SUBLEASE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE COUNTY
OF SANTA CLARA FOR THE USE OF CITY PROPERTY FOR THE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM

This Sublease Agreement ("SUBLEASE") is made and entered into as of __________, 2012, by and between the CITY OF SAN JOSE, a municipal corporation, ("LESSOR") and the
COUNTY OF SANTA CLARA, a political subdivision of the state of California ("LESSEE").

1. LEASED PREMISES, PARKING AND OTHER COMMON AREAS

1.1 Premises. LESSOR hereby leases to LESSEE, and LESSEE hereby leases from
LESSOR that certain Premises deemed to consist of approximately ten thousand
(10,000) square feet of exclusive space including a seven thousand (7,000) square
foot office, collection and work shop space located at 1608 Las Plumas Avenue,
San Jose, CA 95133 ("Premises"), which Premises is shown on the Attached
Exhibit A. The real property on which the Premises are located is referred to as
the San Jose Environmental Innovation Center ("EIC Facility"), and is described
and shown on the attached Exhibit B.

1.2 Parking. LESSEE shall have the nonexclusive right (unless otherwise provided in
this SUBLEASE) in common with LESSOR, other tenants, sublessees and their
customers, employees and invitees to use the parking. LESSOR will make
available 50 non-exclusive parking spaces for LESSEE’s staff and guests as
indicated on Exhibit A to this SUBLEASE.

1.3 Tenant Rules. LESSEE agrees to abide by and conform to the rules and
regulations as included within the Tenant Guidelines attached hereto as Exhibit C
and to cause its employees, suppliers, shippers, customers, and invitees to so
abide and conform.

2. LEASE TERM

This SUBLEASE shall commence January 1, 2013 and expire June 30, 2015, subject to
the option to extend the term contained in Section 4. The right to terminate this
agreement for LESSOR’s failure to deliver the Premises prior to April 1, 2013 is
provided in Section 16 to this SUBLEASE.

3. RENT PAYMENT

Rent is calculated by adding the amortized value for project build out costs on a 40 year
amortization schedule, interest accrued on the remaining balance and operation and
maintenance costs. The operation and maintenance costs are based on an annual base
amount of Thirty Thousand Dollars ($30,000), and are apportioned each quarter in the
rent payment. Rent payments are due quarterly on the dates as indicated in Section 3.1
below. The initial payment will be due April 1, 2013. In addition to the then quarterly
rent payment due, LESSEE shall pay to LESSOR any accrued rent due from the date of
the Certificate of Occupancy ("COO") from LESSOR up to March 31, 2013. LESSOR

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shall credit LESSEE the amount of Nine Hundred Sixty-Six Dollars and Forty-Eight Cents ($966.48) per day for each day after January 1, 2013 that LESSOR has not delivered the COO to LESSEE.

3.1

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3.2 **Interest.** Any payment due from LESSEE to LESSOR, including but not limited to rent, shall bear interest from the due date until the date paid at an annual rate equal to the lesser of: (a) ten percent (10%), or (b) maximum annual interest rate allowed by law. In addition, LESSEE shall pay LESSOR all costs and expenses incurred by LESSOR in the collection of such payments and interest.

3.3 **Late Charge.** For all rent due and owing after the date specified in Section 3.1, LESSEE shall pay, without the necessity of prior demand or notice, to LESSOR a late charge equal to five percent (5%) ("Late Charge") of any installment of rent that is not received by LESSOR within five (5) days after the due date for that payment. A Late Charge equal to five percent (5%) shall additionally be assessed to installments on payments of back rent, if said installments are not received by LESSOR within five (5) days after the due date of such installment as set forth herein. LESSEE and LESSOR agree that these Late Charges represent a fair and reasonable estimate of the additional costs and expenses LESSOR will incur by reason of a late payment of rent or back rent by LESSEE. In no event shall this subsection be deemed or interpreted to grant LESSEE a grace period or extension of time within which to pay any payment of rent or to prevent LESSOR from pursuing or exercising any right or remedy available to LESSOR for LESSEE's failure to pay a rent payment when due.

4. **OPTIONS TO EXTEND**

If this SUBLEASE shall not have been previously terminated, and if LESSEE is not in default under the terms of this SUBLEASE, then LESSEE shall have the option to extend the term of this SUBLEASE on the same terms and conditions for up to four additional terms ("Option Terms"):  

4.1 Each additional term shall be for three (3) years from the expiration of the Initial Term ("Option Term") or previous Option Term.
4.2 Said Option Term may be exercised only by the delivery of written notice by LESSEE to LESSOR at least ninety (90) days, but no more than one hundred eighty (180) days, in advance of the Termination date of the Initial Term or previous Option Term.

4.3 Rent for each year of the Option Terms shall be Three Hundred Fourteen Thousand Dollars ($314,000) exclusive of the operation and maintenance cost. In addition, the operation and maintenance costs are based on an annual base amount of Thirty Thousand Dollars ($30,000) with a 3% escalation for each year thereafter during the Option Terms. Rent and the operation and maintenance payments are due quarterly on the first day of each quarter (March 1, June 1, September 1, and December 1).

5. PREMISES

5.1 Use of Premises. The Premises shall be used as a fixed collection site for household hazardous waste, such as used motor oil, automotive and other types of batteries, antifreeze, oil filters, paint, garden chemicals, household cleaners, pool chemicals and other common hazardous consumer products. LESSEE shall commence operation of the Premises upon acceptance of the Premises as specified in Section 5.3, or as indicated in Exhibit A to this SUBLEASE, and shall remain open to the public no less than 4 days per week.

5.2 Condition of Premises. The parties hereby acknowledge that the collection facility if currently under construction with LESSOR’s completion and delivery of the Premises to LESSEE anticipated occurring on January 1, 2013. In the event LESSEE does not receive delivery of the Premises by April 1, 2013, LESSEE has the right to terminate this agreement without recourse or damage to LESSOR by providing no less than 30 days written notice to the LESSOR. LESSEE’s right to terminate ceases upon delivery of the Premises.

5.3 LESSEE agrees to accept the Premises delivered AS-IS, WHERE-IS condition substantially consistent with the Permit Set signed by the Director of Public Works December 16, 2010, which LESSEE hereby acknowledges having reviewed and approved. LESSEE shall provide LESSOR a punch list regarding any substantial noncompliance of the Premises with the construction drawings and plans within five (5) days of delivery, or forever waive the right to acceptance of the Premises in AS-IS, WHERE-IS condition. The parties shall act in good faith to resolve any items on the punch list.

6. LEASEHOLD IMPROVEMENTS

6.1 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, together with LESSEE’s trade fixtures, (collectively, “LESSEE’s Property”) shall remain the property of LESSEE. Upon the termination or expiration of the SUBLEASE term, if LESSEE is not then in default under the SUBLEASE, LESSEE may remove LESSEE’s Property from
the Premises no later than the termination or expiration date. In addition, LESSEE may remove from the Premises all items installed by LESSEE that are indicative of LESSEE’s business and may otherwise “de-identify” the Premises, as LESSEE reasonably believes necessary or appropriate for the protection of LESSEE’s interest in LESSEE’s trademarks, trade names or copyrights. LESSEE shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall LESSEE remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.2 **Abandonment.** Any of LESSEE’s Property not removed from the Premises within fifteen (15) business days of the date the SUBLEASE terminates or expires shall be deemed abandoned and shall thereupon become the property of LESSOR. LESSOR may possess and dispose of such property as LESSOR deems appropriate. This provision shall apply under all circumstances, including default by LESSEE under this SUBLEASE.

6.3 **Tenant Improvements.** LESSOR shall have the right to review and approve any plans and drawings for fixtures, furniture and equipment within the Premises, as reasonably necessary for the operation of LESSEE’s business (“Tenant Improvements”), including any material changes to the plans and drawings. LESSOR’s approval of the Tenant Improvements may be based upon such conditions as LESSOR deems necessary, including but not limited to LESSEE’s procurement of sufficient bonds for the Tenant Improvements.

6.4 **Liens.** All Tenant Improvements shall be completed free of mechanic’s liens, with first-class materials and workmanship, and in compliance with all applicable permits, ordinances, rules, regulations, and laws applicable to the Premises.

7. **MATERIALS ACCEPTED**

7.1 LESSEE may only use the Premises to accept Hazardous Waste as defined in this Section. “Hazardous Waste” shall include the following: (i) hazardous waste as defined in the Health and Safety Code section 25218.1(e) or as later amended, and which include but are not limited to automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, home generated sharps and pharmaceutical waste and other common hazardous consumer products; (ii) hazardous waste produced by conditionally exempt small quantity generator (CESQG), as defined in Section 261.5 of Title 40 of the Code of Federal Regulations, or as later amended. LESSEE shall not accept under any program: explosives (including ammunition), compressed gas cylinders greater than 5 gallons, infectious/medical waste (except home generated sharps and expired and unwanted pharmaceuticals), or radioactive waste (except smoke detectors/alarms).

LESSEE shall accept materials from the public only during regular operating hours when the Premises are attended by LESSEE’s staff. Automotive fluid
wastes will be bulked on site. Paint may be bulked and reprocessed by filtering, mixing and pouring into 5-gallon containers. To meet state mandates for waste minimization, the paint and other reusable products will be offered to the public through a “Materials Reuse Program.” This type of program is designed to reduce the amount of hazardous waste generated by the HHW Program because products that are still good, such as cleaners, garden products and paint, are offered to the community for reuse. At the discretion of LESSEE, LESSEE may accept reusable products at the Premises and/or bring reusable products from the monthly temporary collection events to the Premises for redistribution.

7.2 Compliance with Laws. LESSEE will properly observe, comply with, and execute, all present and future orders, regulations, directions, rules, laws, permits, ordinances and requirements, hereinafter collectively called “laws,” of all governmental authorities (including, but not limited to, state, municipal, county and federal governments, and their departments, bureaus, boards, and officials), applicable to LESSEE’s hazardous waste collection program or relating to the use or occupancy of the Premises for collection of Hazardous Waste.

7.3 Maintenance. During the term of this SUBLEASE, LESSEE shall, at LESSEE’S sole cost and expense, keep, maintain and leave the areas of the Premises used by LESSEE in good and safe order and repair, ordinary wear and tear excepted. LESSEE shall be responsible for picking up waste materials left at the Premises on the evening prior and evening subsequent to LESSEE’s collection events. LESSEE shall be responsible for cleaning up any spills of materials, trash, clothing, furniture or other items on the Premises, which were brought thereon as a result of LESSEE’s collection events. If LESSEE fails to keep, maintain or leave the Premises in good and safe order and repair, LESSOR may, at its option, after written notice to LESSEE, complete such maintenance or repairs. LESSEE shall pay LESSOR within thirty (30) days from the date of request from LESSOR for the cost of the maintenance or repair work performed by or on behalf of LESSOR. LESSOR’s request for payment shall specify the maintenance or repair work performed.

8. SERVICE AREA.

The Countywide Household Hazardous Waste Collection Program (the “Program”) serves residents of the unincorporated county areas and all cities in Santa Clara County with the exception of Palo Alto. Residents of any jurisdiction belonging to the Program will be allowed to bring household hazardous waste to the Program at the Premises.

9. TRAFFIC CONTROL.

It shall be the responsibility of LESSEE to arrange for the supervising of all incoming and outgoing traffic at the Property.
10. COMPLIANCE WITH GOVERNMENT REQUIREMENTS/USE RESTRICTION

10.1 LESSEE shall properly observe, comply with, and execute, all present and future orders, regulations, directions, rules, laws, permits, ordinances and requirements, hereinafter collectively called "laws", if all governmental authorities (including but not limited to state, municipal, county and federais governments, and their departments, bureaus, boards and officials), relative to the use or occupancy of, or applicable to the Program.

10.2 LESSEE acknowledges that the Premises are located on a site which was ground leased and developed with financing from the New Markets Tax Credit Program (NMTC). LESSEE shall not take any action with regard to the Premises that would cause LESSOR to be in violation with the NMTC requirements. In no event shall LESSEE’s use of the EIC Facility and Premises consist of operation of any of the following prohibited activities or businesses: (i) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (ii) any trade or business the principal activity of which is “farming” within the meaning of Section 2032A(e)(5)(A) of the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal law (the "Code"); (iii) any other trade, business or activity prohibited by any amendment to Section 45D of the Code and any temporary, proposed or final regulations promulgated by the U.S. Treasury pursuant to the Code, and any other guidance published by the Internal Revenue Service; or (iv) private or commercial golf course; country club; massage parlor; hot tub facility; suntan facility; race track or other facility used for gambling; any store the principal business of which is the sale of alcoholic beverages for consumption off premises; shooting gallery; adult bookstore or facility selling or displaying pornographic books, literature or videotapes (materials shall be considered “adult” or “pornographic” for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); bingo or similar games of chance, however lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business; or video game or amusement arcade, except as an incidental part of another primary business. Furthermore, in no event shall LESSEE use the Property or Premises to provide dwelling units, or other areas with sleeping accommodations, on other than a transitory basis.

11. MAINTENANCE, REPAIRS AND SURRENDER

11.1 LESSEE’s Obligations. Except for damage caused by fire or other casualty, whether or not insured or insurable, LESSEE, at LESSEE’s sole cost and expense, shall keep the Premises in a first class condition and repair, including maintaining all plumbing, electrical and lighting facilities and equipment within the Premises and exclusively serving the Premises, and all doors and plate glass windows (both interior and exterior) in the Premises, interior walls, any LESSEE signage and any flooring. Except for interior structural and other items to be maintained and repaired by LESSOR pursuant to Section 11.2 below, LESSEE, at its sole cost and expense, shall keep the entirety of the interior of the Premises, including
LESSEE’s fixtures, case goods and furnishings, in good condition and repair. In addition, LESSEE shall be required to wash-down and clean-up any portion of the outdoor dining area or in connection with LESSEE’s trash disposal. Notwithstanding any provision to the contrary, LESSEE’s obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of LESSOR, its agents, employees or servants, or of any other tenant of the Property; or (b) any repair or improvement caused by LESSOR’s failure to perform its obligations hereunder or under any other agreement between LESSOR and LESSEE.

11.2 LESSOR’s Obligations. Except for repairs and replacements to the Premises that LESSEE must make under Section 11.1 above, LESSOR shall pay for and make all other repairs and/or replacements to the Premises. LESSOR shall commence such repairs and/or replacements within thirty (30) days of receiving, from LESSEE, written notice of the need for the repairs and/or replacements. LESSOR shall, at its sole cost and expense, make the repairs and replacements necessary to maintain the Premises in a good condition. Such repairs, replacements and maintenance’s shall include the upkeep of the roof, roof structures and supports, HVAC, sprinkler system, gutters, downspouts, foundation, exterior walls, storefront, and all structural components of the Premises. LESSOR shall also repair and maintain all sidewalks, landscaping and drainage systems on the Premises and all utility systems (including mechanical, electrical, and HVAC systems), parking and driving surfaces, and plumbing systems which serve the Premises as a whole. LESSOR shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and storefronts. In the event of an emergency, LESSEE may give LESSOR such notice as is practicable under the circumstances, and if LESSOR fails to make such repairs immediately, LESSEE may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to LESSOR for reimbursement. Notwithstanding any provision to the contrary, LESSOR’s obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of LESSEE, its agents, employees or servants; or (b) any repair or improvement caused by LESSEE’s failure to perform its obligations hereunder or under any other agreement between LESSOR and LESSEE.

11.3 Surrender. Upon the expiration or termination of this SUBLEASE, LESSEE shall surrender the Premises to LESSOR in as good order and condition as when LESSEE took possession, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable, and in a broom clean condition.

12. UTILITIES

LESSEE shall pay directly for gas (if applicable), electricity and garbage while LESSOR will pay all utilities that have a common account including water and sewer services.
13. **ASSIGNMENT AND SUBLETTING**

LESSEE shall not assign, let or sublet the whole or any portion of the Premises.

14. **INSURANCE**

Prior to commencing any work or operations under this SUBLEASE, LESSEE at its sole cost and expense and for the full term of this SUBLEASE and any extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of LESSEE and its agents, employees, contractors, and invitees, meeting at least the minimum insurance requirements set forth in Exhibit D attached and incorporated by reference, and shall provide all certificates and/or endorsements as may be required by LESSOR. These requirements are subject to amendment or waiver if so approved in writing by the LESSOR’s Risk Manager.

15. **OPERATION AND INDEMNIFICATION**

15.1 For the purpose of this Section, the term “Hazardous Material” shall mean any substance or material which has been determined by any state, federal or local governmental agency to be capable of posing risk of injury to health, safety, or property, including petroleum and petroleum products, and including all those materials and substances designated as hazardous or toxic presently or in the future by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, The U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials or substances in the environment. Without limiting the generality of the foregoing, the term “Hazardous Material” shall include all of those materials and substances defined as “Toxic Materials” in Section 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time.

15.2 **LESSEE’s Operations.** In conducting its operations as they occur on the Premises, LESSEE shall abide and be bound by all of the following requirements:

1. LESSEE shall comply with all federal, state, and local laws, requirements, and policies now or hereinafter in effect relating to Hazardous Materials and environmental conditions on, under or about the Premises including, but not limited to soil and groundwater conditions, and shall not contaminate the Premises or the subsurface with any Hazardous Material.

2. Disposal of any Hazardous Material on the Premises is strictly prohibited.
LESSEE shall be solely and fully responsible for the reporting of Hazardous Material releases to the appropriate public agencies, when such releases occur on the Premises or are caused by or result from the activities of LESSEE, LESSEE’s officers, agents, employees, contractors, permittees or invitees on the Premises. LESSEE shall immediately notify LESSOR of any release of Hazardous Material on the Premises, regardless of whether the release was caused by or results from LESSEE’s activities or is not a quantity that would otherwise be reportable to a public agency.

LESSEE shall be solely and fully responsible and liable for any Hazardous Material releases resulting from its operations. LESSEE shall take all necessary precautions to prevent any Hazardous Materials from being released on, under or about the Premises including, but not limited to, into soil or groundwater, or the LESSOR’s sewage or storm drain system.

If at any time a release or danger of release of Hazardous Materials is discovered on, under or about the Premises, which, was caused, suffered or permitted in whole or in part by LESSEE, LESSEE’s officers, agents, employees, contractors, permittees or invitees or there is the danger of such release of Hazardous Material, LESSEE, at LESSEE’s sole cost and expense, shall promptly investigate and remediate such release, or danger of release, of Hazardous Material, in accordance with requirements of all appropriate governmental authorities. In addition to all other rights and remedies of LESSOR here under, if such release, or danger of release, of Hazardous Material is not completely remediated within ninety (90) days after discovery of such release, or danger of release, of Hazardous Material, LESSOR, in its discretion, but with 10 days notice to LESSEE, may pay, to have same remediated and LESSEE shall reimburse LESSOR within five (5) days of LESSOR’s demand for payment. The demand for payment by LESSOR shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by LESSOR on behalf of LESSEE.

15.3 Indemnification. LESSEE shall defend, indemnify, and hold LESSOR and LESSOR’S agents, officers, directors, employees, and contractors harmless against and from any and all injuries, cost, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including, without limitation, the cost of any required clean up and remediation of Hazardous Material and reasonable attorney’s fees) in connection with any and all third party claims arising from the use of the Premises (“Claims”), including, but not limited to: (a) storage, use or disposal of Hazardous Material on, under or about the Premises by LESSEE or its officers, agents, employees, contractors, permittees or invitees; (b) any Hazardous Material release on, under or about the Premises including, storm drainage system, caused, suffered or permitted, by LESSEE or its officers, agents, employees, contractors, permittees or invitees; and (c) injuries occurring within the Premises arising from the occupancy of the Premises for the collection of Hazardous Material.
In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between the LESSOR and LESSEE pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead LESSOR and LESSEE agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of (a) any intentional acts or negligence of the indemnifying party, its officers, agents, employees, contractors, permittees or invitees; (b) any breach or default in the performance of any obligation on the indemnifying party’s part to be performed under this SUBLEASE; (c) any violation of any law, ordinance or regulation governing use of the Premises; or (d) the failure of any representation or warranty made by the indemnifying party herein to be true when made.

This indemnity shall survive termination of this SUBLEASE only as to claims arising out of events that occur prior to termination of the SUBLEASE.

When the City of San Jose remains the LESSOR, LESSOR shall indemnify LESSEE for LESSOR’s apportioned share of any liability incurred and attributed to the Countywide HHW Program for transportation, treatment, or disposal of the Hazardous Waste as defined under Section 7, once the Hazardous Waste has been accepted by a licensed hazardous waste hauler.

LESSOR shall indemnify LESSEE for LESSOR’s apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction’s pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction’s pro rata household participation at the event where the waste was generated. LESSEE shall use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to LESSOR for transportation, treatment or disposal in any case where LESSEE has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in the Agreement for Countywide Household Hazardous Waste Collection Program between the City of San Jose and the County of Santa Clara.

LESSOR shall further indemnify LESSEE for LESSOR’s apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the LESSEE as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted
from the total liability for the household hazardous waste prior to assessing
LESSOR’s apportioned share of any liability for the household hazardous waste.

16. **TERMINATION OF SUBLEASE.**

Either party shall have the right to terminate this SUBLEASE, without cause, upon One Hundred Twenty (120) days prior written notice, or through the term of the most current Agreement for Countywide Household Hazardous Waste Collection Program between the City of San Jose and County of Santa Clara, whichever is later. LESSEE, however, may terminate this SUBLEASE due to inadequate Countywide AB939 fee funding from participating agencies for the Countywide Household Hazardous Waste Collection Program provided such written notice is provided to the LESSEE no later than 60 days before the end of the Initial Term or Optional Term.

If LESSEE defaults in the performance of this SUBLEASE, or materially breaches any of its provisions, LESSOR at its option may terminate this SUBLEASE by giving written notice to LESSEE, provided that LESSEE shall not be in default or breach for failure to perform hereunder unless such default or breach continues for 30 days after LESSEE’s receipt of notice thereof from LESSOR. If LESSEE fails to pay LESSOR, LESSOR at its option may terminate this SUBLEASE if the failure is not remedied by LESSEE within sixty (60) days from the date payment is due.

17. **WAIVER.**

The waiver by either party of any breach or violation of any provisions of this SUBLEASE shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this SUBLEASE.

18. **VENUE.**

In the event that suit is brought by either party in connection with this SUBLEASE, the parties agree that venue shall be vested exclusively in the state courts of the County of Santa Clara, or, where otherwise appropriate, in the Northern District of California, San Jose, California.

19. **NOTICES.**

All notices required by this SUBLEASE shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or sent by commercial courier addressed as follows:

To LESSOR:  
City of San Jose  
Real Estate Services, OED  
200 E. Santa Clara Street, 4th Floor  
San Jose, CA 95113

852025
To LESSEE: Kevin O'Day, Director
County of Santa Clara
Department of Agriculture and Environmental Management
1555 Berger Drive, Suite 300
San Jose, CA 95112-2716

20. ENTIRE AGREEMENT AND AMENDMENTS.

This writing constitutes the entire SUBLEASE between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this SUBLEASE shall be effective unless and until such modification is evidenced by writing and signed by all parties. The Director of Agriculture and Environmental Management for the LESSEE is hereby authorized to sign any modifications, amendments or termination of this agreement on behalf of LESSEE.

IN WITNESS WHEREOF, LESSOR (City of San Jose) and LESSEE (County of Santa Clara) have executed this sublease as follows:

APPROVED AS TO FORM: CITY OF SAN JOSE ("LESSOR")

ROSA TSONGTAATARII
Deputy City Attorney

DEBRA FIGONE
City Manager
Date: _________________________

APPROVED AS TO FORM AND LEGALITY: COUNTY OF SANTA CLARA ("LESSEE")

MARK BERNAL
Deputy County Counsel

GEORGE SHIRAKAWA, President
Board of Supervisors
Date: _________________________

ATTEST:

LYNN REGADANZ
Interim Clerk of the Board of Supervisors
Date: _________________________
Dear Tenants:

Building and maintaining good landlord-tenant relations is one of our most important goals. To this end, the City of San Jose has produced this Tenant Handbook.

This handbook is a practical guide for tenants regarding their responsibilities.

Should you need additional information or have questions, please contact the City's Real Estate Division of the Office of Economic Development (“OED-Real Estate Services”) at (408) 975-7309.
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GENERAL RULES AND REGULATIONS

1. Treat leased property with the same respect as you would your own.

2. Keep windows and doors that admit natural light uncovered and free from obstructions.

3. Sidewalks, driveways, entrances, corridors, elevators, stairways and fire escapes of the building must not be obstructed by the tenants or used for any purpose other than ingress and egress.

4. Keep clear all areas to be cleaned. The janitorial staff is instructed not to touch any papers, files or records that are lying on desks, file cabinets or bookcases.

5. Damage to Premises. In case of any destruction or damage done to walls, doors, windows, elevators, plumbing fixtures, lighting fixtures, HVAC equipment or any other part of the building which is caused by carelessness, negligence or improper conduct on the part of the tenant, its agents, employees, clients or invitees, the tenant shall make the repair or replace damaged parts of the building at their expense to the satisfaction of the City. All work performed must be preapproved by the City and meet all applicable codes.

6. Walls and Doors. No tenant may mark, paint, hang or affix a sign, placard, picture, advertisement, name or notice to the interior or exterior walls or doors without written consent of the landlord. Landlord reserves the right to remove any such sign without notice and at the tenant’s expense.

7. Intended Use of Premises. The tenant may not use the occupied premises, or any part of it, for any purpose other than its intended use without the written consent of the landlord.

8. Noises and Disturbances. Tenants may not make or permit any improper noises or disturbances of any kind, which might disturb other occupants in the building.

9. Smoking. Smoking is strictly prohibited.

10. Alcohol. No serving of alcohol will be permitted without written consent of the landlord.

11. Additional Locks. No additional locks may be placed upon any doors of the premises. Upon termination of the lease, the tenant must surrender all keys of the building to the landlord. If not adhered to tenant will be billed for the costs to re-key the space.

12. Telecommunications Equipment. The landlord must first approve any installation of electrical signaling, telegraphic, telephonic equipment or other wire and/or equipment required by the tenant. The installation will be done at the cost and expense of the tenant.
13. Bicycles and Vehicles. No bicycles or vehicles of any kind may be brought into or stored in the building unless specifically permitted.

14. Animals. No animals such as dogs, cats, birds, etc. (with exception of Seeing Eye dogs for the visually impaired or for disabled persons) will be permitted in the building.

15. Heating Units. Portable electric heating units are prohibited in the building.

16. Contact OED-Real Estate Services for assistance, if you need additional electrical outlets. Extension cords are a fire or tripping hazard and are not authorized.

17. Lock all personal items away at the end of the day. All personal items brought to the building (furniture, plants, pictures, clocks, etc.) are the tenant’s responsibility.

18. Refrain from removing paper towels, toilet tissue, and other janitorial supplies from restrooms or supply closets.

19. Remember that any verbal agreement(s) made between you and the landlord is to be put in writing, signed by both parties, and included as an amendment to the lease. If any agreement is not in writing, it may not be enforceable.

20. Report items of concern to OED-Real Estate Services.

**EMERGENCY PROCEDURES**

**Bomb Threat**

- **Telephone Threat**

  When a bomb threat is made over the telephone, obtain the following information from the caller:

  - Exact location of the device
  - Time set for explosion
  - Description of the device
  - Reason the caller has placed the bomb
  - Exact words used by the caller
  - Keep this information as confidential as possible
  - Notify the Police Department – Call 911
  - Notify Environmental Services Department

  In the event you are asked to evacuate the building, move away from the building to allow for clear passage of emergency personnel. Do not re-enter the building until advised by the Police and/or OED-Real Estate Services.

- **Suspicious Packages or Mail Bombs**
Letter bombs are usually sent through the mail addressed to a specific individual in the company, usually disguised to look like some sort of gift or a small package. Letter bombs have the power to kill or maim anyone close to them if they go off. Letter bombs are usually a large size manila envelope ¼" to ½" thick and are fairly rigid. They have been mailed from cities or small towns in the United States, as well as from foreign countries. They are usually mailed to a person by title, such as Chairman, President, Manager, Security Officer, etc.

If a letter is suspected to be a letter bomb:

- Clear everyone out of the area for at least 25 feet around it
- Notify the Police Department – Call 911
- DO NOT HANDLE IT UNDER ANY CIRCUMSTANCES
- DO NOT ATTEMPT TO DEACTIVATE IT YOURSELF

**Earthquake**

**Before an Earthquake**

- Secure objects such as files, office equipment, bookshelves and other potentially dangerous objects
- Be familiar with your immediate work area and floor plan. This will help you react effectively when it is necessary to find the closest and safest shelter point/

**During an Earthquake**

- Get under a sturdy table or desk and hold on or move towards the center of the building. The building core is the strongest part of the structure.
- Keep your back to all glass objects if you cannot avoid them completely.
- Be aware of falling debris. Cover your head as much as possible.
- Do not panic. A clear mind will help you through the dilemma.

**After the Earthquake**

- Remain calm and stay in your area (unless an emergency dictates otherwise).
- Look for injured people and administer first aid where needed.
- Use telephone for emergencies only.
- Be alert for after shocks. Their intensity can produce further damage. Respond to the after shock as though it is the original earthquake.

**Evacuation**

- Normally, it is not recommended to evacuate a building after an earthquake. Outside one may experience falling glass from the building.
- However, if an evacuation is required, use the stairs. Do not use the elevator. Walk down at a steady pace. Do not run.
Evacuation

If it becomes necessary to evacuate the building due to a large fire or a great amount of smoke, the items below are of extreme importance:

- Keep calm; do not panic.
- Do not attempt to use the elevator.
- Use the stairs. Enter the stairwells and proceed to ground level – keep to the right of the stairwell, as emergency response teams may be entering the stairwell.
- Walk rapidly; do not run.
- Before opening any doors, feel the door. If it is hot, do not open.
- If possible, close all doors along the way, as this will slow the spread of a fire.
- If you are caught in smoke: Crawl along the floor, as the air is cleaner and cooler, take short breaths, and breathe through your nose. If forced to make a dash through smoke or flames, hold your breath.
- Do not go back to get personal belongings.

BUILDING SECURITY

Hours of Operation

- Monday thru Sunday 8:00 a.m. to 5:00 p.m.

Building Access

- Tenants will be issued keys to their respective areas. There will be a $10.00 charge for replacement keys.
Exhibit D

Insurance

COUNTY, at COUNTY'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance or self-insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by COUNTY, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described as Commercial General Liability and includes products and completed operations; and

2. The coverage described as Automobile Liability for all owned, hired and non-owned autos; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Pollution Liability insurance, including coverage for all operations, completed operations and professional services; and

B. Minimum Limits of Insurance

COUNTY shall maintain limits no less than:

1. Commercial General Liability: $2,000,000 per occurrence for bodily injury, personal injury, property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of $1,000,000 per accident; and

4. Pollution Liability: $1,000,000 each occurrence/$2,000,000 aggregate limit; and

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C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Automobile Liability and Pollution Liability coverages**
   
   a. The City of San Jose, its officers, employees, agents and COUNTYs are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, COUNTY; products and completed operations of COUNTY; premises owned, leased or used by COUNTY; and automobiles owned, leased, hired or borrowed by COUNTY. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and COUNTYs.

   b. COUNTY's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and COUNTYs. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or COUNTYs shall be excess of COUNTY's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies by COUNTY shall not affect coverage provided CITY, its officers, employees, agents, or COUNTYs.

   d. Coverage shall state that COUNTY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. **All Coverages**

   Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

   Insurance is to be placed with insurers acceptable to CITY's Risk Manager.
F. **Verification of Coverage**

COUNTY shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose - Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San Jose, CA 95113-1905

G. **SUBCONTRACTORS**

COUNTY shall obtain separate certificates and endorsements for each SUBCONTRACTOR.

H. **SELF-INSURANCE**

The requirements of this section may be satisfied by the provision of similar coverage through self-insurance program and such self-insurance shall be certified in writing with an “Affidavit of Insurance”.