Landlord under this Lease as of the date of the occurrence of the event of damage or destruction; and

(D) fourth, the balance of the casualty insurance proceeds shall be distributed to Tenant.

(c) Upon termination, Tenant shall deliver possession of the Premises to Landlord and quitclaim to Landlord all right, title and interest in the Premises and any remaining Improvements.

(d) Landlord's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 12.4(a) then Landlord may, upon such occurrence during the Initial Term, by notice in writing given to Tenant within 60 days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, or (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Section 17 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million and No/100 Dollars (\$1,000,000.00), as Indexed annually plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 17 hereof as of the date of casualty, or the actual amount of the policy deductible) and require Tenant to Restore the Premises in accordance with Section 12.4(b). During the last 10 years of the Term (excluding any unexercised option to extend), Landlord will not have the right to elect to pay the incremental cost and cause Tenant to Restore unless Tenant agrees to do so, in its sole discretion.

12.5 Effect of Termination.

If Tenant elects to terminate the Lease under Section 12.4(a) above, and Landlord elects not to continue the Lease in effect if allowed under Section 12.4(d), then, on the date that Tenant shall have fully complied with all other provisions of Section 12.4(b) to the satisfaction of Landlord, this Lease shall terminate (except that, for purposes of payment of Rent, the effective date of termination shall be the date of the event of damage or destruction). Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to payment to Landlord of accrued and unpaid Rent, through the date of the event of damage or destruction; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, termination of this Lease under this Section 12 shall not limit the right of a Mortgagee to a New Lease under Section 36 unless such Mortgagee has agreed otherwise. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease. At Landlord's request following any termination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

12.6 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Landlord, Tenant and, subject to Section 36, any Mortgagee, or not yet collected, shall be paid to and retained by Landlord; subject to the rights of any Mortgagee under a Mortgage to such insurance proceeds if approved by Landlord under Section 36.8.

12.7 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Landlord or Tenant by reason of damage to or destruction of any Improvements, if any (other than business or rental interruption insurance), must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 12, and subject to the rights of any Mortgagee.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Section 12, and if Tenant Restores the Improvements and there is a Mortgage encumbering the Lease, then any insurer paying compensation in excess of One Million and No/100 Dollars (\$1,000,000.00), as Indexed (or any lesser amount if required by any Mortgagee), under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Mortgagee that is the holder of any Mortgage which is the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Landlord designated by such Mortgagee, for purposes of Restoration only. If there is no Mortgage encumbering the Lease, then the insurance proceeds shall be paid to a trustee (which shall be a bank or trust company) designated by Landlord within twenty (20) days after written request by Tenant, having an office in San Jose. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of One Million and No/100 Dollars (\$1,000,000.00) as Indexed or less directly to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, the Landlord shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such

purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Landlord shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 12 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

12.8 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

12.9 Arbitration of Disputes.

(a) Estimators. In the event Landlord and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Section 12.4(a)(i) or if Landlord disputes Tenant's determination allowing for termination under Section 12.4(a)(ii), such disputes shall be determined in the manner provided in this Section 12.9. Either Party may invoke the provisions of this Section 12.9 at any time that a dispute as to any such amount exists, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute, and for disputes regarding time to complete Restoration under Section 12.4(a)(ii), also having at least the equivalent amount of experience in commercial real estate development matters. Each such estimator shall be competent, licensed, qualified by training and experience in the City, disinterested and independent. Each estimator (or if either Party fails to appoint its estimator within such twenty (20) business day period, the estimator appointed by the other Party) shall make an independent determination of the disputed amount or time for completion of Restoration, as the case may be, in accordance with the provisions hereof. The estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each estimator shall complete, sign and submit its written estimate of the disputed construction, replacement cost, or time for completion of Restoration, as the case may be, within fifteen (15) business days after the appointment of both estimators, unless the Parties agree to permit a longer period of time. If the higher number estimating the cost or number of days for completion of Restoration is not more than one hundred ten percent (110%) of the lower estimate, the disputed amount shall be determined for purposes of this Lease to equal the average of the two (2) estimates.

Section 13. CONDEMNATION

13.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Section 13.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

13.2 Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "Total Condemnation"), this Lease shall terminate as of the Condemnation Date.

13.3 Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Article 13, a Condemnation of less than the entire Premises, of less than Tenant's leasehold estate, or of property located outside the Premises that substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available, shall be a Substantial Condemnation, and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Landlord) if Landlord and Tenant in the reasonable discretion of each of them determine that such Condemnation renders the Project untenable, unsuitable or economically infeasible for its intended use of the Premises consistent with this Lease. Without limiting the foregoing, any dispute between Tenant and Landlord with respect to whether the remaining portion of the Premises shall be untenable, unsuitable or economically infeasible for its intended use shall be resolved by the dispute resolution procedures in accordance with the provisions of Section 27.3 hereof.

(b) Partial Condemnation. Rent shall be reduced as a result of the Partial Condemnation.

13.4 Awards.

Except as provided in Section 13.1(a) and in Sections 13.5 and 13.6, Awards and other payments to either Landlord or Tenant on account of a Condemnation, less costs, fees and expenses of either Landlord or Tenant (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("Net Awards and Payments") shall be allocated between Landlord and Tenant as follows, and subject to the rights of any Mortgagee if approved by Landlord under Section 36.8:

(a) First, to the payment of all accrued and unpaid Rent.

(b) Second, in the event of a Partial Condemnation, Tenant shall furnish to Landlord evidence satisfactory to Landlord of the total cost of the Restoration required by Section 13.3(b). Upon Landlord approval of such costs, which approval shall not unreasonably be withheld, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant to be held and applied to pay the cost of Restoration of the Premises.

(c) Third, to the Landlord for the value of the condemned land only, considered as unimproved and encumbered by this Lease and subject to the particular uses of the Premises existing immediately prior to the date of the Condemnation, and without reference to, or inclusion of, Landlord's reversionary interest in the value of the Improvements (the "Condemned Land Value");

(d) Fourth, to any Mortgagee, pursuant to a Mortgage as and to the extent provided therein, for payment of all sums secured by its Mortgages that remain outstanding, together with its reasonable out-of-pocket expenses and charges in collecting the Net Awards and Payments, including without limitation its reasonable attorneys fees incurred in the condemnation.

(e) Fifth, Tenant shall receive an amount equal to the value of Tenant's leasehold interest in this Lease, including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term or any option term whether the option was exercised or not, and

(f) Sixth, the balance of the Net Awards and Payments shall be divided proportionately between Landlord, for the value of Landlord's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term or any option term whether the option was exercised or not, less any proceeds distributed in repayment of any mortgages pursuant to Section 13.4(d).

(g) If no Mortgagee has received a portion of the Award pursuant to subparagraph (d) above, then, the balance of the Net Awards and Payments shall be divided proportionately between Landlord, for the value of Landlord's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of its Leasehold Interest and the Improvements for

the remaining unexpired portion of the Term or any option term whether the option was exercised or not.

Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Landlord or Tenant on account of any interest in the Premises or the Improvements separate and apart from Condemned Land Value, the value of Landlord's reversionary interest in the Improvements, Tenants leasehold interest in this Lease, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term of this Lease or any option term whether the option was exercised or not, shall be paid to Landlord or Tenant, as applicable, as so designated by the condemning authority or judgment. Notwithstanding Sections (e), (f) and (g) above, if less than all of the Premises is Condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Landlord upon such termination shall be treated for purposes of this Section as received by Landlord on account of its share of the Award and the cash payment payable to Landlord shall be reduced by a like amount and instead paid to Tenant, and any portion of the Net Awards and Payments that is payable to Tenant shall instead be paid to Landlord to the extent Tenant owes such amounts to Landlord in satisfaction of accrued and unpaid Rent owed by Tenant to Landlord under this Lease for periods prior to the Condemnation Date.

(h) Notwithstanding anything to the contrary set forth above, in the event of a Substantial Condemnation resulting in the termination of this Lease, all Net Awards and Payments shall be allocated as set forth in this Section 13.4(a)-(g) and shall be paid for the express benefit of Landlord to the Mortgagee holding a first lien encumbrance on Tenant's interest in the Lease and the Premises, provided that such Mortgagee agrees to distribute the Net Awards and Payments pursuant to the allocation set forth in this Section 13.4(a)-(g). As provided in this Section 13.4, Improvements shall mean Initial Improvements.

13.5 Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, and the entire Award shall be payable to Tenant.

Section 14. LIENS

14.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases

and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 5, (iii) Mortgages permitted under Section 36, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 36, and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 5. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

14.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest, or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow Landlord from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30) days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within sixty (60) days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

Section 15. ASSIGNMENT AND SUBLETTING

15.1 Assignment/Transfer.

(a) Consent of Landlord. Except as otherwise expressly permitted in Sections 15.1(c) and Sections 15.3, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign or sell any interest in this Lease either voluntarily or by operation of law (both (i) and (ii) above, a "Transfer"), without the prior written consent of Landlord, which consent shall not be withheld or delayed unreasonably by Landlord. Except with respect to Transfers permitted under Sections 15.1(c), 15.3, consent may be withheld by Landlord in its sole discretion in the case of a

partial Transfer described in Section 15.1(b). Landlord shall not withhold its consent to any Transfer (other than a partial Transfer as described in Section 15.1(b)) if the conditions set forth in Section 15.1(d) are satisfied and if Landlord determines, in its reasonable judgment, that the transferee (i) has the financial capacity to own and operate the Project and to perform the obligations hereunder; (ii) has a good reputation; and (iii) has sufficient experience in the operation and maintenance of projects of a type and size comparable to the Project.

(b) Partial Transfer. Tenant shall not effect a Transfer hereunder of less than the entire Lease or leasehold without Landlord's consent, which may be withheld in Landlord's sole discretion.

(c) Mortgaging of Leasehold. Notwithstanding anything herein to the contrary, at any time during the Term of this Lease after Completion of the Initial Improvements, Tenant shall have the right, without Landlord's consent, to sell, assign, encumber or transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in Section 36 hereof. Landlord agrees to execute a consent to assignment and such other documentation reasonably required by such Mortgagee to evidence its interest under such Mortgage.

(d) Conditions. Any Transfer described in Subsection (a) or (b) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(i) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of "Tenant" under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project (subject to Section 15.1(j)). It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Landlord would have had, had there been no such Transfer.

(ii) all instruments and other legal documents involved in effecting the Transfer shall have been submitted to Landlord for review, including the agreement of sale, transfer, or equivalent, any Regulatory Approvals, and any necessary approvals under the Subdivision Map Act, and Landlord shall have approved such documents which approval shall not be unreasonably withheld or delayed;

(iii) Tenant shall have complied with the provisions of Subsection (e) of this Section 15.1;

(iv) there shall be no uncured Event of Default or Unmatured Event of Default on the part of Tenant under this Lease uncured or any of the other documents or obligations to be assigned to the proposed transferee, or if uncured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to Landlord in its sole discretion.

(v) the proposed transferee (A) has demonstrated to Landlord's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, and (B) is subject to the jurisdiction of the courts of the State of California;

(vi) the proposed Transfer is not in connection with any transaction for purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Landlord in its sole discretion but expressly excluding the public trading of shares on the open market; and

(vii) Tenant deposits sufficient funds to reimburse Landlord for its reasonable legal expenses to review the proposed Transfer.

(e) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed.

(f) No Release of Tenant's Pre-Transfer Liability or Waiver by Virtue of Consent. The consent by Landlord to an assignment hereunder is not in any way to be construed to (i) from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder prior to the effective date of such Transfer, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

(g) Notice of Significant Changes; Reports to Landlord. Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as

Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(h) Determination of Whether Consent is Required. At any time Tenant may submit a request to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referred to herein as a "proposed transfer") or for a decision by Landlord as to whether in its opinion a proposed transfer requires Landlord consent under the provisions of this Section 15. Within thirty (30) days of the making of such a request and the furnishing by Tenant to Landlord of all documents and instruments with respect thereto as shall be reasonably requested by Landlord, Landlord must notify Tenant in writing of Landlord's approval or disapproval of the proposed transfer or of Landlord's determination that the proposed transfer does not require Landlord's consent. If Landlord disapproves the proposed transfer, or determines that it requires the consent of Landlord, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(i) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 15.1 will not be deemed to prevent (i) the granting of subleases so long as such subletting is done in accordance with Section 16.4, (ii) the granting of any Mortgage expressly permitted by this Lease subject to compliance with Section 36 and other applicable terms of this Lease; or (iii) any Permitted Transfer, as defined in Section 15.3.

(j) Landlord's Participation in Net Transfer Proceeds.

(i) Definitions.

(A) "Lease Purchase Price" means the gross amount paid by a purchaser in consideration of the value of this Lease and leasehold pursuant to a Transfer (other than a Permitted Transfer or a refinancing under Section 38.14).

(B) "Net Transfer Proceeds" shall mean all sums actually received by or on behalf of Tenant in consideration of the value of this Lease and leasehold upon the Transfer (other than a Permitted Transfer) after subtracting the following: (i) all verifiable and actual brokerage commissions paid to an independent broker licensed by the California Department of Real Estate; (ii) all amounts incurred to repay, and all amounts paid in connection with the repayment of, all Mortgages and any debt secured by the Net Available Increment or Business Tax Reimbursement, including without limitation prepayment penalties and other lender fees and costs; and (iii) all other reasonable and customary expenses or sums actually paid or incurred by Tenant directly in connection with such Transfer including, without limitation, reasonable attorneys' fees and costs and amounts paid to the Landlord to reimburse it for its expenses in connection with such Transfer.

(ii) Distribution of Net Transfer Proceeds. Any Net Transfer Proceeds shall be divided equally between Landlord and Tenant.

(k) Reporting of Proceeds from Transfer. No less than 15 days prior to a Transfer, Tenant will deliver to Landlord, an estimated closing statement that includes the best estimate of the following items:

(i) Estimated Lease Purchase Price;

(ii) Expenses to be incurred in connection with such Transfer, as set forth in Section 15.1(j)(i)(B) above;

(iii) The calculation of Net Transfer Proceeds, including Landlord (and, if applicable, City's) share thereof in accordance with Section 15.1(j) hereof.

(l) Manner of Payment. The estimated closing statement shall be updated as of the date for close of escrow under the Transfer to show the actual Net Transfer Proceeds and Landlord's share thereof. Tenant shall pay Landlord's share of the Net Transfer Proceeds at close of escrow of any such Transfer. Landlord may reference in any estoppel certificate or other representation requested from Landlord that payment of Landlord's share of Net Transfer Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Transfer hereunder. Within forty-five days (45) after any such Transfer, the transferor Tenant shall submit to Landlord a report prepared in accordance with generally accepted accounting principles consistently applied, and certified by Tenant's Chief Financial Officer (or equivalent position) as complete and correct in all material respects, confirming the actual amount of Net Transfer Proceeds, and the amount due to the Landlord. At Landlord's option, any overpayments may be either refunded to Tenant or applied to any other amount then due and unpaid. Tenant shall accompany the statement of Net Transfer Proceeds with the amount of any underpayments.

15.2 Assignment of Rents.

Tenant hereby assigns to Landlord all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent hereunder, provided that such assignment is for security purposes only and Tenant may collect and use such rents until Tenant is in default hereunder; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 36 until such time as Landlord has terminated this Lease (subject to Landlord's agreement to enter into a New Lease with Mortgagee and all other express provisions of this Lease protecting Mortgagee's interest in this Lease), at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section 15.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Landlord shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an

Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Landlord the rents so collected (less the actual cost of collection) to the extent necessary to pay Landlord any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

15.3 Permitted Transfers.

Notwithstanding anything stated to the contrary in this Lease including, without limitation, the provisions of this Section 15, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord or City under this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each, a "Permitted Transfer"):

- (a) Transfers of partnership or membership interests in Tenant between members or partners in Tenant, regardless of whether such transfers result in a change in control of Tenant, so long as either has a controlling interest in Tenant; or
- (b) Any Transfer to an Affiliate of Tenant or any Transfers between or among Tenant Affiliates;
- (c) Any Transfer solely and directly resulting from the death or incapacity of an individual, and any Transfer for purposes of estate planning so long as the transferor remains in complete legal control of the transferred property;
- (d) Any Transfer that results in a mere change in identity or form rather than in ownership (for example, the Transfer by the partners of a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held in the general partnership);
- (e) Any Transfer of a limited partnership interest or a membership interest in tenant;
- (f) Transfer to a limited partnership or a limited liability company in which Tenant or an Affiliate of Tenant is a general partner or managing member; or
- (g) Any assignment, transfer or subletting of all or a portion of the Premises or Lease to a corporation, partnership, limited partnership or limited liability company or other entity provided that Tenant or an affiliate of Tenant is a majority shareholder, majority member or majority partner of such entity.

Notwithstanding anything in this Section 15.3, Tenant shall provide Landlord with thirty (30) days' notice of a Permitted Transfer and will also provide Landlord with a copy of any transfer documents.

Section 16. INDEMNIFICATION OF LANDLORD

16.1 Indemnification of Landlord.

Subject to the provisions of Section 39 hereof, Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring on the Premises which is caused by Tenant or any of its Agents, Invitees or Subtenants; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any latent, design, construction or structural defect relating to the Initial Improvements located on the Premises and any subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (v) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits in connection with use or occupancy of the Premises; (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

16.2 Immediate Obligation to Defend.

Subject to the provisions of Section 39 hereof, Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 16.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined that the claim made falls outside the scope of the indemnity provisions of this Agreement, Landlord shall reimburse Tenant for Tenant's reasonable attorneys fees and other costs incurred in defending such claim.

16.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 16.1 or any other indemnification provision of this Lease.

16.4 Survival.

Tenant's obligations under this Section 16 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease as to occurrences prior to such termination.

16.5 Other Obligations.

The agreements to Indemnify set forth in Section 16 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

16.6 Defense.

Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptly to use the San Jose City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten (10) business days after receipt by Tenant of an invoice therefor.

16.7 Release of Claims Against Landlord.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Landlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties.

Section 17. INSURANCE

Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last

day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 17, the types and amounts of insurance as set forth in Exhibit G.

Section 18. HAZARDOUS MATERIALS

18.1 Hazardous Materials Compliance.

(a) **Compliance with Hazardous Materials Laws.** Subject to the provisions of Section 39 hereof, Tenant shall comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premises and the Construction Improvements, to comply with all applicable Hazardous Materials Laws. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment, including, without limitation construction, landscaping and maintenance materials and equipment, that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials the Handling of which do not require a permit or license from, or that need not be reported to, a governmental agency, and which are used in compliance with all applicable laws, and (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general maintenance or office purposes so long as such Handling is at all times in full compliance with all Environmental Laws.

(b) **Notice.** Except for Hazardous Materials permitted by Subsection 18.1(a) above, Tenant shall advise Landlord in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any newly discovered Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) new subsurface environmental condition or (B) Hazardous Materials Claims, (iii) any Release of Hazardous Materials at the Premises caused by Hazardous Materials Handling activities at the Premises ("new Release"), and (iv) Tenant's discovery of the presence of new Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Landlord orally as soon as possible of any emergency or non-emergency regarding any new subsurface environmental condition or new Release. In addition, Tenant shall provide Landlord with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communication, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 18) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications); provided, however, such non-disclosure of such privileged

communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including without limitation, this Section 19).

18.2 Hazardous Materials Indemnity.

Subject to the provisions of Section 39 hereof, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to (A) any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, its Agents, Invitees or any Subtenants (other than Landlord and its Agents and Invitees); (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Landlord and its Agents and Invitees) to comply with applicable Hazardous Materials Laws; or (C) any failure by Tenant to comply with the obligations contained in Section 18.1. Notwithstanding the foregoing, in no event shall Tenant have any indemnity obligations hereunder with respect to Losses arising from or related in any way to any use, Handling, production, transportation, disposal, storage or Release of Hazardous Materials located in, on or under the Premises as of July 1, 2011 (and any increase in the concentrations thereof which may occur after July 1, 2011). Further notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord, City or their respective agents or employees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Landlord hereunder and shall be due and payable from time to time immediately upon Landlord's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

Section 19. DELAY DUE TO FORCE MAJEURE

19.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 19.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section 19.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

Section 20. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

20.1 Landlord May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Landlord, Landlord may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a Condemnation or an impairment of Tenant's contract with Landlord.

20.2 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Landlord for a period of thirty (30) days (or, if Section 18.1(c) is applicable, which failure continues for five (5) business days after written notice from Landlord), and is not the subject of a contest under Section 5, then, Landlord may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 5, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

20.3 Tenant's Obligation to Reimburse Landlord.

If pursuant to the provisions of Sections 18.1(c), 20.1, or 20.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Landlord's demand until payment is made.

Landlord's rights under this Section 20 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

Section 21. EVENTS OF DEFAULT; TERMINATION

21.1 Events of Default.

Subject to the provisions of Section 21.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

(a) Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 21.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Landlord shall not be required to give such notice on more than three occasions during any Lease year, and failure to pay any Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(c) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(d) Tenant makes a general assignment for the benefit of its creditors;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Landlord, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(g) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(h) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease.

21.2 Special Cure Rights.

If an Event of Default occurs, Landlord shall not terminate this Lease or Tenant's right to possession of the Premises unless after notice, given after the Event of Default occurs, and sixty (60) days' opportunity to Tenant or a Bona Fide Institutional Lender of Tenant holding a mortgage otherwise allowed pursuant to Section 36 or the successor-in-interest to or the assignee of such Person's interest in Tenant, either Tenant fails to cure such default within such sixty (60)-day period or, if the Event of Default is not reasonably capable of cure within such sixty (60)-day period, Tenant fails to commence curing the Event of Default within such sixty (60)-day period and thereafter diligently pursue cure of the Event of Default to completion. Notwithstanding the foregoing, Landlord shall not terminate this Lease or Tenant's right to possession of the Premises after such Event of Default if the Bona Fide Institutional Lender (for the purposes of this Section, the "Lender") holding a mortgage otherwise allowed pursuant to Section 36 hereof shall have given notice to the Landlord of its intent to cure such Event of Default by Tenant and provided that the Lender shall commence attempts to cure any such Event of Default which is capable of cure as soon as is practical. (Nothing in this agreement shall require such Lender to attempt to cure.) Lender shall be required to cure any monetary defaults by Tenant within 30 days of the notice of Default and shall diligently pursue the cure of any non-monetary defaults capable of cure and the Landlord shall not terminate this Lease during the Lender's attempt to cure for sixty (60) days after Lender's notice of its intent to cure described above or such longer period as shall be reasonably required. If, in order to effect such cure, Lender shall find it necessary to acquire Tenant's interest in this Lease, Lender's right to cure shall be extended as necessary to include foreclosure or other proceedings necessary therefor. If the Lender acquires title to Tenant's interest in this Lease, the Lender shall have the right to assign its rights hereunder to a substitute tenant the identity and qualifications of which shall be subject to the sole reasonable approval by the Landlord provided that the substitute tenant or affiliate thereof shall have succeeded to Tenant's interest in that certain Agreement between Landlord and Tenant for Organics Processing Services dated _____, 2011 and shall have executed all documents reasonably required by Landlord to evidence the new Tenant's interests and obligations hereunder and under the Organics Processing Services agreement described above. .

21.3 Lender's Rights Upon Termination.

If this Agreement terminates for any reason, including, without limitation, a default by Tenant hereunder or rejection of this Lease in any bankruptcy proceeding, and within thirty (30) days after the notice to the Lender of such termination described herein the Lender, by Notice, requests Landlord to enter into a new Lease, then Landlord shall enter into a new Lease with the Lender (or a substitute tenant subject to approval of the Landlord as described above) within thirty (30) days after the giving of said Notice by the Lender, subject to the requirement that the Lender continue to keep current all rents owing hereunder up to and including the effective date of such assignment. Unless the parties otherwise agree, such new Lease shall continue for the period which would have constituted the remainder of the term of this Lease including, without limitation, any option periods if exercised by the Lender or its nominee pursuant hereto, and shall otherwise have the exact same terms, conditions and language as this Lease.

Section 22. REMEDIES

22.1 Landlord's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or equity. All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others.

22.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this

Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

(b) No Termination. No act by Landlord allowed by this Section 22.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 22.2(a), the rent that Landlord receives from reletting shall be applied to the payment of:

(i) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 22, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 22.2(c)(ii), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

22.3 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(v) "The worth at the time of the award", as used in Section 22.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 22.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 22.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of

redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 15 Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Section 36.

22.4 Continuation of Subleases and Other Agreements.

Subject to the terms of any Non-Disturbance Agreements entered into by Landlord in accordance with Section 12.4 hereof, Landlord shall have the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases and other agreements then in force, as above specified.

Section 23. EQUITABLE RELIEF

23.1 Landlord's Equitable Relief.

In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

23.2 Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

Section 24. NO WAIVER

24.1 No Waiver by Landlord or Tenant.

No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless

clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

24.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

Section 25. DEFAULT BY LANDLORD; TENANT'S REMEDIES

25.1 Default by Landlord; Tenant's Exclusive Remedies.

Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

Section 26. TENANT'S RECOURSE AGAINST LANDLORD

26.1 No Recourse Against Specified Persons.

No commissioner, officer or employee of Landlord or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for

any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

Section 27. ESTOPPEL CERTIFICATES BY TENANT

27.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein.

Section 28. ESTOPPEL CERTIFICATES BY LANDLORD

28.1 Estoppel Certificate by Landlord.

Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Landlord, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any prospective subtenant, mortgagee or transferee of Tenant's interest in this Lease.

Section 29. APPROVALS BY LANDLORD

29.1 Approvals by Landlord.

Landlord represents to Tenant that the Landlord's City Manager or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if the City Manager determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Landlord's best interests. The Landlord City Manager's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the Agency Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable law, including the City's Charter, or the express language of this Lease.

29.2 Fees for Review.

Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement and Subsequent Construction. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposal, except only in any instance where Landlord has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

Section 30. NO MERGER OF TITLE

30.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

Section 31. QUIET ENJOYMENT

31.1 Quiet Enjoyment.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord.

31.2 Landlord Right to Enter.

Landlord shall have the right to enter upon reasonable prior notice in order to fulfill its obligations under Section 39 and Exhibit B.3. In addition Landlord shall have the right to enter for access from Los Esteros Road in order to maintain, repair or replace sanitary sewer pump station and related appurtenances.

31.3 Easement.

Landlord shall grant Tenant a non-exclusive easement for ingress and egress and utility purposes over the existing easement/roadway used by Zanker Road Resource Management, Ltd.

Section 32. SURRENDER OF PREMISES

32.1 End of Lease Term.

(a) Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises with all Improvements, repairs, alterations, additions, substitutions and replacements thereto in accordance with Section 9.2. Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination.

(b) Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Landlord has entered into Non-Disturbance Agreements which Landlord has agreed to assume.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

32.2 Partial Surrender – Phases 2 & 3

In the event that either or both of Phase 2 or Phase 3 Leaseholds are terminated pursuant to Section 2.4, the Tenant shall promptly surrender that portion of the Premises that has been terminated to Landlord. In the event of such termination, Tenant agrees to comply with all reasonable requests to record such evidence that would indicate a termination of any ground lease encumbrance of the fee with respect to such surrendered leasehold.

Section 33. HOLD OVER

33.1 Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of Landlord. If Tenant holds over without Landlord's consent, at Landlord's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant with Rent calculated at the rate of one hundred twenty-five percent (125%) of then comparable rents for similar projects from the date of hold-over.

Section 34. NOTICES

34.1 Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Landlord:

with a copy to: Office of the City Attorney

To Tenant:

with a copy to:

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time

by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

34.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 34.2.

Section 35. INSPECTION OF PREMISES BY LANDLORD

35.1 Entry.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Section 20 and/or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. If Landlord elects to perform work on the Premises pursuant to Section 20, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord, its agents or employees, provided Landlord uses reasonable

diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

35.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior.

35.3 Notice, Right to Accompany.

Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency for the purposes set forth in Sections 35.1 and 35.2. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 35.1 and 35.2.

35.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Landlord) to the inclusion of a provision similar to this Section 35.4 in its Sublease) to require each Subtenant to permit Landlord to enter its premises for the purposes specified in this Section 35.

Section 36. MORTGAGES

36.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 36, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 14.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Land in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgage of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 36 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

36.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. At any time and from time to time during the Term, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate created by this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 36.9(b)) shall only apply to the most senior Mortgagee, unless such Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

36.3 Notice of Liens.

Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

36.4 Limitation of Mortgages.

(a) Limitations. A Mortgage may be made only for the purpose of financing of construction of Improvements, any permanent take-out financing, acquisition financing by a transferee of Tenant's interest in this Lease or the refinancing of permitted Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Landlord. Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(b) Statement. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either

Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively establish that such Mortgage is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall furnish Landlord true, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

36.5 Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 36.1(b) no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property.

36.6 Institutional Lender; Other Permitted Mortgagees.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, or (ii) Tenant in connection with purchase money financing for a Transferee of the Lease, or (iii) any other lender that shall have been approved by Landlord in its sole and absolute discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the structure, financial capacity, and experience of such other lender. In any instances in which Landlord's consent is so required, Landlord shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within thirty (30) days after the receipt of such written notice constitutes approval, and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such 30 day period.

36.7 Rights Subject to Lease.

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless expressly assuming such obligation. Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at foreclosure sale (other than a Mortgagee), shall be required to Restore in accordance with the requirements of this Lease. Whether or not a Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein, as hereafter amended or extended from time to time. If Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts to sell its tenancy interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

36.8 Required Provisions of any Mortgage.

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; (b) that Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole discretion.

36.9 Notices to Mortgagee.

(a) Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Landlord, addressed to such Mortgagee at the address last

furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 36.

(b) Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City of San Jose, as landlord, and _____ as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address: _____."

Section 37. NO JOINT VENTURE

37.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

Section 38. REPRESENTATIONS AND WARRANTIES

38.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California, and duly registered and authorized to conduct business in the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (I) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Landlord in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

38.2 Representations and Warranties of Landlord.

Landlord represents, warrants and covenants to Tenant as follows, as of the date hereof and as of the Commencement Date:

(a) Landlord is duly authorized and existing under the laws of the State of California as a municipal corporation, that Landlord, upon approval of its governing board, has full right, power and authority to enter into this Lease and to carry out the actions contemplated by this Lease. Upon Tenant's request, Landlord will give Tenant a copy of a resolution of the Landlord's governing board authorizing Landlord to enter into this Lease.

(b) Landlord is the sole owner in fee simple of the Premises.

(c) The execution and delivery of this Lease and the performance by Landlord hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Landlord.

(d) The execution, delivery and performance of this Lease does not or will not violate or result in a violation of, contravene or conflict with, or constitute a default by Landlord under (A) any agreement, document or instrument to which Landlord is a party or by which Landlord is bound, or (B) any law, statute, ordinance, or regulation applicable to Landlord.

Section 39. LIABILITIES/INDEMNIFICATION

39.1 Landlord shall be solely responsible for (1) the physical, geotechnical and/or environmental condition of the Premises, including, without limitation, any Hazardous Materials, any Regulated, Designated or Non-Inert Materials in, on, under, or above, or about the Premises (including, but not limited to, all previously landfilled materials, soils and groundwater conditions) which occurred or were in existence prior to July 1, 2011, and (2) any laws applicable to such conditions, including without limitation, Hazardous Materials laws. Tenant shall be responsible for the cost of all Improvements as described in Exhibits B.1 and B.3, including to the extent that such work described in Exhibits B.1 and B.3 remediates the liability for pre-existing conditions on the Premises.

39.2 Subject to the limitations set forth in Section 39.3 hereof, Landlord does hereby indemnify and hold Tenant, its owners, agents, subtenants and assigns free and harmless against (a) any damage or deficiency resulting from any misrepresentation, breach of warranty or non-fulfillment of any provisions of this Lease on the part of the City or from any misrepresentation in or omission from any certificate, financial record, or other instrument furnished to or to be furnished to Tenant pursuant to the terms of this Lease; and (b) all actions, suits, proceedings, demands, assessments, financial assurance requirements, judgments, costs, and expenses, of any kind, on account of any business operations or any other activities occurring on the Premises prior to July 1, 2011; and (c) any and all claims for damages of any kind, including cleanup/corrective action expenses and reasonable attorney's fees and costs of any kind related to the presence, spillage, leaking, maintenance, delivery or storage of any toxic, Hhazardous Waste Materials or Regulated, Designated

waste materials, or Non-Inert waste materials landfilled/placed on the Premises at any time prior to July 1, 2011. The indemnity obligations of this Section shall survive this Lease.

39.3 Tenant shall indemnify, defend, and hold harmless Landlord from any loss, cost, damage, liability, judgment, or expense, including consultants and attorneys' fees, actually incurred or sustained by Landlord in connection with all actions, claims, suits, penalties, obligations, liabilities, damages to the Premises, injuries to persons, environmental claims, including but not limited to (a) the introduction of Hazardous Materials to the Premises, or (b) the Exacerbation of Existing Contamination or the Exacerbation of any Unknown Contamination which may be caused by Tenant or its agents' unapproved activities pursuant to this Lease or arising out of any connection with such activities, whether such damage or claim shall accrue or be discovered before or after the termination of this Lease (or any breach by licensees of any of its obligations under this Lease), Tenant specifically, and not by way of limitation agrees that it shall be responsible for compensating Landlord for any violation by Tenant or its agents of an order or any post-closure regulatory requirements including, but not limited to, any monitoring and reporting which Tenant specifically assumes pursuant to Exhibit B.3 hereof; however, Tenant shall be obligated to provide Landlord with reasonable cooperation and access in order for Landlord to comply with its legal obligations. This shall include providing ingress and egress to City or its contractor, as well as access to affected areas, including the removal of any equipment, piles, or other obstructions as reasonably needed to perform the required work, as well as to provide copies of any documents or records necessary pertaining to compliance requirements. Provided, however, except as set forth in Exhibit B-3 hereof, Tenant shall have no direct obligation to comply with any orders or any post-closure regulatory requirements including, but not limited to any maintenance, monitoring or reporting. However, notwithstanding anything to the contrary contained herein, Tenant shall have no liability under this Lease as a result of the mere discovery of any Hazardous Materials on the Premises not previously disclosed in the environmental reports or the discovery of any existing contamination in a location on the Premises previously unknown to Landlord. As used herein, "Exacerbation" shall mean any unapproved action taken by Tenant or its agents the effect of which is to cause the spread or migration of existing contamination or any unknown contamination to areas of soil and/or groundwater on the Premises that would not have occurred but for such actions. "Exacerbation" shall exclude any excavation or grading activities required for the construction of the Initial Improvements on the Premises provided that such activities are conducted in accordance with standard industry practices and precautions and are performed in accordance with applicable laws, statutes, codes and regulations. The indemnity obligations of this section shall survive this Lease.

39.4 In the event of any conflict between the provisions of this Section 39 and the terms or provisions of this Lease, the terms or provisions of this Section shall prevail and be controlling.

Section 40. GENERAL

40.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Jose, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 19 relating to Force Majeure.

40.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and Sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease 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 (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

40.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term "Tenant," "Landlord" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

40.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Section 36 with regard to Mortgagees.

40.5 Real Estate Commissions.

Landlord is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Landlord each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

40.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

40.7 Entire Agreement.

This Lease including the Exhibits constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

40.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

40.9 Governing Law; Selection of Forum.

Landlord and Tenant agree that the law governing this Lease shall be that of the State of California; and that in the event that suit shall be brought by either party to this Lease, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

40.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit H. Promptly upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Landlord and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

40.11 Extensions by Landlord.

Upon the request of Tenant, Landlord may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

40.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. Landlord's City Manager is authorized to execute on behalf of the Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the City Manager determines that the document or agreement is necessary or proper and is in the Landlord's best interests.

40.13 Effective Date.

This Lease shall become effective on July 1, 2011. Where used in this Lease or in any of its exhibits, references to "the date of this Lease," the "reference date of this Lease," "Lease Date" or "Effective Date" will mean July 1, 2011.

40.14 Severability; Survival.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

Section 41. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Additional Rent means any and all sums that may become due or be payable by Tenant under this Lease.

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with another Person.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of San Jose), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders and who is not an Affiliate of Tenant: (i) a

savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), as Indexed, and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender, and (3) "Special Affiliate" means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Books and Records as defined in Section 2.2(f).

Business Taxes means business taxes paid by Tenant pursuant to Sections 5.04.420 and 5.04.430 of the San Jose Business Tax Ordinance, as amended from time to time.

Certified Site Improvement Costs or Site Improvement Costs Certification as defined in Section 9.3.

City means the City of San Jose, a municipal corporation.

City Manager means the City Manager of the City of San Jose.

Commencement Date shall mean July 1, 2011.

Commercial General Liability Insurance as defined in Section 17.

Completion means completion of construction of all or any applicable portion of the Initial Improvements.

Completion Date means the date of the issuance of the Certificate of Completion.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse

condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Condemned Land Value as defined in Section 13.4(b).

Construction Documents as defined in Section 10.4.

Construction Improvements as defined in Exhibit B.2

Control means: (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract or operation of Law or otherwise, and Controlled and Controlling have correlative meanings.

Common Control means that two Persons are both Controlled by the same other Person.

CPI means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting

from a defect in Landlord's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Foreclosure means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Materials means any material that, because of its quantity, concentration or 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. Hazardous Materials includes, without limitation, any material or substance defined as a "hazardous substance," or "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 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Materials Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Landlord, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Materials Laws means any present or future federal, state or local Laws relating to Hazardous Materials (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on,

under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Indemnified Parties means Landlord, City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation; all of the Agents of Landlord or the City, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Jose-San Francisco-Oakland area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Landlord shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time.

Initial Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Property pursuant to this lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Landlord means the City of San Jose.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, including, without limitation, Hazardous

Materials Laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

Lease means this Ground Lease, as it may be amended from time to time.

Lease Year means each calendar year during the Term.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Major Damage or Destruction means damage to or destruction of all or any portion of the Initial Improvements (together with any Subsequent Improvements) on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety, except that during the last five years of the Term, the percentage figure shall be: (1) in the fifth remaining year of the Term- 25%; (2) in the fourth through second years of the Term- 10%, and (3) in the final year of the Term- 5%. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Memorandum of Lease means the Memorandum of this Lease, between Landlord and Tenant, recorded in the Official Records.

Minor Alterations as defined in Section 10.2.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the County of Santa Clara.

Organic Material means Municipal Solid Waste containing food material, plant trimmings, wood, paper, cardboard and compostable plastics. Organic Material does not

mean wood chips, processed plant material, and other suitable material added to Organic Material to make it the correct consistency for anaerobic digestion and or composting.

Party means City, Landlord or Tenant, as a party to this Lease; Parties means City, Landlord and Tenant, as Parties to this Lease.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Release when used with respect to Hazardous Materials means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means the sum of Base Rent, Per Unit Rent and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a similar to the original Project, subject to the provisions of Section 10 relating to Subsequent

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Construction. All Restoration shall be conducted in accordance with the provisions of Section 10. ("Restore" and "Restored" shall have correlative meanings.)

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Significant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with generally accepted accounting principles, following such transaction, that is at least 150% of the net worth of the Person Controlling Tenant prior to such transaction.

Site Improvement Period means the period of time between January 1, 2009 and June 30, 2018.

Site Improvements or Site Improvement Work as defined in Exhibit B.1.

Site Improvement Cost Certification as defined in Section 9.3.

Site Improvement Costs means any cost incurred by Tenant in completion of Site Improvement Work as described in Exhibit B.1.

Special Control means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

State means the State of California.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Subsequent Construction means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Improvements.

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Substantial Condemnation as defined in Section 13.3(a).

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tenant means Zero Waste Energy Development Company, LLC and assigns.

Ton means U.S. short ton avoirdupois

Term as defined in Section 2.1.

Total Condemnation as defined in Section 13.2.

Transfer as defined in Section 15.1.

Uninsured Casualty as defined in Section 12.4(a)(i).

Unmatured Event of Default means a circumstance which, with notice or the passage of time would constitute an Event of Default.

Worth at the Time of the Award as defined in Section 22.3(a)(v).

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT

ZERO WASTE ENERGY DEVELOPMENT
COMPANY, LLC

By: _____
Its: _____

By: _____
Its: _____

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06/20/11

LANDLORD

CITY OF SAN JOSE, a municipal corporation

By:

APPROVED AS TO FORM:

By: _____

Brian Doyle
Senior Deputy City Attorney

APPROVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA

CITY OF SANTA CLARA, a municipal corporation

By:

LIST OF LEASE EXHIBITS

Exhibit	Description
EXHIBIT A	Description of Premises
EXHIBIT B.1	Site Improvements
EXHIBIT B.2	Construction Improvements
EXHIBIT B.3	Post-Closure Maintenance and Monitoring
EXHIBIT C	Site Plan
EXHIBIT D	Permitted Title Exceptions
EXHIBIT E	Representation of Terms for Phases
EXHIBIT F	Base Rent Payment Schedule
EXHIBIT G	Insurance Requirements
EXHIBIT H	Memorandum of Lease
EXHIBIT I	Prevailing Wage Policy

EXHIBIT F: RENT PAYMENT SCHEDULE

Base Rent

Base Rent of \$850,000 shall be paid annually on the first day of each year following the commencement date. The Landlord shall credit Tenant up to \$850,000 per year on such payments for Site Improvement Work, as more fully described in Exhibit B.1, or until the net present value of the actual total dollars expended on such improvements is fully amortized.

In the event that the Site Improvement Costs are less than ten million eight hundred thousand dollars (\$10,800,000) upon Site Improvement Cost Certification, the net present value of the actual total dollars expended on Site Improvement Work shall be calculated into an annual payment based upon the thirty (30) year duration of the lease with a six percent (6%) annual percentage rate increase. The Tenant shall pay the difference between the net present value of the annualized Site Improvement Costs and Base Rent on the date of the Site Improvement Cost Certification. Upon Site Improvement Cost Certification, Tenant shall be subject to a one time true-up payment for the difference in credit received on Base Rent throughout the Site Improvement Period.

Example:

If the net present value of the Site Improvement Work is \$9,500,000 upon Site Improvement Cost Certification, then:

\$9,500,000 amortized over 30 years at 6% is equal to Base Rent credit of \$690,164.66

\$850,000 (Base Rent) minus \$690,164.66 equals \$159,835.34 the difference between the Base Rent payment due through duration of the lease (30 years) and the annualized Site Improvement Cost

To calculate the one time true up payment take the difference between the Base Rent payment and the base rent credit multiplied by the number of years related to the Site Improvement Period. ($\$159,835.34 \times 7 \text{ years} = \$1,118,847.30$ this is the additional credit received throughout the Site Improvement Period)

Per Unit Rent

Per Unit Rent is due at the earlier of 18 months after the start of a predefined renewal term or the completion of the construction improvement work associated with a particular phase. The annual rent for Phase II and III shall be the higher of \$4.35 for 60% of the 75,000 inbound tons of organic waste expected to be processed in each phase or \$4.35 for every inbound ton of waste over 75,000 tons of organic waste processed in each phase in the previous year. The percentage rent entering the second phase of the project is subject to a one time surcharge increase of 10% when the first ton enters the Phase II portion of the facility.

Per Unit Rent shall be paid monthly on the first day of the following month for the actual Tons received and processed each month and any additional rent due pursuant to the Lease will be paid at the end of the year and will be trued-up against the actual rental paid for the year. Scales shall be installed and operated to weigh all organic material delivered to the Facility. Rent payments shall be based on

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the weight of the organic material delivered to the Facility. Contractor shall perform all calculations of such payments using weight records from the scales at the Facility. Per Ton Rent Payments shall be submitted to the City on or before the last day of the month immediately following the month in which the organic material was received at the facility together with a report that shall include:

- Date and time of delivery for each incoming load of organic material
- Type of organic material delivered
- Weight of the incoming load

Any rent that is not paid on or before the due date shall be deemed delinquent and the Contractor shall pay a first penalty of ten percent (10%) of the amount owed for that month. For any weight tickets lost, the Contractor shall provide the City the date and time of delivery of the load and the estimated weight, including the methodology used by to calculate the weight of the material. If the City Manager determines that the failure to pay the rent on or before its due date is because of an intentional, material misrepresentation or omission, or fraud by the Contractor the City Manager shall impose, in addition to any other remedy that may be available, including termination, a penalty in the additional amount of twenty-five (25%) of the delinquent amount.

All Per Unit rents are to be annually adjusted relative to a CPI-U adjustment factor that shall equal one plus the Annual Percentage Change in the CPI-U for the San Francisco –Oakland-San Jose, CA Area. The CPI-U adjustment factor shall be rounded to the nearest thousandth. The percentage rent entering the second phase of the project is subject to a one time surcharge increase of 10% when the first ton enters the Phase II portion of the facility.