CITY OF OAKLAND

AGENDA REPORT

TO:	Edward D. Reiskin City Administrator	**FROM:**	Elizabeth Lake Interim Assistant City Administrator
SUBJECT:	California Waste Solutions Lease / Disposition and Development Agreement	**DATE:**	June 7, 2021

City Administrator Approval  Date: Jun 25, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces of Legislation:

1) **As Recommended By The Planning Commission At Its June 16, 2021 Meeting:**

   A Resolution Approving (A) Design Review And A Major Conditional Use Permit For The Development For A Recycling Facility Located At 2308 Wake Avenue By California Waste Solutions, Inc.; And (B) Adopting Requisite California Environmental Quality Act Findings And Conditions Of Approval; And

2) **An Ordinance**

   A) **Authorizing City Administrator To Execute A Lease And Disposition AndDevelopment Agreement Between The City Of Oakland (City) And California Waste Solutions, Inc. (CWS) For Development Of A Recycling Facility At 2308 Wake Avenue, With A Term Of Up To Seven Years, A Conveyance Price Of $8,268,500 And Applicable Extension Fees Of $125,000, $250,000,And $425,000;**

   B) **Authorizing City Administrator To Execute A 99-Year Lease Between The City And California Waste Solutions, Inc. Of The City's Leasehold Interest In An Easement Granted By Caltrans Over Adjacent Property;**

   C) **Waiving The City's Local And Small Local Business Enterprises Program, As Amended On February 16, 2021 (Ordinance No. 13640 C.M.S.) And May 4, 2021 (Ordinance No. 13647 C.M.S); And**

D) Applying The Construction Jobs Policy and Operations Jobs Policy Applied To The Other Projects At The Former Oakland Army Base; And

E) Adopting Requisite California Environmental Quality Act Findings

EXECUTIVE SUMMARY

Staff recommends that the City Council adopt the following pieces of legislation:

- A Resolution approving (A) Design Review and a major conditional use permit ("CUP") for a recycling facility located at 2308 Wake Avenue by California Waste Solutions, Inc. ("CWS"); and (B) adopting requisite California Environmental Quality Act ("CEQA") findings and the conditions of approval attached hereto as ***Attachment A***; and

- An Ordinance:

  A. Authorizing the City Administrator to execute a lease and disposition and development agreement ("L/DDA") between the City of Oakland ("City") and CWS substantially in the form attached hereto as ***Attachment B***, for development of real property located at2308 Wake Avenue in the North Gateway Area of the former Oakland Army Base (the"Property") for development of a recycling facility, with a term of up to seven years, a conveyance price of $8,268,500, and applicable extension fees of $125,000, $250,000, and $425,000;

  B. Authorizing the City Administrator to execute a 99-year lease between the City and CWS of the City's leasehold interest in an easement granted by the State of California Department of Transportation ("Caltrans") over adjacent property substantially in the form attached hereto as ***Attachment C***; and

  C. Waiving the application of the City's Local and Small Local Business Enterprises Program, as amended on February 16, 2021 (Ordinance No. 13640 C.M.S.) and May 4, 2021 (Ordinance No. 13647 C.M.S.); and

  D. Applying the Construction Jobs Policy and Operation Jobs Policy applied to the other projects at the former Oakland Army Base; and

  E. Adopting requisite CEQA findings.

An L/DDA is the legal agreement that would transfer ownership and control of the Property from the City to CWS. The City Council is the review and approval body for all such disposition agreements. To consolidate the approval process, the full project entitlement package consisting

of Design Review, CUP and L/DDA are recommended for approval by the City Council. The Planning Commission acted as the recommending body for the Design Review, and the CUP.

BACKGROUND / LEGISLATIVE HISTORY

In 2012, the City revised its Redevelopment Plan for the Oakland Army Base to include relocation of two recyclers, including CWS, from the West Oakland neighborhood to the proposed Gateway Industrial District on the former Oakland Army Base (Resolution No. 83030 C.M.S.).

In July 2018, the City and CWS executed an Exclusive Negotiation Agreement (ENA) to negotiate the sale of approximately 12.02 acres and lease of an adjacent 2.36-acre easement at the North Gateway Area of the former Oakland Army Base (together, the "Property") to CWS for relocation of its recycling uses from its existing facilities in the West Oakland neighborhood (Resolution No. 87308 C.M.S.). The relocation of CWS's uses outside of the West Oakland neighborhood has been a key objective of the community benefits program identified for the Oakland Army Base in 2012 (Resolution No. 83933 C.M.S.). The parties worked together in good faith to expeditiously implement the performance schedule set forth in the ENA. The City and CWS amended the ENA on January 24, 2020 (Resolution No. 88001 C.M.S.), July 13, 2020 (Resolution No. 88204 C.M.S.), October 24, 2020 (Resolution No. 88342 C.M.S.), and April 24, 2021 (Resolution No. 88593 C.M.S.) to extend the expiration date to provide the parties additional time to complete L/DDA negotiations.

In May 2019, CWS applied for a CUP to construct a 170,765 square-foot recycling facility (the "Project") to accommodate an administrative office, an observation/education area, a material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area with a compressed natural gas fueling compressor, and a dispatch area with parking on the 14.38 acre site at 2308 Wake Avenue at the North Gateway Area.

The City engaged Keyser Marston Associates ("KMA") to prepare a fair reuse valuation of the Property. KMA prepared a report dated June 18, 2021 in which it determined that the fair reuse value of the Property is $8,000,000.

ANALYSIS AND POLICY ALTERNATIVES

Relocating CWS's existing facilities and uses, which are currently located at 3300 Wood Street and 1819/1820 10th Street, to the North Gateway Area of the former Oakland Army Base allows intensive recycling facilities to move from the West Oakland neighborhood to the industrially zoned Gateway Industrial District at the former Army Base, puts the currently undeveloped land into productive use, and meets a key objective of the community benefits program identified for the Oakland Army Base in 2012 (Resolution No. 83933 C.M.S.). All of CWS's recycling operations would be permanently relocated to the Project at the Property. The existing CWS West Oakland facilities would be closed when the new facility is fully operational.

To achieve the outcome of relocating CWS to the Property in the North Gateway Area of the former Oakland Army Base, the City and CWS have completed the following:

(1) (A) developed Addendum No. 2 to the 2002 EIR/2012 Addendum,

(B) completed a Design Review process for the proposed CWS Project with Planning Department staff, and

(C) developed a major CUP for the CWS Project's use, all of which were reviewed and recommended for approval by the Planning Commission at its June 16, 2021 meeting and forwarded to City Council for approval, subject to the findings and the conditions of approval attached hereto as ***Attachment A***; and

(2) negotiated the terms and conditions of an L/DDA substantially in the form attached hereto as ***Attachment B***, including the terms of the Lease substantially in the form attached hereto as ***Attachment C*** (the "Lease")

All of these items are presented here for consideration and authorization by the City Council.

An L/DDA is the legal agreement that would transfer ownership and control of the Property from the City to CWS. The City Council is the review and approval body for all such disposition agreements. To consolidate the approval process, the full project entitlement package consisting of Design Review, CUP and L/DDA are being recommended for approval by the City Council. The Planning Commission acted as the recommending body for Design Review, and the CUP and at its June 16th meeting unanimously recommended the City Council's approval.

Lease and Disposition and Development Agreement (L/DDA)

The L/DDA is comprised of two components: (1) a disposition and development agreement between the City and CWS that would convey, or sell, approximately 12.02-acres of City-owned fee property to CWS, and (2) a 99-year lease between the City and CWS of approximately 2.36-acres of the City's leasehold interest in an easement between the City and Caltrans that the City would lease to CWS.

Some of the key components of the L/DDA are:

- The sale of 12.02-acres of City-owned fee property, in the North Gateway Area of the former Oakland Army Base, together with a 99-year lease of 2.36 acres of the City's interest in the adjacent Caltrans under freeway property, at $575,000 per acre, for a total conveyance price of $8,268,500, which exceeds the fair reuse value of $8,000,000.
- CWS to pay all escrow fees and closing costs, including, without limitation, City and any other County transfer and possessory interest taxes.
- Property to be accepted by CWS "as-is" in its current condition, without warranty express or implied by the City, including, without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.

- CWS will ensure that the Project meets or exceeds the City's Green Building Ordinance and that the Property will at no time violate the City's Blight Ordinance.
- CWS may not sell, convey, assign, transfer, or alienate all or any of its interests or rights in the L/DDA without the prior consent of the City. In the event CWS transfers all or a part of the Property to a non-affiliate for any purpose, or to an affiliate for purposes other than the operation of a solid waste or recycling related business, the City shall receive a Transfer Fee of:
    - Thirty-five percent (35%) of the Fair Market Land Value (as defined in the L/DDA) or fifteen percent (15%) of the gross lease revenue of the Property if transferred within the first zero (0) to five (5) years after the Close of Escrow; or
    - Twenty percent (20%) of the Fair Market Land Value or ten percent (10%) of the gross lease revenue of the Property if transferred within six (6) to ten (10) years after Close of Escrow; or
    - Ten percent (10%) of the Fair Market Land Value or five percent (5%) of the gross lease revenue of the Property if transferred within eleven (11) to thirty-five (35) years after the Close of Escrow.
- Prior to the City closing escrow and conveying the Property to CWS, CWS shall have:
    - obtained such discretionary land use entitlements from the City as necessary to proceed with development of the Project;
    - obtained all other regulatory approvals and permits for development and operation, including, but not limited to the solid waste facility permit of the Project;
    - provided to the City a completion guaranty and payment and performance bonds;
    - provided to the City evidence of required insurance;
    - provided to the City a loan commitment and/or evidence of funding which equals the full construction cost of building the entire Project;
    - provided to the City formation documents of the entity taking possession of the Property; and
    - CWS shall not be in default of its obligations under the L/DDA.
- CWS shall pay a one-time fee of $16,000 per acre, which equals $229,760, into the West Oakland Community Fund.
- Subject to City Council approval, CWS shall comply with the Construction Jobs Policy applied to other projects at the former Oakland Army Base attached hereto as ***Attachment D***, as a material term of all contracts under which construction may occur, and shall itself comply with the terms of the policy, including paying prevailing wage.
- Subject to City Council approval, CWS shall comply with the Operations Jobs Policy applied to other projects at the former Oakland Army Base attached hereto as ***Attachment E***.
- CWS shall comply with the City's Living Wage Ordinance and Equal Benefits Ordinance.
- Prior to commencing construction, CWS shall demonstrate to the City that either it has entered into a Project Labor Agreement that is consistent with the Construction Jobs Policy, or has made commercial reasonable efforts to do so.

- CWS shall pay an annual fee equal to $0.005 per month, per square foot of building space to support the West Oakland Jobs Resource Center.
- CWS shall make a good faith effort to show conformance with the applicable sections of the current version of the City's Equitable Climate Action Plan (ECAP).
- CWS shall comply with the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, adopted by the City Council on June 12, 2012 (Resolution No. 83930 C.M.S.), as amended by the City Council on July 16, 2013 (Ordinance No. 13182 C.M.S.), including contributing its fair share payment related to CEQA Mitigation Measures, which equals a one-time payment of $375,311.
- CWS shall pay its proportionate share of: (i) CEQA costs related to the preparation of Addendum No. 2 in the amount of $46,409.66, and (ii) preparation of a subdivision map in the amount of $8,703.19).
- After completion of construction of the project, CWS shall execute and record documentation that will relinquish and terminate recycling operations on CWS's existing sites at 3300 Wood Street and 1819/1820 10th Street in West Oakland;

Some of the key components of the 99-Year Lease of the City's Leasehold Interest in the Caltrans Easement are:

- On April 29, 2005, Caltrans recorded a perpetual easement as document number 2005-171016 granting to the Oakland Base Reuse Authority a perpetual easement to property under the freeway (as amended, the "Caltrans Easement").
- On August 7, 2006, the Oakland Base Reuse Authority transferred all of its rights and obligations relating to the former Oakland Army Base, including the Caltrans Easement, to the Oakland Redevelopment Agency.
- On January 31, 2012, the Oakland Redevelopment Agency transferred all of its rights and obligations relating to the Former Army Base, including the Caltrans Easement, to the City.
- The City has a perpetual interest in the Caltrans Easement and may only grant its rights to others through a lease that meets the terms of the Caltrans Easement.
- CWS agrees to lease the 2.36-acre property subject to the Caltrans Easement (the "Premises") from the City solely based on CWS's own independent investigation of the Premises and not on any representation or warranties made by the City. CWS is accepting all portions of the Premises "As-Is" and "Where-is".
- The term of the lease will be ninety-nine (99) years.
- Rent is $575,000 per acre and payable in advance at Closing (as defined in the L/DDA), which equals $1,357,000, as part of the conveyance price of $8,268,500.
- The Premises are for the sole purpose of allowing the construction, use, replacement, inspection, maintenance, and repair of public roadway to access the Property, truck parking areas, personal vehicle parking areas, commercial fleet vehicle parking area (including the parking of refuse collection vehicles and/or recycling collection vehicles) and associated landscaping and utilities servicing any of such uses above, over, in, under,

upon and across the Premises all as permitted by the CUP. Truck parking shall be limited to parking of truck tractors and un-laden, unenclosed flatbed trailers.

FISCAL IMPACT

CWS will be paying a $8,268,500 conveyance price, which will be accepted and appropriated to the General Purpose Fund (1010), Oakland Army Base Redevelopment Organization (85244), OARB Bay Bridge Gateway Program (SC07), and Project to be determined.

CWS has previously deposited $568,840 with the City as an ENA Deposit, which will be applied to the conveyance price at closing. Upon execution of the L/DDA with CWS, the City will transfer, accept and appropriate the ENA Deposit into the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07). Additionally, within three business days from the execution of the CWS L/DDA, CWS will deposit an additional $250,000, which will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

CWS will be paying a $375,311 OAB Fair Share Program payment, which will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671) Oakland Army Base Redevelopment Organization (85244), OAB Fair Share Project (1005263), OARB Bay Bridge Gateway Program (SC07).

CWS will also pay a $55,112.85 proportionate payment, which will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

CWS will also pay a $229,760 West Oakland Community Fund payment, which will be accepted and appropriated to the Miscellaneous Trusts Fund (7999), Oakland Army Base Redevelopment Organization (85244), OARB Bay Bridge Gateway Program (SC07), and Project to be determined.

CWS will pay an annual community maintenance fee, equal to $0.005 per month, per square foot of building space to support the West Oakland Jobs Resource Center, which shall be increased annually consistent with the Consumer Price Index (“CPI”), and which will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Workforce Development Organization (85311), West Oakland Jobs Resource Center Project (10000336), and OARB Bay Bridge Gateway Program (SC07).

PUBLIC OUTREACH / INTEREST

Per Section 5.0 of the Oakland Army Base Public Engagement Plan (June 2019), CWS published a project-specific public engagement plan entitled “CWS Public Engagement Plan”,

dated May 2019. In accordance with the CWS Public Engagement Plan, CWS has taken the following actions:

- Distributed two separate mailers to Oakland residences describing the proposed facility.
- Hosted two community meetings focused on community concerns including community benefits, jobs and reuse of the current facility.
- Hosted a tour of a state-of-the-art waste management facility located in San Carlos, California.
- Sponsored community events including First African Methodist Episcopal ("FAME") church, Oakland's back to school shoe giveaway event, Life is Living Festival, Oakland's Excellence in Sports Performance Yearly Award ("ESPY"), Making Moves Community festival and other key events that target West Oakland residents.
- Presented before local neighborhood organizations including West Oakland Biz Alert and Oakland Neighbors.

In addition, CWS held its first informational meeting on July 15, 2019 at the West Oakland Senior Center. According to CWS, fifty-eight people RSVP'd and 48 people attended.

On September 10, 2019, CWS held its second community meeting. This meeting focused on responding to community concerns regarding community benefits and reuse of its current locations. Thirty-six people RSVP'd and 22 people attended. The key community benefit concerns were jobs, reuse of current site and community partnership.

On October 11, 2019, CWS also hosted a guided tour of its Rethink Waste facility in San Carlos for members of the community. Rethink Waste is described as a state-of the-art recycling facility operated in similar fashion to the subject proposed facility. A forum was provided for a question and answer session hosted by CWS's Chief Executive Officer. Feedback from attendees indicated there was unanimous support for the proposed Project.

Diverse and equity-centered outreach efforts targeted social media platforms, print ads, ethnic media and stakeholder presentations. Outreach efforts documented the participation of specific racial, language and ethnic groups. CWS believes its outreach captured the attention of anyone who could be impacted by the proposed project or who may just have an interest in the project and the entitlement process.

CWS also responded directly to feedback from the East Bay Municipal Utilities District (EBMUD) regarding CWS truck ingress and egress. The plans were revised to reflect EBMUD concerns. These revisions include the following:

1. CWS revised the site plan to relocate the outbound truck lane entering onto Wake Avenue to avoid any modifications to the existing median at the railroad tracks,
2. The relocated truck lane was changed to outbound and left turn only lane to keep trucks from turning right on Wake Avenue and inadvertently proceeding onto EBMUD property via Engineer Road.
3. Trucks entering the CWS site are to enter only at the main vehicle entry point from Wake Avenue.

CWS met with EBMUD staff on January 14, 2020 to present the above changes. EBMUD staff fully supported the revision and had no other objections to the Project.

COORDINATION

The City Administrator's Office has coordinated its efforts with the Bureau of Planning with respect to CEQA and Project approvals, as well as the Public Works Department, the City Attorney's Office, and Budget Bureau.

SUSTAINABLE OPPORTUNITIES

***Economic*:** Redevelopment of the Property should have substantial economic regional impacts which can be characterized in terms of net direct spending, total output, income and jobs. In addition, the project should have positive fiscal impacts which can be measured in both City and County tax revenue increases including property taxes, sales taxes, and business taxes.

***Environmental*:** Relocating CWS's existing facilities out of a residential mixed-use neighborhood to the industrial North Gateway Area of the former Oakland Army Base should contribute to and enhance smart growth principles, will leverage existing multi-modal transportation amenities and will be consistent with regional growth policies and state growth mandates pursuant to Senate Bill 375 and Assembly Bill 32, as well as allow for updated state-of-the-art recycling facilities, all of which result in environmental benefits.

***Race and Equity*:** The West Oakland neighborhood adjacent to the Property is a historically underserved area that has long experienced social and economic inequities. Relocating a truck-intensive, industrial use to the North Gateway Area would ultimately provide positive health benefits by moving recycling activities away from the historically environmentally impacted neighborhood in West Oakland and provide economic stimulus to the neighborhood by preserving and creating additional local job opportunities and would contribute to continued neighborhood job growth and economic stability.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff has determined that Addendum No. 2 to the 2002 EIR/2012 Addendum is appropriate because no new information about the site, changes to the project, or circumstances under which the project would be undertaken that would result in new or more severe adverse environmental impacts have occurred. The California Public Resources Code Section 21166 and CEQA Guidelines Section 15164 states that an Addendum to a certified EIR is allowed when minor changes or additions are necessary and none of the conditions for preparation of a Subsequent EIR are met.

Staff has determined, through the environmental checklist, that there is substantial evidence that the project would not require preparation of a Subsequent or Supplemental EIR and that an Addendum is the appropriate CEQA document, per the following conclusions:

(1) Although the proposed Project adds project-level details to the site identified in the 2002 EIR/2012 Addendum for such development, these project details would not result in new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum.

(2) Although the Addendum No. 2 takes into account current conditions, there would be no new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum due to changes in circumstances.

(3) Although the Addendum No. 2 takes into account new information, including updated transportation and emissions assessments per current guidelines and implementation of current Standard Conditions of Approval, there would be no new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum due to new information.

Therefore, in accordance with California Public Resources Code Section 21166 and CEQA Guidelines Section 15164, the 2002 EIR/2012 Addendum and Addendum No. 2 will comprise the full and complete CEQA evaluation necessary for the proposed project and no further CEQA evaluation for the Project will be required.

CALIFORNIA SURPLUS LANDS ACT

All of the properties located within the former Oakland Army Base were used for federal military uses for decades, resulting in hazardous materials contamination. In light of this contamination, the properties at the former Oakland Army Base have both Federal and State deed restrictions preventing their use for any residential activities. The properties were transferred, ultimately, to the City to advance specific development objectives and not general City uses.

Pursuant to the California Surplus Lands Act (CA Government Code 54220 et seq., as amended the "SLA"), properties subject to ENAs executed prior to September 30, 2019 and it is anticipated to close prior to December 31, 2022 are exempt from the requirements of the SLA. As noted above, this action is for an extension of an existing ENA that was executed prior to September 30, 2019.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following pieces of legislation:

1. As recommended by the Planning Commission at its June 16, 2021 meeting:

   A Resolution approving (A) Design Review and a major conditional use permit for a recycling facility located at 2308 Wake Avenue by California Waste Solutions, Inc. (CWS); and (B) adopting requisite California Environmental Quality Act (CEQA) findings and the conditions of approval attached hereto as ***Attachment A***; and

2. An Ordinance

A. Authorizing the City Administrator to execute a lease and disposition and development agreement (L/DDA) between the City of Oakland (City) and California Waste Solutions, Inc. (CWS) For Development Of A Recycling Facility At 2308 Wake Avenue, substantially in the form attached hereto as ***Attachment B***, with a term of up toseven years, a conveyance price of $8,268,500, and applicable extension feesof $125,000, $250,000, and $425,000;

B. Authorizing the City Administrator to execute a 99-year lease between the City and CWS of the City's leasehold interest in an easement granted by Caltrans over adjacent property substantially in the form attached hereto as ***Attachment C***; and

C. Waiving the application of the City's Local and Small Local Business Enterprises Program, as amended on February 16, 2021 (Ordinance No. 13640 C.M.S.) and May 4, 2021 (Ordinance No. 13647 C.M.S.); and

D. Applying the Construction Jobs Policy and Operation Jobs Policy applied to the other projects at the former Oakland Army Base; and

E. Adopting requisite CEQA findings.

For questions regarding this report, please contact John Monetta, Project Manager I at (510) 238-7125.

Respectfully submitted,

Elizabeth Lake

ELIZABETH LAKE
Interim Assistant City Administrator

Prepared by:
John Monetta, Project Manager I
Office of the City Administrator

Attachments (5):

A. Required Findings -- CEQA, Design Review and Conditional Use Permit and Conditions of Approval
B. Form of L/DDA
C. Form of Lease
D. Construction Jobs Policy
E. Operations Jobs Policy

ATTACHMENT A

REQUIRED FINDINGS:
CWS RECYCLING FACILITY
CONDITIONAL USE PERMIT

Required findings include:

- California Environmental Quality Act
- Regular Design Review: Planning Code Section 17.136.050
- Conditional Use Permit Findings: Planning Code Section 17.134.050

California Environmental Quality Act Findings

The Planning Commission certified an Environmental Impact Report for the Oakland Army Base (OARB) Redevelopment Plan (2002 EIR) on July 29, 2002. The City Council and the Redevelopment Agency also took actions to certify/adopt the 2002 EIR in October of 2002. The 2002 EIR is available to the public at the Planning Department offices and on the web at: http://www2.oaklandnet.com/oakca1/groups/ceda/documents/webcontent/oak036432.pdf

Subsequently in 2012, the City and the Port of Oakland adopted the 2012 Addendum to the 2002 EIR (2012 Addendum). The 2012 Addendum is available to the public at the Planning Department Offices and on the web at: https://cao-94612.s3.amazonaws.com/documents/Army-Base-Initial-Study-052912.pdf.

Staff has determined that Addendum No, 2 to the 2002 EIR/2012 Addendum is appropriate because no new information about the site, changes to the project, or circumstances under which the project would be undertaken that would result in new or more severe adverse environmental impacts have occurred. The California Public Resources Code Section 21166 and CEQA Guidelines Section 15164 State CEQA Guidelines Section 15164 states that an Addendum to a certified EIR is allowed when minor changes or additions are necessary and none of the conditions for preparation of a Subsequent EIR are met.

Staff has determined that there is substantial evidence that the project would not require preparation of a Subsequent or Supplemental EIR and that an Addendum is the appropriate CEQA document, per the following conclusions:

(1) The proposed project adds project-level details to a site identified in the 2002 EIR/2012 Addendum for an existing recycling facility being relocated from a primarily residential neighborhood in West Oakland. The project would not result in new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum because, the CWS Project as proposed, is consistent with the development assumptions for the project site in the 2012 Addendum.

(2) Although Addendum No. 2 takes into account current conditions, there would be no new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum due to changes in circumstances.

(3) Although Addendum No. 2 takes into account new information, including updated transportation and emissions assessments per current guidelines and implementation of current SCAs, there would be no new significant environmental effect or a substantial increase in the severity of impacts identified in the 2002 EIR/2012 Addendum due to new information.

Therefore, in accordance with California Public Resources Code Section 21166 and CEQA Guidelines Section 15164, the 2002 EIR/2012 Addendum and Addendum No. 2, if adopted by

the City Council, will comprise the full and complete CEQA evaluation necessary for the proposed project and no further CEQA evaluation for the project will be required.

City of Oakland Design Review Findings

The proposed recycling facility design is subject to Planning Code Section 17.136.050 - Regular design review criteria. Accordingly, regular design review approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria:

17.136.050 Regular design review criteria.

Regular design review approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria:

For Nonresidential Facilities and Signs.

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

   The proposed project creates a well-composed design in relationship to the existing and planned industrial facilities and the surrounding neighborhood. Visually, the proposed building conforms to the area design guidelines with regard to height, bulk, texture, materials and colors. The entrance area of the proposed building is two stories where most of the building is one-story at approximately 45 feet. The two-story portion of the proposed building is the primary façade and is treated with a mix of materials of different texture and colors. The main entrance coincides with the primary façade and is softened with an abundance of landscaping including various types of ground cover, shrubs and trees.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

   The proposed project transforms a vacant lot into a state-of-the- art recycling facility to replace an existing facility in West Oakland. The project will protect the value of the surrounding industrial area and the operators are committed to reducing environmental impacts, specifically air pollution, by implementing required mitigation measures stipulated in the Addendum to the 2002 EIR/2012 Addendum

1. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposed project complies with the vision of the D-GI district and the Oakland General Plan. The project also complies with the Gateway Industrial Design Standards, providing recycling services in a building that is consistent with existing and planned development including other recycling companies, truck servicing operations and warehousing.

City of Oakland Major Conditional Use Permit Findings

The proposed recycling facility requires a Major CUP for development of a parcel greater than one acre and construction of a non-residential building greater than twenty-five thousand (25,000) square feet of floor area. Accordingly, a Major CUP approval may be granted only if the proposal conforms to all of the following general findings applicable to Major Conditional Use Permits:

17.134.050 Findings required.

A. Except as different criteria are prescribed elsewhere in the zoning regulations, a conditional use permit shall be granted only if the proposal conforms to all of the following general use permit criteria, as well as to any and all other applicable use permit criteria:

1. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

   The location, size, design and operating characteristics of the CWS facility are compatible with adjacent uses which include an East Bay Municipal District (EBMUD) facility to the north, a vacant parcel now reserved for a metal recycling facility to the east, a roadway overpass to the south and a truck parking facility to the west. The facility as currently designed will meet all of the Gateway Industrial District Design Standards, which include height, bulk and façade design. Employee and truck traffic would be generated primarily during non-peak traffic hours and will therefore have no significant impact on weekday rush hour traffic. Also, CWS operations run at limited capacity during evenings and weekends and will therefore have no significant impact on weekend recreation activity which is expected to occur along Grand Avenue, Maritime Street and Burma Road.

2. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

   The project is located in an industrial use district and is surrounded by compatible industrial activities, including a water treatment plant, truck parking and a vacant parcel currently planned for a heavy metal recycling facility. The proposed approximately 50-foot tall recycling facility is compatible with completed and planned structures in the general vicinity. The proposed project complies with the D-GI zoning district standards and is compatible with Gateway Industrial District Design Standards. The area is also within the Business Mix General Plan designation, which is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of businesses and commercial and industrial

establishments. Residential activity is expressly prohibited within the D-GI district; the closet residential neighborhood is approximately 0.5 miles from the subject site.

3. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

   The surrounding area would be occupied by a mix of industrial use, including a water treatment plant, truck parking and a planned facility for recycling of metals. This concentration of truck intensive industrial use at the Gateway Industrial District, which were formerly located in the West Oakland residential neighborhood, is essential to improving livability and air quality in the nearby West Oakland community.

4. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.134.050

   Design Review of the proposed facility occurred before the City's Design Review Committee (DRC) on during its December 11, 2019 and March 4, 2020 meeting dates. All project design concerns expressed by the DRC were adequately addressed during the March 4th DRC meeting and Staff believes the proposed project substantially conforms with the Gateway Industrial District Design Standards.

5. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

   The proposed recycling facility conforms with the Business Mix General Plan designation by contributing to the mix of industrial business in the D-GI zoning district. The facility conforms with the siting guidelines and operating parameters contemplated and analyzed in 2002 EIR/2012 Addendum and conforms with all applicable and required design criteria found in the Gateway Industrial District Design Standards.

CONDITIONS OF APPROVAL
PROJECT: CALIFORNIA WASTE SOLUTIONS (CWS) RECYCLING FACILITY
PROJECT SPONSORS: RPR ARCHITECTS/CALIFORNIA WASTE SOLUTIONS

Part 1: Standard Conditions of Approval – General Administrative Conditions

1. Approved Use

The project applicant / property sponsor, including successors, (collectively referred to hereafter as the "project applicant" or "applicant"), shall construct and operate the project in accordance with the authorized use as described in the approved application materials dated April 15, 2020 and the approved plans, as amended by the following conditions of approval and standard conditions of approval/mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

This action includes the regulatory approvals set forth below (the "Approval"):

a. Design Review.
b. Conditional Use Permit (CUP) to establish recycling facility.

2. Effective Date, Expiration, Extensions and Extinguishment

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with the requirements of, and obtain required permits from all other applicable federal, state and regional environmental agencies including the California Department of Resources Recycling and Recovery (CalRecycle), the Alameda County Department of Environmental Health, acting as the Local Enforcement Agency (LEA) for CalRecycle, the Alameda County Waste Management Authority (aka StopWaste), the Bay Area Air Quality Management District and the Regional Water Quality Control Board, as necessary. The project applicant shall comply with local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Planning and Building Department, Fire Marshal, Department of Transportation, and Public Works Department. Compliance with other agency applicable requirements may require changes to

the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

Major changes include, but are not limited to, changes of any of the following: substantial change in operations, substantial increase in recycling capacity or a substantial increase in building footprint,

5. Compliance with Conditions of Approval

a. The project applicant shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.

c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within sixty (60) days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement, or similarly termed document, with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with Engineering Services and/or the Bureau of Building, if directed by the Director of Public Works, Building Official, Director of City Planning, Director of Transportation, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, Engineering Services, Department of Transportation, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCA/MMRP)

a. All mitigation measures identified in the Addendum No. 2 are included in the Standard Condition of Approval / Mitigation Monitoring and Reporting Program (SCA/MMRP), which is included in these Conditions of Approval and are incorporated herein by reference, as Attachment C, as Conditions of Approval of the project. The Standard Conditions of Approval identified in the Addendum No. 2 are also included in the SCA/MMRP, and are, therefore, incorporated into these Conditions by reference. To the extent that there is any inconsistency between the SCA/MMRP and these Conditions, the more restrictive Conditions, as determined by the City, shall govern. In the event a Standard Condition of Approval or mitigation measure recommended in the Addendum No. 2 has been inadvertently omitted from the SCA/MMRP, that Standard Condition of Approval or mitigation measure is adopted and incorporated from the Addendum No. 2 into the SCA/MMRP by reference, and adopted as a Condition of Approval. The project applicant shall be responsible for compliance with the requirements of any submitted and approved technical reports, all applicable mitigation measures adopted, and with all Conditions of Approval set forth herein at his/her sole cost and expense, unless otherwise expressly provided in a specific mitigation measure or Condition of Approval, and subject to the review and approval by the City of Oakland. The SCA/MMRP identifies the timeframe and responsible party for implementation and monitoring for each Standard Condition of Approval and mitigation measure. Unless otherwise specified, monitoring of compliance with the Standard Conditions of Approval and mitigation measures will be the responsibility of the Bureau of Planning, with overall authority concerning compliance residing with the Environmental Review Officer. Adoption of the SCA/MMRP meets the City's requirement set forth in section 21081.6 of CEQA to develop a monitoring and reporting program.

b. Prior to the issuance of the first construction-related permit, the project applicant shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

13. Compliance Matrix

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including the SCA/MMRP measures) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to

each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

OTHER STANDARD CONDITIONS

14. Employee Rights

The project applicant and sponsor shall comply with State and Federal laws regarding employees' right to organize and bargain collectively with employees and shall comply with the Oakland Minimum Wage Law (Chapter 5.92 of the Oakland Municipal Code).

When required: Ongoing
Initial Approval: N/A
Monitoring/Inspection: N/A

PROJECT SPECIFIC CONDITIONS

15. Entry Gate

A schematic design of the proposed kiosk near the entry gate shall be reviewed and approved by Planning Staff prior to building permit submittal.

When required: Prior to submittal building permit application
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

16. Acceptable Materials

Only the following "Acceptable Materials" may be accepted at the facility: items collected in commercial recycling activities and municipal residential programs such as those collected by CWS under the *Residential Recycling Collection Service Contract* between City of Oakland and CWS: newspaper, mixed paper (including, but not limited to, white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade paper), glass bottles and jars, metal cans including empty aerosol containers, aluminum foil and trays, milk and juice cartons, soup and juice boxes, narrow neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard, which have been source-separated from other solid waste by residential and commercial generators for the purpose of recycling, as defined in California Public Resources Code 40180. Acceptable Materials also include materials collected by CWS under the Residential Recycling Collection Service Contract between City and CWS, including dry cell household batteries, used motor oil and used motor oil filters.

The recycling facility shall not allow drop-in recycling by the general public.

When required: Ongoing

Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

17. Waste Quantities

The recycling facility may only receive, process, and transfer up to 850 tons per day of Acceptable Materials. The project applicant must provide sufficient space to receive and store materials during peak operating periods without infringing upon traffic flow or equipment operation. In instances of emergency situations where the inflow rate could be increased and/or additional waste storage is needed, the Lead Enforcement Agency (LEA) is to be contacted to coordinate the best procedures to minimize potential public health hazards for this type of short-term condition.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

18. Prohibited Wastes

Subject to Section 1. Above, the facility is expressly prohibited from receiving, processing, or transferring the waste defined in the following sections of Title 14, Division 7, Chapter 3 of the California Code Regulations, except for the amounts received incidental to source-separated recycling (e.g. E-wastes, propane cylinders, CO2 cylinders, fire extinguishers, medical wastes and the like), which shall be properly stored and disposed of at an appropriate disposal facility:

17225.8. Bulky Waste. "Bulky Waste" includes large items of solid waste such as appliances, furniture, large auto parts, trees, branches, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

17225.15. Construction and Demolition Wastes. "Construction and Demolition Wastes" include the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

17225.30. Garbage. "Garbage" includes all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs.

17225.32. Hazardous Wastes. "Hazardous Wastes" include any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to humans, domestic animals, or wildlife, during, or as an approximate result of any disposal of such wastes or mixture of wastes as defined in Article 2, Chapter 6.5, Section 25117 of the

Health and Safety Code. The terms “toxic,” “corrosive,” “flammable,” “irritant,” and “strong sensitizer” shall be given the same meaning as in the California Hazardous Substances Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code).

17407.5. “Hazardous, Liquid and Special Wastes” include wastes such as propane cylinders, CO2 cylinders, fire extinguishers and E-wastes.

17225.52. Putrescible Wastes. “Putrescible Wastes” include wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, offal and dead animals.

17408.2. Medical Wastes. ”Medical Waste” includes untreated medical waste, including sharps waste.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

19. Material Handling

All material management, processing and storage shall be conducted entirely inside the enclosed building.

Used motor oil received through the recycling collection program is to be stored in a waste oil tank located in the vehicle maintenance facility and emptied and removed from the recycling facility by a certified oil recycling company.

Batteries are to be stored in a location within the recycling facility that would have a fire-safe barrier separating the battery storage from any bale or fuel storage.

Materials delivered to the facility for processing shall be processed and transported away from the facility in accordance with the amount of time allowed under the Solid Waste Facility Permit.

“Glass bottles and jars” included in “Acceptable Materials” shall be sorted and processed into glass and glass fines which shall be transported to glass beneficiation facilities for further processing for recycling.

Prohibited materials received incidental to source-separated recycling shall be separated, properly stored and transported to an appropriate disposal facility.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

20. Burning Waste

Open burning of solid waste at the facility is prohibited. If burning wastes are inadvertently received at the facility, they are to be immediately unloaded away from other materials where it can be spread and extinguished. If fire appears to be a greater threat, 911 is to be called immediately for assistance from the Fire Department. Smaller fires can be extinguished through use of accessible fire suppression equipment (e.g. fire extinguishers) operated by facility personnel who are trained in the proper procedures in the event of a fire. Any incidents of fire are to be noted in the Special Occurrence Log.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

21. Load Checking

In accordance with 14 CCR, Section 17409.5(a), the project applicant must implement a load checking program at the facility. Site personnel are to be trained in the recognition, proper handling and disposition of prohibited waste. In the event that a hazardous or prohibited waste is detected as part of the load checking program, it either must be rejected or, if the hauler cannot be identified, separated or cordoned off with traffic cones or similar devices, and properly disposed using licensed haulers.

All loads entering the facility are required to be covered (tarped). Each incident of an uncovered load is to be logged by date, and the customer's name and vehicle license numbers are documented. Repeat violators shall be refused entry.

Load checking records for the previous year are to be maintained for future reference at the facility office.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

22. Traffic

The maximum daily permitted truck trips at the facility is 308 one-way truck trips.

Collection trucks should depart the site before the peak morning traffic hour.

The number of trucks returning during peak afternoon hours shall not exceed seven trips.

Transfer trucks that transport recyclable material to market and non-recyclable material to the landfill or further processing shall be scheduled to travel during off-peak hours (5:00 a.m. to 7:00 a.m. and 11:00 a.m. to 3:00 p.m. weekdays).

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

23. Signs

Identification signs are to be posted at the main gate of the facility. Entry signs must provide the following information:

Delivery hours

Emergency phone numbers

Speed limit on site to prevent dust

Requirement that all loads entering the facility shall be covered (tarped).

Also, the facility is not open to the public therefore each point of access from a public road shall be posted with an easily visible sign indicating the operation or facility name and location of nearest public operation or facility.

In addition, warnings for exposure to loud noise are also to be clearly posted in appropriate locations.

When required: Prior to issuance of a Certificate of Occupancy (Temporary or Final, as the case may be)

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Building

24. Equipment Maintenance

The project applicant is required to implement a preventative maintenance program to ensure the reliability of all equipment and vehicles. Daily maintenance of both mobile and stationary equipment is to be conducted.

When required: Ongoing

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

25. Standby Equipment

The project applicant must have sufficient standby equipment available to meet requirements while equipment repairs are being made.

When required: Ongoing

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

26. Personnel

The project applicant must maintain adequate numbers of qualified personnel to ensure the proper operation of the facility. Facility personnel are required to attend monthly scheduled training meetings in proper facility operation and maintenance, hazardous waste recognition

and screening, environmental and nuisance controls, use of equipment, safety procedures, and emergency situation procedures.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

27. Safety

The project applicant must prepare a safety plan in accordance with SB 198 (Injury and Illness Prevention Program). This plan is to be maintained on site at the facility's main administration office.

When required: Prior to issuance of a Certificate of Occupancy (Temporary or Final, as the case may be)
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

28. Facility Maintenance and Cleaning

The project applicant must implement a maintenance program at the facility. The program must include daily monitoring for defective or deteriorated conditions, and the prompt repair of problems.

The buildings and facility grounds are to be cleaned of loose materials and litter daily. Litter pick-up within the facility yard and around the facility is to be conducted on a continual basis to prevent the tracking or off-site migration of waste materials.

The project applicant must conduct daily general housekeeping at the facility to minimize the accumulation of materials (i.e., fuel drums, used parts, inoperable equipment, tires, scrap and similar items) inherent in the operation of a recycling facility. The paved areas of the facility (including the entrance area) are to be repaired, as necessary.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

29. Odor

Areas utilized for processing and storage of recyclable must be cleaned on a regular basis to prevent odor generation. Constant monitoring of the processing and storage areas, including containers, by facility personnel must be implemented to prevent the creation of odors.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

30. Vector, Bird and Animal Control

In accordance with 14 CCR, Section 17410.4, the project applicant shall institute measures to control or prevent the propagation, harborage and attraction of flies, rodents or other vectors and animals, and to minimize bird attraction. A site-specific Integrated Pest Management and Maintenance Plan (IPMMP) must be prepared and submitted to the LEA as part of the Solid Waste Facility Permit application. Following approval by the LEA, the IPMMP must be implemented and maintained at the facility.

All containers are to be inspected and cleaned if they appear to be an attraction to any vectors. Proper drainage is to be designed to prevent any standing water from accumulating along the edge of the buildings, and/or paved areas of the facility. If fly larvae is observed, the area should be sprayed with an appropriate fly control agent and wet material removed so larvae does not return.

A maintenance program to prevent vector problems must be conducted, as necessary, by either site personnel or a professional pest control company, including setting, maintaining, and inspecting rodent traps by the professional pest control company. Bird control measures must be implemented to control bird attraction to the site. These measures include installation of spikes on buildings and light poles.

When required: Ongoing

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

31. Dust

The project applicant must implement dust control measures at the facility. The facility equipment and the building floor must be cleaned on a daily basis. **Automatic sprayers (mister system) must be utilized within the building to control dust.** Sweeping the exterior paved surfaces must be conducted daily to minimize the accumulation of dust and dirt, and setting speed limits for trucks to minimize dust.

When required: Ongoing

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

32. Noise

All collection vehicles and equipment used at the site are to be properly muffled. Workers are to be provided with ear protection, as necessary. Noise levels shall not exceed the maximum noise levels allowed in all industrial zones as described in Table 17.120.03 of the City's Planning Code, Signage is to be installed warning employees and visitors of potential exposure to loud noises.

When required: Ongoing

Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

33. Public Complaints

The project applicant must maintain a record of any written public complaints, including the nature of the complaint, the date of the complaint, name, address, telephone number of the person(s) making the complaint, and any action(s) taken in response.

When required: Ongoing
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

34. Reporting

At the end of each quarter, the project applicant shall provide to the City and Alameda County Waste Management Authority (StopWaste) the following information regarding activities at the CWS North Gateway Recycling Facility during the preceding quarter: daily number of one-way truck trips; incidents of uncovered loads; inbound tonnage by local jurisdiction; outbound tonnage by commodity and facility destination; the tonnage of non-marketed materials (e.g. contaminants or rejects) that are sent to a landfill; the facility's diversion rate (including methodology); list personnel who are required to attend monthly scheduled training meetings in proper facility operation and maintenance, including hazardous waste recognition and screening, environmental and nuisance controls, use of equipment, safety procedures, and emergency situation procedures; and any public complaints.

When required: Quarterly
Initial Approval: Bureau of Planning
Monitoring/Inspections: Bureau of Planning

35. Relinquishment of Existing CUPs

By submitting the executed version of the form letter attached hereto as Exhibit A ("Termination and Relinquishment of CUP Rights Letter"), Project applicant shall unconditionally, fully and permanently (a) cease all recycling and other nonconforming operations at 1819 10th Street, 1820 10th Street (APNs: 006-0029-003-02; 006-0049-027-01: 006-0049-025-01) (collectively, "10th Street Parcels"); and such additional contiguous parcels that project applicant may own and use for its current operations (collectively, "10th Street Parcels"); and (b) relinquish all of its rights to conduct recycling or industrial operations under Conditional Use Permits CM04460 and CM92-222 for 1819 10th Street and 1820 10th Street ("Existing CUPs"). Submittal of the Termination and Relinquishment of CUP Rights Letter shall effectuate the relinquishment of the foregoing rights, in lieu of any other process that may be available.

When required: Prior to issuance of Certificate of Occupancy (Temporary or Final, as the case may be)

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

36. Cessation of Legal Nonconforming Uses

By submitting an executed version of the form letter attached hereto as Exhibit B ("Termination and Relinquishment of Legal Nonconforming Rights Letter"), Project applicant shall unconditionally, fully and permanently (a) cease all recycling and other nonconforming operations at 3300 Wood Street and/or the 10th Street Parcels; and (b) relinquish all of its legal non-conforming use rights at 3300 Wood Street (APN 007-0599-001-03) and/or the 10th Street Parcels to conduct recycling or industrial operations. Submittal of the Termination and Relinquishment of Legal Nonconforming Rights Letter shall effectuate the relinquishment of the foregoing rights, in lieu of any other process that may be available.

When required: Prior to issuance of Certificate of Occupancy (Temporary or Final, as the case may be)

Initial Approval: Bureau of Planning

Monitoring/Inspections: Bureau of Planning

Exhibit A

FORM OF
TERMINATION AND RELINQUISHMENT
OF CUP RIGHTS LETTER

[DATE]

Department of Planning
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: **Conditional Use Permits CM04460 and CM92-222 (collectively, the "Existing CUPs") for Parcels Associated With 1819 10th Street and 1820 10th Street (respectively, APN Nos: 006-0029-003-02; 006-0049-027-01; 006-0049-025-01) (collectively, "Subject Properties")**

Dear Sir/Madam:

Pursuant to Condition 35 of Conditional Use Permit PLN19158, this is to notify you that [ADD NAME OF LEGAL OWNER(S)], the sole fee title holders of the Subject Properties ("Owners"), hereby fully, permanently and unequivocally relinquish all rights, benefits and privileges related to or arising from the Existing CUPs. In addition, we represent and warrant that all recycling and/or nonconforming operations have been ceased at the Subject Properties. The foregoing is effective as of the date of this letter.

We further acknowledge and agree that this relinquishment letter (1) is in exchange for good and valuable consideration received by the Owners pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Sincerely,

[ADD SIGNATURE BLOCK]
[SIGNATURE TO BE NOTARIZED]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

FORM OF
TERMINATION AND RELINQUISHMENT
OF LEGAL NONCONFORMING RIGHTS LETTER

[DATE]

Department of Planning
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: **Legal Nonconforming Rights to Conduct Recycling Operations and Other Nonconforming Uses (collectively, the "Legal Nonconforming Rights") at Parcels Associated with 1819 10th Street, 1820 10th Street and 3300 Wood Street (respectively, APN Nos: 006-0029-003-02; 006-0049-027-01; 006-0049-025-01; 007-0599-001-03) (collectively, "Subject Properties")**

Dear Sir/Madam:

Pursuant to Condition 36 of Conditional Use Permit PLN19158, this is to notify you that [ADD NAME OF LEGAL OWNER(S)], the sole fee title holders of the Subject Properties ("Owners"), hereby fully, permanently and unequivocally relinquish all rights, benefits and privileges related to or arising from the Legal Nonconforming Rights. In addition, we represent and warrant that all recycling and/or industrial operations have been ceased at the Subject Properties. The foregoing is effective as of the date of this letter.

We further acknowledge and agree that this relinquishment letter (1) is in exchange for good and valuable consideration received by the Owners pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Sincerely,

[ADD SIGNATURE BLOCK]
[SIGNATURE TO BE NOTARIZED]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit B

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
CITY OF OAKLAND
PLANNING & BUILDING DEPARTMENT
BUREAU OF BUILDING
250 FRANK H OGAWA PLAZA, 2ND FLOOR
OAKLAND, CA 9412
ATTN: CODE ENFORCEMENT SERVICES

(If other than "City of Oakland" the applicant shall ensure that a copy is provided to the City.)

Space Above This Line For Recorder's Use Only

1. NOTICE OF TERMINATION AND 2. RELINQUISHMENT OF RIGHTS

Subject Properties Address:	**1819 10th Street, 1820 10th Street**
Subject Properties APN:	**006-0029-003-02; 006-0049-027-01; 006-0049-025-01**
Planning Permit Numbers:	**Conditional Use Permits CM04460 and CM92-222**
Building Permit Numbers:	**N/A**

Notice is hereby given that Owner(s) of Record of the Subject Properties have fully, permanently and unequivocally terminated all existing operations and relinquished all rights, benefits and privileges related to the noted Planning Permits pursuant to that certain Termination and Relinquishment of CUP Rights Letter dated [ADD DATE]. Further notice is given that said letter (1) is in exchange for good and valuable consideration received by the Owner(s) pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Owner(s) of Record:_____ Date:_____

Signed:_____ Print:_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
CITY OF OAKLAND
PLANNING & BUILDING DEPARTMENT
BUREAU OF BUILDING
250 FRANK H OGAWA PLAZA, 2ND FLOOR
OAKLAND, CA 9412
ATTN: CODE ENFORCEMENT SERVICES

(If other than "City of Oakland" the applicant shall ensure that a copy is provided to the City.)

Space Above This Line For Recorder's Use Only

3. NOTICE OF TERMINATION AND 4. RELINQUISHMENT OF RIGHTS

Subject Properties Address:	**1819 10th Street, 1820 10th Street; 3300 Wood Street**
Subject Properties APN:	**006-0029-003-02; 006-0049-027-01; 006-0049-025-01; 007-0599-001-03**
Planning Permit Numbers:	**Legal Nonconforming Rights to Conduct Recycling and/or Nonconforming Operations**
Building Permit Numbers:	**N/A**

Notice is hereby given that Owner(s) of Record of the Subject Properties have fully, permanently and unequivocally terminated all existing operations and relinquished all rights, benefits and privileges related to their legal nonconforming rights to conduct recycling and/or nonconforming operations at the Subject Property, pursuant to that certain Termination and Relinquishment of Legal Nonconforming Rights Letter dated [ADD DATE]. Further notice is given that said letter (1) is in exchange for good and valuable consideration received by the Owner(s) pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Owner(s) of Record:_____ Date:_____

Signed:_____ Print:_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ATTACHMENT B

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY:

City of Oakland

WHEN RECORDED MAIL TO:

City of Oakland
OAB Project Manager
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

LEASE/DISPOSITION
AND
DEVELOPMENT AGREEMENT
(North Gateway)

By and Between

CITY OF OAKLAND

and

CALIFORNIA WASTE SOLUTIONS, INC.

Dated as of_____, 2021

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LIST OF EXHIBITS

LEASE/DISPOSITION AND DEVELOPMENT AGREEMENT
(North Gateway)

THIS LEASE/DISPOSITION AND DEVELOPMENT AGREEMENT (North Gateway) (this "**Agreement**" or "**L/DDA**") is entered into as of_____, 2021 (the "**Effective Date**"), by and between the CITY OF OAKLAND, a municipal corporation (the "**City**"), and CALIFORNIA WASTE SOLUTIONS, INC., a California corporation ("**Developer**").

RECITALS

This Agreement is entered into upon the following facts, understandings and intentions of the City and Developer, sometimes collectively referred to herein as the "**Parties**," and individually as a "**Party**":

A. The City owns certain real property in fee consisting of 12.02 acres, located on the former Oakland Army Base ("**OAB**") in the City of Oakland, Alameda County, California, as more particularly described on **Exhibit A-1** attached hereto and incorporated herein by this reference (the "**City Property**").

B. The California Department of Transportation ("**Caltrans**") owns certain real property in fee consisting of 2.36 acres, located within the OAB more particularly described on **Exhibit A-2** attached hereto and incorporated herein by this reference, which is controlled by the City pursuant to the Caltrans Easement (as defined below).

C. The "**Property**" is comprised of the City Property and the Caltrans Easement; a majority of the Property is comprised of the certain real property acquired from the United States of America acting by and through the Secretary of the Army ("**Army**") commonly known as the "**Subaru Lot**" more particularly described on **Exhibit B** attached hereto and incorporated by this reference, and a small portion of the Property also acquired from the Army, commonly known as the EDC Property (as defined below).

D. In 2003, the Army conveyed the majority of the OAB (the "**EDC Property**") to the Oakland Base Reuse Authority ("**OBRA**"), the City' predecessor in interest, pursuant to that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel dated August 7, 2003, recorded in the Official Records of Alameda County, California (the "**Official Records**") on August 8, 2003 as Instrument No. 2003466370 ("**Army EDC Deed**").

E. The EDC Property is subject to that certain Covenant to Restrict Use of the Property recorded in the Official Records on August 8, 2003 as Instrument No. 2003466371 ("**EDC Covenant**").

F. The Regional Water Quality Control Board issued Order No. R2-2004-0086 dated November 5, 2004 ("**RWQCB Order**"), which affects the Property.

G. The Army conveyed the Subaru Lot to OBRA pursuant to that certain Quitclaim Deed dated as of August 31, 2004, recorded on November 18, 2004 in the Official Records as

Instrument No. 2004513849 (the "**Subaru Lot Deed**"), subject to that certain Covenant to Restrict Use of Property recorded in the Official Records on November 13, 2004 as Instrument No. 2004513848 ("**Subaru Lot Covenant**").

H. As of May 5, 2005, the EDC Property and the Subaru Lot are both subject to the unrecorded Consent Agreement (as defined below).

I. Pursuant to City Council Resolution No. 87308 C.M.S., dated July 24, 2018, the City and Developer entered into that certain Exclusive Negotiating Agreement (North Gateway California Waste Solutions Project) dated as of July 24, 2018; as amended by that certain First Amendment to Exclusive Negotiating Agreement (North Gateway California Waste Solutions Project) dated as of January 24, 2020 and that certain Second Amendment to Exclusive Negotiating Agreement (North Gateway California Waste Solutions Project) dated as of July 15, 2020 (collectively, the "**ENA**").

J. Subject to the final land use entitlements as may be approved by the City in its regulatory discretion, the "**Development**" is anticipated to consist of (1) construction of a recycling facility with an approximately 171,000 square foot building consisting of an administrative office, material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area and a dispatch area and parking for personnel and collection trucks (collectively, the "**Improvements**") and (2) the operation of the recycling facility subject to the terms of the Conditional Use Permit. The Property and the Improvements are collectively referred to herein as the "**Development**"**,** and (2) the recycling facility which will be operated on the Property is referred to herein as the "**Project**."

K. The City's desire to enter into this Agreement with Developer is, in substantial part, to (1) facilitate the relocation of Developer's existing business operations in West Oakland in the areas commonly known as 1819 10th Street, 1820 10th Street, and 3300 Wood Street (APN 006-0029-003-02, 006-0049-025-01, 006-0049-027-01, and 007-0599-001-03) (collectively, the "**Existing Sites**") to the Property, and (2) not allow any similar business to subsequently operate at the Existing Sites, so as to reduce the number of environmentally impactful businesses in West Oakland.

L. Developer desires to purchase the City Property and to enter into a long-term lease of the Caltrans Easement for the purpose of developing the Property and operating the Project.

M. Pursuant to City Council Ordinance No._____C.M.S., adopted on _____, 2021, the City Council approved, among other things, this Agreement.

N. The City has prepared and placed on file a copy of the summary of the transaction contemplated by this Agreement, and the City has made the required findings and approvals in connection with the disposition of the Property pursuant to this Agreement, all in conformance with the requirements of Government Code Section 52201 and the Oakland Municipal Code ("**OMC**").

O. Pursuant to the California Environmental Quality Act (set forth in Public Resources Code, Section 21000 et seq., "**CEQA**"), the City Council found and determined that the anticipated environmental effects of the Development and the Project have been evaluated in the Prior EIR (as defined below), as modified by the 2021 Addendum No. 2 (as defined below) and that, as supported by substantial evidence in the record, no additional environmental analysis is required for the sale of the City Property, leasing of the Caltrans Easement, and development of the Improvements or operation of the Project.

P. This Agreement sets forth the terms and conditions under which the City will sell the City Property and lease the Caltrans Easement to the Developer, and by which the Developer will construct the Improvements on the Property.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Agreement, and in reliance on the representations and warranties set forth herein, the City and Developer agree as follows:

ARTICLE 1
INTENT, DEFINITIONS

Section 1.1 Purpose. The purpose of this Agreement is to set forth conditions precedent for the Close of Escrow (as defined below), to require Developer to comply with certain terms and conditions for Developer's due diligence, design, demolition, construction, financing, and development of the Improvements; and to require that, following the Close of Escrow, the Improvements will be constructed in accordance with the terms and conditions of this Agreement.

Section 1.2 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) "**2021 Addendum No. 2**" means that certain North Gateway Addendum No. 2 to the Prior EIR adopted on _____, 2021 by the Oakland City Council pursuant to CEQA.

(b) "**Affiliate**" means any entity that is directly or indirectly wholly-owned by Developer and directly or indirectly Controlling, Controlled by, or under common Control with, such Developer.

(c) "**Agreement**" or "**L/DDA**" means this Lease/Disposition and Development Agreement.

(d) "**Applicable Laws and Requirements**" mean all applicable present and future statutes, regulations, rules, guidelines, ordinances, codes, orders, and the like, and all amendments and modifications thereto (collectively, "**Laws**"), of any federal, state, or local agency, department, commission, board, bureau, office or other governmental authority to the extent of its jurisdiction relating to or affecting this Agreement, the design and construction of the Improvements, and/or the use of the Property by Developer, Developer's agents, contractors,

Affiliates, employees, guests, visitors, invitees, subtenants, licensees, permittees or other persons or entities, including, but not limited to:

(a) Those Laws pertaining to reporting, licensing, permitting, investigation, remediation or abatement of emissions, discharges, or releases (or threatened emissions, discharges or releases) of Hazardous Materials in or into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials;

(b) Those Laws pertaining to the protection of the environment and/or the health or safety of employees or the public;

(c) Those Laws pertaining to taxes, assessments, rates, charges, fees, municipal liens, levies, excises or imposts;

(d) The Army EDC Deed, EDC Covenant, the Subaru Lot Deed, and the Subaru Lot Covenant;

(e) The Consent Agreement and the related remedial action plan, as amended (the "**RAP**") and Risk Management Plan, as amended (the "**RMP**") (collectively, the "**RAP/RMP**");

(f) RWQCB Order;

(g) The 2021 Addendum No. 2;

(h) All licenses and permits issued by, and other determinations and approvals made by, governmental agencies pertaining to the Property;

(i) All applicable mitigation measures; and

(j) All plans required to be prepared by Developer by the City as part of the Project approvals.

(e) "**Army**" is defined in Recital C.

(f) "**Army EDC Deed**" is defined in Recital D.

(g) "**Blight Ordinance**" means Chapter 8.24 of the Oakland Municipal Code.

(h) "**Bona Fide Institutional Lender**" means any one or more of the following, who is not an Affiliate of Developer, whether acting in its own interest and capacity or in a fiduciary capacity for one or more persons or entities: (i) a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a United States 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 (A) any one of which assets of at least Five Hundred Million Dollars ($500,000,000) (or the equivalent in foreign currency), and (B) in the

case of a religious, educational, or charitable institution or an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or affiliate of 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, or (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 and/or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender.

(i) "**Business Day**" means Monday through Friday that is not a City holiday.

(j) "**Caltrans**" is defined in Recital B.

(k) "**Caltrans Easement**" means collectively, that certain document entitled "Easement" dated April 22, 2005, by and between the City, as successor to OBRA, and Caltrans, recorded on April 29, 2005 in the Official Records on April 29, 2005 as Instrument No. 2005171016; as amended by (A) that certain First Amendment to Easement dated May 19, 2015, recorded in the Official Records on May 22, 2015 as Instrument No. 2015136710, and (B) that certain Second Amendment to Easement dated August 11, 2016, recorded in the Official Records on September 1, 2016 as Instrument No. 2016223509.

(l) "**CEQA**" is defined in Recital O.

(m) "**Certificate of Completion**" is defined in Section 7.9.

(n) "**Certificate of Occupancy**" means a temporary or final certificate of occupancy or its equivalent by the City in its regulatory capacity that confirms that the City's requirements for occupancy and use of the Project have been completed.

(o) "**City**" means City of Oakland, a municipal corporation, acting in its proprietary capacity, unless otherwise specified in this Agreement.

(p) "**City Administrator**" means the Oakland City Administrator.

(q) "**City Event of Default**" is defined in Section 11.3.1.

(r) "**City Property**" is defined in Recital A.

(s) "**Close of Escrow**" or "**Closing**" means the date the Grant Deed is recorded in the Official Records of Alameda County, California.

(t) "**Completion Guaranty**" is defined in Section 3.1.6(a).

(u) "**Conditional Certificate of Occupancy**" means a Certificate of Occupancy issued by the City in its regulatory capacity allowing for partial occupation or partial use of the Improvements and containing conditions for final completion and occupancy.

(v) "**Conditional Use Permit**" means the conditional use permit issued by the City for the Development.

(w) "**Consent Agreement**" means collectively, that certain unrecorded Consent Agreement dated September 27, 2002, between the City and DTSC, as amended and superseded by that certain Consent Agreement dated May 19, 2003, as amended by that certain Letter Amendment to Consent Agreement dated as of May 2, 2005.

(x) "**Construction Bonds**" have the meaning given in Section 3.1.7(b).

(y) "**Construction Contract**" is defined in Section 3.1.5(a).

(z) "**Construction Documents**" mean the construction plans and attachments submitted to and approved by the City pursuant to this Agreement.

(aa) "**Construction Jobs Policy**" is defined in Section 8.2.3.

(bb) "**Control**" means the ownership (direct or indirect) by any one Person and if applicable, together with that Person's Affiliates, spouse and/or children and/or trusts for their benefit, of more than fifty percent (50%) of the profits or capital of another Person, and Controlled and Controlling have correlative meanings.

(cc) "**Conveyance Price**" is defined in Section 6.1.

(dd) "**CPI**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If CPI is changed so that the base year differs from that used as of the date most immediately preceding the prior adjustment date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If CPI is discontinued, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if CPI had not been discontinued; provided, however, if there is no replacement government index or computation, then City will select another similar published index, generally reflective of increases in the cost of living, in order to obtain substantially the same result as would be obtained if CPI had not been discontinued.

(ee) "**Developer Default Notice**" is defined in Section 11.4.2.

(ff) "**Developer Event of Default**" is defined in Section 11.4.1.

(gg) "**Developer Submission**" is defined in Section 3.2.1.

(hh) "**Development**" is defined in Recital J.

(ii) "**Development Budget**" is defined in Section 3.1.2(a).

(jj) "**Development Covenants**" is defined in Section 12.2.

(kk) "**Design Development Plans**" is defined in Section 3.1.4(a).

(ll) "**Discretionary Approvals**" is defined in Section 3.1.1.

(mm) "**DTSC**" means the California Department of Toxic Substances Control.

(nn) "**EDC Covenant**" is defined in Recital E.

(oo) "**EDC Property**" is defined in Recital D.

(pp) **"Effective Date**" shall be the date first set forth above, which shall be the date of execution of this Agreement.

(qq) "**ENA**" is defined in Recital I.

(rr) "**Environmental Assessments**" has the meaning given in Section 5.2.1

(ss) "**Equal Benefits Ordinance**" is defined in Section 8.2.3(a).

(tt) "**Escrow**" is as defined in Section 6.2.

(uu) "**Escrow Holder**" means_____.

(vv) "**Existing Sites**" is defined in Recital K.

(ww) "**Extension**" is defined in Section 2.3.

(xx) "**Extension Fee**" is defined in Section 2.3.1.

(yy) "**Final Construction Plans**" is defined in Section 3.14(c).

(zz) "**Financing Documents**" is defined in Section 3.1.3(a).

(aaa) "**Good Faith Deposit**" is defined in Section 6.1.1.

(bbb) "**Grant Deed**" is defined in Section 6.5.

(ccc) "**Guarantor**" is defined in Section 3.1.6(b).

(ddd) "**Hazardous Materials**" has the meaning given in Section 5.1.

(eee) "**Mortgagee**" is defined in Section 12.2.

(fff) "**Improvements**" is defined in Recital J.

(ggg) "**Indemnitees**" has the meaning given in Section 13.20.2.

(hhh) "**Investigation Activities**" has the meaning given in Section 4.2.

(iii) "**L/DDA**" or "**Agreement**" means this Lease/Disposition and Development Agreement.

(jjj) "**LEA**" means the Alamed"a County Department of Environmental Health.

(kkk) "**Lease**" is defined in Section 6.5.

(lll) "**Lease Termination**" is defined in Section 11.6.2.

(mmm) "**Material Change**" is defined in Section 7.2.3(a).

(nnn) "**Modified L/SLBE Program**" is defined in Section 8.2.3.

(ooo) "**Mortgage**" is defined in Section 12.1.1.

(ppp) "**OAB**" is defined in Recital A.

(qqq) "**Operations Jobs Policy**" is defined in Section 8.2.3.

(rrr) "**Outside Closing Date**" is the date that is the one (1) year from the Effective Date, subject to Extension pursuant to Section 2.3.

(sss) "**Party**" means one of the two parties to this Agreement and their respective successors and assigns.

(ttt) "**Permitted Exceptions**" means the exceptions to title listed in the attached **Exhibit C**, together with any others approved by Developer prior to the Close of Escrow.

(uuu) "**Permitted Transfer**" is defined in Section 10.6.1.

(vvv) "**Person**" means any individual, partnership, corporation (including 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, or any other governmental entity.

(www) "**Pre-Conveyance Period**" is defined in Section 2.2 below.

(xxx) "**Preexisting Hazardous Materials**" means Hazardous Materials that existed in, on, adjacent to, or under the Property prior to the Effective Date, whether such substances were within the definition of Hazardous Materials as used in this Agreement as of the Effective Date, or subsequently become included within such definition. Notwithstanding anything to the contrary in the foregoing, Preexisting Hazardous Materials shall not include asbestos, asbestos-containing materials, lead-based paints, or pesticides.

(yyy) "**Prior EIR**" means that certain Environmental Impact Report for the Oakland Army Base Area Redevelopment Plan certified and adopted on July 31, 2002 (State

Clearinghouse No. 2001082058), as modified by the 2012 Oakland Army Base Project Initial Study/Addendum.

(zzz) "**Project**" includes the Improvements, including those to be demolished and constructed pursuant to the Discretionary Approvals and this Agreement, including ancillary landscaping, parking, and other improvements as approved by the City, as described in the Final Construction Plans approved by the City pursuant to this Agreement and constructed in accordance with this Agreement.

(aaaa) "**Property**" is defined in Recital C.

(bbbb) "**Regulatory Permits**" is defined in Section 3.1.1.

(cccc) "**Remediation**" means investigate, remove, removal, remedy, remediate, remediation, and monitor Hazardous Materials, all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto, development of environmental remediation plans and securing regulatory approval for such plans, compliance with regulatory agency notification requirements. "Remove" or "removal" means the cleanup or removal of released Hazardous Materials from the environment, such actions as may be necessary taken in the event of the threat of release of Hazardous Materials into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of Hazardous Materials, the disposal of removed material, removal of underground storage tanks and associated pipes, special handling and disposal of excavated soils classified as hazardous waste, treatment and special disposal of displaced groundwater classified as hazardous waste, abatement or removal of any Hazardous Materials, or taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms "remedy" or "remediate or remediation" mean those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a Hazardous Material into the environment, to prevent or minimize the release of Hazardous Materials so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(dddd) "**Repurchase Grant Deed**" is defined in Section 11.6.3.

(eeee) "**Repurchase Option**" is defined in Section 11.6.3. Within thirty (30) days after written request from Developer, the City shall execute and record such instruments as Developer may reasonably request to acknowledge of record that the Repurchase Option has terminated provided that such instruments shall not be recorded prior to recordation of the Certificate of Completion.

(ffff) "**SCA/MMRP**" means those certain standard conditions of approval and MMRP adopted by the City Council on June 12, 2012 pursuant to Resolution No. 83930 C.M.S., as amended by the City Council on July 16, 2013 pursuant to Ordinance No. 13182 C.M.S.

(gggg) "**Schedule of Performance**" means the dates by which performance milestones for Developer to meet prior to Close of Escrow as generally described in **Exhibit D** attached hereto.

(hhhh) "**Significant Change**" means any change in the direct or indirect ownership of Developer, that results in Control of Developer.

(iiii) "**State Labor Code**" is defined in Section 8.2.2.

(jjjj) "**Subaru Lot Covenant**" is defined in Recital G.

(kkkk) "**Subaru Lot Deed**" is defined in Recital G.

(llll) "**Term**" is as defined in Section 2.1.

(mmmm) "**Transfer**" is as defined in Section 10.2.

ARTICLE 2
TERM

Section 2.1 Term. The term ("**Term**") of this Agreement shall commence upon the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement, shall terminate on the latest to occur of: (a) the date of issuance of the Certificate of Completion for completion of the Improvements; (b) execution of the Termination and Relinquishment of Rights Letters; or (c) recordation of the Notices of Termination and Relinquishment.

Section 2.2 Pre-Conveyance Period. The parties acknowledge that it will take time for Developer to finance the acquisition of the Property and the construction of the Improvements and to prepare final design and construction documents. Developer shall have one (1) year, commencing on the Effective Date, to satisfy applicable pre-conveyance conditions for the Close of Escrow for the conveyance of the City Property and the leasing of the Caltrans easement for development of the Improvements (the "**Pre-Conveyance Period**").

Section 2.3 Extension. At Developer's sole discretion, subject to there being no Developer default and Developer's payment of each applicable Extension Fee (as defined below), Developer may extend the Pre-Conveyance Period up to three (3) additional one-year extensions (each an "**Extension**"). Each Extension shall be exercisable no earlier than one hundred twenty (120) days and no later than thirty (30) days prior to the then-existing expiration date of the Pre-Conveyance Period.

2.3.1 Upon receipt of written notice of Developer's exercise of any eligible Extension, Developer shall pay an extension fee as follows (each an "**Extension Fee**"):

(a) No Extension Fee for the first Extension if Developer has submitted an application determined to be complete by the LEA for a permit to handle solid waste (the "**Solid Waste Facility Permit**") within ten (10) months after the Effective Date (the "**LEA Submittal Deadline**"),

(b) If Developer has not submitted such a complete application for a Solid Waste Facility Permit at the time of the LEA Submittal Deadline, One Hundred Twenty-Five Thousand Dollars ($125,000) for the first Extension;

(c) Two Hundred Fifty Thousand Dollars ($250,000) for the second Extension; and

(d) Four Hundred Twenty-Five Thousand Dollars ($425,000) for the third Extension.

2.3.2 Each Extension Fee shall be nonrefundable and not applicable to the Conveyance Price.

2.3.3 Each Extension exercised by Developer shall be memorialized in writing executed by both the City and Developer, with a new, mutually agreed upon Schedule of Performance extending all yet-to-be-completed pre-Closing items in the Schedule of Performance by one (1) year, which shall replace the immediately preceding Schedule of Performance.

ARTICLE 3
CONDITIONS PRECEDENT TO CONVEYANCE

Section 3.1 Conditions Precedent to Conveyance. As conditions precedent to the City's obligation to convey the Property to Developer and Developer's obligation to acquire the Property from the City (as specified below), the following conditions must be met during the Pre-Conveyance Period by the scheduled milestone date indicated in the Schedule of Performance attached hereto as **Exhibit D**, unless that time limit is extended in writing by the City Administrator or his or her designee in his or her sole reasonable discretion, up to the Outside Closing Date subject to Extension pursuant to Section 2.3; provided, however, thereafter the Outside Closing Date may only be extended by the City Council, acting by ordinance, in its sole and absolute discretion.

3.1.1. Discretionary Approvals and Regulatory Permits. During the Pre-Conveyance Period, Developer shall have obtained such discretionary land use entitlements from the City as necessary to proceed with the development of the Project, as well as the completion of environmental review pursuant to CEQA and incorporation of any CEQA mitigation measures identified in the environmental review process required to be included in the plans for Project development and operations (collectively, the "**Discretionary Approvals**"). In addition, Developer shall have obtained all other applicable governmental regulatory approvals and permits for construction and development of the Improvements (except those that can be issued only after completion of construction), including, but not limited to, the Solid Waste Facility Permit, and final building permits from the City's Building Department (collectively, the "**Regulatory Permits**"). Developer shall diligently, and with commercially reasonable efforts, take steps necessary to obtain all necessary Discretionary Approvals and Regulatory Permits not later than the dates specified in the Schedule of Performance and Section 3.1 above. The City shall cooperate with Developer as needed to obtain any Regulatory Permits; provided however, that the City shall not be required to expend any out-of-pocket expense other than reasonable amounts of City staff time.

Copies of all Discretionary Approvals and Regulatory Permits shall be submitted to the City promptly upon receipt by the Developer.

3.1.2 Financial Plan. No later than the applicable date set forth in the Schedule of Performance, Developer shall submit or make available, as applicable, to the City for its review and approval in accordance with Section 3.2 the items listed below which together will be referred to as the Financial Plan. As used in this Agreement, "make available" shall mean that City representatives shall be allowed to inspect such items at a designated office of Developer located within the City of Oakland but the City shall not make any copies or take any photographs of such items. The following items shall be referred to collectively as the "**Financial Plan**":

(a) A detailed estimated cost breakdown of the cost of the Improvements (the "**Development Budget**") based on the Final Construction Plans (as defined below) and the Construction Contract for the Improvements. The Development Budget shall be an itemized budget for the construction of the Improvements (including all hard and soft costs), showing all construction related, and non-construction related, costs, including the funding sources of payment for each item. The Development Budget shall include appropriate amounts for contingency for all items of construction, or such other greater retainage as may be provided for in the Construction Contract (as defined below).

(b) Developer shall make available a certified financial statement compiled by an outside, independent accountant or other financial statement or other evidence in form reasonably acceptable to the City demonstrating that Developer has sufficient additional sources of capital available and is committing such funds to cover the difference, if any, between the dollar amount of the Development Budget for the construction of the Improvements and the amount available to Developer from external financing sources, including without limitation, the Completion Guaranty (as defined below).

(c) Proposed construction financing, grant funding, equity contributions, and other financing or funds from external sources equal to one hundred percent (100%) of the Development Budget.

(d) Any other evidence reasonably requested by City demonstrating the economic and financial feasibility of construction of the Improvements.

The City shall not unreasonably withhold, condition or delay its approval of the Financial Plan.

3.1.3 Financing Documents.

(a) No later than the applicable date set forth in the Schedule of Performance, Developer shall submit to the City for its review and approval a draft of the form of all documents to be used for financing construction of the Improvements pursuant to the approved Financing Plan (the "**Financing Documents**"). The City shall not disapprove the Financing Documents if substantially consistent with the Financial Plan.

(b) The full execution of the Financing Documents and the closing of all construction financing for the Improvements shall be a concurrent condition to conveyance of the Property to Developer.

3.1.4 Construction Documents.

(a) Not later than the applicable date set forth in the Schedule of Performance, Developer shall submit for City's review and approval design development plans for the Project (the "**Design Development Plans**").

(b) Not later than the applicable date set forth in the Schedule of Performance, Developer shall submit for the City's review and approval, the Final Construction Plans for the Improvements. The term "**Final Construction Plans**" means the construction documentation upon which Developer and Developer's general building contractor will rely in constructing the Improvements, and shall include, but not necessarily be limited to (each to the extent applicable to any cold-shell portions of the Improvements), final architectural and engineering drawings, including a final site plan, final floor plans, a final roof plan, final exterior elevations, final interior design and building sections, final reflected ceiling plan, final enlarged floor plans and sections (as applicable), final structural plans, final mechanical plans, final plumbing plans, final HVAC plans, final electrical plans, final specifications outline, final technical specifications, final tabulation of areas, and final landscaping plans and specifications, plans for street and sidewalk improvements, an updated itemized statement of probable construction costs (appropriate amounts for contingency and inflation shall be included) broken down by trade, civil and landscape design, and a schedule for construction. The Final Construction Plans shall be consistent with the Design Development Plans approved by the Cityand governmental approvals.

(c) The Final Construction Plans shall include a plan and schedule to incorporate public art into the Improvements ("**Public Art Plans**") as required pursuant to any governmental approvals. The Public Art Plans shall be submitted to the City for review and approval prior to the applicable date set forth in the Schedule of Performance.

(d) Developer and its design consultants shall meet or exceed the requirements of the City's Green Building Ordinance as it pertains to the Improvements.

3.1.5 Construction Contract.

(a) Developer shall enter into a contract or contracts for the construction of the Improvements with a licensed and reputable general building contractor(s) meeting the employment and contracting obligations contained herein (the "**Construction Contract**"). The Construction Contract shall (i) provide that the City's employment and contracting requirements as set forth herein will be met, to the extent applicable; and (ii) include all of the terms and conditions required to be included in the Construction Contract by funding sources for the construction of the Improvements.

(b) Not later than the applicable date set forth in the Schedule of Performance, the Developer shall submit to the City for its review and approval a draft of the

final Construction Contract for the construction of the Improvements, with a budget showing the total hard construction costs for the Improvements consistent with the Project Development Budget based on the Final Construction Plans and requiring compliance with the Construction Jobs Policy.

3.1.6 Completion Guaranty.

(a) Developer shall cause the Guarantor to execute the completion guaranty substantially in the form attached hereto as **Exhibit E** (the "**Completion Guaranty**") for one hundred percent (100%) of the estimated hard costs as set forth in the approved Project Development Budget ("**Project Costs**"), less the predevelopment costs already spent for the Improvements and deliver it to the City concurrently with the Closing.

(b) Without limiting the City's approval rights set forth in Section 3.1.6(c), the Guarantor under the Completion Guaranty ("**Guarantor**") must be a financially strong person or entity with significant assets which, at a minimum, must include having a net worth of at least forty percent (40%) of the cost of construction of the Improvements, not including any amounts invested by the Guarantor in the Developer or the Project, less the predevelopment costs already spent for such Improvements costs. In lieu of documenting the required net worth, the Guarantor may provide the City with a letter of credit, in form and substance consistent with the Completion Guaranty, from a financial institution approved by the City, in an amount equal to the difference between forty percent (40%) of the Improvements costs and Guarantor's net worth and which shall be automatically renewable until Developer Completes Construction.

(c) The City, in its sole and absolute discretion, must approve the person or entity that the Developer proposes to serve as Guarantor.

3.1.7 Payment and Performance Bonds.

(a) Prior to Closing, Developer shall submit to the City for its review and approval:

(i) A performance bond in an amount not less than one hundred percent (100%) of the hard costs of construction of the Improvements pursuant to the Construction Contract approved by the City, as security for the faithful performance of such construction; and

(ii) A labor and material payment bond in an amount not less than one hundred percent (100%) of the hard cost of construction of the Improvements pursuant to the approved Construction Contract, as security for payment to persons performing labor and furnishing materials in connection with such construction.

(b) The performance bond and labor and materials payment bonds (collectively, the "**Construction Bonds**") shall be issued by a licensed surety (with sufficient strength and rating as determined by the City in its reasonable discretion), shall name the City as co-obligee or assignee, and shall be in a form reasonably satisfactory to the City.

3.1.8 Insurance. Developer shall have provided to the City evidence of insurance as required by **Exhibit F** attached hereto.

3.1.9 Entity Information. Developer has provided to the City the formation documents and certificate(s) of good standing for Developer or, if applicable, its Affiliate, to which the City Property will be conveyed, and the Caltrans Easement will be leased to, at the Close of Escrow, together with evidence that such entity has a current City business license.

3.1.10 No Litigation. There is no third-party litigation challenging the Development or the City's authority to sell the City Property or enter into the lease of the Caltrans Easement.

3.1.11 No Default. There is no Developer Event of Default as of the Close of Escrow.

Section 3.2 City Review and Approval of Developer Submissions.

3.2.1 The submittals required by Section 3.1 (collectively, the "**Developer Submissions**") shall be forwarded to the designated Project Manager for the City, for his or her reasonable review and approval.

(a) With respect to a Developer Submission regarding Final Construction Plans, Construction Contract, and evidence of insurance, the City shall approve or disapprove such Developer Submission (in whole or in part) in writing within thirty (30) Business Days of receipt by the City's Project Manager.

(b) With respect to any other Developer Submission required pursuant to Section 3.2, the City shall approve or disapprove (in whole or in part) such Developer Submission in writing within fifteen (15) Business Days of receipt by the City's Project Manager.

3.2.2 If a Developer Submission is approved in whole or in part, then no further submissions by the Developer, or approval by the City thereof, shall be required for such Developer Submission that is approved, except for any subsequent material change in the contents of the Developer Submission. The City may approve those portions of a Developer Submission that are reasonably satisfactory and reject those portions that are not. The City may also approve all or a portion of a Developer Submission subject to conditions requiring further submissions for City review and approval. Any rejection or disapproval of a Developer Submission shall be in writing and shall state in reasonable detail the basis for such rejection or disapproval with specificity.

3.2.3 If a Developer Submission is rejected by the City in whole or in part based on its reasonable discretion or approved subject to conditions requiring further submissions, the Developer shall submit a new or revised Developer Submission within fifteen (15) Business Days of written notification of the City's rejection or conditional approval and the specific basis and reasons therefor. If more than fifteen (15) Business Days are reasonably required to prepare and submit such new or revised Developer Submission, the Developer shall be in compliance herewith if the Developer begins preparation of the new or revised Developer Submission within

the fifteen (15) Business Day period, and uses commercially reasonable efforts to submit the same in a commercially reasonable period of time that, in any event, shall not exceed thirty (30) Business Days. The City shall approve or disapprove such new or revised Developer Submittal within fifteen (15) Business Days after its receipt thereof.

ARTICLE 4
ACCESS, GENERAL CONDITIONS

Section 4.1 Developer's Investigations. During the period commencing with the Effective Date prior to the Closing, Developer shall, at Developer's sole cost and expense, investigate the developmental and use potential of the Property, and approve any conditions associated therewith, as Developer shall deem necessary to satisfy itself that the Property may be developed in an economically feasible manner, and shall have inspected the Property and investigated the development cost and potential thereof and satisfied itself, in Developer's sole discretion, that all physical and legal aspects of the Property are acceptable to Developer, including without limitation, size, soils condition, flood and earthquake fault locations, improvement costs (both on-site and off-site), development entitlements, availability of utilities, and the Property otherwise meets Developer's development and use criteria and may be developed in an economically feasible manner.

Section 4.2 Entry. The City shall provide Developer and its agents, contractors and representatives with reasonable access to and entry upon the Property, during normal business hours and in accordance with the terms and conditions of this Section 4.2, for the purposes of conducting such investigation, testing, appraisals, and other studies as Developer may elect of the physical condition of the Property, including, without limitation, inspection and testing for the presence of Hazardous Materials, and for structural, mechanical, seismic, electrical and other physical and environmental conditions and/or characteristics of the Property (collectively, "**Investigation Activities**"). This Section 4.2 shall not be construed to limit the City's right to enter the Property under its separate regulatory authority. Such Investigation Activities shall be permitted and conducted on the following terms and conditions:

4.2.1 Developer shall pay for all Investigation Activities ordered or performed by, or on behalf of, Developer, including the City's oversight costs and third-party charges.

4.2.2 Developer shall not contact DTSC or RWQCB regarding the potential development and uses of all or portions of the Property without giving the City reasonable prior written notice and the opportunity to participate with Developer in any such contacts.

4.2.3 Developer shall indemnify, defend and hold the City, and its council members, commissioners, officers, agents and employees, harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorneys' fees) to the extent arising out of, relating to, or by reason of any entry on the Property by Developer, its agents, employees, consultants or contractors, including, without limitation, any damages, injury or death to any person, entity, or property, or to any conditions on the Property created by Developer's entry onto the Property or activities thereon by Developer or its agents, employees, consultants or contractors. Developer's obligation under this Section 4.2.3 shall exclude any matters arising out of or relating to Hazardous Materials existing

in, on, under, or about the Property on or before the Effective Date ("**Pre-Existing Hazardous Materials**") or the indemnified parties' sole active negligence or willful misconduct. The foregoing indemnity shall survive beyond the termination of this Agreement.

4.2.4 Prior to any entry, and thereafter until Closing, Developer shall cause the City, and its council members, commissioners, officers, agents and employees, to be named as additional insureds on a commercial general liability insurance policy with coverage of at least Two Million Dollars ($2,000,000) and shall cause copies of the actual insurance policies (not certificates of such insurance) to be delivered to the City.

(a) Notwithstanding anything to the contrary in this Agreement, Developer's compliance with this Section 4.2.4 shall in no way relieve or decrease liability of Developer under Section 4.2.3 above, or any other provision of this Agreement, and no insurance carried by the City shall be called upon to satisfy Developer's indemnification obligations under Section 4.2.3 or any other obligations of Developer or its employees, agents, consultants, and contractors under this Agreement.

(b) Developer hereby waives any and all rights of recovery against the City and its employees for any loss or damage to the extent these damages are insured by insurance carried by Developer, and the insurance proceeds are actually received by the insured, including amounts within any insurance deductible or self-insured retention. Developer shall, upon obtaining policies of insurance required in this Agreement, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Agreement.

4.2.5 Developer shall not alter the Property prior to Closing except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and Developer shall, upon completion of any testing or other activity under this Agreement remove all debris, litter, equipment, and other materials placed on the Property by the Developer and its agents, and restore the Property, at Developer's sole cost and expense, except as otherwise approved in writing by the City in connection with demolition of any existing improvements located on the Property and construction of the Improvements. Until restoration is complete, Developer will take all steps necessary to ensure that any conditions on the Property created by Developer's testing prior to Closing will not interfere with the normal operation of the Property or create any dangerous, unhealthy, unsightly or noisy conditions on the Property. The foregoing covenant shall survive any termination of this Agreement.

4.2.6 In connection with any and all entry by Developer or its employees, agents, consultants, and contractors on the Property, Developer shall keep the Property free of all liens by mechanics, materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer to perform any work in connection with the Property.

4.2.7 Notwithstanding any other provision in this Agreement, this right of entry shall not relieve the Developer from the necessity of obtaining any applicable governmental approvals or permits that may be necessary to perform such tests or conduct other

activities on the Property. The City reserves the right to require all persons entering the Property to sign a waiver of liability.

Section 4.3 Inspections. The City and its employees, agents, architects, engineers, and contractors shall have the right to enter upon the Property following the Closing and prior to the issuance of the Certificate of Completion (the "**Pre-Completion Period**") to inspect the Property and the Improvements at reasonable times to determine if development is in conformance with this Agreement. No inspection performed or not performed by the City hereunder shall give the City any responsibility or liability with respect to the activities relating to, or the design and construction of, the Improvements or constitute or be deemed to constitute a waiver of any of Developer's obligations hereunder or be construed as approval or acceptance of the work or the prosecution thereof or the design or construction of the Improvements.

Section 4.4 Safety and Function. Developer shall use best efforts to ensure that during the Pre-Completion Period, the safety, functioning and appearance of the Property and the convenience and safety of other persons is not adversely affected by the activities of Developer, its employees, contractors, consultants or other agents.

Section 4.5 Prohibited Activities. Without limitation of the foregoing, or any other provision of this Agreement, in no event shall Developer conduct activities on the Property that are forbidden by Applicable Laws and Requirements; or that may be dangerous to life, limb, property or public health; that in any manner cause, create, or result in a nuisance; or that is of a nature that involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode, or that otherwise harms the health or welfare of persons in the physical environment; or that results in any discharge or release of Hazardous Materials on the Property or any neighboring property including but not limited to the disposing or discharging of such substances into or under the Property or any neighboring property.

Section 4.6 Disclosures.

4.6.1 Each Party acknowledges that City is required to disclose if the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency (Cal. Gov. Code §8589.3); (b) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code §8589. (Cal. Gov. Code §8589.4); (c) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code §51178 or §51179 (in which event the owner maintenance obligations of Cal. Gov. Code §51182 would apply) (Cal. Gov. Code §51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code § 4125 (in which event the property owner would be subject to the maintenance requirements of Cal. Pub. Resources Code §4291 and it would not be the state's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code §4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code §4142) (Pub. Resources Code §4136); (e) an earthquake fault zone (Pub. Resources Code §2621.9); or (f) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Pub. Resources Code §2694).

4.6.2 The parties acknowledge that they shall employ, at the City's cost, the services of Escrow Holder (or such other company as designated by the City) (which, in such capacity is herein called "**Natural Hazard Expert**") to examine the maps and other information specifically made available to the public by government agencies for the purpose of enabling the party owning the applicable property to fulfill its disclosure obligations with respect to the natural hazards referred to in California Civil Code Section 1103(c) and to report the result of its examination to the parties in writing.

4.6.3 As contemplated in California Civil Code Section 1103.2(b), if an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone or wildland fire area map or accompanying information is not of sufficient accuracy or scale for the Natural Hazard Expert to determine if the applicable property is within the respective natural hazard zone, then for purposes of the disclosure the applicable property shall be considered to lie within such natural hazard zone.

4.6.4 The written report (the "**Natural Hazard Disclosure**") prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges the City from its disclosure obligations referred to herein, and, for the purpose of this Agreement, the provisions of Civil Code Section 1102.4 regarding the non-liability of the City for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. Without limitation, in no event shall the City have any responsibility for matters not actually known by the City.

THESE HAZARDS MAY LIMIT DEVELOPER'S ABILITY TO DEVELOP THE PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT THE PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. DEVELOPER MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

ARTICLE 5
HAZARDOUS MATERIALS

Section 5.1 Hazardous Materials. For purposes of this Agreement, the term "**Hazardous Materials**" shall mean any substances that are toxic, corrosive, inflammable, or ignitable, petroleum and petroleum byproducts, lead, asbestos, any hazardous wastes, and any other substances that have been defined as "hazardous substances," hazardous materials, "hazardous wastes," "toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601, et seq., 33 U.S.C. section 1251, et seq., 42 U.S.C. section 6901, et seq. (RCRA), 42 U.S.C. section 7401, et seq., 42 U.S.C. section 9601, et seq. (CERCLA), 49 U.S.C. section 1801, et seq. (HMTA); or California statutes beginning at California Health and Safety Code section 25100, et seq., section 25249.5, et seq., and 25300, et seq., and California Water Code section 13000, et seq., the regulations and publications adopted and promulgated pursuant to such statutes and any similar

statutes and regulations adopted hereafter. Hazardous Materials shall not include substances stored on the Property that are stored as part of the normal construction and operation of the Development and that otherwise comply with all Applicable Laws and Requirements.

Section 5.2 Notice.

5.2.1 As of the Effective Date, Hazardous Materials exist in soil and groundwater at, on, and under portions of the Property. Pursuant to the ENA and prior to the Effective Date, the City made available to Developer, environmental assessments reports and other environmental information pertaining to the Property (collectively, the "**Environmental Assessments**"). Developer acknowledges that it is aware of the conditions described in the Environmental Assessments and acknowledges that it has reviewed the contents of the Environmental Assessments. This notice constitutes the notice required under California Health and Safety Code Section 25359.7 and other Applicable Laws and Requirements.

5.2.2 The EDC Covenant required by DTSC as part of the Consent Agreement provides that all of the protective provisions, covenants, restrictions and conditions set forth in the EDC Covenant shall be incorporated in any transfer of the EDC Property or any interest therein. The Subaru Lot Covenant provides that all protective provisions, covenants, restrictions and conditions set forth in the Subaru Lot Covenant shall be incorporated in any transfer of the Subaru Lot or any interest therein. Further, the Army EDC Deed and the Subaru Lot Deed provides that all of the environmental protection provisions of the Army EDC Deed or the Subaru Lot Deed, as applicable, shall be included either verbatim or by reference into any transfer of the EDC Property or Subaru Lot, as applicable, or any interest therein. Required notices and copies of the EDC Covenant and Army EDC Deed or Subaru Lot Deed, as applicable, shall also be provided in all relevant agreements flowing from this L/DDA. Developer covenants that it will include or reference the EDC Covenants and Army EDC Deed or Subaru Lot Deed, as applicable, in each of its future leases and/or subleases or other relevant agreements flowing from this L/DDA.

Section 5.3 Consent Agreement and RWQCB Order. The City and Developer, at Developer's sole cost, shall use best efforts to obtain approval from DTSC and RWQCB of a full assignment to Developer of the Consent Agreement and the RWQCB Order, respectively, and to release the City therefrom. Developer shall indemnify the City pursuant to Section 13.20 below, and shall pay all costs arising from, or relating to, obligations under the Consent Agreement and/or the RWQCB Order, which either agency does not agree to release, assign, or partially assigns.

Section 5.4 Remediation.

5.4.1 Developer shall be solely responsible for all costs of investigation, removal, cleanup, treatment, transportation, disposal, and monitoring of any contamination by Hazardous Materials on or near the Property as required in connection with the Development, whether such contamination occurred prior to or following conveyance of the Property to the Developer. Developer shall be solely responsible for developing, submitting, and implementing any risk assessments or remediation work plans for the Property as required by Applicable Laws and Requirements. Developer shall comply with all Applicable Laws and Requirements, including,

without limitation, the Consent Agreement, RWQCB Order, Army EDC Deed, EDC Covenant, and Subaru Lot Covenant.

5.4.2 Developer hereby waives and releases the City from any claims, causes of action, liabilities or costs arising from the presence of, or associated with, the investigation, monitoring or remediation of any Hazardous Materials contamination on or near the Property as of the Effective Date, whether or not such contamination was known as of the Effective Date.

Section 5.5 Environmental Investigation. Developer may engage its own environmental consultant to make such environmental site assessments or investigations of the Property with respect to possible contamination by Hazardous Materials as Developer deems necessary, including conducting any "Phase I" or "Phase II" investigations of the Property. Upon request, Developer shall promptly deliver to the City a copy of all reports and assessments provided by the Developer's consultants.

Section 5.6 Use and Operation of Project. Except as provided in the Discretionary Approvals and Regulatory Permits, and subject to the exclusion from the definition of "Hazardous Materials" for substances stored on the Property that are stored as part of the normal construction and operation of the Development and that otherwise comply with all Applicable Laws and Requirements, as set forth in Section 5.1, above, neither Developer, nor any agent, employee, nor contractor of Developer, nor any authorized user, occupant, or tenant of the Property or Project shall use the Property or Project or allow the Property or Project to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials following conveyance of title to the City Property to the Developer.

ARTICLE 6
DISPOSITION OF PROPERTY

Section 6.1 Conveyance Price. The purchase price for the fee interest in the City Property and the leasehold interest in the Caltrans Easement shall be Eight Million Two Hundred Sixty-Eight Thousand Five Hundred Dollars ($8,268,500) (the "**Conveyance Price**"). This amount is computed as Five Hundred Seventy-Five Thousand Dollars ($575,000) per acre for the 14.38 acre- Property. The Conveyance Price shall be paid as follows:

6.1.1 Deposits. Upon the Effective Date, the City shall credit the ENA earnest money deposit in the amount of Five Hundred Sixty-Eight Thousand Eight Hundred Forty Dollars ($568,840) as the deposit required under this Agreement (the "**Good Faith Deposit**"). Three (3) Business Days after the Effective Date, Developer shall make an additional deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000) (the "**Additional Deposit**"). The Good Faith Deposit and the Additional Deposit, a total of Eight Hundred Eighteen Thousand Eight Hundred Forty Dollars ($818,840), shall collectively be referred to herein as the "**Deposit**". If the Close of Escrow occurs, the Deposit, shall be applied to the Conveyance Price. If the Closing does not occur by the last day of the Pre-Conveyance Period, the City may terminate this Agreement and retain the Deposit as liquidated damages pursuant to Section 6.1.3 below.

6.1.2 Funds Due at Closing. The Conveyance Price shall be paid in cash in immediately available funds submitted into "**Escrow**" three (3) Business Days before the Close of Escrow.

6.1.3 **LIQUIDATED DAMAGES**. **DEVELOPER UNDERSTANDS THAT BY ENTERING INTO THIS AGREEMENT, THE CITY IS PRECLUDED FROM NEGOTIATING WITH OTHER DEVELOPERS FOR THE SALE AND DEVELOPMENT OF THE PROPERTY, AND THE CITY THEREFORE SUFFERS A DETRIMENT, SHOULD THE CONVEYANCE OF THE PROPERTY TO THE DEVELOPER NOT OCCUR IN ACCORDANCE WITH THIS AGREEMENT, FROM LIMITING COMPETITION FOR SELLING AND DEVELOPING THE PROPERTY AND FROM THE LOSS OF TIME IN GETTING THE PROPERTY SOLD AND DEVELOPED. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES, WHICH THE CITY MAY SUFFER IN THE EVENT THAT THE CONVEYANCE OF THE PROPERTY TO THE DEVELOPER DOES NOT OCCUR IN ACCORDANCE WITH THIS AGREEMENT. THEREFORE, THE PARTIES DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT THE CITY WOULD SUFFER IN THE EVENT OF ANY SUCH DEVELOPER EVENT OF DEFAULT IS AND SHALL BE THE RIGHT TO RETAIN THE DEPOSIT SET FORTH ABOVE AS LIQUIDATED DAMAGES. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT THE PARTIES' INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT.**

INITIALS OF PARTIES TO LIQUIDATED DAMAGES PROVISION:

_____ CITY **_____ DEVELOPER**

Section 6.2 Opening Escrow. To accomplish the conveyance in fee of the City Property and the leasehold interest in the Caltrans Easement from the City to Developer, Developer shall establish an escrow (the "**Escrow**") and shall execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement.

Section 6.3 Condition of Title; Compliance; CFD.

6.3.1 The City shall convey the City Property and the leasehold interest in the Caltrans Easement free of all liens, encumbrances, and rights of occupancy and possession, except the Permitted Exceptions, which include, among other things, the Army EDC Deed, EDC Covenant, the Subaru Lot Deed, the Subaru Lot Covenant, the Caltrans Easement, and any other easements of record. Developer shall comply with all existing encumbrances on title to the Property, together with all new encumbrances anticipated to be recorded pursuant to this Agreement.

6.3.2 On July 21, 2015, the City formed Gateway Industrial District Community Facilities District No. 2015-1 on the Gateway Development Area, which includes the Property ("**CFD No. 2015-1**"). CFD No. 2015-1 shall be responsible for funding the maintenance, operation, repair, and replacement of the overall public infrastructure for the Gateway Development Area to be owned and otherwise maintained by the City. The City is also in the process of negotiating with the Port to annex the Port and reform the CFD. Developer acknowledges that: (a) the City hereby notifies Developer of the creation of CFD No. 2015-1; (b) the existence of CFD No. 2015-1 and its ability to impose liens shall be included as a Permitted Exception; and (c) Developer will comply with all applicable continuing obligations imposed by CFD No. 2015-1, including as it may be revised, accruing on Developer's interests in the Property after Close of Escrow, including paying any and all special taxes, assessments, or other fees accrued after Close of Escrow.

Section 6.4 "As Is" Conveyance. Developer shall accept the Property "as is," in its current condition, without warranty, express or implied, by the City, including, without limitation, with respect to the presence of Hazardous Materials known or unknown on or near the Property. The City shall not be responsible for performing demolition, site preparation, any other removal or placement of improvements, soil conditions, or removing any subsurface obstruction or correcting any subsurface condition pursuant to Applicable Laws and Requirements. The City shall have no responsibility for the suitability of the Property for the development of the Project. Developer waives any right of reimbursement or indemnification from the City for Developer's costs related to any physical conditions on the Property. This waiver shall survive termination of this Agreement.

Section 6.5 Close of Escrow. The Close of Escrow shall occur in accordance with the Schedule of Performance. On the Close of Escrow, the City shall convey, and Developer shall accept conveyance of, the City Property by execution and delivery of the Grant Deed in the form attached hereto as **Exhibit G** (the "**Grant Deed**") and the City and Developer shall enter into the lease of the Caltrans Easement in the form attached hereto as **Exhibit H** (the "**Lease**").

Section 6.6 Costs of Escrow. The lien of any assessment related to the Property shall be assumed by Developer, and assessments payable thereon, if any, shall be prorated as of the date of the conveyance of the Property to Developer. Developer shall pay for any title insurance it requests or obtains. In addition, Developer shall pay all other costs of Escrow, including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, other closing costs, and City and any other county transfer and possessory interest taxes.

Section 6.7 Real Estate Commissions. Developer represents and warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement or the transactions contemplated hereunder, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Developer shall defend and hold the City harmless from all damages resulting from any claims that may be asserted against the City by any broker, finder or other person with whom Developer has or purportedly has dealt. The provisions of this Section 6.8 shall survive any termination of this Agreement.

ARTICLE 7
CONSTRUCTION OF PROJECT

Section 7.1 Commencement of Construction. Developer shall commence and complete construction of the Improvements in accordance with the Schedule of Performance.

Section 7.2 Construction Pursuant to Documents.

7.2.1 Developer shall perform and complete, or cause the performance and completion of the construction of the Improvements in accordance with Applicable Laws and Requirements, the Construction Documents, and all other applicable governmental determinations, and approvals.

7.2.2 Developer shall be solely responsible for all aspects of construction of the Improvements, including, but not limited to, the quality and suitability of the Construction Documents, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

7.2.3 Any Developer proposed Material Change (as defined below) in the Construction Documents shall require the prior written approval of the City and shall be timely submitted in writing by Developer to City for approval. The City shall approve or disapprove in writing a proposed Material Change (including proposed changes to the Development Budget following satisfaction of the conditions precedent set forth in Section 3.1 above) within fourteen (14) Business Days after receipt by the City. If the City rejects Developer's proposed Material Change, then the City shall provide Developer with the specific reasons therefor, and the approved Construction Documents shall continue to control. The City's approval of changes to the Development Budget following satisfaction of the conditions precedent set forth in Section 3.1 above shall be given only if each of the proposed changes is reasonable and necessary for construction of the Improvements.

(a) For purpose of this Agreement, the term "**Material Change**" shall include the following changes to the Improvements:

(i) Significant changes in exterior elevations, building bulk, site coverage, floor area ratio, number of floors;

(ii) Significant change in color, size, type, or design or use of exterior finishing materials substantially affecting architectural appearance;

(iii) Significant changes affecting off-street parking facilities and proposed driveway locations; or

(iv) Significant changes in perimeter landscape planting and design, and changes in size or quality of exterior pavements or exterior lighting.

7.2.4 An immaterial change does not require advance City approval. However, Developer must submit to the City any immaterial change within ten (10) Business Days after making such change, and such change shall become part of the approved Construction Documents, which Developer shall use to construct the Improvements.

Section 7.3 Off-Site Improvements. Developer, at its sole cost and expense, shall construct all required off-site physical infrastructure (for example, rights-of-way, sewer, storm water improvements) and all other permit conditions required to be satisfied by the Discretionary Approvals and Regulatory Permits authorizing development of the Improvements and operation of the Project.

Section 7.4 Credentials. All design and construction of the Improvements shall be performed by knowledgeable parties trained and experienced in the work to be done and all such work which so requires shall be performed by licensed contractors (to the extent required by Applicable Laws and Requirements who meet applicable California licensing, and, if applicable, bonding and certification requirements.

Section 7.5 Disabled Access. Developer shall develop the Project in compliance with all Applicable Laws and Requirements for access for disabled persons.

Section 7.6 Lead-Based Paint. Developer and its contractors and subcontractors shall not use lead-based paint in the construction or maintenance of the Project. Developer shall insert this provision in all contracts, and shall require its contractor(s) to insert this provision in all subcontracts for work performed on the Project that involves the application of paint.

Section 7.7 Quality of Work. Developer shall construct the Improvements in conformance with general industry standards, and shall employ building materials of a quality suitable for the requirements of the Project. Developer shall develop the Improvements in full conformance with Applicable Laws and Requirements, including building and zoning codes.

Section 7.8 Insurance. Developer shall cause to have in full force and effect such policies of insurance as are required by the City pursuant to the insurance requirements described on **Exhibit F**.

Section 7.9 Certificate of Completion. Promptly after Completion of Construction of the Project in accordance with the terms of this Agreement, and upon the request of the Developer, the City shall furnish the Developer for recordation a Certificate of Completion so certifying in the form attached hereto as **Exhibit I** ("**Certificate of Completion**"). The Certificate of Completion shall be a conclusive determination that the covenants in this Agreement with respect to Developer's construction obligations have been met for the Project. The Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093 and is not in lieu of a temporary or final Certificate of Occupancy to be issued by the City in its regulatory capacity.

Section 7.10 Employment Nondiscrimination. Developer, its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, ancestry, national origin, religion, sex, sexual preference,

marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship.

Section 7.11 Completion of Construction. Developer shall diligently prosecute to completion the construction of the Improvements in accordance with the Schedule of Performance. As between the City and Developer, Developer shall be solely responsible for the performance and completion of the Improvements, including all costs.

Section 7.12 Construction Completion Procedures.

7.12.1 Upon completion of construction of the Improvements, Developer shall submit to the City a notice of such completion.

7.12.2 Upon completion of construction of the Improvements, Developer shall provide to the City a complete set of "as-built" drawings in electronic format as full-size scanned TIF files and AutoCAD files, each in a form reasonably acceptable to the City's Building Department, showing clearly all changes, revisions and substitutions during the construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of the Improvements.

7.12.3 Except as expressly permitted by the City's prior written approval, in no event shall Developer open any portion of the Property to the public without either the issuance by the City in its regulatory capacity of either (a) a Certificate of Occupancy, or (b) a Conditional Certificate of Occupancy.

Section 7.13 Progress Reports. Until such time as Developer is entitled to issuance of a Certificate of Occupancy, Developer shall provide the City with periodic progress reports, as reasonably requested by the City, regarding the status of completion of the Improvements. In addition, Developer shall provide to the City on a quarterly basis, Developer's design and construction costs constituting the private match for the funded segment of the Trade Corridor Improvements Fund allocation for timely incorporation into the City's quarterly reports to the California Transportation Commission.

Section 7.14 Entry by the City.

7.14.1 Developer shall permit the City through its employees, contractors and agents, to enter the Property at all reasonable times during construction of the Improvements to observe all aspects of the construction and to inspect the work of the Improvements to determine that such work is in substantial conformity with the approved Construction Documents or to inspect the Improvements and/or Property for compliance with this Agreement. No inspection performed or not performed by the City under this Agreement shall give or be deemed to give the City any responsibility or liability with respect to the work or the prosecution thereof or the design or construction of the Improvements or constitute or be deemed to constitute a waiver of any of Developer's obligations under this Agreement or be construed as approval or

acceptance of the work or the prosecution thereof or the design or construction of the Improvements.

7.14.2 Approval and acceptance of the Improvements shall be pursuant to the provisions of this Agreement pertaining to the construction approval process and issuance by the City in its regulatory capacity of a Certificate of Occupancy. The City is under no obligation to (a) supervise the demolition or construction, (b) inspect the Improvements or the Property, or (c) inform Developer of information obtained by the City during any inspection, and Developer shall not rely upon the City for any supervision, inspection, or information.

Section 7.15 Compliance with Applicable Laws and Requirements. Developer shall cause all work performed pursuant to this Agreement to be performed in compliance with all Applicable Laws and Requirements. The work shall proceed only after issuance of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the City for obtaining and maintaining such permits, licenses or other authorizations, as may be required of Developer and all entities engaged in work on the Improvements.

ARTICLE 8
CITY PROGRAMS, STANDARD CONDITIONS AND COMMUNITY BENEFITS

Section 8.1 Project Labor Agreement. Prior to commencement of construction of the Improvements, Developer shall demonstrate to the City that either Developer has entered into a Project Labor Agreement with the Alameda County Building Trades that is consistent with the Construction Jobs Policy (as defined below) and attached hereto as **Exhibit J** or used commercially reasonable efforts to do so.

Section 8.2 Employment and Contracting Requirements. Developer shall comply with the following requirements with respect to the Development:

8.2.1 the Construction Jobs Policy and Developer shall include the Construction Jobs Policy as a material term of all contracts pursuant to which construction of the Improvements might occur.

8.2.2 (a) all applicable Labor Code Section 1720 et seq. ("**State Labor Code**") requirements, including provisions requiring the payment of prevailing wages in connection with construction of the Improvements and shall ensure that all workers performing construction work for the Improvements employed by the Developer and by any of its contractors and subcontractors shall be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code Sections 1770, et seq., whether or not required to do so by State Labor Code requirements.

(b) Developer shall require its general contractor to post the prevailing wage rates for all applicable trades and to submit copies of certified payroll records to Developer to ensure compliance with State Labor Code requirements pertaining to "public works." Developer shall submit certified payrolls for its contractors and subcontractors to the City's

Department of Contracting and Purchasing to comply with all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations.

(c) Developer shall also include in its general contractor agreement a provision, in a form reasonably acceptable to City, obligating such general contractor to require its contractors and/or subcontractors to comply with all State Labor Code requirements pertaining to "public works" (as defined in Section 1720 of the State Labor Code).

8.2.3 the City has established requirements for participation by local and small local business enterprises ("**L/SLBE**"), hiring of Oakland residents and the use of apprentices in publicly supported projects and certain negotiated agreements. Such requirements are set forth in the City's L/SLBE Program Manual adopted on Febrary 16, 2021 pursuant to Ordinance No. 13640 C.M.S., which may be amended from time to (as may be amended, the "**L/SLBE Program**"). The City Council modified the L/SLBE Program applicable to the Development pursuant to Ordinance No._____ C.M.S. [insert the Ordinance that approved this L/DDA], which modified Program is attached hereto and incorporated herein by reference as **Exhibit J** ("**Construction Jobs Policy**") and **Exhibit K** (the "**Operations Jobs Policy**") (collectively, the "**Modified L/SLBE Program**"). The Develpoment is subject to, and the Developer shall abide by, the provisions of the Modified L/SLBE Program. The Operations Jobs Policy includes compliance with:

(a) the City of Oakland's Equal Benefits Ordinance codified in Chapter 2.32 of the Oakland Municipal Code ("**Equal Benefits Ordinance**"). Developer warrants and represents that it does not discriminate in the provision of those benefits enumerated in the Equal Benefits Ordinance between its employees with domestic partners and its employees with spouses, or between the domestic partners and spouses of its employees. Developer shall post written notice to its employees of their potential rights under the Equal Benefits Ordinance. Developer shall promptly provide to the City upon the City's request documents and information verifying its compliance with the Equal Benefits Ordinance. Developer understands that, in the event that it violates the Equal Benefits Ordinance, the City may suspend or terminate this Agreement, demand repayment of amounts disbursed under this Agreement, deem the Developer ineligible for future financial assistance, impose liquidated damages, seek attorneys' fees and enforcement costs, or pursue any other remedy permitted under the Equal Benefits Ordinance; and

(b) the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations as a "City Financial Assistance Recipient" or "CFAR".

8.2.4 Developer shall comply with the reporting requirements of the policies identified in Sections 8.2.1-8.2.4; provided, however, that if such policies do not themselves include a reporting requirement, Developer shall submit information on forms supplied by the City concerning the workforce and ownership composition of Developer, its contractors, subcontractors, suppliers, and professional service providers, as reasonably requested by the City.

Section 8.3 Climate Change. Developer shall make good faith efforts to conform with the applicable sections of the current draft of the City's Equitable Climate Action Plan.

Section 8.4 Air Quality. Developer shall comply with the SCA/MMRP requirements, including, without limitation applicable mitigation measures that may be required as a result of the CEQA process undertaken for the Discretionary Approvals.

Section 8.5 Fair Share Costs.

8.5.1 The SCA/MMRP specifies that certain mitigation measures will be funded on a fair share basis. Fair share within the City's Gateway Area is based on acreage. Developer shall pay to the City at Close of Escrow its fair share payment related to CEQA Mitigation Measures ("**Fair Share Costs**"), which the City anticipates will be Three Hundred Seventy-Five Thousand Three Hundred Eleven Dollars ($375,311). Fair Share Costs will increase annually consistent with the annual increase in the CPI, as provided in a memorandum dated July 30, 2019 the City shared with Developer (the "**Fair Share Memorandum**") regarding the application of the fair share program for the North Gateway site, which includes tables (Table A and Table B) that provide the mitigation measures to be funded on a fair share basis the costs for such fair share mitigation measures as of July 18, 2018.

8.5.2 As provided in the Fair Share Memorandum, the City and the Port will use the funds to implement mitigation measures in the SCA/MMRP either wholly or partially as noted in Table A attached to the Fair Share Memorandum. Implementation of other mitigation measures in the SCA/MMRP are Developer's responsibility. The Fair Share Memorandum provides additional information on the Fair Share Costs and program.

Section 8.6 Proportionate Costs.

8.6.1 Developer shall pay to the City at Close of Escrow its proportionate share of CEQA costs, determined in proportion of the Property to the acreage of the OAB, related to the preparation of the 2021 Addendum No. 2, in the amount of Forty-Six Thousand Four Hundred Nine Dollars and Sixty-Six Cents ($46,409.66), which equals Nine and Seven Tenths percent (9.7%) of Four Hundred Seventy-Eight Thousand Twenty-Five Dollars and Ninety-Four Cents ($478,025.94).

8.6.2 The City is preparing, or has prepared, a subdivision map designated as Parcel Map No. 10778 (the "**Parcel Map**") to, among other things, create the City Property. Developer shall pay to the City at Close of Escrow Eight Thousand Seven Hundred Three Dollars and 19 Cents ($8,703.19) as its proportionate share of the cost of preparation and recordation of the Parcel Map.

Section 8.7 Community Benefits.

8.7.1 Developer shall pay to the City at Close of Escrow a one-time fee of Sixteen Thousand Dollars ($16,000) per acre into the West Oakland Community Fund (an amount that is anticipated to be Two Hundred Twenty-Nine Thousand Seven Hundred Sixty Dollars ($229,760)).

8.7.2 Commencing on completion of the first building as part of the Improvements, Developer shall pay on January 1 an annual fee equal to $0.005/month per leasable square foot of building space to support the West Oakland Jobs Center, which fee shall be increased annually consistent with the annual increase in the CPI.

ARTICLE 9
PRE- AND POST-CONSTRUCTION REQUIREMENTS AND COVENANTS

Section 9.1 Developer Pre- and Post- Completion. Developer and/or future owners of the Property shall comply with the following requirements before and after issuance of the Certificate of Completion (unless expressly set forth below):

9.1.1 commencing on the Close of Escrow, Developer shall be responsible for maintenance of the Property;

9.1.2 commencing on the Close of Escrow and thereafter, Developer covenants that it shall maintain the Development in first-class condition and will ensure that at no time shall the Development violate the Blight Ordinance or any other City laws, regulations or policies. This covenant shall survive the termination or expiration of this Agreement; and

9.1.3 Developer may not install or place signage on any existing City street outside the Property or in the public corridor. Developer may install and place signage on the Property in compliance with City codes, or other Applicable Laws and Requirements.

9.1.4 After Close of Escrow, Developer shall have the right, but not the obligation, to initiate relocation of its existing operations from Wood Street and 10th Street before commencing construction of the Improvements as long as relocation of the operations do not require a Solid Waste Facility Permit, and provided that (a) Developer has obtained all required Discretionary Approvals and Regulatory Permits to allow such relocation, and (b) such relocation shall not prevent or impair construction of the Improvements in accordance with this Agreement.

9.1.5 After completion of construction of the Improvements as evidenced by the issuance by the City in its regulatory capacity of a Certificate of Occupancy or Conditional Certificate of Occupancy for the Improvements, Developer may Commence Operations by initiating a pilot project to ramp up operations at the proposed Improvements for an interim period of time, not to exceed six (6) months after recordation of the Certificate of Completion, prior to initiating full operational capacity provided that Developer has obtained all required Discretionary Approvals and Regulatory Permits.

Section 9.2 Operations Permits. Developer shall use best efforts to obtain all Regulatory Permits and Operations Permits in accordance with the Schedule of Performance.

Section 9.3 Developer Post-Completion. After completion of construction of the Improvements as evidenced by the issuance of either a Conditional Certificate of Occupancy or a Certificate of Occupancy and recordation of the Certificate of Completion, Developer and/or

future owners shall comply with the following requirements in accordance with the Schedule of Performance:

9.3.1 execute documentation that unconditionally relinquishes and terminates (a) operations at the Existing Sites pursuant to the following Conditional Use Permits CM04460 and CM92-222 for 1819 10th Street and 1820 10th Street (collectively, the "**CUPs**") and (b) its grandfathered legal nonconforming use at the Existing Sites in substantially the form attached hereto as **Exhibits L-1 and L-2** (the "**Termination and Relinquishment of Rights Letter**"); and

9.3.2 record in the Official Records of Alameda County, California, against the Existing Sites, a notice of termination and relinquishment of the grandfathered (legal non-conforming) use and uses permitted by the CUPs following relocation to the Property in substantially the form attached hereto as **Exhibits M-1 and M-2** (the "**Notices of Termination and Relinquishment**").

ARTICLE 10
ASSIGNMENT AND TRANSFERS

Section 10.1 Purpose of Restrictions on Transfer. This Agreement is entered into for the purposes of setting forth the terms and conditions of the conveyance of the Property and the performance and construction of the Improvements in accordance with the terms of this Agreement. The qualifications and identity of Developer are of particular concern to the City, in view of the importance of the development of the Improvements to the City. Transfer or assignment of this Agreement is permitted only as expressly provided in this Agreement.

Section 10.2 Transfers Prohibited. Developer shall not sell, convey, assign, Transfer (except Permitted Transfers (as defined below)), alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including any right or obligation to acquire an interest in the Property, construct the Improvements or otherwise do any of the above, either voluntarily or by operation of law, or make any contract or agreement to do any of the same (each a "**Transfer**" as further defined below), without in each instance (i) expressly requiring the transferee to assume in writing all of the obligations of Developer hereunder in accordance with Section 10.7.2 below, including without limitation complying with Section 9.3 of this Agreement to timely execute the Termination and Relinquishment of Rights Letters and recording the Notices of Termination and Relinquishment with respect to the Existing Sites, and (ii) obtaining the prior written approval of the City by the City Administrator or his or her designee, which approval may not be unreasonably withheld or conditioned. Any Transfer made in contravention of this Section 10.2 shall be void and shall be deemed to be a Developer Event of Default, whether or not Developer knew of, or participated in, such Transfer. Developer shall promptly reimburse the City for the City's cost of its review of any request for a Transfer.

10.2.1 Definition of Transfer. As used in this Agreement, the Term Transfer shall include:

(a) Any total or partial sale, assignment or conveyance, or creation of any trust or power by deed of trust or otherwise, or any Transfer in any other mode or

form of or with respect to the Existing Site, the Development or any interest therein, or any contract or agreement to do any of the same;

(b) Any transfer of Control of Developer to a Person who is not an Affiliate of Developer;

(c) Any Significant Change in Developer;

(d) Any substitution, removal, withdrawal, or addition of a member of the Developer;

(e) Any dissolution, merger, consolidation or other reorganization or any issuance or transfer of beneficial interests in the Developer, directly or indirectly, in one or more transactions that results in a change in the identity of the persons or entities controlling the Developer;

(f) Any assignment by the Developer of all or any part of this Agreement; or

(g) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

Section 10.3 Identity of Developer; Purpose of Transfer Restrictions.

10.3.1 Developer represents and warrants as follows:

(a) Developer is a duly existing corporation in the State of California in good standing and qualified to do business in the State of California and each of its members and managers are duly existing and in good standing in their respective states of formation;

(b) Developer has not made or created any assignment or transfer, either voluntarily or by operation of law.

10.3.2 Developer further represents and warrants that its purchase of the City Property and lease of the Caltrans Easement, and its other undertakings pursuant to this Agreement, will be used for the purposes of timely redevelopment of the Property and not for speculation in landholding. Developer further recognizes that, in view of the following factors, the qualifications of Developer are of particular concern to the community and the City:

(a) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Project; and

(b) The fact that the Property is not to be acquired for speculation, but only for development by the Developer in accordance with this Agreement.

10.3.3 Developer further represents that the person signing below on its behalf has the authority to bind Developer and that all necessary board of directors', shareholders', partners', and members' or other approvals have been obtained for such authority.

Section 10.4 Prohibited Transfers.

10.4.1 Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

10.4.2 Except as expressly permitted pursuant to this Agreement, Developer represents and agrees that it has not made, and will not make or permit, any Transfer prohibited by this Agreement or Significant Change, either voluntary or by operation of law. Any Transfer in contravention of this Agreement shall be void and shall be deemed to be a default under this Agreement whether or not Developer knew of, or participated in, such Transfer.

Section 10.5 Effect of Certificate of Completion. The restrictions on Transfer contained in Section 10.2 shall terminate upon completion of construction of the Improvements and recordation of the Certificate of Completion for the Improvements pursuant to this Agreement.

Section 10.6 Permitted Transfers.

10.6.1 The City Administrator or his or her designee shall not unreasonably withhold or condition its consent (which may include seeking approval by the City Council) to the following Transfers provided all other conditions have been satisfied (each a "**Permitted Transfer**"):

(a) granting of easements or permits to facilitate the development of the Improvements;

(b) granting of any security interest in the Project, if such security interest is granted to secure financing for the Improvements and is consistent with the approved Financial Plan;

(c) Transfer to an Affiliate of Developer.

10.6.2 In the event Developer Transfers all or part of the Property to a non-Affiliate for any purpose, or to an Affiliate of Developer for purposes other than the operation of a solid waste or recycling-related business, Developer shall provide to the City prior written disclosure of such Transfer and upon such Transfer, the City shall receive a transfer fee ("**Transfer Fee**") of:

(a) Thirty-five percent (35%) of the Fair Market Land Value (as defined below) or fifteen percent (15%) of the gross lease revenue of the Property if Transferred within the first zero (0) to five (5) years after the Close of Escrow; or

(b) Twenty percent (20%) of the Fair Market Land Value or ten percent (10%) of the gross lease revenue of the Property if Transferred within six (6) to ten (10) years after Close of Escrow; or

(c) Ten percent (10%) of the Fair Market Land Value or five percent (5%) of the gross lease revenue of the Property if Transferred within eleven (11) to thirty-five (35) years after the Close of Escrow.

"**Fair Market Land Value**" means the difference between the fair market value of the land at the time of Transfer and the Conveyance Price established in Section 6.1 above. This Section 10.6.2 shall survive the termination of this Agreement.

Section 10.7 Effectuation of Permitted Transfers.

10.7.1 In the absence of specific written agreement by the City, no Transfer permitted by this Article 10 of this Agreement shall be deemed to relieve Developer from any obligations under this Agreement.

10.7.2 No Transfer of this Agreement or of all or a portion of the Development that is otherwise permitted by this Agreement shall be permitted unless at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing reasonably satisfactory to the City, expressly assumes the obligations of Developer under this Agreement arising on or after the date of such Transfer, and agrees to be subject to the conditions and restrictions to which Developer is subject arising during the Term of this Agreement.

ARTICLE 11
TERMINATION AND REMEDIES

Section 11.1 Application of Remedies. This Article 11 shall govern the Parties' remedies for breach or failure under this Agreement.

Section 11.2 No Fault of Parties Prior to the Close of Escrow. The following event constitutes a basis for a Party to terminate this Agreement without the fault of either Party:

11.2.1 If Close of Escrow is prevented due to Force Majeure as set forth in Section 13.10.2, below, which individually or cumulatively exceeds sixty (60) days after the Effective Date, and all other applicable conditions for the Close of Escrow have been met. Upon the happening of such an event, and at the election of either Party, this Agreement may be terminated by written notice to the other Party (the "**Termination Notice**"). If the City is the terminating Party, then the City shall return the Deposit to the Developer within ten (10) Business Days after the date of the Termination Notice. If the Developer is the terminating Party, the City shall retain the Deposit. In either instance, Developer shall execute such documents as are reasonably requested by the City to evidence the Developer's release of all interest in the Property. Thereafter, neither Party shall have any rights or obligations under this Agreement, except those provisions of this Agreement that provide that they survive termination of this Agreement.

11.2.2 If the City in its regulatory capacity, denies the Discretionary Approvals or Regulatory Permits issued by the City and Developer diligently and in good faith sought such Discretionary Approvals or Regulatory Permits. If either Party terminates the Agreement hereunder by delivering a written Termination Notice to the other Party, then the City shall return the Deposit to the Developer within ten (10) Business Days after the date of the Termination Notice and Developer shall execute such documents as are reasonably requested by the City to evidence the Developer's release of all interest in the Property. Thereafter, neither Party shall have any rights or obligations under this Agreement, except those provisions of this Agreement that provide that they survive termination of this Agreement.

11.2.3 If other Governmental Authorities do not issue the Regulatory Permits and Developer diligently and in good faith sought such Regulatory Permits. If either Party terminates the Agreement hereunder by delivering a written Termination Notice to the other Party, then the City shall return two-thirds of the Deposit ($545,893) to the Developer within ten (10) Business Days after the date of the Termination Notice and Developer shall execute such documents as are reasonably requested by the City to evidence the Developer's release of all interest in the Property. Thereafter, neither Party shall have any rights or obligations under this Agreement, except those provisions of this Agreement that provide that they survive termination of this Agreement.

Section 11.3 Fault of the City.

11.3.1 The occurrence of any of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**City Event of Default**":

(a) Except as provided in Section 11.2 above, the City without good cause fails to convey to Developer the Property within the time and in the manner specified in Article 6, and Developer is otherwise entitled to such conveyance.

(b) The City breaches any other material provision of this Agreement.

11.3.2 Upon the happening of an event described in Section 11.3.1 above, Developer shall first notify the City in writing of City's purported breach or failure, and the City shall have sixty (60) days from receipt of such notice to cure such breach or failure, or if having so commenced, does not prosecute such cure with diligence and dispatch to completion. If the City does not cure within such period, then the event shall constitute a City Event of Default and Developer's remedies shall be limited to terminating, in writing, this Agreement, the City shall return the Deposit to the Developer as liquidated damages, neither Party shall any rights or obligations under this Agreement, and the City shall have no further rights or remedies against Developer. The Developer shall have no right to recover any general, punitive, consequential, or special damages.

Section 11.4 Fault of Developer.

11.4.1 The occurrence of any of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**Developer Event of Default**":

(a) Developer fails to pay the City any amount due to the City under this Agreement within the time and in the manner specified in that section.

(b) Developer fails to satisfy any condition in Article 3 above within the times and in the manner specified in this Agreement or satisfy any other Developer performance milestone(s) set forth in the Schedule of Performance.

(c) Developer or its Affiliate approved in writing by the City, refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Property within the time and in the manner specified in Article 6 above after all conditions to such conveyance have been satisfied or waived.

(d) Developer fails to commence construction in accordance with the Schedule of Performance, or after commencement, fails to diligently prosecute construction of the Improvements to completion pursuant to the Final Construction Plans by the deadline set forth in the Schedule of Performance for more than ten (10) consecutive days, and such failure continues for a period of sixty (60) days from the date of written notice thereof from the City as to such failure to commence or perform the construction, or if Developer does not within such sixty (60) day period commence such cure, or having so commenced, does not prosecute such cure with diligence to completion.

(e) Developer abandons or substantially suspends construction of the Improvements for more than thirty (30) consecutive days, and such abandonment or suspension continues for a period of thirty (30) days from the date of written notice thereof from the City as to such abandonment or suspension of the construction of the Improvements, or if Developer 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.

(f) Developer fails to perform or observe the requirements set forth in Article 8 of this Agreement.

(g) Developer fails to perform or observe the pre-construction or post-construction requirements set forth in Article 9 or keep the pre-construction or post-construction covenants in the manner and within the times set forth in this Agreement.

(h) Developer voluntarily or involuntarily attempts or completes a Transfer except as permitted in Article 10 above.

(i) A determination by the City in its reasonable judgement that any of Developer's representations or warranties made in this Agreement, any statements made to the City by Developer, or any certificates, documents, or schedules supplied to the City by Developer were untrue in any material respect when made, or that Developer concealed or failed to disclose a material fact to the City.

(j) Developer, or any general partner, managing member, or parent entity of Developer, or Guarantor files for bankruptcy, dissolution, or reorganization, fails to obtain a full dismissal of any involuntary filing brought by another Party under bankruptcy or

similar laws before the earlier of final relief or sixty (60) calendar days after filing, makes a general assignment for the benefit of creditors, applies for the appointment of a receive, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another Party before the earlier of final relief or sixty (60) calendar days after the filing, becomes insolvent, or fails to pay its debts as they become due.

(k) Developer breaches any other material provision of this Agreement.

11.4.2 Upon the happening of any event described in Section 11.3.1 above, the City shall first notify Developer in writing of its purported breach or failure (a "**Developer Default Notice**"). Developer shall have fifteen (15) days from receipt of a Developer Default Notice to cure a monetary Developer Event of Default, including but not limited to payments of an Extension Fee, Deposits and Conveyance Price. For a non-monetary Developer Event of Default, Developer shall have sixty (60) days from receipt of a Developer Default Notice to cure such Developer Event of Default or failure, or if such cure cannot reasonably be completed within such sixty (60) day period and Developer commences such cure within such sixty (60) day period and is proceeding diligently with efforts, the cure period may be extended for a reasonable period mutually agreed upon by the Parties.

Section 11.5 City Remedies Prior to Close of Escrow. If a Developer Event of Default occurs prior to the Close of Escrow, the City may terminate this Agreement, in which case the City may retain the Deposit as its liquidated damages, neither Party shall have any rights or obligations under this Agreement, and Developer shall have no further rights or remedies against the City.

Section 11.6 City Remedies After the Close of Escrow. If a Developer Event of Default occurs after the Close of Escrow and prior to commencement of construction of the Improvements, the City may pursue any or all of the following remedies:

11.6.1 The City may institute an action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to the Developer Event of Default.

11.6.2 If the Developer Event of Default is pursuant to Section 11.4.1(d) above, the City may exercise its optional right to repurchase the Property as follows (the "**Repurchase Option**"): the City shall deposit into Escrow an amount equal to the Conveyance Price less the estimated cost of demolition of any of the Improvements if, and to the extent, Developer has not fulfilled its demolition obligation, and less the outstanding amount of any liens on the Property (the "**Repurchase Price**"), and provide written notice to the Escrow Holder, with a copy to the Developer, that an uncured Developer Event of Default has occurred. If the City exercises its Repurchase Option, (a) Developer shall convey the Property to the City by grant deed (the "**Repurchase Grant Deed**") concurrently with the City's payment of the Repurchase Price to Developer through Escrow, (b) the Parties shall execute a recordable termination of the Lease ("**Lease Termination**"), and (c) the City shall take title to the Property subject to all Mortgages permitted pursuant to Section 12.1.1 below that encumber the Property at the time of recordation of the Repurchase Grant Deed and Lease Termination notwithstanding any provision of this Agreement regarding the relative priorities of this Agreement and such

Mortgages. Upon recordation of the Repurchase Grant Deed and the Lease Termination, the City may reenter and take exclusive possession of the Property.

11.6.3 The City may pursue all other remedies permitted by law or at equity.

Section 11.7 City Remedies During Construction. If a Developer Event of Default occurs following the commencement of construction and prior to the completion of the Improvements as evidenced by City's issuance of a Certificate of Completion, the City may pursue any or all of the following remedies:

11.7.1 If the Developer Event of Default is pursuant to Section 11.4.1(d) or (e), the City may terminate this Agreement.

11.7.2 The City may institute an action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to the Developer Event of Default.

11.7.3 To the extent the Event of Default is related to the Developer's failure to comply with the provisions of Article 8, the City may elect at the City's sole option to impose any liquidated damages set forth in the applicable policy/requirement set forth in Article 8.

11.7.4 If the Developer Event of Default is pursuant to Section 11.4.1(d) above, in lieu of exercising its rights and remedies under either the Completion Guaranty or for specific performance, subject to the provisions of Section 12.6, the City may exercise its Repurchase Option as follows:

(a) The City may elect in its sole discretion to demolish or retain the improvements. If the City elects to retain the improvements, then it shall exercise its Repurchase Option in the manner set forth in Section 11.6.2 above only after closing on the Repurchase Option. If the City elects to demolish the improvements, then the City shall send written notice to Developer to require Developer to demolish at the Developer's sole cost all improvements on the Property made by Developer and return the Property to substantially the condition existing at the time the Property was conveyed/leased to Developer. Developer shall complete the demolition no later than sixty (60) calendar days after such written notice and if Developer fails to do so the cost incurred by the City in demolishing the Improvements shall be deducted from the price to be paid by the City pursuant to the Repurchase Option.

(b) Concurrently with the exercise of its Repurchase Option, the City shall deposit into Escrow an amount equal to the Conveyance Price, less the estimated cost of demolition of any of the improvements if, and to the extent, Developer has not fulfilled its demolition obligation and less the amount of any liens on the Property and provide written notice to the Escrow Holder, with a copy to Developer, that an uncured Developer Event of Default has occurred. Developer shall convey the Property to the City by the Repurchase Grant Deed and the Parties shall execute the Lease Termination. Upon recordation of the Repurchase Grant Deed and the Lease Termination, the City may reenter and take exclusive possession of the Property.

Section 11.8 City Remedies Following Completion of Construction. If Developer Event of Default occurs following the completion of the Improvements and prior to the City's issuance of a Certificate of Completion, the City:

11.8.1 The City may institute an action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such Developer Event of Default.

11.8.2 The City may institute an action for damages to recover from Developer all of the damages caused by the Developer Event of Default.

11.8.3 The City may pursue all other remedies permitted by law or at equity.

Section 11.9 Documents, Data and Approvals. If this Agreement is terminated pursuant to Section 11.2 above, then Developer shall promptly deliver to the City copies of the following items in the possession of Developer (or of Developer's, contractors, consultants or agents, to the extent that Developer has a right to receive such items and deliver them to the City) subject to the rights of parties who prepared the same and without warranty of any kind: all final plans and specifications for the Project Approvals; all permits and approvals obtained from the City in connection with the Improvements; all applications for permits and approvals not yet obtained from the City but needed in connection with the Improvements, and all final reports from third-party investigations, excluding any appraisals or financial analysis prepared for the Project Approvals.

ARTICLE 12
RIGHTS OF MORTGAGEES

Section 12.1 Encumbrance for Development Purpose.

12.1.1 Developer may place, as approved in the Financial Plan, mortgages, deeds of trust, or any other reasonable method of security ("**Mortgage**") upon the Property before the issuance of a Certificate of Completion for the sole purpose of securing loans financing the acquisition of the Property and the development of the Improvements. A Mortgage may be given only to (a) a Bona Fide Institutional Lender, or (b) any other lender that shall have been approved in writing by the City in its sole and absolute discretion, subject to the City's receipt of substantial and adequate evidence providing the City with information on the structure, financial capacity, and experience of such other lender. Prior to commencement of construction of the Improvements, Developer shall promptly notify the City of any Mortgage that has been or will be created or attached to the Property. Any such Mortgage, lien or encumbrance shall be subject to and subordinate to this Agreement. However, notwithstanding the foregoing or any other provision of this Agreement, the Repurchase Option, the exercise of such Repurchase Option, and any vesting of title in the City as a result thereof shall not defeat, render invalid, extinguish or otherwise limit in any way any Mortgage permitted pursuant to Section 12.1.1 of this Agreement or any rights or interest of any Mortgagee of such Mortgage, except for any limitations specifically imposed by this Agreement.

12.1.2 Following issuance of a Certificate of Completion, Developer may place mortgages, deeds of trust, or other security upon the Development, without the need to notify the City or obtain the City's consent. Any such lien or encumbrance shall be subject to and subordinate to this Agreement.

Section 12.2 Mortgagee not Obligated to Construct.

12.2.1 The Mortgagee of any mortgage, beneficiary of any deed of trust, or holder of any other recorded security interest authorized by this Agreement in any part of the Property or such mortgagee's successors or assigns (a "**Mortgagee**") is not obligated to construct or complete any improvements or to guarantee such construction or completion. In the event that the Mortgagee of such Mortgage (or its nominee) acquires the Property or a portion thereof through judicial or non-judicial foreclosure or deed or assignment in lieu of foreclosure (each, a "**Foreclosure**"), the following Transfers shall be a permitted Transfer under this Agreement (each such Transferee, a "**Foreclosure Transferee**"): (a) a Transfer to a Mortgagee; (b) a Transfer to a Mortgagee's Nominee (defined below); and (c) if a Mortgagee or a Mortgagee Nominee is the immediate Transferee pursuant to such Foreclosure, such party's initial Transfer of any portion of the Property to a subsequent Transferee. In the event that a Foreclosure Transferee acquires the Property or a Mortgagee obtains appointment of a receiver to construct the Project, the Foreclosure Transferee or such receiver shall be required to comply with the following provisions of this Agreement: (i) cause commencement of construction and complete construction of the Project, and (ii) comply with the other covenants set forth in Articles 5, 7, 8 and 9 (collectively, the "**Development Covenants**"). However, any Foreclosure Transferee or any such receiver shall have at least one hundred and eighty (180) days after the initial transfer of the Property pursuant to a Foreclosure to cause commencement of construction (or recommence Project construction, if Project construction has already commenced), and shall have at least two (2) years thereafter to complete construction of the Project in accordance with the Development Covenants (and such extended time period shall be deemed an extension of the time to achieve completion of construction (such extended date, the "**Completion Date**") with respect to the Foreclosure Transferee's obligations hereunder. For purposes of this Agreement, a "**Mortgagee Nominee**" shall mean an entity which is owned by, or an Affiliate of, a Mortgagee.

Section 12.3 Failure of Mortgagee or Foreclosure Transferee to Complete Improvements

12.3.1 In any case where, subsequent to default or breach by Developer, (a) if any Mortgagee that has the option to cause commencement of construction or completion of construction of the Improvements pursuant to this Agreement or otherwise has not exercised its option, or has exercised its option to do so but has not proceeded diligently with construction of the Improvements, or has not completed construction by the Completion Date, or (b) if any Foreclosure Transferee (including a Mortgagee which has become a Foreclosure Transferee) does not commence and complete construction of the Improvements, and, in the case of either a Mortgagee or a Foreclosure Transferee, such default has not been cured within thirty (30) calendar days after written notice by City, City shall have the option (and every deed of trust or mortgage on the Property securing Project financing shall so provide for these option) of (y) paying to the Mortgagee the Mortgagee Purchase Price (as defined below) and securing an assignment of the Mortgage, or (z) in the event that the Foreclosure Transferee holds title to the Property by way of Foreclosure, repurchasing fee title to the Property from the Foreclosure

Transferee free and clear of any of the Foreclosure Transferee's interests thereon upon payment to the Foreclosure Transferee of the Mortgagee Purchase Price.

12.3.2 For purposes of this Agreement, the "**Mortgagee Purchase Price**" shall mean an amount equal to the sum of:

(a) (i) in the case of a Mortgagee or a Mortgagee Nominee (other than a Mortgagee or a Mortgagee Nominee which has become a Foreclosure Transferee), the outstanding debt owed to such Mortgagee or Mortgagee Nominee that is secured by the Property pursuant to the Mortgage of such Mortgagee or Mortgagee Nominee at the time of assignment of such Mortgage to the City, or

(ii) in the case of a Mortgagee or a Mortgagee Nominee which has become a Foreclosure Transferee, the outstanding debt owed to such Mortgagee or Mortgagee Nominee that is secured by the Property pursuant to the Mortgage of such Mortgagee or Mortgagee Nominee at the time of the Foreclosure, or

(iii) in the case of a Foreclosure Transferee that is not a Mortgagee or Mortgagee Nominee of the Foreclosed Mortgage, the purchase price paid by such Foreclosure Transferee in connection with the Foreclosure;

(b) the Mortgagee's or Foreclosure Transferee's reasonable foreclosure expenses (to the extent such expenses are not otherwise included in the debt secured by the Property); and

(c) the costs of any work on the Project performed by the Foreclosure Transferee or Mortgagee on the Property (to the extent such costs are not otherwise included in the debt secured by the Mortgage on the Property).

Notwithstanding the above, the "Mortgagee Purchase Price" shall not include additional default interest (i.e., the excess of interest at the applicable default rate over interest at the regular rate specified in the Mortgagee loan documents), late charges, attorneys' fees, or administrative or similar internal charges imposed by the Mortgagee in connection with foreclosure, collection, and/or enforcement of Mortgagee's loan. The Mortgagee Purchase Price shall be reduced by any cash amounts actually received by Mortgagee as payment on the Mortgagee's loan from Developer or a third party prior to City's re-acquisition of title to the Property, including without limitation any amounts received as payment on the Mortgagee's loan by Developer or by any guarantors, sureties or other third parties. At the time City exercises its rights under this Section 12.3 to acquire the Mortgagee's debt, the Mortgagee shall execute such assignments or other documents as are reasonably necessary and appropriate for the transfer of Mortgagee's rights under its Mortgage to City, including, without limitation, any rights to guaranties, bonds, letters of credit, escrow funds, or other security for the loan, but without warranty or recourse other than warranty of title to the applicable loan documents and warranty as to the amount of disbursements made and payments received thereunder.

Section 12.4 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 11 of this Agreement delivers any notice of default to Developer, the

City shall at the same time deliver a copy of such notice to each Mortgagee that has provided in writing to the City its contact information. If an Event of Default on the part of the Developer remains uncured after the expiration of the period provided herein for Developer to remedy or cure such default (the "**Default Expiration Date**"), any Mortgagee shall have the right, but not the obligation, to do any of the following:

12.4.1 Remedy, or cause to be remedied, such default within the time periods set forth in Section 12.5 below after the Default Expiration Date and the City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer. The Mortgagee shall have the right to add the cost of the cure to the obligations secured by its security. Nothing in this Agreement is intended to permit a Mortgagee to construct improvements on the Property (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed Developer's obligations to the City herein by written agreement reasonably satisfactory to the City. The Mortgagee in that event must agree to complete the Improvements, in the manner provided in this Agreement. Any Mortgagee properly completing the Improvements in accordance with the terms of this Agreement shall be entitled, upon written request made to the City, to a Certificate of Completion pursuant to this Agreement.

12.4.2 Commence, or cause any trustee under the Mortgage to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the Property pursuant to a Foreclosure; provided that (a) Mortgagee shall provide City with written notice of its election to pursue judicial foreclosure, non-judicial foreclosure or a deed-in-lieu process within three (3) months after the Default Expiration Date and (b) except as extended by Section 12.6, below, (i) any non-judicial foreclosure or deed-in-lieu process shall be completed within a maximum of twelve (12) months after the Default Expiration Date and (ii) any judicial foreclosure shall be completed within eighteen (18) months after the Default Expiration Date. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring title to the Property, thereafter undertake its obligations (if any) with respect to the Property pursuant to Section 12.2.

Section 12.5 Additional Cure Period. In the event of any default by Developer under this Agreement, the City shall not be entitled to terminate this Agreement or exercise the Repurchase Option as to any Mortgagee, if the Mortgagee, within thirty (30) days after the Default Expiration Date (or within sixty (60) days after receipt of notice by the Mortgagee if the default is not curable by Developer), shall have the right to do any of the following:

12.5.1 either (a) cure the default if the same can be cured by the expenditure of money, or (b) if the default or breach is not so curable, commence, or cause the commencement of, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the interests covered by the Mortgage, which period for completing foreclosure shall, in any event, not exceed the time periods provided in Section 12.4.2 above, or if applicable Section 12.6 below.

12.5.2 perform or cause the performance of all of the covenants and conditions of this Agreement requiring the expenditure of money by Developer (including all unpaid monetary obligations of Developer under the Agreement) which are capable of being cured by Mortgagee until such time as the Property shall be sold upon foreclosure pursuant to the Mortgage, or shall be conveyed thereunder, or shall be transferred upon Foreclosure.

Section 12.6 Suspension of Cure Period. If any Mortgagee is prohibited from commencing or prosecuting or completing a Foreclosure by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer, the times specified in Section 12.5 above, for commencing or prosecuting Foreclosure shall be extended for the period of the prohibition, so long as the Mortgagee shall have fully cured any default in the payment of any monetary obligations of Developer under this Agreement and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

Section 12.7 Loss Payable Endorsement. The City and Developer agree that the name(s) of the Mortgagee(s) shall, at such Mortgagee's request, be added as a primary loss co-payee to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Developer under this Agreement on condition that the insurance proceeds are to be applied in the manner specified in this Agreement.

Section 12.8 Consent to Foreclosure Not Required. Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the estate hereunder from Developer to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of the City or constitute a breach of any provision of or a default under this Agreement, , and upon such foreclosure, sale or conveyance, the City shall recognize such purchaser or other transferee as the Developer hereunder, provided such purchaser or other transferee agrees in writing to assume all of the obligations of Developer pursuant to this Agreement, including uncured defaults and perform all of the terms, covenants, and conditions on the part of Developer to be performed hereunder . Notwithstanding the foregoing, any subsequent purchaser or other transferee shall:

12.8.1 be subject to any limitations on Transfer, assignments or other transfer of interests as provided in Article 10 hereof; and,

12.8.2 if such Transfer is approved by the City under Article 10 hereof, deliver to the City its written agreement to be bound by all the terms and provisions of this Agreement to the same extent as the original Developer including, without limitation, any and all restrictions on further Transfers, assignments or other transfers of interests hereunder.

Section 12.9 Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Developer shall be paid to and held by the Mortgagee of highest priority and distributed pursuant to the provisions of this Agreement, except that the Mortgagee(s) may reserve the right to apply to the Mortgage debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property

and the improvements located thereon to the extent required herein. Except as otherwise expressly set forth in this Agreement, the rights of any Mortgagee, pursuant to its Mortgage, to receive condemnation or insurance proceeds which are otherwise payable to such Mortgagee or to a party which is its mortgagor shall not be impaired.

Section 12.10 Notice of Proceedings. The parties hereto shall give all Mortgagee(s) notice of any arbitration proceedings or condemnation proceedings involving Developer's interest in the Property, or of any pending adjustment of insurance claims, and any Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention; provided that no Mortgagee shall be entitled to an award of attorneys' fees or costs from the City. In the event that any Mortgagee shall not elect to intervene or become a Party to the proceedings, that Mortgagee shall receive notice and a copy of any award or decision made in connection therewith, which shall also be binding on all Mortgagees not intervening.

Section 12.11 Reinstated Agreement. In the event of termination of this Agreement by reason of any Event of Default by Developer or in connection with any bankruptcy, insolvency or similar proceeding involving Developer, the City if requested by any Mortgagee will reinstate the Agreement, and enter into the reinstated Agreement for the Property, with the most senior Mortgagee (who must be a Bona Fide Institutional Lender) requesting a reinstated Agreement, provided such Mortgagee is the then-current owner of the Property, for the remainder of the term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

12.11.1 The Mortgagee shall make written request to the City for the reinstated Agreement within sixty (60) days after such Mortgagee receives written notice of such termination;

12.11.2 Within thirty (30) days after receipt of the reinstated Agreement from the City, the Mortgagee shall execute and deliver the reinstated Agreement to the City and simultaneously shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Agreement but for its termination and, in addition thereto, all reasonable expenses, including attorneys' fees and costs, that the City shall have incurred by reason of such termination and the execution and delivery of the reinstated Agreement;

12.11.3 The Mortgagee shall perform and observe all covenants herein contained on a Developer's part to be performed, and shall further remedy any other conditions which Developer under this Agreement was obligated to perform under its terms, in each instance as and to the extent the same are curable or may be performed by the Mortgagee;

12.11.4 The developer under the reinstated Agreement shall have the same right and interest in and to the buildings and improvements on the Property as Developer had under this Agreement immediately prior to its termination; and

12.11.5 Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement, any such reinstated Agreement shall enjoy the same priority in time as the Agreement over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property; provided, however, that the City shall not make any warranties or representations regarding title or priority, express or implied, with respect to the reinstated Agreement, except for any liens or encumbrances created by the City, and the City shall have no obligation to deliver possession of the Property under the reinstated Agreement.

Section 12.12 Right of the City to Cure. By appropriate agreement with a Mortgagee, Developer shall cause a Mortgagee to provide the City with written notice by certified mail of the occurrence of any event of default under the Mortgage. In the event of an uncured default or breach by a Developer of the Mortgage prior to the Completion of Construction, and if the Mortgagee has not exercised its option to complete the Improvements, the City may (but is not required to) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from Developer for all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subordinate to any Mortgages executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

Section 12.13 Right of City to Satisfy Other Liens. After the conveyance of title to the Property and prior to Completion of Construction, and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the City shall have the right, but not the obligation, to satisfy any such lien or encumbrances not satisfied by Developer; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as Developer shall provide such reasonable security as may be required by the City to insure the payment of such tax, assessment, lien or charge to prevent any sale, foreclosure or forfeiture of the Property by reason of such nonpayment. Such security shall not be less than the amount of the contested tax, assessment, lien or charge, including all penalties, fines and interest which can be assessed thereon.

Section 12.14 Further Assurances. The City, through the City Administrator, and Developer shall cooperate in including in this Agreement by suitable written amendment from time to time any provision which may be reasonably requested by the prospective lender which will be the most senior Mortgagee with a Mortgage secured by the Property to implement the provisions and intent of this Article 12, provided, however, that any such amendments will not adversely affect any of the City's rights and remedies under this Agreement.

ARTICLE 13
GENERAL PROVISIONS

Section 13.1 Notices, Demands and Communications.

13.1.1 Except as otherwise expressly provided for in this Agreement, all notices, demands, approvals, consents and other formal communications between the City, and the Developer required or permitted under this Agreement shall be in writing and shall be deemed

given and effective upon the earliest to occur of (a) actual receipt by the recipient if received on a Business Day before 5:00 p.m. local time, (b) the next Business Day after the recipient's actual receipt if received after 5:00 p.m. or on a day that is not a Business Day), (c) the next Business Day after deposited with a reputable overnight courier postage pre-paid, to the City or the Developer at their respective addresses for notice designated in Section 13.1.2, or (d) three (3) Business Days after deposit with the U.S. Postal Service for delivery by United States Registered or Certified Mail, First Class postage pre-paid, to the City or the Developer at their respective addresses for notice designated in Section 13.1.2. Notwithstanding the foregoing, courtesy notices to the emails provided in Section 13.1.2, if any, shall not constitute notice under this Section 13.1.

13.1.2 All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given the manner provided in Section 13.1.1.

City: City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: OAB Project Manager

With copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

Developer: California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: David Duong

With copy to: California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: Sooah Sohr, Counsel

Section 13.2 Requests for Approval. In order for a request for any approval or other determination by the City required under the terms of this Agreement to be effective, it shall be clearly marked "Request for Approval" and provide (or be accompanied by a cover letter providing) substantially the following:

13.1.3 the Section of this Agreement under which the request is made and the action or response required;

13.1.4 if applicable, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

13.1.5 if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval which is the subject matter of the notice.

If a request for approval provides a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period provided in this Agreement shall be the controlling time period. 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 to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 13.2.

Section 13.3 City Approvals. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Administrator or his or her designee is authorized to act on behalf of the City, unless specifically provided otherwise. Notwithstanding the foregoing, except as provided in Section 2.3, only the City Council, acting by appropriate ordinance or resolution, may extend the Outside Closing Date.

Section 13.4 No Conflict of Interest.

13.4.1 Developer warrants and represents that it has no knowledge that any public official of the City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement or the Project in violation of the rules contained in California Government Code Section 1090, et seq., pertaining to conflicts of interest in public contracting. Developer shall exercise due diligence to ensure that no such official will receive such an interest.

13.4.2 Developer further warrants and represents that it has no knowledge that (a) any public official of the City who has participated in decision-making concerning this Agreement or the Project or has used his or her official position to influence decisions regarding this Agreement or the Project, has an economic interest in the Developer or the Project, and (b) either the Project nor this Agreement will have a direct or indirect financial effect on such official, the official's spouse or dependent children, or any of the official's economic interests. Developer agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. Developer's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100, et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700, et seq.).

Section 13.5 Non-Liability. No councilmember, director official, employee, or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Developer or successor under the terms of this Agreement.

Section 13.6 Developer's Warranties. Developer represents and warrants: (a) that it has access to professional advice and support to the extent necessary to enable the Developer to fully comply with the terms of this Agreement and otherwise carry out the Project; (b) that there are no pending or threatened actions or proceedings before any court or administrative agency

which may substantially affect the financial condition or operation of the Developer; (c) that it is duly organized, validly existing and in good standing under the laws of the State of California; (d) that the organizational documents it has submitted to the City concerning it or its partners or members are true, correct, and complete as of the date of this Agreement; (e) that it has the full power and authority to undertake the Project; and (f) that the persons executing and delivering this Agreement are authorized to execute and deliver such document on behalf of the Developer.

Section 13.7 Litigation. Developer shall promptly give notice in writing to the City of any litigation pending or threatened against Developer, any of Developer's partners or members, or an Affiliate of Developer that relates to the Project.

Section 13.8 Publicity. At the written option of the City, any written publicity published by or at the request Developer for the Project shall make reference to the role of the City in making the Project possible. The words "City of Oakland" shall be prominently displayed in all pieces of such written publicity published by or at the request Developer, including flyers, press releases, posters, signs, brochures, and public service announcements. City staff will be available whenever possible at the request of Developer to assist Developer in generating publicity for the Project. Developer agrees to cooperate with the City in any City-generated publicity or promotional activities with respect to the Project.

Section 13.9 Waiver. Any waiver by either Party of an obligation in this Agreement must be in writing and executed by an authorized agent of such Party. No waiver will be implied from any delay, or failure by a Party to take action on any breach or event of default of the other Party, or to pursue any remedy allowed under this Agreement or Applicable Laws or Requirements. Any Extension of time granted to a Party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by a Party to any act or omission by the other Party shall not be construed to be consent to any other act or omission or to waive the requirement for the other Party's written consent to future waivers.

Section 13.10 Enforced Delay.

13.10.1 Neither Developer, nor the City (the "**Delayed Party**," as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party under this Agreement where delays or default are due to Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event up to one (1) year in the aggregate; provided, however, within thirty (30) days after the beginning of any such Force Majeure event, the Delayed Party shall have first notified the other Party of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay and the other Party agrees in writing to such extension, which agreement shall not be unreasonably, withheld or delayed.

13.10.2 "**Force Majeure**" means events that cause material delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party's performance under this Agreement, due to causes beyond the Delayed Party's control and not caused by the acts or omissions of the Delayed Party (excluding, in any case,

a Delayed Party's performance of the payment of money required under the terms of this Agreement), due to war; acts of terrorism; insurrection; strikes; lockouts; riots; fires; casualties; acts of nature (including, without limitation, floods, earthquakes and unusually severe weather); acts of the public enemy; epidemic; pandemic; quarantine restrictions (excluding with respect to epidemic, pandemic, and/or quarantine restrictions related to COVID-19 and its variants); freight embargoes; lack of transportation; a development moratorium as defined in Section 66452.6(f) of the California Government Code; or third party legal challenges to this Agreement, the Project or the Project entitlements that prevents or suspends construction work on the Improvements.

13.10.3 Notwithstanding anything to the contrary in this Section 13.10, the condition of the market, lack of credit or financing (unless such lack is itself a result of some other event of enforced delay) shall not be considered to be a matter beyond the Developer's control and therefore no event caused by a lack of such financing or credit in and of itself shall be considered to be an event requiring an extension of time for performance under this Section 13.10.

Section 13.11 Time of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every term, covenant, agreement, condition and provision of this Agreement.

Section 13.12 Inspection of Books and Records. Developer shall maintain and the City has the right at all reasonable times to inspect the books, records and all other documentation of Developer pertaining to Developer's obligations under this Agreement with respect to the Improvements.

Section 13.13 Headings. Section and subsection headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions of this Agreement.

Section 13.14 Applicable Law. This Agreement shall be governed by the laws of the State of California, except those provisions preempted by federal law.

Section 13.15 Severability. In any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such holding of invalidity, voiding or unenforceability.

Section 13.16 Binding Upon Successors; Covenants to Run With Land.

13.16.1 All of the terms, provisions, and obligations contained in this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, transferees, successors-in-interests and assigns of each of the parties hereto, whether by operation of law or in any manner whatsoever. The term "Developer" as used in this Agreement shall include all such assigns, successors in interest, and transferees.

13.16.2 The Parties intend that the covenants contained in this Agreement shall constitute covenants running with the land and shall bind the Property and every

person having an interest in the Property during the Term of this Agreement. Developer agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

Section 13.17 Parties Not Co-Venturers; Relationship of the Parties. The relationship of Developer and the City for these Improvements is and shall remain solely that of a purchaser and seller of real property, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. The City neither undertakes nor assumes any responsibility or duty to the Developer or any third-party with respect to the Project or the Property. The Developer shall have no authority to act as an agent of the City or to bind the City to any obligation.

Section 13.18 Provisions Not Merged With Property. None of the provisions of this Agreement are intended to merge, or shall be merged, by the Grant Deed, the leasehold interest in the Caltrans Easement or any other instrument transferring an interest in any portion of the Property, and neither the Grant Deed, the leasehold interest in the Caltrans Easement, nor any other instrument transferring an interest in to any portion of the Property shall affect this Agreement.

Section 13.19 Governmental Approvals. Should the Developer require the approval of any governmental body or board, the Developer shall bear the sole cost and responsibility for obtaining the approval.

Section 13.20 Indemnification.

13.20.1 If through acts or neglect on the part of Developer or its construction contractor(s), any other contractor or any subcontractor suffers loss or damage on the work, and such other contractor or subcontractor assesses any claim against the City on account of any damage alleged to have been sustained, the City shall notify Developer and its construction contractor who shall defend at their own expense any suit based upon that claim, and Developer shall pay all costs and expenses incurred by the City in connection with any judgment or claim.

13.20.2 Developer shall indemnify and hold the City, and its council members, commissioners, officers, directors, employees, and agents (collectively, " **Indemnitees**") harmless from any losses, damages, liabilities, claims, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including attorneys' fees) which City Indemnitees may incur as a result of, or arising from (a) Developer's failure to perform any of its obligations as and when required by this Agreement; (b) a failure of any of Developer's representations or warranties to be true and complete; (c) obligations under the Consent Agreement and/or the RWQCB Order, which either agency does not agree to release the City from, assign to Developer, or partially assign to Developer; or (d) any act or omission by Developer or any agent, contractor, subcontractor, architect, engineer or supplier with respect to development or use of the Improvements or the Property, except to the extent the loss is caused by the active negligence or willful misconduct of the City. Developer shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend Indemnitees in any court action, administrative action, or other proceeding brought by any third-party arising from the matters set forth in this Section 13.20.

13.20.3 These indemnity and hold harmless provisions are severable from this Agreement, in that they shall survive termination or invalidation of this Agreement.

Section 13.21 Attorneys' Fees. Except as otherwise expressly provided in this Agreement, in the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of this Agreement, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in the action. For purposes of this Section 13.21, the reasonable fees of attorneys of the Office of City Attorney of the City of Oakland shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter are of the law for which such services are rendered who practice in San Francisco law firms with at least the same number of attorneys employed by the City Attorney's Office.

Section 13.22 Integration. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the transaction contemplated by this Agreement.

Section 13.23 Amendments. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing, approved as to form and legality by the City Attorney of Oakland, and executed by both Parties.

Section 13.24 Estoppels. Either Party to this Agreement shall provide an estoppel certificate to the other as requested from time to time stating any defaults under the Agreement, that this Agreement has not been modified, or, if modified, stating the nature of such modification, and certifying that this Agreement, as modified, is in full force and effect.

Section 13.25 Time Periods. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next Business Day, but in no event shall the Extension be for more than three (3) calendar days. All references to days shall mean calendar days unless otherwise specifically stated.

Section 13.26 Joint and Several Liability. If there is one or more entity named as Developer hereunder, the obligations and liabilities of Developer hereunder shall be joint and several.

Section 13.27 Campaign Contribution Restrictions. Developer is aware of and shall abide by the prohibition on campaign contributions from contactors doing business with the City between commencement of contract negotiations and either (a) 180 days from completion of contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. Developer acknowledges that it has executed and submitted to the City a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

Section 13.28 Future Expansion. City acknowledges that Developer is not precluded from proposing and seeking governmental approvals for future expansion opportunities regarding the quantities and/or types of materials handled at the Property and that this Agreement and related applications for Discretionary Approvals and Regulatory Permits (including a solid

waste facilities permit) in no way limit, waive or otherwise impair Developer's rights as the Property owner/tenant to seek such approvals. Developer acknowledges that City's willingness to negotiate and consummate this Agreement is in no way an assurance, commitment or waiver of City's discretionary authority to process such future approvals and agrees that Developer is not relying on, in the transaction contemplated in this Agreement, any purported assurance, commitment or waiver by City for such future approvals.

Section 13.29 Entire Agreement. This instrument, together with the exhibits hereto, constitutes the entire agreement between the City and Developer with respect to the subject matter of this Agreement and supersedes the ENA and all prior offers, negotiations, communications, discussions, correspondence oral and written.

Section 13.30 No Third Party Beneficiaries. This Agreement shall not, nor be deemed nor construed to, confer upon any person or entity, other than the Parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third-party beneficiary status or any right to enforce any provision of this Agreement.

Section 13.31 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein by reference.

Section 13.32 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to form and legality:

By: _____
JoAnne Dunec
Deputy City Attorney

[*Signatures continue on following page.*]

DEVELOPER:

California Waste Solutions, Inc.,
a California corporation

By:_____
Name:_____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF_____)

On_____, before me,_____, a Notary Public, personally appeared_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF_____)

On_____, before me,_____, a Notary Public, personally appeared_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

EXHIBIT A-1

City Property Plat and Legal Description

[Attached]

EXHIBIT "A"

Real property situate in the City of Oakland, County of Alameda, and State of California, and being all of Parcel 2 as shown on that Parcel Map No. 10778, field for record on March 12, 2021 in Book 348, Pages 89-98 Alameda County Records.

APN: 018-0508-007

See Exhibit A-1 – Plat to accompany legal description which is attached and made a part hereof.

End of Description

Prepared by:

_____

Scott Shortlidge, LS 6441

NOTE

BEARINGS AND DISTANCES ARE BASED ON RECORD OF SURVEY NO. 990. ALL DISTANCES SHOWN OR DERIVED FROM THIS DRAWING ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000705.

EXHIBIT A-1

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

SALES PARCEL

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

G,\job2011\111069\Mapping\Plats\PARCEL 2 - PM 10778.ciwg

RUGGERI·JENSEN·AZAR
ENGINEERS• PLANNERS• SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1"=200'	4-7-2021	111069

EXHIBIT A-2

Caltrans Easement Plat and Legal Description

[Attached]

Exhibit "A"
Legal Description

All that certain real property situated in the City of Oakland, County of Alameda, State of California, and being all of Easement Parcels 3 and 3a as described in the Easement deed to the State of California Transportation Department, a state agency recorded on April 29, 2005 under document no. 2005-171016 Official Records of said County, same being portions of those parcels of land described in that certain Indenture between the Southern Pacific Company and the Unites States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485), and being a portion of the lands commonly referred to as the "Subaru Lot" and described as Parcel A in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, 1998, and being more particularly described as follows:

BEGINNING at the common south corner of Parcels 1 and 2 as shown on that Parcel Map No. 10095, filed for record on August 13, 2013 in Book 324, Pages 6 through 15 Official Records of said County, same corner being on the north line of Easement Parcel 3a;

Thence along said north line for the following four courses:

1) South 49°58'48" East, 51.32 feet to an angle point;

2) South 57°44'30" East, 113.40 feet to the beginning of a curve concave northwesterly, having a radius of 1647.00 feet; and a central angle of 7°24'24";

3) along said curve to the right, an arc distance of 212.91 feet to a point from which the radius point bears South 39°39'54" West, being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 1°02'28", from which beginning the radius point bears South 38°00'16" West;

4) along said curve to the right, an arc distance of 29.93 feet to a point from which the radius point bears South 39°02'44" West, being the beginning of a non-tangent curve concave northwesterly, having a radius of 599.96 feet and a central angle of 29°48'22", from which beginning the radius point bears North 47°17'25" West;

Thence along said generally southeastern line of said Easement Parcels 3 and 3a along said curve to the right, an arc distance of 312.11 feet to a point from which the radius point bears North 17°29'03" West, being the beginning of a non-tangent curve concave southwesterly, having a radius of 926.00 feet and a central angle of 18°51'52", from which beginning the radius point bears South 66°43'21" West, same corner being the most southerly corner of said Easement Parcel 3;

Thence along said generally southwestern line of said Easement Parcel 3 for the following two courses:

1) along said curve to the left, an arc distance of 304.88 feet to a point from which the radius point bears South 47°51’29” West, being the beginning of a non-tangent curve concave southwesterly, having a radius of 926.00 feet and a central angle of 08°51’58”, from which beginning the radius point bears South 45°00’14” West;

2) along said curve to the left, an arc distance of 143.29 feet to a point from which the radius point bears South 36°08’16” West to the southwest corner of Easement Parcel 3;

Thence along the west lines of Easement Parcels 3 and 3a, North 30°38’42” East, 161.47 feet to the northwest corner of Easement Parcel 3a;

Thence along the north line of Easement Parcel 3a for the following two courses:

1) South 59°26’20” East, 74.36 feet to an angle point;

2) South 49°58’48” East, 73.38 feet to the **POINT OF BEGINNING**, containing 109,089 square feet (2.504 acres), more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description labeled Exhibit A-2, attached and hereby made a part of this legal description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone 111, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

End of Description

I hereby state that this description and its accompanying plat were prepared by me, or under my direction, in April 2021.

Scott Shortlidge, LS 6441

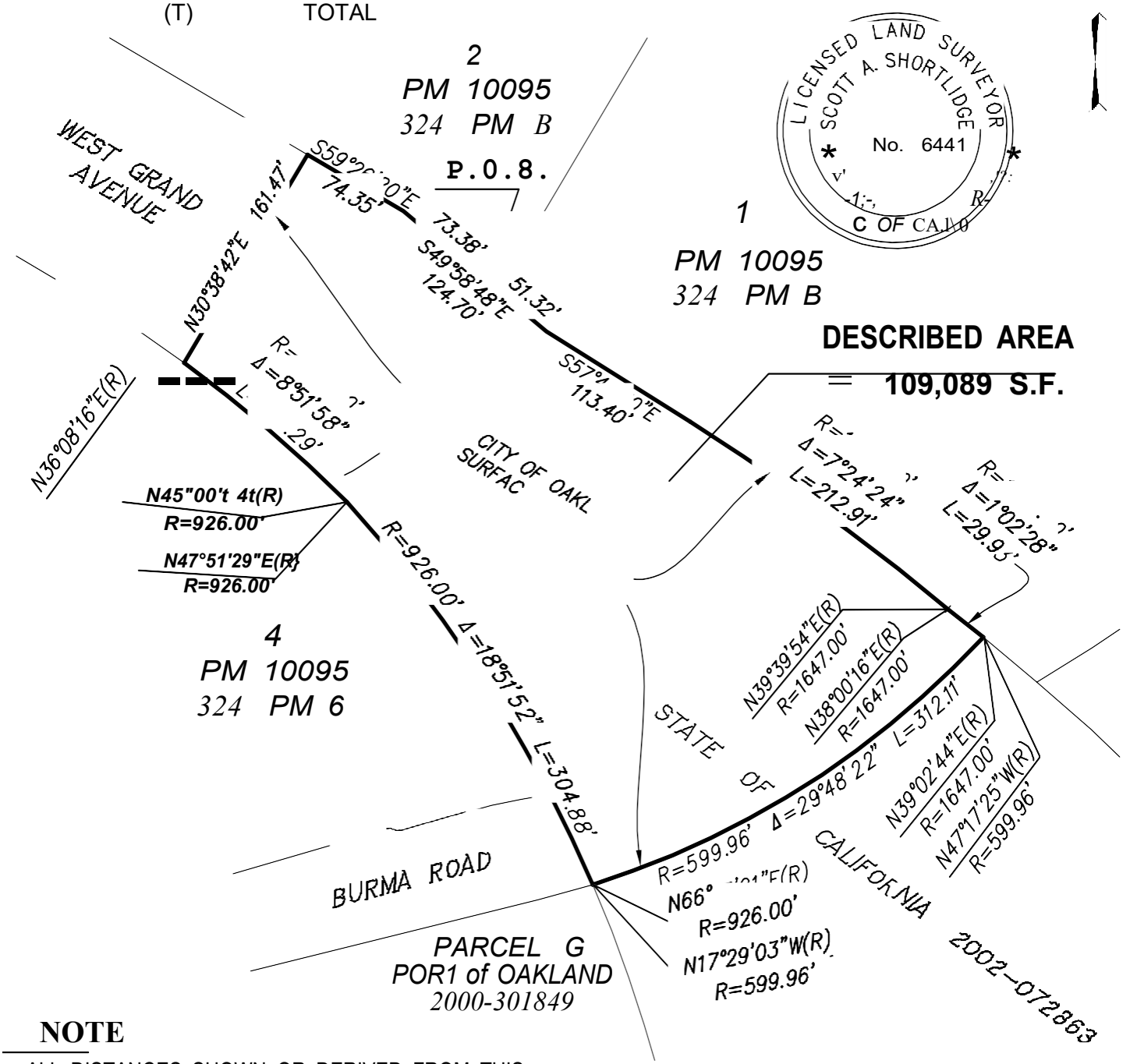
LEGEND

P.O.B.	POINT OF BEGINNING
	EXISTING PARCEL LINE
	BOUNDARY OF DESCRIBED AREA
S.F.	SQUARE FEET
(T)	TOTAL

0 100 200

1 inch = 100 ft.

N



LICENSED LAND SURVEYOR
SCOTT A. SHORTLIDGE
No. 6441
STATE OF CALIFORNIA

NOTE

ALL DISTANCES SHOWN OR DERIVED FROM THIS DRAWING ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000705.

EXHIBIT A-2

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

CALTRANS EASEMENT

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

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RUGGERI-JENSEN AZAR
ENGINEERS• PLANNERS• SURVEYORS
4690 CHABOT DRIVE. SUITE 200 PLEASANTON. CA 94588
PHONE: (925) 227- 9100 FAX: (925) 227- 9300

SCALE:	DATE:	JOB NO.:
1"=100'	4-7-2021	111069

EXHIBIT B

Subaru Lot Plat and Legal Description

[Attached]

Schedule 1.1 (87)
Legal Description
Subaru Lot
Oakland Army Base

All that certain real property situated in the City of Oakland, County of Alameda, State of California, described as follows:

Parcel 2C

A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 32, Image:660); A portion of the lands described in that certain Final Judgment as to Parcel No. 6, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded May 23, 1960, Reel 092, Image 111 of Official Records, in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel:092, Image: 111), all of which are more particularly described as follows:

COMIVIENCING at City of Oakland monument No. 7SE13, said monument being a pin set in con$_{h}$crete in a monument well marking the intersection of the centerlines of Maritime Street and 10[1] Street, as said streets are shown that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Anny Map), said monument also being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at P.iges 50◆60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel l, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the A&ove Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S,/bistrict Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951 in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), S?id corner being the northwest terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcell, Tract 1 (6566 O.R. 301), said corner being marked by a 2 V2" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Pagel, Alameda County Official Records;

Thence along the northwestern line of said Parcel 1, Tract 1 (6566 O.R. 301) South 79°57'58" West, 9.41 feet to the beginning of a non-tangent curve concave southwesterly, having a radius

of 599.96 feet and a central angle of 20°37'16", from which beginning the radius point bears South 36°18'10" West;

Thence along said curve to the right, an arc distance of 215.93 feet to a point on the generally northeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, 1998, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A wiII hereinafter be referred to as the Subaru Lot), being a point on the course described as "South 70°14'01" East, 101.26 feet" in the description of said Parcel A (the Subaru Lot), and being the **POINT OF BEGINNING** of Parcel 15A as herein described;

Thence along the northeastern, eastern and southeastern lines of said Parcel A (the Subaru Lot) the following twelve courses:

1) South 70°14'16" East, 42.04 feet to an angle point in said line, said point being marked by a 1 Yz" brass disk with bolt stamped "LS 6379";

2) South 71 °46'24" East, 32.44 feet to an angle point in said line, said point being marked by a 1 Yz" brass disk with bolt stamped "LS 6379";

3) South 74°35'56" East, 103.17 feet to an angle point in said line, said point being marked by a 1 Yz" brass disk with bolt stamped "LS 6379";

4) South 71 °25'40... East, 87.02 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 354.97 feet and a central angle of 59°49'02", from which beginning the rad.j.us point bears South 30°09'08" West, said beginning of curve being marked by a 1 1/z" brass disk with bolt stamped "LS 6379";

5) along said curve to the right, an arc distance of 370.59 feet to the beginning of a compound curve concave westerly, having a radius of 199.99 feet and a central angle of 25°52'29", said point of compound curvature being marked by a nail and washer with. tag stamped "LS 6379";

6) along said curve to the right, an arc distance of 90.32 feet to a point of tangency being marked by a nail and washer with tag stamped "LS 0379";

7) South 25°50'39" West, IQ0.04 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

8) South 30° 42'24" West, 148.96 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

9) South 37° 08'59" West, 99.92 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

10) South 40°33'22" West, 49.03 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

11) South 49°48'18" West, 93.04 feet to an angle point in said line;

12) South 56°00'39" West, 30.42 feet to the a point on the generally northeastern line of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002 as Document No. 2002072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863), said point being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 08°46'22", from which beginning point the radius point bears South 46°46'37" West;

Thence along the generally northeastern line of said Parcel 56444 (Doc. 2002072863) the following eight courses:

1) along said curve to the left, an arc distance of 252.18 feet to a point from which the radius point bears South 38°00'16" West, being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 7°24'24", from which the radius point bears South 39°39'54" West;

2) along said curve to the left, an arc distance of 212.91 feet to a point of tangency;

3) North 57°44'30" West, 113.40 feet to an angle point;

4)' North 49°58'48" West, 124.70 feet to an angle point;

5) North 59°26'20" West, 696.99 feet to an angle point;

6) North 38°53'13" West, 28.48 feet to an angle point;

7) North 59°26'21" West, 95.01 feet to an angle point;

8) North 65°41'40" West, 26.04 feet to a point on the generally northwestern line of said Parcel A (the Subaru Lot), said point being the beginning of a non-tangent curve concave easterly, having a radius of 20.00 feet and a central angle of 29°55'43", from which beginning point the radius point bears North 87°47'11" East;

Thence along the northwesterly, northerly and northeasterly lines of said Parcel A (the Subaru Lot) the following thirteen courses:

1) along said curve to the iight, an arc distance of 10.45 feet to the beginning of a compound curve concave southeasterly, having a radius of 199.99 feet and a central angle of)9°56'30", said point of compound curvature being marked by a 1 'h" brass disk and spike stamp6d "LS 6379";

2) along said curve to the rigfit, an arc distance of 139.42 feet to a point of tangency being marked by a l" iron pipe with plug and tack stamped "LS 6379"; •

3) North 67°39'24" East, 25.68 feet to the beginning of a curve concave southerly, having a radius of 299.98 feet and a central angle of 25°11'31";

4) along said curve to the right, an arc distance of 131.90 feet to a point of tangency being marked by a 1" iron pipe with plug stamped "LS 6379";

5) South 87°09'05" East, 415.50 feet to an angle point in said line, said point being marked by a l" iron pipe with plug stamped "LS 6379";

6) North 80°41'00" East, 170.83 feet to an angle point in said line, said point being marked by a l" *iron* pipe with plug stamped "LS 6379";

7) South 70°15'39" East, 49.25 feet to an angle point in said line, said point being marked by a 1 W' brass disk with bolt stamped "LS 6379";

8) South 72°38'25" East, 67.85 feet to an angle point in said line, said point being marked by a 1 Yi" brass disk with bolt stamped "LS 6379";

9) South 69°32'54" East, 44.74 feet to an angle point in said line, said point being marked by a 1 Yi" brass disk with bolt stamped "LS 6379";

10) South 66°07'36" East, 44.94 feet to an angle point in sai line, said point being marked by a %" brass tag in concrete stamped "LS 6379";

11) South 63°28'21" East, 40.88 feet to an angle point in said line, said point being marked by a 1 , brass disk with bolt stamped "LS 6379";

12) South 69°21'45" East, 49.64 feet to an angle point in said line, said point being marked by a 1 Y:z" brass disk with bolt stamped "LS 6379";

13) South 70°14'16" East, 59.22 feet to the **POINT OF BEGINNING,** containing 829,036 square feet (19.032 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone m North American Datum of 1983 (1986 values) as shown upon that cer:tain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

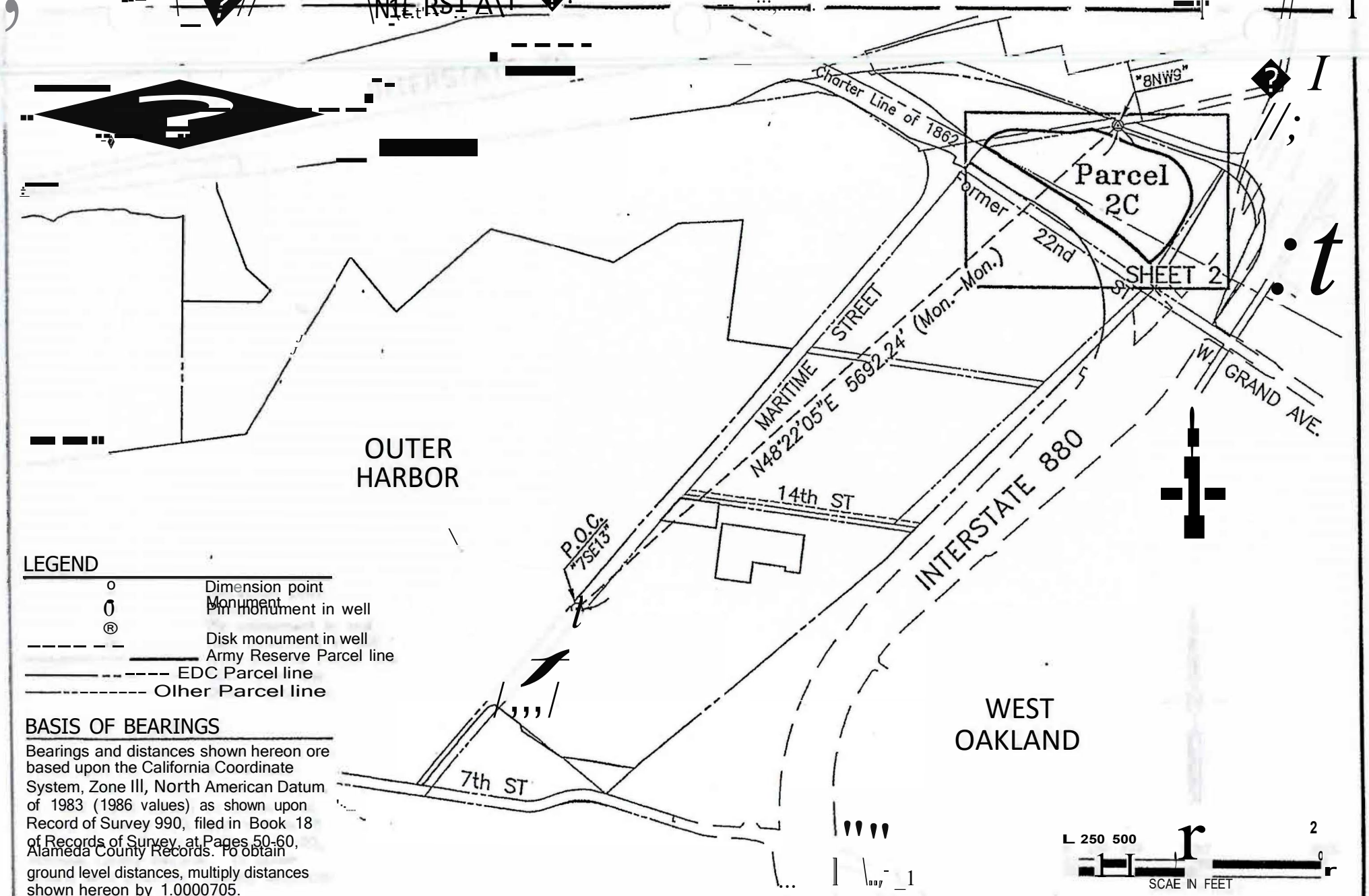
End of Description

I hereby state that this description and its accompanying plat were prepared by me,, or under my direction, in July 2003.

John R. Monaghan, LS 6122
License Expires: 03/31/06

7/15/03
Date

LICENSED LAND SURVEYOR
JOHN R. MONAGHAN
No 6122
Exp 3/31/06
STATE OF CALIFORNIA



PORT OF OAKLAND

LAND SURVEYS AND MAPPING

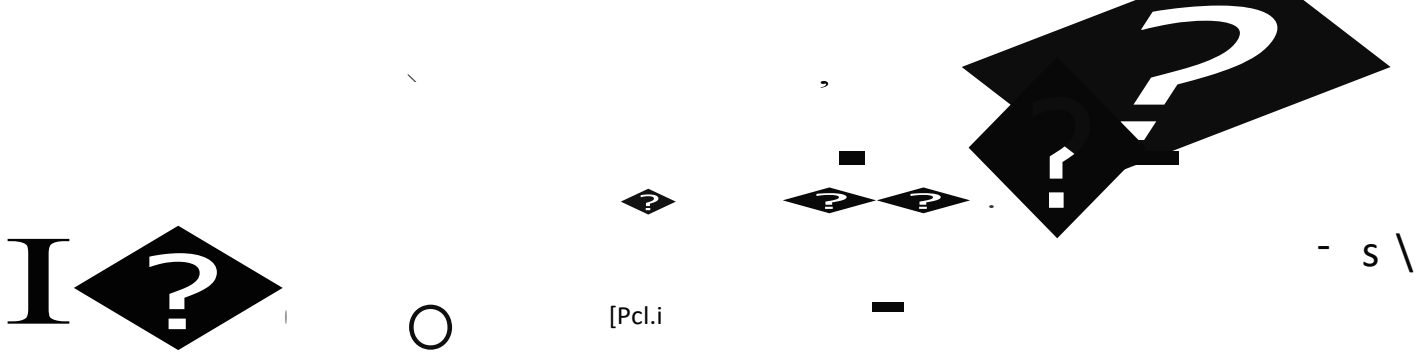
530 Water Street
Oakland, C::i/ifomia

SCHEDULE 1.1 87)

PLAT TO ACCOMPANY LEGAL DESCRIPTION

SUBARU LOT
OAKLAND ARMY BASE

DRAWN BY: ni.u	Field Bk.
CHECKED BY:	Wrk. o 104471
SCALE: 1 =	Data File:
OAIE, 7/15/2003	RevlsJoa,
SHEET t OF 2	Rev. date:
ACAD: ARU.DWG	



1..UKV+

CURVE TABLE

	UI:.LIA	RADIUS	LENGTH
	20'37'16"	599.96'	215.93'
C1	25'52'29"	199.99'	
C2	29'55'43"	20.00'	
C3	39'56'30"		

[Pcl.i

U.S.A.

U. S.A.

34-th

90.32

RE:32 IM:660

RE:92 IM:111

10.45'

.S

L2	S70'14'16"E	42.04'	L14	N38 •53'13"W	28.48'
L3	S71 '46'24"E	32.'44'	L15	N59'26'21"W	95.01'
L4	S74'35'56"E	103.17'	l16	N65'41'40"W	26.04'
LS	S71'25'40"E	87.02'	L17	N67'39'24"E	25.68'
L7	S30 42 24 W	0.04'			

–T.A.M.R.P. 12/17 1998–

? 9

L N80'41'00"E

LINE	BEARING	DI STANCE
R1	S36'18'1O"W	
R2	S56'55'26"W	
R3	N87'47'11"E	
R4	S62'17'06"E	

LINE TABLE

,036 Sq. Ft.
(19.032 Ac.)

63rd R.S.C.

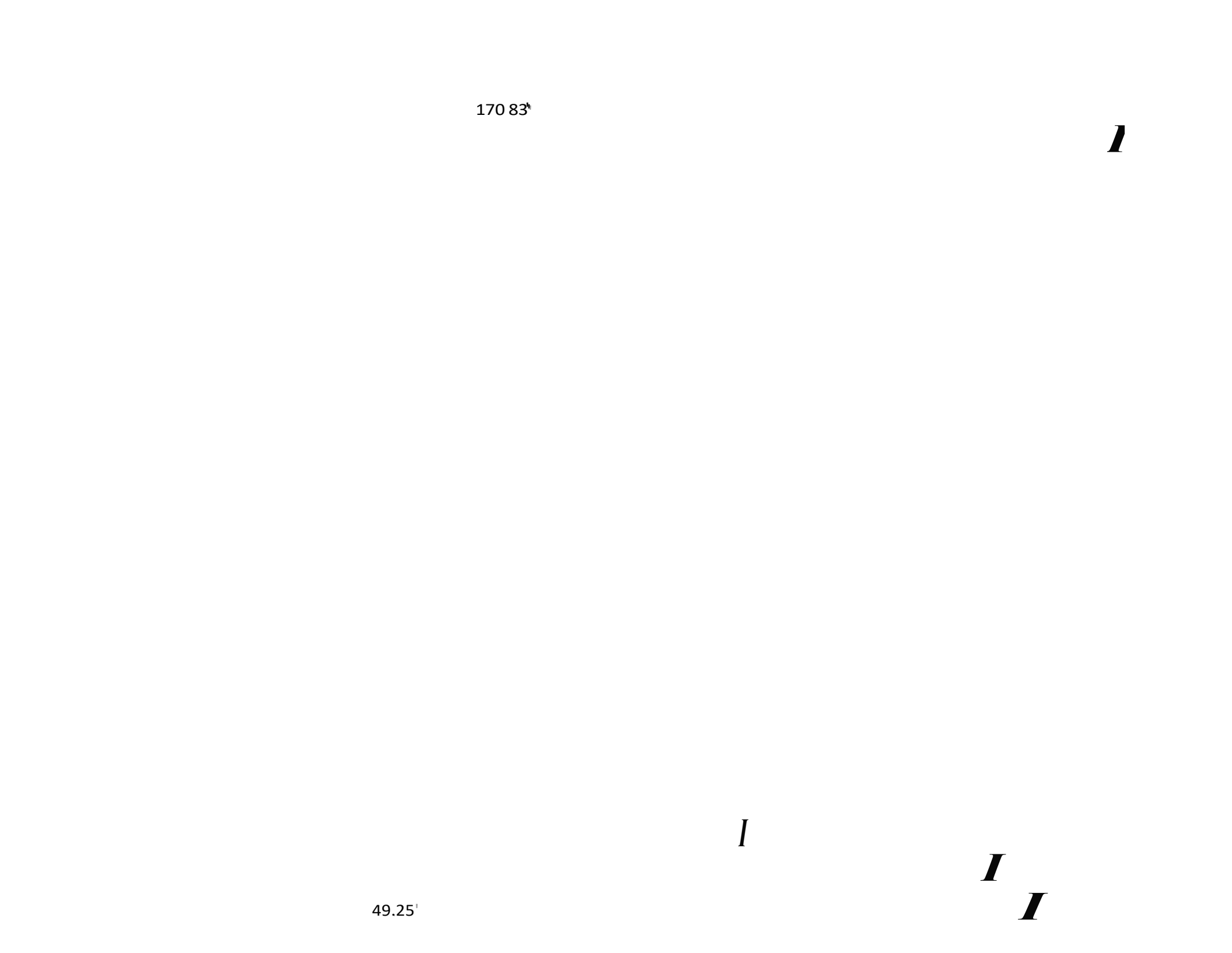
LINE TABLE

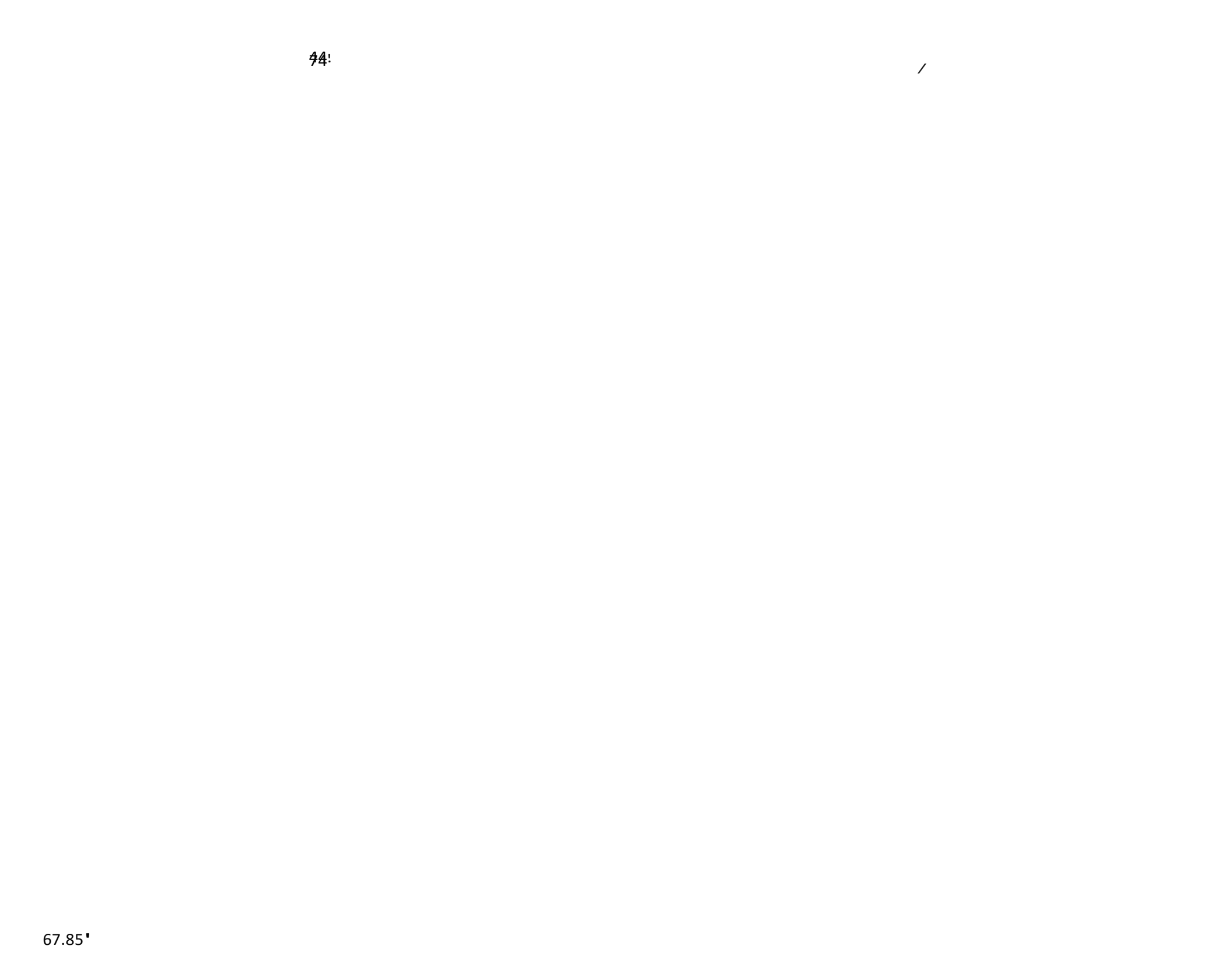
Parcel 2C

8
2
9

L1	S79'57'58"W	9.41'
		148.96'
LB	S37'08'59"W	99.92'
L9	S40'33'22"W	49.03'

LINE	BEARING	DISTANCE
L19	S70°15'39"E	
L20	S72°38'25"E	
L"21	S69°32'54"E	


170 83
49.25


44
74
67.85'

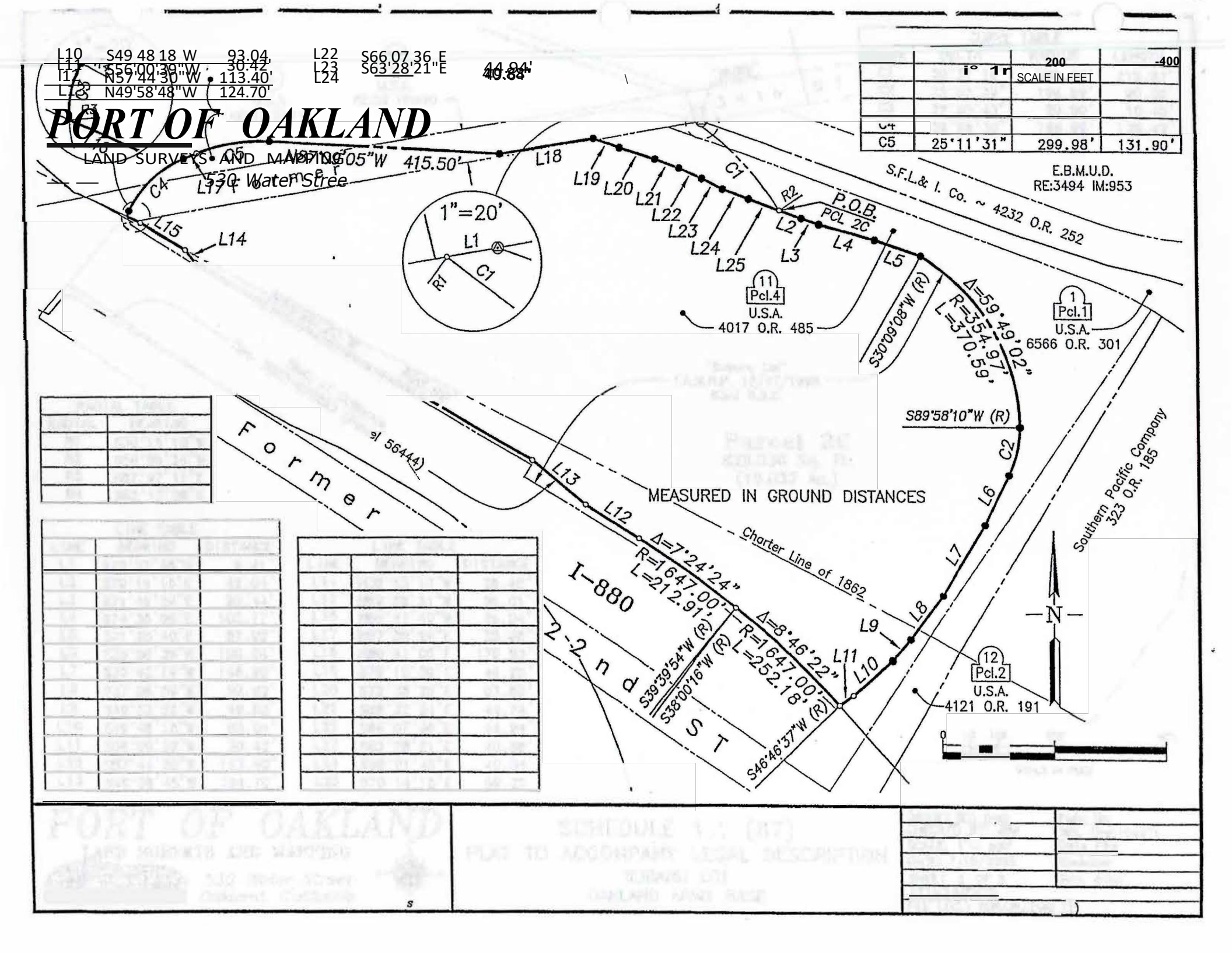
L10	S49 48 18 W	93.04'	L22	S66 07 36 E	
L11	S56 00 39 W	30.42'	L23	S63 28 21 E	44.94'
L12	N37 44 30 W	113.40'	L24		40.88'
L13	N49 58 48 W	124.70'			

		200	400
		SCALE IN FEET	
C4			
C5	25°11'31"	299.98'	131.90'

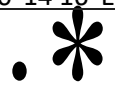
PORT OF OAKLAND

LAND SURVEYS AND MAPPING

530 Water Street



L25 S70' 14'16"E 59.22'



Oakland, California

SCHEDULE 1.1 (87)
PLAT TO ACCOMPANY LEGAL DESCRIPTION
SUBARU LOT
OAKLAND ARMY

DRAWN BY: DA
CHECKEDBY:-.JRM
SCALE: 1 ".,; 200'
DATE: **7/15..,'2003**
SHEET 2 OF 2
ATTACHMENTS:

Field_Bk:
Wrk. Ord: 104471
Data File:
Revision:
Rev. date:

FILE Toe.> SUBARU.DWG_{2

EXHIBIT C

Permitted Exceptions

[NOTE: To be updated when preliminary report obtained specific to the Property]

1. General and special taxes and assessments for the fiscal year 2021-2022, a lien not yet due or payable.

2. General and special taxes and assessments for the fiscal year 2020-2021 are exempt. If the exempt status is terminated an additional tax may be levied.

3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

4. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 2015-1 (Gateway Industrial District), as disclosed by Notice of Special Tax Lien recorded July 24, 20195 as Instrument No. 2015205574 of Official Records.

5. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. A/C-3, as disclosed by Notice of Special Tax Lien recorded January 31, 2019 as Instrument No. 2019015593 of Official Records.

6. Possible easements or lesser rights for public and private utilities, the exact location of which are not disclosed, including, but not limited to, public sewers, public roads, power lines, cable line, culverts and railway facilities over and across said land as disclosed by certain various instruments as follows: 1) Deed recorded December 28, 1906, in Book of Deeds 1304, Page 17, Alameda County Records, 2) Deed recorded October 10, 1910, in Book of Deeds 1837, Page 75, Alameda County Records, 3) Resolution recorded December 16, 1926 in Book 1511, Page 93 of Alameda County Records, 4) Agreement recorded June 12, 1935 in Book 3197, Page 154 of Alameda County Records, 5) Indenture recorded January 4, 1939, in Book 3700 of Official Records, Page 280, Alameda County Official Records, 6) Agreement recorded February 17, 1942 in Book 4167, Page 393, Alameda County Official Records, 7) Deed recorded February 17, 1942 in Book 4186, Page 156, Alameda County Official Records, and 8) Final Judgment recorded February 16, 1951 in Book 6361, Page 334, Alameda County Official Records.

7. Abutter's rights of ingress and egress to or from the adjoining freeway and freeway frontage roads (West Grand Avenue) have been relinquished pursuant to the terms and provisions in the documents recorded June 26, 1968 as Instrument No. BA-68979, in Book 2205, Page 787 and recorded February 23, 1979 as Instrument No. 79-34788 and recorded February 13, 2002 as Instrument No. 2002-072863.

Affects: EDC Parcel B-2, Baldwin Yard Adjusted Parcel 14 and Subaru Adjusted Parcel 15-B, and "Port Sliver" Parcel C-1 of Official Records

8. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 03, 2000 as Instrument No. 2000232151 of Official Records.

   Revised Statement of Institution of Redevelopment for the Oakland Army Base Redevelopment Project recorded December 03, 2007 as Instrument No. 2007-409566 of Official Records.

9. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 08, 2003 as Instrument No. 2003466370 of Official Records.
   In Favor of: United States of America, acting by and through the Secretary of the Army
   Affects: All of said lands

   Terms and provisions contained in the above document.

10. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded August 08, 2003 as Instrument No. 2003466371 of Official Records. Affects: EDC Parcels B-2 and B-3 and Public Trust Parcel E and Baldwin Yard Adjusted Parcel 14.

11. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded November 18, 2004 as Instrument No. 2004-513848 of Official Records. Affects: Subaru Adjusted Parcel 15-B.

12. The terms and provisions contained in the document entitled "Quitclaim Deed" recorded November 18, 2004 as Instrument No. 2004-513849 of Official Records. Affects: Subaru Adjusted Parcel 15-B.

13. An easement for ingress and egress and incidental purposes, recorded November 18, 2004 as Instrument No. 2004-513852 of Official Records.
   In Favor of: United States of America (Department of the Army)
   Affects: Southeasterly portion of Baldwin Yard Adjusted Parcel 14

   Terms and provisions contained in the above document.

14. The terms and provisions contained in the document entitled "Correction Quitclaim Deed" recorded May 17, 2007 as Instrument No. 2007-190760 of Official Records. Affects: Subaru Adjusted Parcel 15-B.

15. An easement for ingress and egress and incidental purposes, recorded August 31, 2007 as Instrument No. 2007-319054 of Official Records.
In Favor of: City of Oakland, acting by and through its Board of Port Commissioners
Affects: Southeasterly portion of Baldwin Yard Adjusted Parcel 14

16. An easement for water transmission, telemetry and electrical transmission facilities and incidental purposes, recorded December 04, 2014 as Instrument No. 2014296828 of Official Records.
In Favor of: East Bay Municipal Utility District, a public corporation
Affects: Portion of Lots 1 and 2, Parcel Map 10095 as described therein

Terms and provisions contained in the above document.

17. An easement for railroad facilities and incidental purposes, recorded May 27, 2015 as Instrument No. 2015140407 of Official Records.
In Favor of: BNSF Railway Company, a Delaware corporation
Affects: Portion of Lots 2, 3 and 5 Parcel Map 10095 as described therein

Terms and provisions contained in the above document.

18. The terms and provisions contained in the document entitled "Development Agreement (Gateway Development/Oakland Global)" recorded February 16, 2016 as Instrument No. 2016038035 of Official Records. By and between City of Oakland and Prologis CCIG Oakland Global, LLC.

19. Terms and provisions of an unrecorded lease dated February 16, 2016, by and between the City of Oakland, a municipal corporation as lessor and Oakland Bulk and Oversized Terminal, LLC, a California limited liability company as lessee, as disclosed by a Memorandum of Army Base Gateway Redevelopment Project Ground Lease for West Gateway recorded February 16, 2016 as Instrument No. 2016038036 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

(Affects portion of Lots 1, 2, 3, 5, 9 and 10 Parcel Map 10095)

20. Notice of pendency of action recorded January 14, 2019 as Instrument No. 2019006453 of Official Records.

Court:	Superior Court of the State of California for the County of Alameda
Case No.:	RG-18-930929
Plaintiff:	Oakland Bulk and Oversized Terminal, LLC, a California limited liability company and Oakland Global Rail Enterprise, LLC, a California limited liability company
Defendant:	City of Oakland, a California municipal corporation
Purpose:	Plaintiffs seek specific performance of all Defendant's contractual obligations set forth in contracts to lease and development real property

(Affects Parcels 1, 2, 3, 5, 7, 9, 10 of Parcel Map 10095 and other land)

21. Water rights, claims or title to water, whether or not shown by the public records.

22. Rights of parties in possession.

EXHIBIT D

Schedule of Performance

All terms not defined herein shall have the meaning ascribed to them in the Lease/Disposition and Development Agreement to which this Exhibit D is attached to and a part thereof. Note: The Milestones below shall be extended in accordance with Section 2.3 of the Agreement.

No.	L/DDA Obligation	L/DDA Section	Milestone	Date Completed at Implementation of Milestone
1.	Open Escrow	Sec 6.2	3 Business Days after Effective Date	
2.	Submit Additional Deposit to City	Sec 6.1.1	3 Business Days after Effective Date	
3.	Obtain Required City Discretionary Approvals	Sec 3.1.1	Effective Date	
4.	Submit Design Development Plans	Sec 3.1.4	5 months after Effective Date	
5.	Submit Public Art Plan	Sec 3.1.4	6 months after Effective Date	
6.	Submit Final Construction Plans	Sec 3.1.4	9 months after Effective Date	
7.	Submit Financing Plan and Guarantor	Secs. 3.1.2 & 3.1.6	9 months after Effective Date	
8.	Submit evidence of insurance	Sec 3.1.8	10 months after Effective Date	
9.	Submit formation documents for entity taking possession of land	Sec 3.1.9	10 months after Effective Date	
10.	Submit Financing Documents	Sec 3.1.3	11 months after Effective Date	
11.	Obtain assignment of Consent Agreement and RWQCB Order OR if not assigned, provide indemnity	Sec 5.3	11 months after Effective Date	
12.	Submit Evidence of Project Labor Agreement good faith	Sec 8.1	11 months after Effective Date	
13.	Submit Construction Contract	Sec 3.1.5	11 months after Effective Date	
14.	Submit evidence of update to Alameda County Integrated Waste Management Plan (IWMP)		11 months after Effective Date	
15.	Submit evidence of Solid Waste Facility Permit issuance by LEA, which includes concurrence by CalRecycle	Sec. 3.1.1	11 months after Effective Date	
16.	Submit evidence of coverage under State Water Resources	Sec. 3.1.1	11 months after Effective Date	

	Control Board Industrial General Permit (WDID letter) (submit NOI, submit SWPPP, pay fees)			
17.	Submit evidence Bay Area Air Quality Management District (BAAQMD) Authority to Construct (ATC) or confirmation that no ATC is required	Sec. 3.1.1	11 months after Effective Date	
18.	Submit evidence Industrial Pretreatment Permit coverage for discharge to EBMUD sanitary sewer or confirm no pretreatment permit required.	Sec. 3.1.1	11 months after Effective Date	
19.	Deposit into Escrow Conveyance Price, taxes, fees and costs	Sec 6.1.2; 6.6; 8.5; 8.6.1; 8.6.2; 8.7.1	3 Business Days before Close of Escrow	
20.	Submit Completion Guaranty	Sec 3.1.6	3 Business Days before Close of Escrow	
21.	Submit payment and performance bonds	Sec 3.1.7	3 Business Days before Close of Escrow	
22.	Close Escrow by Outside Closing Date	Sec 3.1; 6.5	12 months after Effective Date	
23.	Commencement of Construction	Sec 7.1	2 months after Close of Escrow	
24.	Completion of Construction	Sec 7.11	30-36 months after Commencement of Construction	
25.	Submit evidence of BAAQMD Permit to Operate	Sec. 9.2	90 days after Completion of Construction	
26.	Commence Operations	Sec 9.1	The earlier of (a) 90 days after Completion of Construction and issuance of Permits to Operate, or (b) 6 months after Completion of Construction	
27.	Executed Termination and Relinquishment of Rights Letters and Record Notices of Termination and Relinquishment	Sec. 9.3	6 months after date to Commence Operations	

EXHIBIT E

Form of Completion Guaranty

COMPLETION GUARANTY

THIS COMPLETION GUARANTY ("**Guaranty**"), dated as of __, 20_, is made by _____, a_____(the "**Guarantor**"), in favor of the City of Oakland, a municipal corporation (the "**Beneficiary**" or "**City**").

RECITALS

A. California Waste Solutions, Inc., a California corporation ("**Developer**"), has entered into a Lease/Disposition and Development Agreement (North Gateway), dated as of _____, 2021, with the Beneficiary (the "**L/DDA**") with respect to the real property located in the City of Oakland, California (the "**Property**"), more particularly described on Attachment 1, attached hereto, which DDA requires Developer to construct the Project thereon.

B. Guarantor's execution and delivery to Beneficiary of this Guaranty is a condition precedent to Beneficiary's execution and delivery of the L/DDA.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, capitalized terms used in this Guaranty shall have the meanings assigned to them in the L/DDA and the following terms shall have the following meanings:

"**Governmental Authority**" means any nation or government, any state, county, municipality or other political subdivision or branch thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any City, board commission, court, department or officer thereof.

"**Guaranty**" means this Completion Guaranty, as the same may be amended, supplemented or otherwise modified from time to time.

"**Improvements**" means the Project to be constructed on the Property in accordance with the Final Construction Plans and any modifications or changes in the Final Construction Plans permitted or required by the L/DDA.

"**Obligations**" means the obligations guaranteed by the Guarantor hereunder, including those set forth under Section 2 hereof.

(b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty, and section and paragraph references are to this Guaranty unless otherwise specified. The words "include" "includes" and "including" shall be deemed to be followed by the phrase "without

limitation". The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Guaranty. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Beneficiary, for the benefit of the Beneficiary the performance of each and every obligation of the Developer under the L/DDA with respect to the construction of the Project. Without limiting the generality of the foregoing, Guarantor guarantees that (a) the Project shall be constructed and completed in accordance with the Final Construction Plans approved by the City, (b) construction of the Project shall be commenced and completed within the time limits set forth in the L/DDA (subject to any extensions of such time limits in accordance with the provisions of the L/DDA), and (c) the Property and the Project shall be and remain free and clear of any and all mechanics' and materialmen's liens of persons or entities furnishing materials, labor or services in constructing or completing the Project.Guarantor agrees that following a Developer Event of Default, Beneficiary shall be entitled to exercise against Guarantor all rights and remedies available to Beneficiary against the Developer under the L/DDA, provided, however, that notwithstanding anything to the contrary herein, Guarantor's obligations under the L/DDA, including the obligations under this Guaranty, shall automatically and completely terminate following: (A) the issuance of the Certificate of Completion for the Project as described in the L/DDA, except to the extent of any claims made by Beneficiary against Guarantor under this Guaranty prior to issuance of the Certificate of Completion; and (B) delivery to the City of a copy of the final as-built plans for the Project.

The Guarantor hereby acknowledges that if it fails to perform its obligations promptly under this Guaranty, the Beneficiary has the option, without any obligation to do so, to proceed to complete the Project, or cause the completion of the Project, sixty (60) days after written notice including an opportunity to cure or to commence to cure during such period are provided to the Guarantor, without obtaining the Guarantor's consent and without affecting the liability of the Guarantor hereunder.

The Guarantor further agrees to pay any and all expenses (including all reasonable fees and disbursements of counsel) which may be reasonably paid or incurred by the Beneficiary after the occurrence of a default by any Guarantor hereunder in enforcing, or obtaining advice of counsel in respect of, any rights with respect to, or collecting, any or all of the Obligations and/or enforcing any rights with respect to, or collecting against, the Guarantor under this Guaranty. This Guaranty shall remain in full force and effect until the Obligations have been indefeasibly satisfied and discharged in full.

The Guarantor acknowledges and agrees that it will be impossible to measure accurately the damages to the Beneficiary resulting from a breach of the covenants of the Guarantor set forth in paragraphs (a) and (b) of the first paragraph of this Section 2; that such a breach will cause irreparable injury to the Beneficiary and that the Beneficiary has no adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantor as provided herein, and the Guarantor hereby waives and agrees not to assert any defense based on the denial of any of the foregoing in an action for specific performance of such covenant.

No payment or payments made by any person other than the Developer or Guarantor or received or collected by the Beneficiary from any other person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Guarantor hereunder which shall, notwithstanding any such payment or payments, remain liable for the Obligations until the Obligations have been indefeasibly satisfied and discharged in full.

3. Amendments, Rights With Respect to the Obligations. The Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, any demand for payment of any of the Obligations may be rescinded and any of the Obligations continued, and the Obligations, or the liability of any other person or entity upon or for any part thereof, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released. The Final Construction Plans and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, without the necessity of any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, which will remain bound hereunder notwithstanding any modification or amendment. When making any demand hereunder against the Guarantor, the Beneficiary may, but shall be under no obligation to, make a similar demand on any other person or entity obligated with respect to the Obligations, and any failure by the Beneficiary to make any such demand or to collect any payments from such person or entity shall not relieve the Guarantor of its obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of the Beneficiary against the Guarantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings.

Without limiting any other provision of this Guaranty or Guarantor's covenants hereunder: Guarantor: (A) authorizes City, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time, to: (i) approve modifications to the Final Construction Plans; (ii) change the terms and conditions of the L/DDA; or (iii) assign this Guaranty in whole or in part; and (B) authorizes the City, without notice or demand and without affecting its liability hereunder, from time to time to (i) extend, accelerate, or otherwise change the time for any payment provided for in the L/DDA, or any covenant, term or condition of the L/DDA, in any respect to impair or suspend the City's remedies or rights against Developer in respect to the L/DDA, and to consent to any assignment or reassignment of the L/DDA; (ii) take and hold security for any payment provided for in the L/DDA, or exchange, waive or release any such security; and (iii) apply such security and direct the order or manner of sale thereof as the City in its discretion may determine. The City may, without notice, assign this Guaranty or the L/DDA, or any sums payable thereunder. Notwithstanding any renewal, extension or holding over of the L/DDA, this Guaranty shall continue until all of the Obligations have been satisfied.

4. Guaranty Absolute and Unconditional.

(a) Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof or reliance by the Beneficiary upon this Guaranty or acceptance of this Guaranty. The Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guaranty and all dealings between the Guarantor and the Beneficiary likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guaranty. The Guarantor hereby agrees that neither the Beneficiary' rights nor the Guarantor's obligations under this Guaranty shall be released, diminished, impaired, reduced or affected by any events, actions or circumstances other than the satisfaction and discharge in full of the Obligations. The Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Guarantor with respect to the Obligations. The Guarantor understands and agrees that this Guaranty shall be construed as a continuing, absolute and unconditional guaranty without regard to the following: (i) the validity or enforceability of the L/DDA or any document executed in connection therewith ("**Transaction Document**"), (ii) any defense, set-off or counterclaim which may at any

time be available to or be asserted by Guarantor against Beneficiary, (iii) failure of Beneficiary to enforce any provision of the L/DDA or (iv) any other circumstance whatsoever (with or without notice to or knowledge of the Guarantor or any other person) which constitutes, or might be construed to constitute, an equitable or legal discharge of any person or entity for the Obligations, or of the Guarantor under this Guaranty, in bankruptcy or in any other instance. When pursuing their rights and remedies hereunder against the Guarantor, the Beneficiary may, but shall be under no obligation to, pursue such rights and remedies as it may have against any other person or entity, and any failure by the Beneficiary to pursue such other rights or remedies or to collect any payments from any such other person or entity shall not relieve the Guarantor of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Beneficiary against the Guarantor.

(b) The Guarantor waives any and all other rights and defenses available to the Guarantor including: (i) any defense based upon an election of remedies by the Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise (the so-called "Gradsky" defense); (ii) any defense based upon the failure of the Beneficiary to disclose to the Guarantor any information concerning obligations under any of the Transaction Documents; and (iii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal. Without limiting the generality of the foregoing or any other provision hereof, the Guarantor further expressly waives, to the extent permitted by law, any and all rights and defenses that may exist by reason of any anti-deficiency or other similar laws of California, and any and all rights that might otherwise be available to the Guarantor (but not including rights under the Construction Contract), including any rights of subrogation, reimbursement, indemnification and contribution under California Civil Code Sections 2787 to 2855 inclusive, 2899 and 3433, or under California Code of Civil Procedure 580a, 580b, 580d and 726 or any such sections. Finally, the Guarantor waives any benefit of any statute of limitations affecting the liability of the Guarantor hereunder or the enforcement hereof.

5. Reinstatement. Notwithstanding any provision of this Guaranty to the contrary, this Guaranty shall continue to be effective, or be reinstated, as the case may be, if, at any time, payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Beneficiary upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Guarantor or any other person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Guarantor or any other person or any substantial part of their property, or otherwise, all as though such payments had not been made.

6. Payments. The Guarantor hereby agrees that payments hereunder will be paid to the Beneficiary without set-off or counterclaim in U.S. Dollars at the office of the Beneficiary.

7. Representations and Warranties. The Guarantor hereby represents and warrants to the Beneficiary that:

(a) it has full power to own its property, and to enter into and perform its obligations under this Guaranty;

(b) (i) the execution and delivery by the Guarantor of this Guaranty has been duly authorized by all necessary action on the part of the Guarantor or any other person or entity; and (ii) neither the execution and delivery of this Guaranty nor compliance with the provisions hereof will conflict with or result in a breach of, or constitute a material default under, any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on the Guarantor, its properties or its organizational documents or any of the provisions of any indenture, Mortgage, contract or other instrument to which the Guarantor is a party or by which the Guarantor or its properties is bound or result in the creation or imposition of any lien or encumbrance upon any of its properties or revenues pursuant to the terms of any such indenture, Mortgage, contract or other instrument, in any such case which conflict, breach, default, lien or encumbrance would materially adversely affect the ability of the Guarantor to perform its obligations under this Guaranty;

(c) this Guaranty has been duly authorized, executed and delivered on behalf of Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;

(d) Guarantor has obtained/performed any consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and any consent of any other person (including any creditor of such Guarantor) that is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty;

(e) the Guarantor is not in default under or with respect to any contractual obligation applicable to it which could have a material adverse effect upon the ability to perform its obligations under this Guaranty; the Guarantor is not a party to or bound by any contractual obligation or subject to any requirement of law which could have a material adverse effect upon its ability to perform its obligations under this Guaranty; and the Guarantor is not in default under any order, award or decree of any arbitrator or court or other governmental authority binding upon or affecting it or by which any of its property or assets may be bound or affected in any way which could materially adversely affect its ability to perform its obligations under this Guaranty, and no such order, award or decree could materially adversely affect the ability of the Guarantor to perform its obligations under this Guaranty;

(f) the Guarantor has (i) filed, or caused to be filed, all tax returns which are required to be filed by it, (ii) paid all taxes shown to be due and payable on such returns or on any assessments made against the Guarantor or any of the Guarantor's property, and (ii) paid all other taxes, fees or other charges imposed on the Guarantor or any of the Guarantor's property by any governmental authority (in each case other than those matters (A) the amount or validity of which is currently being contested in good faith by appropriate proceedings or (B) which could not in any way materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty);

(g) no tax liens have been filed and no claims are being actively asserted with respect to any taxes, fees or other charges that are the subject of Section 7(f) (other than with respect

to those taxes, fees or other charges (i) the amount or validity of which is currently being contested in good faith by appropriate proceedings or (ii) which could not in any way materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty); and

(h) there is no action, suit or proceeding of or before any arbitrator or Governmental Authority pending or, to the best knowledge of the Guarantor, threatened, by or against or affecting the Guarantor or its property or assets: (i) with respect to this Guaranty or any of the transactions contemplated by this Guaranty; or (ii) which could be materially adverse to the business, operations, assets, property or financial or other condition of the Guarantor or which could materially adversely affect the ability of the Guarantor to perform its obligations under this Guaranty.

8. Covenants. The Guarantor hereby covenants and agrees to:

(a) at any time and from time to time, upon the written request of Beneficiary, and at the sole expense of the Guarantor, promptly and fully execute and deliver such further instruments and documents and take such further actions as Beneficiary may reasonably request for the purpose of obtaining or preserving the full benefits of this Guaranty and of the rights and powers herein granted;

(b) pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all the Guarantor's indebtedness and other obligations of whatever nature; and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the Guarantor's business and to comply with all contractual obligations and requirements of law applicable to it (in each case, except where the failure to do so is not likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guaranty); and

(c) maintain at all times for the term of this Guaranty a net worth equal to or greater than the net worth require in Section 3.1.6(a)(i) of the L/DDA.

9. Notices. All notices, requests and demands to or upon the Beneficiary or the Guarantor to be effective shall be in writing (or by confirmed fax or similar electronic transfer) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or if given by mail, three (3) business days after being deposited in the mails by certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) if to the Beneficiary, at its address for notices provided in the L/DDA; and

(b) if to the Guarantor, at its address for notice(s) set forth after its signature below. The Beneficiary and the Guarantor may change their address and transmission numbers for notices by notice in the manner provided in this Section.

10. Counterparts. This Guaranty may be executed by counterpart, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

11. Severability. Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Integration. This Guaranty represents the entire agreement of the Guarantor with respect to the subject matter hereof and there are no promises or representations by the Guarantor or the Beneficiary relative to the subject matter hereof not reflected or referred to herein.

13. Amendments in Writing; No Waiver; Cumulative Remedies.

(a) None of the terms or provisions of this Guaranty may be amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and the Beneficiary. None of the terms or provisions of this Guaranty may be waived except by a written instrument executed by the waiving party.

(b) The Beneficiary shall not by any act (except by a written instrument pursuant to paragraph 13(a) hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Beneficiary any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Beneficiary of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Beneficiary would otherwise have on any future occasion.

(c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

14. Section Headings. The section headings used in this Guaranty are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

15. Submission to Jurisdiction; Waivers.

(a) The Guarantor hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Guaranty to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of California, the courts of the United States of America for the Northern District of California, and appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts and waives any objection that the Guarantor may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Guarantor at its address referred to in section 9 or at such other address of which the beneficiary shall have been notified pursuant thereto; and

(iv) agrees that nothing herein shall affect the right to effect service or process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

(b) The Guarantor each hereby unconditionally and irrevocably waives, to the maximum extent not prohibited by law, any right they may have to claim or recover in any legal action or proceeding relating to this Guaranty any special, exemplary, punitive or consequential damages.

16. Acknowledgments. The Guarantor hereby acknowledges that: (a) it has been advised by skilled legal counsel in the negotiation, execution and delivery of this Guaranty; and (b) that as part of Beneficiary's consideration for entering into this transaction, the Beneficiary has specifically bargained for the waiver and relinquishment by the Guarantor of all defenses to the enforceability of the Obligations that may arise hereafter.

17. Waivers Of Jury Trial. The Guarantor hereby irrevocably and unconditionally waives trial by jury in any legal action or proceeding relating to this Guaranty and for any counterclaim therein.

18. Successors and Assigns. This Guaranty shall be binding upon the permitted successors and assigns of the Guarantor and shall inure to the benefit of the Beneficiary and its indorsees, transferees, successors and assigns. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guaranty, but the Beneficiary may assign, transfer or delegate any of its rights or obligations under this Guaranty without the consent of the Guarantor.

19. Governing Law. This Guaranty shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

20. No Third Party Beneficiary. Except as expressly provided for herein, nothing in this Guaranty shall be deemed to create any right in any person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third person.

21. Time of the Essence. Time shall be of the essence in this Guaranty with respect to all the Obligations.

22. Attorneys' Fees and Costs. The Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses that may be incurred by the City in the successful enforcement of this Guaranty. For purposes of this Guaranty, the reasonable fees of attorneys of the Office of City Attorney of the City of Oakland shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in San Francisco law firms with at least the same number of attorneys as employed by the City Attorney's Office.

23. No Guarantor Assignment. The Guarantor shall not assign its rights under this Guaranty.

24. Adequate Consideration. Guarantor represents and warrants that it has received adequate and sufficient consideration for the Obligations incurred under this Guaranty.

25. Acknowledgement of Documents. The Guarantor has received a copy of the DDA, as executed or in substantially the form to be executed, and is satisfied with all of the terms and

conditions thereof. In executing and delivering this Guaranty, the Guarantor has relied on its own review of the DDA and not on any representation or statement of the City or any other person.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

[SIGNATURE BLOCK OF GUARANTOR]

By:_____

Name:_____

Title: _____

By:_____

Name:_____

Title: _____

Address for Notice(s) to Guarantor:

_____

_____

_____

EXHIBIT F

Insurance Requirements
(Revised 09/12/2019)

All terms not defined herein (other than insurance terms) shall have the meaning ascribed to them in the Lease/Disposition and Development Agreement to which this Exhibit F is attached to and a part thereof.

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Developer shall procure, prior to commencement of service, and keep in force for the term of this contract, at Developer's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City, and with respect to the Caltrans Easement, acceptable to the State of California, Department of Transportation. If requested, Developer shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be on an occurrence basis and at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Developer shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

ii. **Automobile Liability Insurance.** Developer shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

iii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than $1,000,000 each accident, $1,000,000 policy limit bodily injury by disease, and $1,000,000 each employee bodily injury by disease. Developer certifies that it is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Developer shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. **Professional Liability/Errors and Omissions insurance, if determined to be required by Human Resources Management/Risk Management Department (HRM/RMD),** appropriate to the Developer's profession with limits not less than $_____each claim and $_____aggregate. If the professional liability/errors and omissions insurance is written on a claims-made form:

a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.

b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

v. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire, or water restoration or fuel storage dispensing, then for small jobs (projects less than $500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least $500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Developer must also maintain Errors and Omissions (Professional Liability) of $500,000 per occurrence and in the aggregate.

vi. **Sexual/Abuse Insurance.** If Developer will have contact with persons under the age of 18 years, or provide services to persons with Alzheimer's or Dementia, or provides Case Management services, or provides Housing services to vulnerable groups (i.e., homeless persons) Developer shall maintain sexual/molestation/abuse insurance with a limit of not less than $1,000,000 each occurrence and $1,000,000 in the aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

vii. **Technology Professional Liability (Errors and Omissions) OR Cyber Liability Insurance, if determined by HRM/RMD,** appropriate to the Consultant's profession, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to, or destruction of, electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, as well as credit monitoring expenses with limits sufficient to respond to these obligations.

b. Terms Conditions and Endorsements

The aforementioned insurance for the Property (except the Caltrans Easement) shall be endorsed and have all the following conditions:

i. Insured Status (Additional Insured): Developer shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Developer submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City, Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and

iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and

iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and

v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

The aforementioned insurance for the Caltrans Easement shall meet the requirements and conditions as set forth in the Caltrans Easement.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Developer, such insurance in the name of Developer as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Developer under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Developer will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Developer's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Should the Developer subcontract out the work required by this Agreement, it shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Developer may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Developer shall be named as additional insureds under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Developer waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If Developer maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the Developer.

EXHIBIT G

Form of Grant Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attention: _____

APN: _____ SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned grantor(s) declare(s):
County transfer tax is $
City transfer tax is $
(X) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale
( ) Unincorporated area; or (X) County of Alameda

GRANT DEED

(North Gateway)

FOR VALUABLE CONSIDERATION, THE CITY OF OAKLAND, a municipal corporation ("**Grantor**"), does hereby grant to CALIFORNIA WASTE SOLUTIONS, INC., a California corporation ("**Grantee**"), fee title to that certain real property located in the City of Oakland, County of Alameda, State of California as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Property**"); subject to the title matters listed on, the terms EDC Deed, CRUP, CRUP (Subaru Lot), and Army Deed are defined in, Exhibit B attached hereto. As required by the EDC Deed, the Property is conveyed subject to the valid and existing outstanding lines, licenses, easements, and other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, reservations, and agreements, in each case as expressly set forth in the EDC Deed or as properly recorded in accordance with applicable law. The (1) Environmental Restrictions as defined and set forth in the CRUP and CRUP (Subaru Lot), and (2) notices, use restrictions and restrictive covenants contained in the Army Deed, to the extent applicable to the Property are incorporated herein by this reference.

[*Signature page follows.*]

Executed as of_____, 20_

GRANTOR:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF_____)

On_____, before me,_____, a Notary Public, personally appeared_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

EXHIBIT A

Legal Description of Property

[Attached]

EXHIBIT "A"

Real property situate in the City of Oakland, County of Alameda, and State of California, and being all of Parcel 2 as shown on that Parcel Map No. 10778, field for record on March 12, 2021 in Book 348, Pages 89-98 Alameda County Records.

APN: 018-0508-007

See Exhibit A-1 – Plat to accompany legal description which is attached and made a part hereof.

End of Description

Prepared by:

_____

Scott Shortlidge, LS 6441

NOTE

BEARINGS AND DISTANCES ARE BASED ON RECORD OF SURVEY NO. 990. ALL DISTANCES SHOWN OR DERIVED FROM THIS DRAWING ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000705.

EXHIBIT A-1

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

SALES PARCEL

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

G,\job2011\111069\Mapping\Plats\PARCEL 2 - PM 10778.ciwg

RUGGERI·JENSEN·AZAR
ENGINEERS• PLANNERS• SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1"=200'	4-7-2021	111069

EXHIBIT B

Title Matters

[NOTE: To be updated prior to closing]

1. General and special taxes and assessments for the fiscal year 2021-2022, a lien not yet due or payable.

2. General and special taxes and assessments for the fiscal year 2020-2021 are exempt. If the exempt status is terminated an additional tax may be levied.

3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

4. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 2015-1 (Gateway Industrial District), as disclosed by Notice of Special Tax Lien recorded July 24, 20195 as Instrument No. 2015205574 of Official Records.

5. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. A/C-3, as disclosed by Notice of Special Tax Lien recorded January 31, 2019 as Instrument No. 2019015593 of Official Records.

6. Possible easements or lesser rights for public and private utilities, the exact location of which are not disclosed, including, but not limited to, public sewers, public roads, power lines, cable line, culverts and railway facilities over and across said land as disclosed by certain various instruments as follows: 1) Deed recorded December 28, 1906, in Book of Deeds 1304, Page 17, Alameda County Records, 2) Deed recorded October 10, 1910, in Book of Deeds 1837, Page 75, Alameda County Records, 3) Resolution recorded December 16, 1926 in Book 1511, Page 93 of Alameda County Records, 4) Agreement recorded June 12, 1935 in Book 3197, Page 154 of Alameda County Records, 5) Indenture recorded January 4, 1939, in Book 3700 of Official Records, Page 280, Alameda County Official Records, 6) Agreement recorded February 17, 1942 in Book 4167, Page 393, Alameda County Official Records, 7) Deed recorded February 17, 1942 in Book 4186, Page 156, Alameda County Official Records, and 8) Final Judgment recorded February 16, 1951 in Book 6361, Page 334, Alameda County Official Records.

7. Abutter's rights of ingress and egress to or from the adjoining freeway and freeway frontage roads (West Grand Avenue) have been relinquished pursuant to the terms and provisions in the documents recorded June 26, 1968 as Instrument No. BA-68979, in Book 2205, Page 787 and recorded February 23, 1979 as Instrument No. 79-34788 and recorded February 13, 2002 as Instrument No. 2002-72863.

   Affects: EDC Parcel B-2, Baldwin Yard Adjusted Parcel 14 and Subaru Adjusted Parcel 15-B, and "Port Sliver" Parcel C-1 of Official Records

8. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 03, 2000 as Instrument No. 2000232151 of Official Records.

   Revised Statement of Institution of Redevelopment for the Oakland Army Base Redevelopment Project recorded December 03, 2007 as Instrument No. 2007-409566 of Official Records.

9. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 08, 2003 as Instrument No. 2003466370 of Official Records (the "**EDC Deed**").
   In Favor of: United States of America, acting by and through the Secretary of the Army
   Affects: All of said lands

   Terms and provisions contained in the above document.

10. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded August 08, 2003 as Instrument No. 2003466371 of Official Records (the "**CRUP**"). Affects: EDC Parcels B-2 and B-3 and Public Trust Parcel E and Baldwin Yard Adjusted Parcel 14.

11. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded November 18, 2004 as Instrument No. 2004-513848 of Official Records (the "**CRUP (Subaru Lot)**"). Affects: Subaru Adjusted Parcel 15-B.

12. The terms and provisions contained in the document entitled "Quitclaim Deed" recorded November 18, 2004 as Instrument No. 2004-513849 of Official Records (the "**Army Deed**"). Affects: Subaru Adjusted Parcel 15-B.

13. An easement for ingress and egress and incidental purposes, recorded November 18, 2004 as Instrument No. 2004-513852 of Official Records.
   In Favor of: United States of America (Department of the Army)
   Affects: Southeasterly portion of Baldwin Yard Adjusted Parcel 14

   Terms and provisions contained in the above document.

14. The terms and provisions contained in the document entitled "Correction Quitclaim Deed" recorded May 17, 2007 as Instrument No. 2007-190760 of Official Records. Affects: Subaru Adjusted Parcel 15-B.

15. An easement for ingress and egress and incidental purposes, recorded August 31, 2007 as Instrument No. 2007-319054 of Official Records.
   In Favor of: City of Oakland, acting by and through its Board of Port Commissioners
   Affects: Southeasterly portion of Baldwin Yard Adjusted Parcel 14

16. An easement for water transmission, telemetry and electrical transmission facilities and incidental purposes, recorded December 04, 2014 as Instrument No. 2014296828 of Official Records.

In Favor of:	East Bay Municipal Utility District, a public corporation
Affects:	Portion of Lots 1 and 2, Parcel Map 10095 as described therein

Terms and provisions contained in the above document.

17. An easement for railroad facilities and incidental purposes, recorded May 27, 2015 as Instrument No. 2015140407 of Official Records.

In Favor of:	BNSF Railway Company, a Delaware corporation
Affects:	Portion of Lots 2, 3 and 5 Parcel Map 10095 as described therein

Terms and provisions contained in the above document.

18. The terms and provisions contained in the document entitled "Development Agreement (Gateway Development/Oakland Global)" recorded February 16, 2016 as Instrument No. 2016038035 of Official Records. By and between City of Oakland and Prologis CCIG Oakland Global, LLC.

19. Terms and provisions of an unrecorded lease dated February 16, 2016, by and between the City of Oakland, a municipal corporation as lessor and Oakland Bulk and Oversized Terminal, LLC, a California limited liability company as lessee, as disclosed by a Memorandum of Army Base Gateway Redevelopment Project Ground Lease for West Gateway recorded February 16, 2016 as Instrument No. 2016038036 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

(Affects portion of Lots 1, 2, 3, 5, 9 and 10 Parcel Map 10095)

20. Notice of pendency of action recorded January 14, 2019 as Instrument No. 2019006453 of Official Records.

Court:	Superior Court of the State of California for the County of Alameda
Case No.:	RG-18-930929
Plaintiff:	Oakland Bulk and Oversized Terminal, LLC, a California limited liability company and Oakland Global Rail Enterprise, LLC, a California limited liability company
Defendant:	City of Oakland, a California municipal corporation
Purpose:	Plaintiffs seek specific performance of all Defendant's contractual obligations set forth in contracts to lease and development real property

(Affects Parcels 1, 2, 3, 5, 7, 9, 10 of Parcel Map 10095 and other land)

21. Water rights, claims or title to water, whether or not shown by the public records.

22. Rights of parties in possession.

EXHIBIT H

Form of Lease – Caltrans Easement

LEASE
(North Gateway - Caltrans Easement)

THIS LEASE (North Gateway - Caltrans Easement) (the "**Lease**") is made as of _____, 20__ (the "**Effective Date**"), by and between the CITY OF OAKLAND, a municipal corporation (with its successors called "**City**" or "**Landlord**''), and CALIFORNIA WASTE SOLUTIONS, INC., a California corporation ("**Tenant**"). Capitalized terms are defined herein and/or in Exhibit A.

RECITALS:

A. On February 11, 2002, the Federal Highway Administration ("**FHWA**"), acting under the authority granted in 23 U.S.C. §§ 107(d) and 317, conveyed certain lands on the Oakland Army Base ("**Former Army Base**") to the State of California Department of Transportation ("**Caltrans**") by deed recorded on February 13, 2002, in the Official Records of Alameda County ("**Official Records**") as Document No. 2002072863 (the "**FHWA Deed**") (the "**FHWA Deed**"), attached as Exhibit B.

B. On April 29, 2005, Caltrans recorded a perpetual easement in the Official Records as document number 2005-171016 granting to the Oakland Base Reuse Authority a perpetual easement to property under the freeway (the "**Original Caltrans Easement**").

C. On August 7, 2006, the Oakland Base Reuse Authority transferred all of its rights and obligations relating to the Former Army Base, including the Original Caltrans Easement, to the Oakland Redevelopment Agency.

D. On January 31, 2012, the Oakland Redevelopment Agency transferred all of its rights and obligations relating to the Former Army Base, including the Original Caltrans Easement to Landlord.

E. On_____, 2021, Landlord and Tenant entered into that certain Lease/Disposition and Development Agreement (North Gateway) (the "**L/DDA**"), pursuant to which, among other things, Landlord agreed to lease the Original Caltrans Easement to Tenant pursuant to the terms set forth in this Lease.

F. The Original Caltrans Easement was amended by that certain First Amendment to Easement by and between Landlord and Caltrans dated May 19, 2015 (recorded on May 22, 2015 in the Official Records as Instrument No. 2015136710), and by that certain Second Amendment to Easement by and between Landlord and Caltrans dated August 17, 2016 (recorded on September 1, 2016 in the Official Records as Instrument No. 20166223509). The Original Caltrans Easement and the foregoing amendments are collectively referred to herein as the "**Caltrans Easement**", attached hereto as Exhibit C.

G. Landlord has a perpetual interest in the Caltrans Easement and Landlord may only grant its rights to others through a lease that meets the terms of the Caltrans Easement.

H. Tenant owns certain real property in fee consisting of 12.02 acres, located on the Former Army Base (the "**Property**") and pursuant to the L/DDA desires to lease from Landlord the Caltrans Easement (the "**Premises**") upon the terms and conditions set forth herein, and pursuant to the L/DDA, Landlord agreed to lease such property to Tenant upon such terms and conditions.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Landlord and Tenant hereby agree as follows:

1. PREMISES. In consideration of the payment of the rent hereinafter specified, Landlord hereby leases to Tenant for the Term (defined below), and upon all of the covenants and conditions set forth herein, the Premises located on the Former Army Base in the City of Oakland, Alameda County, California as more particularly described and depicted by legal description and plat provided in Exhibit D attached hereto.

1.1 **Description of Premises**. The Premises consist of vacant land under a section of the freeway with structural columns and related utilities, but otherwise unimproved, which is being leased hereunder for the purpose set forth in Section 4.1 below.

1.2 **Condition**. Tenant is leasing the Premises from Landlord solely based on the Tenant's own independent investigation of the Premises and not on any representation or warranties made by Landlord. Accordingly, Tenant is accepting all portions of the Premises "As-Is" and "Where-is". Tenant acknowledges that it has conducted a thorough investigation and inspection of the Premises, and based on its investigation and inspection accepts the physical condition and current level of environmental hazards on the Premises and deems the Premises to be safe for Tenant's intended use.

1.3 **Restrictions On Use**. Tenant acknowledges that the use of the Premises is restricted by, and subject to, the conditions set forth in (a) the FHWA Deed and the Caltrans Easement, including without limitation, the restrictions provided in paragraphs A and B of the FHWA Deed and Section 2 of the Caltrans Easement, and (b) that certain Conditional Use Permit (the "**CUP**") applicable to the Premises.

1.4 **Hazardous Material**.

1.4.1 **Army Access**. Landlord and Tenant acknowledge that pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. 9620(h)(3), the Easement Area (as defined in the FHWA Deed) contains the presence of hazardous substances as reported in the DEPARTMENT OF THE ARMY BASEWIDE PRELIMINARY ASSESSMENT/SITE INSPECTION (PNSI), OAKLAND ARMY BASE, OAKLAND, CALIFORNIA, dated February 24, 1998, as amended, and in accordance with the FHWA Deed, is subject to the reserved rights of the U.S. Department of the

Army ("**Army**") to access the Caltrans Easement for purposes of performing investigation, remediation or corrective activities relating to hazardous substances, found to be necessary.

1.4.2 **Remediation**.

1.4.2.1 Tenant shall be solely responsible for all costs of investigation, removal, cleanup, treatment, transportation, disposal, and monitoring of any contamination by Hazardous Materials on or near the Premises as required in connection with the Development (as defined in Exhibit A attached hereto), whether such contamination occurred prior to or following leasing of the Premises to Tenant. Tenant shall be solely responsible for developing, submitting, and implementing any risk assessments or remediation work plans for the Premises as required by Applicable Laws and Requirements. Tenant shall comply with all Applicable Laws and Requirements, including, without limitation, the FHWA Deed, Caltrans Easement, and the CUP.

1.4.2.2 Tenant hereby waives and releases Landlord from any claims, causes of action, liabilities or costs arising from the presence of, or associated with, the investigation, monitoring or remediation of any Hazardous Materials contamination on or near the Premises as of the Effective Date, whether or not such contamination was known as of the Effective Date.

1.4.3 **Environmental Investigation**. Tenant may engage its own environmental consultant to make such environmental site assessments or investigations of the Premises with respect to possible contamination by Hazardous Materials as Tenant deems necessary, including conducting any "Phase I" or "Phase II" investigations of the Premises. Upon request, Tenant shall promptly deliver to Landlord a copy of all reports and assessments provided by Tenant's consultants.

1.4.4 **Use and Operation of Premises**. Except as provided in Applicable Laws and Requirements, and subject to the exclusion from the definition of "Hazardous Materials" for substances stored on the Premises that are stored as part of the normal construction and operation of the Development and that otherwise comply with all Applicable Laws and Requirements, neither Tenant, nor any agent, employee, nor contractor of Tenant, nor any authorized user, occupant, or tenant of the Premises shall use the Premises or allow the Premises to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials following leasing of the Premises to Tenant.

1.5 **Assignment and Assumption**. Subject to Section 2(b) of the Caltrans Easement, Landlord hereby assigns and Tenant hereby assumes all of Landlord's rights and obligations under the Caltrans Easement pertaining to the Premises.

1.6 **Exhibits**. The following exhibits are attached to this Lease and incorporated herein by this reference for all purposes:

EXHIBIT A	Definitions
EXHIBIT B	FHWA Deed
EXHIBIT C	Caltrans Easement
EXHIBIT D	Premises
EXHIBIT E	Insurance Certificates

2. TERM

2.1 **Term**. Tenant shall have and hold the Premises for a period of ninety-nine (99) years starting on the Effective Date ("**Term**") with termination of renewal rights as provided herein. The Lease Term shall expire on_____, 20__, unless earlier terminated in accordance with the terms of this Lease ("**Expiration Date**").

2.2 **No Renewal Option**. Tenant acknowledges and agrees that this Lease is not renewable and cannot be extended for any additional term beyond the Term. This provision shall not preclude the parties from entering into a new lease upon the expiration of the Term.

2.3 **Delays in Possession**. Landlord shall use commercially reasonable efforts to deliver possession of the Premises to Tenant. If despite said efforts, Landlord is unable to deliver possession as agreed, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease and Tenant shall not be obligated to perform its obligations under this Lease.

3. BASE RENT. Base Rent is hereby established at Five Hundred Seventy-Five Thousand Dollars ($575,000) per acre and payable in advance at Closing (as defined in the L/DDA) pursuant to Section 6.1 of the L/DDA.

4. USE OF PREMISES.

4.1 **Permitted Use**. The Premises are for the sole purpose of allowing the construction, use, replacement, inspection, maintenance, and repair of public roadway to access the Property, truck parking areas, personal vehicle parking areas, commercial fleet vehicle parking area (including the parking of refuse collection vehicles and/or recycling collection vehicles) and associated landscaping and utilities servicing any of such uses above, over, in, under, upon and across the Premises all as permitted by the CUP. Truck parking shall be limited to parking of truck tractors and un-laden, unenclosed flatbed trailers.

4.2 **Compliance with Applicable Laws**. Tenant shall, at Tenant's expense, comply promptly with all Applicable Laws and Requirements (as defined in Exhibit A attached hereto), including, without limitation, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term or any part of the Term hereof, regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Tenant shall comply with all

requirements and use restrictions of the FHWA Deed, Caltrans Easement, and the CUP applicable to the Premises.

4.3 **Condition of Premises**.

4.3.1 Landlord shall deliver the Premises to Tenant clean and free of debris on the Effective Date.

4.3.2 Tenant hereby accepts the Premises in the condition existing as of the Effective Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all Applicable Laws and Requirements, including, without limitation, zoning, municipal, county and state Laws, ordinances and regulations governing and regulating the use of the Premises, the CUP, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

5. NOTICES.

5.1 Any notice required or permitted to be given under this Lease shall be in writing and (a) personally delivered, (b) sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, or (c) sent by Federal Express or similar nationally recognized overnight courier service, to the addresses set forth below (or such other addresses as may be specified by notice in the foregoing manner):

To Landlord:

City of Oakland
One Frank H. Ogawa Plaza, 3rd floor
Oakland, CA 94612
Attn: OAB Project Manager

With copy to:

Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

To Tenant:

California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: David Duong

With a copy to:

California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: Sooah Sohr, Counsel

5.2 Any notice shall be deemed delivered five (5) days after notice is mailed or, if personally delivered, upon the date of actual receipt or delivery (or refusal to accept delivery). By written notice to the other in accordance with this Section 5, either party may change its own mailing address.

6. BROKERS. Landlord and Tenant warrant that they have had no dealing with any finder, broker or agent in connection with this Lease. Tenant will indemnify, defend and hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any finder, broker or agent based on dealings with Tenant with respect to this Lease.

7. TENANT'S TAXES. Tenant will be separately liable for and shall pay, before delinquency, all Real Property Taxes (as defined in Exhibit A attached hereto) payable with respect to this Lease, if applicable, and all taxes levied or assessed against, or attributable to, any personal property on the Premises.

8. LIENS. Tenant shall not permit any lien on any part of the Premises resulting from or relating to any work or materials furnished or obligations incurred by or on behalf of Tenant. Landlord may cause such liens to be released by any means it deems proper, including payment, at Tenant's expense and without affecting Landlord's rights.

9. RIGHTS OF ENTRY.

9.1 **City Rights**. Upon reasonable notice to Tenant, Landlord reserves for itself and its authorized representatives, the right to enter upon the Premises for the following purposes:

9.1.1 To install, maintain, repair and replace City utility systems;

9.1.2 To inspect field activities and/or remediation activities of Landlord, Caltrans, or the Army and their employees, agents, contractors and subcontractors, or to cure any breach by Tenant; or

9.1.3 To conduct compliance audits.

9.2 **Landlord Coordination**. Any access by City for activities listed in Section 9.1 above, to the extent practicable, will be coordinated with representatives designated by Landlord and Tenant so as to minimize the disruption of Tenant's use of the Premises. Landlord shall be responsible for repairing any damage to the Premises arising out of the activities provided herein. Tenant shall have no other claim or cause of action against Landlord on account of the disruption.

9.3 **Tenant Compliance**. Tenant shall comply with the provisions of any health or safety plan in effect during the course of any of the access activities set forth in Section 9.1 above.

9.4 **Caltrans Rights**. Tenant understands, acknowledges and consents to Caltrans' right of entry pursuant to the terms of the Caltrans Easement to access its existing and future freeway structures, including, without limitation, utilities servicing such freeway structures, for the purpose of inspecting, maintaining, retrofitting, repairing and reconstructing such freeway structures and utilities and for inspecting the uses made of the Premises as more particularly described in the Caltrans Easement.

Tenant's Initials: _____

9.5 **Army Rights**. Tenant understands, acknowledges and consents to the Army's right of access under the FHWA Deed specifically provides the right for Army, its officials, agents, employees, contractors and subcontractors to enter, upon reasonable notice, the Premises for the purposes of performing environmental investigation, remediation or other corrective actions of environmental conditions.

Tenant's Initials: _____

10. INDEMNIFICATION AND EXCULPATION.

10.1 Tenant shall indemnify, defend and hold and save Landlord and its council members, employees, officers, directors, and agents (each an "**Indemnitee**") harmless from all fines, suits, losses, costs, expenses, liabilities, claims, demands, actions, damages and judgments ("**Liabilities**") suffered by, recovered from or asserted against the Indemnitee, of every kind and character, resulting from (a) Tenant's operation, condition, maintenance, use or occupancy of the Premises, (b) any bodily injury, death or property damage occurring in or about the Premises, (c) any act, omission or negligence of Tenant or its agents, or (d) any breach or default in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease.

10.1.1 Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause attributable to operation, condition, maintenance, use or occupancy of the Premises, and Tenant, on behalf of itself and its Indemnities, hereby waives, to the fullest extent permitted by Law, all claims against Landlord and/or its Indemnities for personal injury or death, loss of, damage or destruction of any tangible or intangible property, including economic losses and consequential and resulting damages.

10.1.2 Without limiting the foregoing, Landlord and its Indemnities shall not be liable for the following: (a) any loss of or damage to property of Tenant or of others located in the Premises, by theft or otherwise, (b) any injury or damage to persons, property, and/or the interior of the Premises resulting from fire, explosion, gas, electricity, water, rain, snow or any other acts of Nature, (c) any injury or damage caused by any person(s) either on the Premises or on the Former Army Base, or by occupants of property adjacent to the Premises, or by the public or by the construction of any private, public or quasi-public work; or (d) any latent defect in the construction of the Premises.

10.1.3 Any exculpation clause will not apply to claims against Landlord to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage or destruction was proximately caused by Landlord's gross negligence, fraud, willful misconduct or violation of Law.

10.2 If any such proceeding is brought, Tenant will retain counsel reasonably satisfactory to Landlord to defend the indemnified party at the indemnifying party's sole cost and expense. All such costs and expenses, including attorneys' fees and court costs, will be a demand obligation owed by Tenant to Landlord. Tenant's obligations under this Section 10.2 shall survive the termination or expiration of this Lease.

10.4 The indemnification provisions herein are independent of the parties' insurance obligations herein, and Tenant's obligation to indemnify will be limited or modified by Tenant's insurance coverage or obligations herein.

11. INSURANCE.

11.1 **Type of Insurance**. Tenant, during the Term and any other period of occupancy, shall, at its expense, maintain insurance that satisfies the terms of the Caltrans Easement and is reasonably satisfactory to Landlord, but in no event less than:

11.1.1 Commercial General Liability insurance with combined single limits not less than Five Million Dollars ($5,000,000), for personal injury or death and property damage occurring in or about or related to the use of the Premises. Such comprehensive general liability insurance will be extended to include a "blanket contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in this Agreement and all of the other broadened liability features normally contained in an extended liability endorsement coverage. This coverage may not be self-insured.

11.1.2 Property Insurance. On "All Risk" basis or broad form insurance (including earthquake coverage if available at commercially reasonable rates) for the full replacement cost of all Tenant's property on the Premises and all fixtures and leasehold improvements in the Premises. Unless this Lease is terminated upon damage or destruction, the proceeds of such insurance will be used to restore the foregoing.

11.1.3 Workers' Compensation (as required by state Law), and Employer's Liability insurance in the amount of not less than One Million Dollars ($1,000,000).

11.1.4 Comprehensive business automobile liability insurance and where applicable, garage liability insurance providing automobile liability insurance for liability arising out of the ownership, operation, maintenance or use of "any auto" including owned, hired and non-owned autos.

11.1.5 Pollution Liability Insurance. If the Tenant is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than $500,000), the Tenant must maintain Pollution Liability Insurance of at least $5,000,000 for each occurrence and in the aggregate. If the Tenant is engaged in environmental sampling or underground testing, then Tenant must also maintain Errors and Omissions (Professional Liability) of $5,000,000 per occurrence and in the aggregate.

11.2 **General Requirements**.

11.2.1 The limits of such insurance shall not limit the liability of the Tenant. Under no circumstances will the Tenant be entitled to assign to any third party rights of action which the Tenant may have against Landlord.

11.2.2 All policies required hereunder will be issued by carriers rated A-VII or better by Best's Key Rating Guide and licensed to do business in the State of California.

11.2.3 (a) Tenant's policies will name Caltrans, Landlord, the City of Oakland, and Landlord's managing agent and any other person or entity that Landlord may designate from time to time as additional insureds and loss payees, with primary coverage non-contributing to and not in excess of any insurance Landlord may carry, and will provide that coverage cannot be cancelled or materially changed except upon thirty (30) days prior written notice to Landlord and Caltrans.

(b) Tenant's general liability policies will be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, the City of Oakland, and Landlord's managing agent, and to provide severability of interests, and the coverage afforded to Caltrans, Landlord, Landlord's managing agent must be as broad as that afforded to Tenant.

11.2.4 At least thirty (30) days prior to expiration of such policies, and promptly upon any other request by Landlord, Tenant will furnish Landlord with copies of policies, or certificates of insurance, evidencing maintenance and renewal of the required coverage on ACORD 25, ACORD 27, endorsement form CG-2011-1185 or other form as appropriate and acceptable to Landlord in its sole discretion, and a copy of the endorsement to Tenant's liability policy showing the additional insureds.

11.2.5 In the event Tenant does not maintain said insurance, Landlord may, in its sole discretion and without waiving any other remedies hereunder, procure said insurance and Tenant will pay to Landlord as additional Rent the cost of said insurance plus a ten percent (10%) administrative fee. Landlord may require closure of Premises during any period for which Tenant does not have the required insurance coverage.

11.3 **Landlord Right to Modify**. Landlord maintains the right to modify, delete, alter or change the requirements set forth in this Section 11 upon not less than ninety (90) days prior written notice to Tenant and not more frequently than one time during any five (5) year period. In the event that a policy is in force for a particular coverage at the time of such modification, and the insurer is unwilling to make such modification until the expiration of the current policy, the modification shall be applied to such coverage upon the expiration of the current policy.

11.4 **Self Insurance; Certificates**. The insurance required by Section 11.1.1 is required under the Caltrans Easement and may not be self-insured. Tenant's certificates of insurance are attached hereto as Exhibit E.

12. DAMAGE OR DESTRUCTION. If the Premises or any part thereof are damaged by fire or other casualty, Tenant will promptly notify Landlord.

13. DEFAULTS AND REMEDIES.

13.1 **Events of Default**. The occurrence of one or more of the following events will constitute an "**Event of Default**" hereunder by Tenant:

13.1.1 Tenant fails to comply with any other obligation under this Lease, and the default is not remediable or, if remediable, continues uncured for a period of thirty (30) days after written notice to Tenant, except that any failure by Tenant to provide access to Landlord or the Army or their agents, representatives, and/or contractors as required herein will be deemed an Event of Default hereunder without further notice or cure period; or

13.1.2 Tenant attempts any Transfer (as defined below); or

13.1.3 Tenant will do, or permit to be done, anything which creates a lien or stop notice upon the Premises or the Former Army Base.

13.2 **Remedies**. Upon an Event of Default, Landlord may terminate this Lease by notice to Tenant, or, at Landlord's sole and absolute discretion, continue this Lease in full force and effect, and/or perform Tenant's obligations on Tenant's behalf and at Tenant's expense.

13.2.1 If and when this Lease is so terminated, all rights of Tenant and those claiming under it will terminate and Tenant will immediately surrender the Premises to Landlord. In such event, Landlord may recover from Tenant within a reasonable time thereafter:

(a) Any amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in

the ordinary course of things would be likely to result therefrom, including but not limited to legal and other professional fees and other costs incurred by Landlord in connection with the entering into of this Lease, using an amortization schedule equal to the Term of this Lease and a discount rate of the Prime Rate (as defined in Exhibit A attached hereto) plus four percent (4%) per annum, plus (i) expenses for cleaning, repairing or restoring the Premises; (ii) costs of carrying the Premises such as taxes and insurance premiums thereon, utilities and security precautions; (iii) expenses in retaking possession of the Premises; and (iv) attorneys' fees and court costs; plus

(b) Any other amounts in addition to or in lieu thereof that may be permitted by Law.

13.2.2 Landlord will have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach, even if Tenant has abandoned the Premises, and enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

13.2.3 Upon Termination of this Lease, Landlord may enter the Premises and dispose of Tenant's property and improvements as herein provided, and may perform Tenant's obligations hereunder on Tenant's behalf. Tenant shall reimburse Landlord on demand for Landlord's attorneys' fees and other expenses in doing so (in accordance with Section 20 below). This Section 13.2.3 will survive expiration or termination of this Lease.

13.3 **Continuing Liability**. No repossession, re-entering or reletting of the Premises or any part thereof by Landlord will relieve Tenant of its liabilities and obligations under this Lease.

13.4 **Remedies Cumulative**. All rights and remedies of Landlord under this Lease will be nonexclusive of, and in addition to, any other remedies available to Landlord at Law or in equity.

13.5 **No Waiver**.

13.5.1 Landlord's failure to insist on strict compliance with any terms hereof or to exercise any right or remedy, does not waive the same.

13.5.2 A receipt by Landlord of any rent whether with or without knowledge of the breach of any covenant or agreement contained in this Lease will not be a waiver of the breach, and no waiver by Landlord of any violation or provision of this Lease will be effective unless expressed in writing and signed by Landlord.

13.5.3 Payment by Tenant or receipt by Landlord of a lesser amount than due under this Lease may be applied to such of Tenant's obligations as Landlord elects. No endorsement or statement on any check, and no accompanying letter, will make the same an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy provided in this Lease.

14. ENCUMBRANCES, ASSIGNMENT AND SUBLETTING.

14.1 **Transfers**. Tenant shall not sell, convey, assign, Transfer (as defined in the L/DDA), alienate or otherwise dispose of all or any of its interest or rights in this Lease, including any right or obligation to acquire an interest in the Premises, construct the Improvements (as defined in the L/DDA) or otherwise do any of the above, either voluntarily or by operation of Law, or make any contract or agreement to do any of the same, without in each instance (a) expressly requiring the transferee to assume in writing all of the obligations of Tenant under the L/DDA in accordance with Section 10.7.2 of the L/DDA, including, without limitation complying with Section 9.3 of the L/DDA to timely execute the Termination and Relinquishment Documentation (as defined in and pursuant to the L/DDA) and recording the Notice of Termination and Relinquishment (as defined in and pursuant to the L/DDA) with respect to the Existing Sites (as defined in the L/DDA), and (b) obtaining the prior written approval of Landlord by the City Administrator or his or her designee, which approval may not be unreasonably withheld or conditioned. Any Transfer made in contravention of this Section 14.1 shall be void and shall be deemed to be a default, whether or not Tenant knew of, or participated in, such Transfer. Tenant shall promptly reimburse the Landlord for Landlord's cost of its review of any request for a Transfer.

14.2 **Prohibited Transfers**.

14.2.1 Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Tenant. No voluntary or involuntary successor in interest of the Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

14.2.2 Except as expressly permitted pursuant to this Lease, Tenant represents and agrees that it has not made, and will not make or permit, any Transfer prohibited by this Lease or the Caltrans Easement, or Significant Change, either voluntary or by operation of Law. Any Transfer in contravention of this Lease or the Caltrans Easement shall be void and shall be deemed to be a default under this Lease whether or not Tenant knew of, or participated in, such Transfer.

14.3 **Landlord Remedies**. In the event that Tenant effects a Transfer without Landlord's consent as required herein, then in addition to the remedies set forth herein or otherwise available to Landlord by Law or in equity, Landlord may seek additional damages.

15. NONDISCRIMINATION. During the Term of this Lease, Tenant will not discriminate against any person or persons or exclude them from participation in the Tenant's operations, programs or activities conducted on the Premises, because of race, color, religion, sex sexual orientation, age, disability, marital status or national origin. The Tenant will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200D); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any other applicable Laws prohibiting discrimination on any basis.

16. SIGNS. Except for "no parking" signs as required by the Caltrans Easement and traffic safety signs, Tenant shall not place, maintain, or permit any sign, awning, canopy, marquee, or other advertising at the Premises without the prior written consent of Landlord in Landlord's sole and absolute discretion and in compliance with all Applicable Laws and Requirements. Tenant shall maintain its signage in good appearance and repair at all times during the Term. If at the end of the Term, Tenant's signage is not removed from the Premises by Tenant, such signage may, without damage or liability, be removed and disposed of by Landlord at Tenant's expense.

17. SURRENDER OF PREMISES.

17.1 Preceding the expiration or termination of this Lease, a close out report will be prepared by the Landlord in coordination with Tenant and will constitute the basis for settlement by Landlord and Tenant for any of the Premises shown to be lost, damaged, contaminated or destroyed by action of Tenant and/or Tenant Parties or otherwise caused as a result of Tenants' use of the Premises, during the Term of this Lease and will constitute the basis for determining any and all environmental restoration requirements to be completed by Tenant.

17.2 As soon as its right to possession ends, Tenant shall surrender the Premises to Landlord free of all occupants, with all Tenant's personal property removed and in a clean and debris-free condition. Tenant shall concurrently deliver to Landlord all keys to the Premises.

17.3 If possession is not immediately surrendered by Tenant, Landlord may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof and any and all property.

18. HOLDING OVER. If Tenant does not surrender the Premises as required and holds over after its right to possession ends, Tenant shall become a Tenant at sufferance only, at the then-current Port Tariff Rate (as defined in Exhibit A attached hereto). Nothing other than a fully-executed, written agreement of the parties creates any other relationship. Tenant is liable for Landlord's loss, costs and damage from such holding over, including, without limitation, those from Landlord's delay in delivering possession to other parties. This Section 18 is in addition to other rights of Landlord hereunder and as provided by Applicable Laws and Requirements.

19. PROFESSIONAL FEES. Landlord will be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of Tenant's default and consultations in connection therewith. Additionally, where Landlord performs work "at Tenant's expense" under this Lease, Tenant shall reimburse the City within thirty (30) days of receipt of the cost accounting, including, but not limited to City Attorney fees. In any dispute between the parties (whether or not litigated) arising hereunder or out of Tenant's use or occupancy of the Premises or this Lease, the prevailing party's reasonable costs and expenses (including fees of attorneys and experts) will be paid or reimbursed by the unsuccessful party.

20. GENERAL PROVISIONS.

20.1 **Historical Artifacts**. Tenant shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered in, on, under, or upon the Premises, Tenant shall immediately notify Landlord and protect the site and the material from further disturbance until the Landlord gives clearance to proceed.

20.2 **Seismic Notification**. The Premises are constructed on artificial fill and are located in an active seismic area. Structures may be subject to seismic damage.

20.3 **Soil and Water Conservation**. Tenant shall maintain, in a manner satisfactory to Landlord, all soil and water conservation structures that may exist upon the Premises at the beginning of the Term or that may be constructed by the Tenant or Landlord during the Term of this Lease. Tenant shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion resulting from the activities of the Tenant will be corrected by the Tenant at its sole expense.

20.4 **Interpretation of Lease**. Surrender or cancellation of this Lease will not work a merger. Headings in this Lease are for convenience only, and do not affect the meaning of the text. Unless context indicates otherwise, words of any gender or grammatical number include all genders and numbers. Where context conflicts with the definition of any term, context will control, but only for that use and related uses. If any provision of this Lease or any application thereof is invalid, void or illegal, no other provision or application will be affected. Time is of the essence of every provision of this Lease.

20.5 **Governing Law**. California Law governs this Lease.

20.6 **Recordation Prohibited**. Neither party may record this Lease or a copy or memorandum thereof. Submission of this Lease to Tenant is not an offer, and Tenant will have no rights hereunder until each party executes a counterpart and delivers it to the other party.

20.7 **Limitation on Liability**. Landlord's rights hereunder are solely for Landlord's benefit, and Landlord has no duty to exercise them for the benefit of Tenant or others. Landlord and Landlord's councilmembers, employees, officers, directors, and agents shall not be personally liable for any deficiency.

20.8 **Easements and Other Rights**. Tenant acknowledges that the Lease is subject to all existing easements and rights-of-way for location of roadways, utilities and any type of facility over, across, in, under and upon the Premises or any portion thereof. Tenant further acknowledges that Landlord may grant such additional easements and rights-of-way over, across, in, under and upon the Premises as it may determine to be in the public interest; provided that any such additional easement or right-of-way shall not unreasonably interfere with the access to, and the use and possession of, the Premises by Tenant. This Lease does not include any mineral rights.

20.9 **Quiet Enjoyment**. If Tenant pays all sums and performs all its other obligations under this Lease, Tenant will and may peaceably and quietly have, hold and enjoy the Premises subject to this Lease and to rights to which the Lease is subordinate. Tenant acknowledges that it may be subject to inconveniences and disturbance arising from the development and environmental investigation and remediation of the Former Army Base, such as entry detours, construction, and additional noise, dust and vibrations, as well as the rights of Caltrans as set forth in the Caltrans Easement.

20.10 **Service of Process**. Tenant hereby appoints as its agent, to receive the service of all dispossessory or distraint proceedings and notices thereunder, the person in charge of or occupying the Premises at the time, and, if no person will be in charge of or occupying the same, then such service may be made by attaching the same to the main entrance of the Premises.

20.11 **Negotiated Transaction**. The parties mutually acknowledge that this Lease has been negotiated at arm's length. The provisions of this Lease will be deemed to have been drafted by all of the parties and this Lease shall not be interpreted or constructed against any party solely by virtue of the fact that such party or its counsel was responsible for its preparation.

21. WAIVERS AND ACKNOWLEDGEMENTS.

21.1 **Waiver of Jury Trial**. Each party, on behalf of itself, its employees, contractors, agents, successors and assigns, hereby waives any right to a trial by jury with respect to any dispute arising under this Lease or in connection with Tenant's use, possession or occupancy of the Premises or Landlord's and/or Army's exercise of its rights and the fulfillment of its obligations herein. Each party acknowledges that it has had the opportunity to consult with counsel with respect to the meaning and significance of this Section.

Landlord's Initials:_____ Tenant's Initials: _____

21.2 **No Commitment for Future Conveyance or Relocation Assistance**. Tenant understands and acknowledges that (a) this Lease is subject to, and limited by, the terms and conditions of the Caltrans Easement, (b) this Lease is not and does not constitute a commitment by Landlord to any renewals or extension of the use or occupancy authorized herein for a term beyond the Term or to any future reuse or disposal, (c) Caltrans has the right to terminate the Caltrans Easement and thereby terminate this Lease pursuant to the terms of the Caltrans Easement, (d) Tenant is not entitled to, and waives any claim to severance damages, in the event Tenant is required to vacate the Premises as a result of Caltrans exercise of its reserved rights under the Caltrans Easement, (e) this Lease does not create any right or expectation for Tenant to acquire the Premises, in whole or in part, nor any obligation by the Landlord to assist Tenant, monetarily or otherwise, with moving, locating substitute space, or otherwise relocating or discontinuing its operations at the Former Army Base on or before the Expiration Date or earlier termination of this Lease, and (f) Tenant is not entitled to, and waives any claim to relocation benefits, in the event Tenant is required to vacate the Premises as a result of Caltrans exercise of its reserved rights under the Caltrans Easement.

Tenant's Initials: _____

21.3 **Acceptance in AS-IS Condition**. Tenant understands and acknowledges that Tenant is fully familiar with the condition of the Premises and the Former Army Base, that the Premises are being accepted by Tenant in their current condition, "AS-IS" and "WITH ALL FAULTS" and, as such, Landlord makes no warranty concerning the state of repair or physical condition of the Premises or the Former Army Base or as to the Premises' usability generally or as to its fitness for any particular purpose, including the use identified in this Lease. Tenant understands and acknowledges that Landlord has made no commitment to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises or the Former Army Base.

Tenant's Initials: _____

22. Assignment and Assumption.

22.1 Effective as of the Effective Date, Landlord hereby transfers all of Landlord's rights and obligations pertaining to the Premises under the Caltrans Easement, including, without limitation, the use limitations, Caltrans' access requirements, relocation requirements, Hazardous Materials requirements, permitting requirements and insurance requirements.

22.2 Effective as of the Effective Date, Tenant hereby accepts Landlord's transfer and assumes all of Landlords' obligations under the Caltrans Easement.

22.3 Landlord agrees that the indemnification obligations herein apply to any Liabilities with respect to this assignment.

23. Covenants Run with the Land.

23.1 The provisions, covenants, conditions, and Easement (as defined in the Caltrans Easement) provided herein shall be covenants running with the land pursuant to California Civil Code Section 1468, and shall benefit and burden Landlord, Caltrans and their successors.

23.2 Notwithstanding any other provision in the Caltrans Easement, the reservations and conditions in the FHWA Deed remain in full force and effect and run with the land. These reservations and conditions include, but are not limited to, the provisions in paragraphs A through J of the FHWA Deed. The exercise of its rights under these reservations and conditions will be at no cost to the United States.

24. Multiple Originals; Counterparts. This Lease may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts. The parties hereto shall be entitled to rely upon facsimile copies or electronic copies of a party's signature to this Lease.

THIS LEASE AND THE L/DDA CONTAIN ALL AGREEMENTS OF THE PARTIES CONCERNING THIS SUBJECT MATTER, SUPERSEDING ANY SUCH PRIOR AGREEMENTS, REPRESENTATIONS OR WARRANTIES, AND MAY BE AMENDED OR MODIFIED ONLY BY A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES.

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[*Signatures on next page*]

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

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

Tenant and the persons executing this Lease on Tenant's behalf represent and warrant that they are duly authorized and empowered so to execute and deliver this Lease, and that this Lease is binding upon Tenant in accordance with its terms.

TENANT:

CALIFORNIA WASTE SOLUTIONS, INC.,
a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

LEASE DEFINITIONS

In addition to the definitions set forth in the Lease, the following capitalized terms are defined below for the purposes of this Lease.

"**Affiliate**" means any entity that is directly or indirectly wholly-owned by Tenant and directly or indirectly Controlling, Controlled by, or under common Control with, such Tenant.

"**Applicable Laws and Requirements**" mean all applicable present and future statutes, regulations, rules, guidelines, ordinances, codes, orders, and the like, and all amendments and modifications thereto (collectively, "**Laws**" or individually "**Law**"), of any federal, state, or local agency, department, commission, board, bureau, office or other governmental authority to the extent of its jurisdiction relating to or affecting this Lease, the design and construction of the Improvements, and/or the use of the Premises by Tenant, Tenant's agents, contractors, Affiliates, employees, guests, visitors, invitees, subtenants, licensees, permittees or other persons or entities, including, but not limited to:

(a) Those Laws pertaining to reporting, licensing, permitting, investigation, remediation or abatement of emissions, discharges, or releases (or threatened emissions, discharges or releases) of Hazardous Materials in or into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials;

(b) Those Laws pertaining to the protection of the environment and/or the health or safety of employees or the public;

(c) Those Laws pertaining to taxes, assessments, rates, charges, fees, municipal liens, levies, excises or imposts;

(d) The FHWA Deed and the Caltrans Easement;

(e) The 2021 Addendum No. 2;

(f) All licenses and permits issued by, and other determinations and approvals made by, governmental agencies pertaining to the Premises;

(g) All applicable mitigation measures; and

(h) All plans required to be prepared by Tenant by the City as part of the project approvals.

"**Control**" means the ownership (direct or indirect) by any one Person and if applicable, together with that Person's Affiliates, spouse and/or children and/or trusts for their benefit, of more than fifty percent (50%) of the profits or capital of another Person, and Controlled and Controlling have correlative meanings.

"**CUP**" means that certain Conditional Use Permit_____issued by the City.

"**Development**" is anticipated to consist of (a) construction of a recycling facility with an approximately 171,000 square foot building consisting of an administrative office, material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area and a dispatch area and parking for personnel and collection trucks and (b) the operation of the recycling facility subject to the terms of the CUP.

"**Hazardous Materials**" shall mean any substances that are toxic, corrosive, inflammable, or ignitable, petroleum and petroleum byproducts, lead, asbestos, any hazardous wastes, and any other substances that have been defined as "hazardous substances," hazardous materials, "hazardous wastes," "toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601, et seq., 33 U.S.C. section 1251, et seq., 42 U.S.C. section 6901, et seq. (RCRA), 42 U.S.C. section 7401, et seq., 42 U.S.C. section 9601, et seq. (CERCLA), 49 U.S.C. section 1801, et seq. (HMTA); or California statutes beginning at California Health and Safety Code section 25100, et seq., section 25249.5, et seq., and 25300, et seq., and California Water Code section 13000, et seq., the regulations and publications adopted and promulgated pursuant to such statutes and any similar statutes and regulations adopted hereafter. Hazardous Materials shall not include substances stored on the Premises that are stored as part of the normal construction and operation of the Premises and that otherwise comply with all Applicable Laws and Requirements.

"**Person**" means any individual, partnership, corporation (including 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, or any other governmental entity.

"**Port Tariff Rate**" means Tariff No. 2-A pursuant to Port Ordinance 4559, effective July 1, 2020, adopted on June 11, 2020 by the Port of Oakland Board of Port Commissioners, or its successor, or if discontinued during the Term, the then market rate as determined by an independent broker or appraiser.

"**Prime Rate**" means the rate of interest published in the "Money Rates" column of Wall Street Journal as the Prime Rate, as such rate may change from time to time (or, if such rate is no longer published in the Wall Street Journal, such reasonable substitute as Landlord may select).

"**Real Property Taxes**" means any form of general or special assessment, license fee, license tax, business license fee, real property transfer tax, possessory interest tax, any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Former Army Base or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, sanitary, fire, street, drainage or other improvement district, or any other governmental entity or public corporation, as

against (a) any legal or equitable interest of Landlord in the Former Army Base or any portion thereof, (b) Landlord's right to rent or other income therefrom, (c) the square footage thereof, (d) the act of entering into any lease, (e) the occupancy of Tenant or Tenants generally, or (f) Landlord's business. The term "real property taxes" will also include any tax, fee, levy, assessment or charge including, without limitation, any so-called value added tax, (i) which is in the nature of, in substitution for or in addition to any tax, fee, levy, assessment or charge hereinbefore included within the definition of "real property taxes," (ii) which is imposed for a service or right not charged for prior to June 1, 1978, or if previously charged for, which has been increased since June 1, 1978, (iii) which is imposed or added to any tax or charge hereinbefore included within the definition of real property taxes as a result of a "change in ownership" of the Property or any portion thereof, as defined by applicable statutes and regulations, for property tax purposes, or (iv) which is imposed by reason of this transaction, any modification or change hereto or any transfer hereof.

"**Remediation**" means investigate, remove, removal, remedy, remediate, remediation, and monitor Hazardous Materials, all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto, development of environmental remediation plans and securing regulatory approval for such plans, compliance with regulatory agency notification requirements. "Remove" or "removal" means the cleanup or removal of released Hazardous Materials from the environment, such actions as may be necessary taken in the event of the threat of release of Hazardous Materials into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of Hazardous Materials, the disposal of removed material, removal of underground storage tanks and associated pipes, special handling and disposal of excavated soils classified as hazardous waste, treatment and special disposal of displaced groundwater classified as hazardous waste, abatement or removal of any Hazardous Materials, or taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms "remedy" or "remediate or remediation" mean those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a Hazardous Material into the environment, to prevent or minimize the release of Hazardous Materials so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.

"**Tenant Parties**" means Tenant and its affiliates, volunteers, employees, contractors, suppliers, agents, representatives, invitees, and subtenants.

"**Year**" or "**year**" means a calendar year.

EXHIBIT B

FHWA DEED

[ATTACHED]

EXHIBIT C

CALTRANS EASEMENT

[ATTACHED]

EXHIBIT D

PREMISES
(LEGAL DESCRIPTION AND PLAT)

[ATTACHED]

EXHIBIT E

INSURANCE CERTIFICATES

[ATTACHED]

EXHIBIT I

Certificate of Completion

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY:
City of Oakland

AND WHEN RECORDED MAIL TO:
California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attention: _____

CERTIFICATE OF COMPLETION
(North Gateway)

The City of Oakland, a municipal corporation (the "**City**"), certifies that the construction required by that certain Lease/Disposition and Development Agreement (North Gateway), dated_____, 2021, by and between the City and California Waste Solutions, Inc., a California corporation ("**Developer**"), recorded in the Official Records of County of Alameda, State of California, on_____, 20_, as Instrument No. _____ (the "**L/DDA**"), has been completed on the property subject to the L/DDA as more particularly described in Exhibit A attached hereto (the "**Property**").

This Certificate of Completion shall be a conclusive determination of satisfactory completion of the development and construction required by the L/DDA upon the Property and of compliance with the L/DDA with respect thereto.

This Certificate of Completion is issued only to establish the Developer's completion of improvements in compliance with the terms and conditions of the L/DDA. Nothing herein shall relieve the Developer of its responsibility, liability, or obligation to perform any acts or fulfill any conditions necessary for the issuance of a final certificate of occupancy for the Project by the Building Official of the City of Oakland.

Dated:_____

CITY OF OAKLAND,
a municipal corporation

By:_____
Name:_____
Title: _____

Approved as to form and legality:

By: _____
Name: _____

Title: _____

[Note: Notaries and exhibits to be attached at closing.]

Exhibit A

Property Legal Description

EXHIBIT J

Construction Jobs Policy

[Attached]

EXHIBIT K

Operations Jobs Policy

[Attached]

EXHIBIT L-1

Forms of Termination and Relinquishment of Rights Letters

FORM OF
TERMINATION AND RELINQUISHMENT
OF CUP RIGHTS LETTER

[DATE]

Department of Planning
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: **Conditional Use Permits CM04460 and CM92-222 (collectively, the "Existing CUPs") for Parcels Associated With 1819 10th Street and 1820 10th Street (respectively, APN Nos: 006-0029-003-02; 006-0049-027-01; 006-0049-025-01) (collectively, "Subject Properties")**

Dear Sir/Madam:

Pursuant to Condition 35 of Conditional Use Permit PLN19158, this is to notify you that [ADD NAME OF LEGAL OWNER(S)], the sole fee title holders of the Subject Properties ("Owners"), hereby fully, permanently and unequivocally relinquish all rights, benefits and privileges related to or arising from the Existing CUPs. In addition, we represent and warrant that all recycling and/or nonconforming operations have been ceased at the Subject Properties. The foregoing is effective as of the date of this letter.

We further acknowledge and agree that this relinquishment letter (1) is in exchange for good and valuable consideration received by the Owners pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Sincerely,

[ADD SIGNATURE BLOCK]
[SIGNATURE TO BE NOTARIZED]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

EXHIBIT L-2

Forms of Termination and Relinquishment of Rights Letters

FORM OF
TERMINATION AND RELINQUISHMENT
OF LEGAL NONCONFORMING RIGHTS LETTER

[DATE]

Department of Planning
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: **Legal Nonconforming Rights to Conduct Recycling Operations and Other Nonconforming Uses (collectively, the "Legal Nonconforming Rights") at Parcels Associated with 1819 10th Street, 1820 10th Street and 3300 Wood Street (respectively, APN Nos: 006-0029-003-02; 006-0049-027-01; 006-0049-025-01; 007-0599-001-03) (collectively, "Subject Properties")**

Dear Sir/Madam:

Pursuant to Condition 36 of Conditional Use Permit PLN19158, this is to notify you that [ADD NAME OF LEGAL OWNER(S)], the sole fee title holders of the Subject Properties ("Owners"), hereby fully, permanently and unequivocally relinquish all rights, benefits and privileges related to or arising from the Legal Nonconforming Rights. In addition, we represent and warrant that all recycling and/or industrial operations have been ceased at the Subject Properties. The foregoing is effective as of the date of this letter.

We further acknowledge and agree that this relinquishment letter (1) is in exchange for good and valuable consideration received by the Owners pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Sincerely,

[ADD SIGNATURE BLOCK]
[SIGNATURE TO BE NOTARIZED]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

EXHIBIT M-1

Forms of Notices of Termination and Relinquishment

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
CITY OF OAKLAND
PLANNING & BUILDING DEPARTMENT
BUREAU OF BUILDING
250 FRANK H OGAWA PLAZA, 2ND FLOOR
OAKLAND, CA 9412
ATTN: CODE ENFORCEMENT SERVICES

(If other than "City of Oakland" the applicant Only shall ensure that a copy is provided to the City.)

Space Above This Line For Recorder's Use

NOTICE OF TERMINATION AND RELINQUISHMENT OF RIGHTS

Subject Properties Address:	**1819 10th Street, 1820 10th Street**
Subject Properties APN:	**006-0029-003-02; 006-0049-027-01; 006-0049-025-01**
Planning Permit Numbers:	**Conditional Use Permits CM04460 and CM92-222**
Building Permit Numbers:	**N/A**

Notice is hereby given that Owner(s) of Record of the Subject Properties have fully, permanently and unequivocally terminated all existing operations and relinquished all rights, benefits and privileges related to the noted Planning Permits pursuant to that certain Termination and Relinquishment of CUP Rights Letter dated [ADD DATE]. Further notice is given that said letter (1) is in exchange for good and valuable consideration received by the Owner(s) pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Owner(s) of Record:_____ Date:_____

Signed:_____ Print:_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

EXHIBIT M-2

Forms of Notices of Termination and Relinquishment

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
CITY OF OAKLAND
PLANNING & BUILDING DEPARTMENT
BUREAU OF BUILDING
250 FRANK H OGAWA PLAZA, 2ND FLOOR
OAKLAND, CA 9412
ATTN: CODE ENFORCEMENT SERVICES

(If other than "City of Oakland" the applicant shall ensure that a copy is provided to the City.)

Space Above This Line For Recorder's Use Only

NOTICE OF TERMINATION AND RELINQUISHMENT OF RIGHTS

Subject Properties Address:	**1819 10th Street, 1820 10th Street; 330 Wood Street**
Subject Properties APN:	**006-0029-003-02; 006-0049-027-01: 006-0049-025-01; 007-0599-001-03**
Planning Permit Numbers:	**Legal Nonconforming Rights to Conduct Recycling and/or Nonconforming Operations**
Building Permit Numbers:	**N/A**

Notice is hereby given that Owner(s) of Record of the Subject Properties have fully, permanently and unequivocally terminated all existing operations and relinquished all rights, benefits and privileges related to their legal nonconforming rights to conduct recycling and/or nonconforming operations at the Subject Property, pursuant to that certain Termination and Relinquishment of Legal Nonconforming Rights Letter dated [ADD DATE]. Further notice is given that said letter (1) is in exchange for good and valuable consideration received by the Owner(s) pursuant to that certain Lease/Disposition and Development Agreement by and between the City of Oakland and California Waste Solutions, approved by Ordinance No. [ADD ORDINANCE NO.] on date [ADD DATE]; (2) supersedes any other equitable or administrative revocation, abandonment or relinquishment process that may exist; and (3) shall apply to all successors and assigns of the Subject Properties.

Owner(s) of Record:_____ Date:_____

Signed:_____ Print:_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of_____)

On_____, 20__, before me,_____,
(Name of Notary)

personally appeared_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ATTACHMENT C

EXHIBIT H

Form of Lease – Caltrans Easement

LEASE
(North Gateway - Caltrans Easement)

THIS LEASE (North Gateway - Caltrans Easement) (the "**Lease**") is made as of _____, 20__ (the "**Effective Date**"), by and between the CITY OF OAKLAND, a municipal corporation (with its successors called "**City**" or "**Landlord**''), and CALIFORNIA WASTE SOLUTIONS, INC., a California corporation ("**Tenant**"). Capitalized terms are defined herein and/or in Exhibit A.

RECITALS:

A. On February 11, 2002, the Federal Highway Administration ("**FHWA**"), acting under the authority granted in 23 U.S.C. §§ 107(d) and 317, conveyed certain lands on the Oakland Army Base ("**Former Army Base**") to the State of California Department of Transportation ("**Caltrans**") by deed recorded on February 13, 2002, in the Official Records of Alameda County ("**Official Records**") as Document No. 2002072863 (the "**FHWA Deed**") (the "**FHWA Deed**"), attached as Exhibit B.

B. On April 29, 2005, Caltrans recorded a perpetual easement in the Official Records as document number 2005-171016 granting to the Oakland Base Reuse Authority a perpetual easement to property under the freeway (the "**Original Caltrans Easement**").

C. On August 7, 2006, the Oakland Base Reuse Authority transferred all of its rights and obligations relating to the Former Army Base, including the Original Caltrans Easement, to the Oakland Redevelopment Agency.

D. On January 31, 2012, the Oakland Redevelopment Agency transferred all of its rights and obligations relating to the Former Army Base, including the Original Caltrans Easement to Landlord.

E. On_____, 2021, Landlord and Tenant entered into that certain Lease/Disposition and Development Agreement (North Gateway) (the "**L/DDA**"), pursuant to which, among other things, Landlord agreed to lease the Original Caltrans Easement to Tenant pursuant to the terms set forth in this Lease.

F. The Original Caltrans Easement was amended by that certain First Amendment to Easement by and between Landlord and Caltrans dated May 19, 2015 (recorded on May 22, 2015 in the Official Records as Instrument No. 2015136710), and by that certain Second Amendment to Easement by and between Landlord and Caltrans dated August 17, 2016 (recorded on September 1, 2016 in the Official Records as Instrument No. 20166223509). The Original Caltrans Easement and the foregoing amendments are collectively referred to herein as the "**Caltrans Easement**", attached hereto as Exhibit C.

G. Landlord has a perpetual interest in the Caltrans Easement and Landlord may only grant its rights to others through a lease that meets the terms of the Caltrans Easement.

H. Tenant owns certain real property in fee consisting of 12.02 acres, located on the Former Army Base (the "**Property**") and pursuant to the L/DDA desires to lease from Landlord the Caltrans Easement (the "**Premises**") upon the terms and conditions set forth herein, and pursuant to the L/DDA, Landlord agreed to lease such property to Tenant upon such terms and conditions.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Landlord and Tenant hereby agree as follows:

1. PREMISES. In consideration of the payment of the rent hereinafter specified, Landlord hereby leases to Tenant for the Term (defined below), and upon all of the covenants and conditions set forth herein, the Premises located on the Former Army Base in the City of Oakland, Alameda County, California as more particularly described and depicted by legal description and plat provided in Exhibit D attached hereto.

1.1 **Description of Premises**. The Premises consist of vacant land under a section of the freeway with structural columns and related utilities, but otherwise unimproved, which is being leased hereunder for the purpose set forth in Section 4.1 below.

1.2 **Condition**. Tenant is leasing the Premises from Landlord solely based on the Tenant's own independent investigation of the Premises and not on any representation or warranties made by Landlord. Accordingly, Tenant is accepting all portions of the Premises "As-Is" and "Where-is". Tenant acknowledges that it has conducted a thorough investigation and inspection of the Premises, and based on its investigation and inspection accepts the physical condition and current level of environmental hazards on the Premises and deems the Premises to be safe for Tenant's intended use.

1.3 **Restrictions On Use**. Tenant acknowledges that the use of the Premises is restricted by, and subject to, the conditions set forth in (a) the FHWA Deed and the Caltrans Easement, including without limitation, the restrictions provided in paragraphs A and B of the FHWA Deed and Section 2 of the Caltrans Easement, and (b) that certain Conditional Use Permit (the "**CUP**") applicable to the Premises.

1.4 **Hazardous Material**.

1.4.1 **Army Access**. Landlord and Tenant acknowledge that pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. 9620(h)(3), the Easement Area (as defined in the FHWA Deed) contains the presence of hazardous substances as reported in the DEPARTMENT OF THE ARMY BASEWIDE PRELIMINARY ASSESSMENT/SITE INSPECTION (PNSI), OAKLAND ARMY BASE, OAKLAND, CALIFORNIA, dated February 24, 1998, as amended, and in accordance with the FHWA Deed, is subject to the reserved rights of the U.S. Department of the

Army ("**Army**") to access the Caltrans Easement for purposes of performing investigation, remediation or corrective activities relating to hazardous substances, found to be necessary.

1.4.2 **Remediation**.

1.4.2.1 Tenant shall be solely responsible for all costs of investigation, removal, cleanup, treatment, transportation, disposal, and monitoring of any contamination by Hazardous Materials on or near the Premises as required in connection with the Development (as defined in Exhibit A attached hereto), whether such contamination occurred prior to or following leasing of the Premises to Tenant. Tenant shall be solely responsible for developing, submitting, and implementing any risk assessments or remediation work plans for the Premises as required by Applicable Laws and Requirements. Tenant shall comply with all Applicable Laws and Requirements, including, without limitation, the FHWA Deed, Caltrans Easement, and the CUP.

1.4.2.2 Tenant hereby waives and releases Landlord from any claims, causes of action, liabilities or costs arising from the presence of, or associated with, the investigation, monitoring or remediation of any Hazardous Materials contamination on or near the Premises as of the Effective Date, whether or not such contamination was known as of the Effective Date.

1.4.3 **Environmental Investigation**. Tenant may engage its own environmental consultant to make such environmental site assessments or investigations of the Premises with respect to possible contamination by Hazardous Materials as Tenant deems necessary, including conducting any "Phase I" or "Phase II" investigations of the Premises. Upon request, Tenant shall promptly deliver to Landlord a copy of all reports and assessments provided by Tenant's consultants.

1.4.4 **Use and Operation of Premises**. Except as provided in Applicable Laws and Requirements, and subject to the exclusion from the definition of "Hazardous Materials" for substances stored on the Premises that are stored as part of the normal construction and operation of the Development and that otherwise comply with all Applicable Laws and Requirements, neither Tenant, nor any agent, employee, nor contractor of Tenant, nor any authorized user, occupant, or tenant of the Premises shall use the Premises or allow the Premises to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials following leasing of the Premises to Tenant.

1.5 **Assignment and Assumption**. Subject to Section 2(b) of the Caltrans Easement, Landlord hereby assigns and Tenant hereby assumes all of Landlord's rights and obligations under the Caltrans Easement pertaining to the Premises.

1.6 **Exhibits**. The following exhibits are attached to this Lease and incorporated herein by this reference for all purposes:

EXHIBIT A	Definitions
EXHIBIT B	FHWA Deed
EXHIBIT C	Caltrans Easement
EXHIBIT D	Premises
EXHIBIT E	Insurance Certificates

2. TERM

2.1 **Term**. Tenant shall have and hold the Premises for a period of ninety-nine (99) years starting on the Effective Date ("**Term**") with termination of renewal rights as provided herein. The Lease Term shall expire on_____, 20__, unless earlier terminated in accordance with the terms of this Lease ("**Expiration Date**").

2.2 **No Renewal Option**. Tenant acknowledges and agrees that this Lease is not renewable and cannot be extended for any additional term beyond the Term. This provision shall not preclude the parties from entering into a new lease upon the expiration of the Term.

2.3 **Delays in Possession**. Landlord shall use commercially reasonable efforts to deliver possession of the Premises to Tenant. If despite said efforts, Landlord is unable to deliver possession as agreed, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease and Tenant shall not be obligated to perform its obligations under this Lease.

3. BASE RENT. Base Rent is hereby established at Five Hundred Seventy-Five Thousand Dollars ($575,000) per acre and payable in advance at Closing (as defined in the L/DDA) pursuant to Section 6.1 of the L/DDA.

4. USE OF PREMISES.

4.1 **Permitted Use**. The Premises are for the sole purpose of allowing the construction, use, replacement, inspection, maintenance, and repair of public roadway to access the Property, truck parking areas, personal vehicle parking areas, commercial fleet vehicle parking area (including the parking of refuse collection vehicles and/or recycling collection vehicles) and associated landscaping and utilities servicing any of such uses above, over, in, under, upon and across the Premises all as permitted by the CUP. Truck parking shall be limited to parking of truck tractors and un-laden, unenclosed flatbed trailers.

4.2 **Compliance with Applicable Laws**. Tenant shall, at Tenant's expense, comply promptly with all Applicable Laws and Requirements (as defined in Exhibit A attached hereto), including, without limitation, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term or any part of the Term hereof, regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Tenant shall comply with all

requirements and use restrictions of the FHWA Deed, Caltrans Easement, and the CUP applicable to the Premises.

4.3 **Condition of Premises**.

4.3.1 Landlord shall deliver the Premises to Tenant clean and free of debris on the Effective Date.

4.3.2 Tenant hereby accepts the Premises in the condition existing as of the Effective Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all Applicable Laws and Requirements, including, without limitation, zoning, municipal, county and state Laws, ordinances and regulations governing and regulating the use of the Premises, the CUP, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

5. NOTICES.

5.1 Any notice required or permitted to be given under this Lease shall be in writing and (a) personally delivered, (b) sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, or (c) sent by Federal Express or similar nationally recognized overnight courier service, to the addresses set forth below (or such other addresses as may be specified by notice in the foregoing manner):

To Landlord:

City of Oakland
One Frank H. Ogawa Plaza, 3rd floor
Oakland, CA 94612
Attn: OAB Project Manager

With copy to:

Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

To Tenant:

California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: David Duong

With a copy to:

California Waste Solutions, Inc.
1211 Embarcadero, Suite 300
Oakland, CA 94606
Attn: Sooah Sohr, Counsel

5.2 Any notice shall be deemed delivered five (5) days after notice is mailed or, if personally delivered, upon the date of actual receipt or delivery (or refusal to accept delivery). By written notice to the other in accordance with this Section 5, either party may change its own mailing address.

6. BROKERS. Landlord and Tenant warrant that they have had no dealing with any finder, broker or agent in connection with this Lease. Tenant will indemnify, defend and hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any finder, broker or agent based on dealings with Tenant with respect to this Lease.

7. TENANT'S TAXES. Tenant will be separately liable for and shall pay, before delinquency, all Real Property Taxes (as defined in Exhibit A attached hereto) payable with respect to this Lease, if applicable, and all taxes levied or assessed against, or attributable to, any personal property on the Premises.

8. LIENS. Tenant shall not permit any lien on any part of the Premises resulting from or relating to any work or materials furnished or obligations incurred by or on behalf of Tenant. Landlord may cause such liens to be released by any means it deems proper, including payment, at Tenant's expense and without affecting Landlord's rights.

9. RIGHTS OF ENTRY.

9.1 **City Rights**. Upon reasonable notice to Tenant, Landlord reserves for itself and its authorized representatives, the right to enter upon the Premises for the following purposes:

9.1.1 To install, maintain, repair and replace City utility systems;

9.1.2 To inspect field activities and/or remediation activities of Landlord, Caltrans, or the Army and their employees, agents, contractors and subcontractors, or to cure any breach by Tenant; or

9.1.3 To conduct compliance audits.

9.2 **Landlord Coordination**. Any access by City for activities listed in Section 9.1 above, to the extent practicable, will be coordinated with representatives designated by Landlord and Tenant so as to minimize the disruption of Tenant's use of the Premises. Landlord shall be responsible for repairing any damage to the Premises arising out of the activities provided herein. Tenant shall have no other claim or cause of action against Landlord on account of the disruption.

9.3 **Tenant Compliance**. Tenant shall comply with the provisions of any health or safety plan in effect during the course of any of the access activities set forth in Section 9.1 above.

9.4 **Caltrans Rights**. Tenant understands, acknowledges and consents to Caltrans' right of entry pursuant to the terms of the Caltrans Easement to access its existing and future freeway structures, including, without limitation, utilities servicing such freeway structures, for the purpose of inspecting, maintaining, retrofitting, repairing and reconstructing such freeway structures and utilities and for inspecting the uses made of the Premises as more particularly described in the Caltrans Easement.

Tenant's Initials: _____

9.5 **Army Rights**. Tenant understands, acknowledges and consents to the Army's right of access under the FHWA Deed specifically provides the right for Army, its officials, agents, employees, contractors and subcontractors to enter, upon reasonable notice, the Premises for the purposes of performing environmental investigation, remediation or other corrective actions of environmental conditions.

Tenant's Initials: _____

10. INDEMNIFICATION AND EXCULPATION.

10.1 Tenant shall indemnify, defend and hold and save Landlord and its council members, employees, officers, directors, and agents (each an "**Indemnitee**") harmless from all fines, suits, losses, costs, expenses, liabilities, claims, demands, actions, damages and judgments ("**Liabilities**") suffered by, recovered from or asserted against the Indemnitee, of every kind and character, resulting from (a) Tenant's operation, condition, maintenance, use or occupancy of the Premises, (b) any bodily injury, death or property damage occurring in or about the Premises, (c) any act, omission or negligence of Tenant or its agents, or (d) any breach or default in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease.

10.1.1 Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause attributable to operation, condition, maintenance, use or occupancy of the Premises, and Tenant, on behalf of itself and its Indemnities, hereby waives, to the fullest extent permitted by Law, all claims against Landlord and/or its Indemnities for personal injury or death, loss of, damage or destruction of any tangible or intangible property, including economic losses and consequential and resulting damages.

10.1.2 Without limiting the foregoing, Landlord and its Indemnities shall not be liable for the following: (a) any loss of or damage to property of Tenant or of others located in the Premises, by theft or otherwise, (b) any injury or damage to persons, property, and/or the interior of the Premises resulting from fire, explosion, gas, electricity, water, rain, snow or any other acts of Nature, (c) any injury or damage caused by any person(s) either on the Premises or on the Former Army Base, or by occupants of property adjacent to the Premises, or by the public or by the construction of any private, public or quasi-public work; or (d) any latent defect in the construction of the Premises.

10.1.3 Any exculpation clause will not apply to claims against Landlord to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage or destruction was proximately caused by Landlord's gross negligence, fraud, willful misconduct or violation of Law.

10.2 If any such proceeding is brought, Tenant will retain counsel reasonably satisfactory to Landlord to defend the indemnified party at the indemnifying party's sole cost and expense. All such costs and expenses, including attorneys' fees and court costs, will be a demand obligation owed by Tenant to Landlord. Tenant's obligations under this Section 10.2 shall survive the termination or expiration of this Lease.

10.4 The indemnification provisions herein are independent of the parties' insurance obligations herein, and Tenant's obligation to indemnify will be limited or modified by Tenant's insurance coverage or obligations herein.

11. INSURANCE.

11.1 **Type of Insurance**. Tenant, during the Term and any other period of occupancy, shall, at its expense, maintain insurance that satisfies the terms of the Caltrans Easement and is reasonably satisfactory to Landlord, but in no event less than:

11.1.1 Commercial General Liability insurance with combined single limits not less than Five Million Dollars ($5,000,000), for personal injury or death and property damage occurring in or about or related to the use of the Premises. Such comprehensive general liability insurance will be extended to include a "blanket contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in this Agreement and all of the other broadened liability features normally contained in an extended liability endorsement coverage. This coverage may not be self-insured.

11.1.2 Property Insurance. On "All Risk" basis or broad form insurance (including earthquake coverage if available at commercially reasonable rates) for the full replacement cost of all Tenant's property on the Premises and all fixtures and leasehold improvements in the Premises. Unless this Lease is terminated upon damage or destruction, the proceeds of such insurance will be used to restore the foregoing.

11.1.3 Workers' Compensation (as required by state Law), and Employer's Liability insurance in the amount of not less than One Million Dollars ($1,000,000).

11.1.4 Comprehensive business automobile liability insurance and where applicable, garage liability insurance providing automobile liability insurance for liability arising out of the ownership, operation, maintenance or use of "any auto" including owned, hired and non-owned autos.

11.1.5 Pollution Liability Insurance. If the Tenant is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than $500,000), the Tenant must maintain Pollution Liability Insurance of at least $5,000,000 for each occurrence and in the aggregate. If the Tenant is engaged in environmental sampling or underground testing, then Tenant must also maintain Errors and Omissions (Professional Liability) of $5,000,000 per occurrence and in the aggregate.

11.2 **General Requirements**.

11.2.1 The limits of such insurance shall not limit the liability of the Tenant. Under no circumstances will the Tenant be entitled to assign to any third party rights of action which the Tenant may have against Landlord.

11.2.2 All policies required hereunder will be issued by carriers rated A-VII or better by Best's Key Rating Guide and licensed to do business in the State of California.

11.2.3 (a) Tenant's policies will name Caltrans, Landlord, the City of Oakland, and Landlord's managing agent and any other person or entity that Landlord may designate from time to time as additional insureds and loss payees, with primary coverage non-contributing to and not in excess of any insurance Landlord may carry, and will provide that coverage cannot be cancelled or materially changed except upon thirty (30) days prior written notice to Landlord and Caltrans.

(b) Tenant's general liability policies will be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, the City of Oakland, and Landlord's managing agent, and to provide severability of interests, and the coverage afforded to Caltrans, Landlord, Landlord's managing agent must be as broad as that afforded to Tenant.

11.2.4 At least thirty (30) days prior to expiration of such policies, and promptly upon any other request by Landlord, Tenant will furnish Landlord with copies of policies, or certificates of insurance, evidencing maintenance and renewal of the required coverage on ACORD 25, ACORD 27, endorsement form CG-2011-1185 or other form as appropriate and acceptable to Landlord in its sole discretion, and a copy of the endorsement to Tenant's liability policy showing the additional insureds.

11.2.5 In the event Tenant does not maintain said insurance, Landlord may, in its sole discretion and without waiving any other remedies hereunder, procure said insurance and Tenant will pay to Landlord as additional Rent the cost of said insurance plus a ten percent (10%) administrative fee. Landlord may require closure of Premises during any period for which Tenant does not have the required insurance coverage.

11.3 **Landlord Right to Modify**. Landlord maintains the right to modify, delete, alter or change the requirements set forth in this Section 11 upon not less than ninety (90) days prior written notice to Tenant and not more frequently than one time during any five (5) year period. In the event that a policy is in force for a particular coverage at the time of such modification, and the insurer is unwilling to make such modification until the expiration of the current policy, the modification shall be applied to such coverage upon the expiration of the current policy.

11.4 **Self Insurance; Certificates**. The insurance required by Section 11.1.1 is required under the Caltrans Easement and may not be self-insured. Tenant's certificates of insurance are attached hereto as Exhibit E.

12. DAMAGE OR DESTRUCTION. If the Premises or any part thereof are damaged by fire or other casualty, Tenant will promptly notify Landlord.

13. DEFAULTS AND REMEDIES.

13.1 **Events of Default**. The occurrence of one or more of the following events will constitute an "**Event of Default**" hereunder by Tenant:

13.1.1 Tenant fails to comply with any other obligation under this Lease, and the default is not remediable or, if remediable, continues uncured for a period of thirty (30) days after written notice to Tenant, except that any failure by Tenant to provide access to Landlord or the Army or their agents, representatives, and/or contractors as required herein will be deemed an Event of Default hereunder without further notice or cure period; or

13.1.2 Tenant attempts any Transfer (as defined below); or

13.1.3 Tenant will do, or permit to be done, anything which creates a lien or stop notice upon the Premises or the Former Army Base.

13.2 **Remedies**. Upon an Event of Default, Landlord may terminate this Lease by notice to Tenant, or, at Landlord's sole and absolute discretion, continue this Lease in full force and effect, and/or perform Tenant's obligations on Tenant's behalf and at Tenant's expense.

13.2.1 If and when this Lease is so terminated, all rights of Tenant and those claiming under it will terminate and Tenant will immediately surrender the Premises to Landlord. In such event, Landlord may recover from Tenant within a reasonable time thereafter:

(a) Any amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in

the ordinary course of things would be likely to result therefrom, including but not limited to legal and other professional fees and other costs incurred by Landlord in connection with the entering into of this Lease, using an amortization schedule equal to the Term of this Lease and a discount rate of the Prime Rate (as defined in Exhibit A attached hereto) plus four percent (4%) per annum, plus (i) expenses for cleaning, repairing or restoring the Premises; (ii) costs of carrying the Premises such as taxes and insurance premiums thereon, utilities and security precautions; (iii) expenses in retaking possession of the Premises; and (iv) attorneys' fees and court costs; plus

(b) Any other amounts in addition to or in lieu thereof that may be permitted by Law.

13.2.2 Landlord will have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach, even if Tenant has abandoned the Premises, and enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

13.2.3 Upon Termination of this Lease, Landlord may enter the Premises and dispose of Tenant's property and improvements as herein provided, and may perform Tenant's obligations hereunder on Tenant's behalf. Tenant shall reimburse Landlord on demand for Landlord's attorneys' fees and other expenses in doing so (in accordance with Section 20 below). This Section 13.2.3 will survive expiration or termination of this Lease.

13.3 **Continuing Liability**. No repossession, re-entering or reletting of the Premises or any part thereof by Landlord will relieve Tenant of its liabilities and obligations under this Lease.

13.4 **Remedies Cumulative**. All rights and remedies of Landlord under this Lease will be nonexclusive of, and in addition to, any other remedies available to Landlord at Law or in equity.

13.5 **No Waiver**.

13.5.1 Landlord's failure to insist on strict compliance with any terms hereof or to exercise any right or remedy, does not waive the same.

13.5.2 A receipt by Landlord of any rent whether with or without knowledge of the breach of any covenant or agreement contained in this Lease will not be a waiver of the breach, and no waiver by Landlord of any violation or provision of this Lease will be effective unless expressed in writing and signed by Landlord.

13.5.3 Payment by Tenant or receipt by Landlord of a lesser amount than due under this Lease may be applied to such of Tenant's obligations as Landlord elects. No endorsement or statement on any check, and no accompanying letter, will make the same an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy provided in this Lease.

14. ENCUMBRANCES, ASSIGNMENT AND SUBLETTING.

14.1 **Transfers**. Tenant shall not sell, convey, assign, Transfer (as defined in the L/DDA), alienate or otherwise dispose of all or any of its interest or rights in this Lease, including any right or obligation to acquire an interest in the Premises, construct the Improvements (as defined in the L/DDA) or otherwise do any of the above, either voluntarily or by operation of Law, or make any contract or agreement to do any of the same, without in each instance (a) expressly requiring the transferee to assume in writing all of the obligations of Tenant under the L/DDA in accordance with Section 10.7.2 of the L/DDA, including, without limitation complying with Section 9.3 of the L/DDA to timely execute the Termination and Relinquishment Documentation (as defined in and pursuant to the L/DDA) and recording the Notice of Termination and Relinquishment (as defined in and pursuant to the L/DDA) with respect to the Existing Sites (as defined in the L/DDA), and (b) obtaining the prior written approval of Landlord by the City Administrator or his or her designee, which approval may not be unreasonably withheld or conditioned. Any Transfer made in contravention of this Section 14.1 shall be void and shall be deemed to be a default, whether or not Tenant knew of, or participated in, such Transfer. Tenant shall promptly reimburse the Landlord for Landlord's cost of its review of any request for a Transfer.

14.2 **Prohibited Transfers**.

14.2.1 Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Tenant. No voluntary or involuntary successor in interest of the Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

14.2.2 Except as expressly permitted pursuant to this Lease, Tenant represents and agrees that it has not made, and will not make or permit, any Transfer prohibited by this Lease or the Caltrans Easement, or Significant Change, either voluntary or by operation of Law. Any Transfer in contravention of this Lease or the Caltrans Easement shall be void and shall be deemed to be a default under this Lease whether or not Tenant knew of, or participated in, such Transfer.

14.3 **Landlord Remedies**. In the event that Tenant effects a Transfer without Landlord's consent as required herein, then in addition to the remedies set forth herein or otherwise available to Landlord by Law or in equity, Landlord may seek additional damages.

15. NONDISCRIMINATION. During the Term of this Lease, Tenant will not discriminate against any person or persons or exclude them from participation in the Tenant's operations, programs or activities conducted on the Premises, because of race, color, religion, sex sexual orientation, age, disability, marital status or national origin. The Tenant will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200D); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any other applicable Laws prohibiting discrimination on any basis.

16. SIGNS. Except for "no parking" signs as required by the Caltrans Easement and traffic safety signs, Tenant shall not place, maintain, or permit any sign, awning, canopy, marquee, or other advertising at the Premises without the prior written consent of Landlord in Landlord's sole and absolute discretion and in compliance with all Applicable Laws and Requirements. Tenant shall maintain its signage in good appearance and repair at all times during the Term. If at the end of the Term, Tenant's signage is not removed from the Premises by Tenant, such signage may, without damage or liability, be removed and disposed of by Landlord at Tenant's expense.

17. SURRENDER OF PREMISES.

17.1 Preceding the expiration or termination of this Lease, a close out report will be prepared by the Landlord in coordination with Tenant and will constitute the basis for settlement by Landlord and Tenant for any of the Premises shown to be lost, damaged, contaminated or destroyed by action of Tenant and/or Tenant Parties or otherwise caused as a result of Tenants' use of the Premises, during the Term of this Lease and will constitute the basis for determining any and all environmental restoration requirements to be completed by Tenant.

17.2 As soon as its right to possession ends, Tenant shall surrender the Premises to Landlord free of all occupants, with all Tenant's personal property removed and in a clean and debris-free condition. Tenant shall concurrently deliver to Landlord all keys to the Premises.

17.3 If possession is not immediately surrendered by Tenant, Landlord may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof and any and all property.

18. HOLDING OVER. If Tenant does not surrender the Premises as required and holds over after its right to possession ends, Tenant shall become a Tenant at sufferance only, at the then-current Port Tariff Rate (as defined in Exhibit A attached hereto). Nothing other than a fully-executed, written agreement of the parties creates any other relationship. Tenant is liable for Landlord's loss, costs and damage from such holding over, including, without limitation, those from Landlord's delay in delivering possession to other parties. This Section 18 is in addition to other rights of Landlord hereunder and as provided by Applicable Laws and Requirements.

19. PROFESSIONAL FEES. Landlord will be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of Tenant's default and consultations in connection therewith. Additionally, where Landlord performs work "at Tenant's expense" under this Lease, Tenant shall reimburse the City within thirty (30) days of receipt of the cost accounting, including, but not limited to City Attorney fees. In any dispute between the parties (whether or not litigated) arising hereunder or out of Tenant's use or occupancy of the Premises or this Lease, the prevailing party's reasonable costs and expenses (including fees of attorneys and experts) will be paid or reimbursed by the unsuccessful party.

20. GENERAL PROVISIONS.

20.1 **Historical Artifacts**. Tenant shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered in, on, under, or upon the Premises, Tenant shall immediately notify Landlord and protect the site and the material from further disturbance until the Landlord gives clearance to proceed.

20.2 **Seismic Notification**. The Premises are constructed on artificial fill and are located in an active seismic area. Structures may be subject to seismic damage.

20.3 **Soil and Water Conservation**. Tenant shall maintain, in a manner satisfactory to Landlord, all soil and water conservation structures that may exist upon the Premises at the beginning of the Term or that may be constructed by the Tenant or Landlord during the Term of this Lease. Tenant shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion resulting from the activities of the Tenant will be corrected by the Tenant at its sole expense.

20.4 **Interpretation of Lease**. Surrender or cancellation of this Lease will not work a merger. Headings in this Lease are for convenience only, and do not affect the meaning of the text. Unless context indicates otherwise, words of any gender or grammatical number include all genders and numbers. Where context conflicts with the definition of any term, context will control, but only for that use and related uses. If any provision of this Lease or any application thereof is invalid, void or illegal, no other provision or application will be affected. Time is of the essence of every provision of this Lease.

20.5 **Governing Law**. California Law governs this Lease.

20.6 **Recordation Prohibited**. Neither party may record this Lease or a copy or memorandum thereof. Submission of this Lease to Tenant is not an offer, and Tenant will have no rights hereunder until each party executes a counterpart and delivers it to the other party.

20.7 **Limitation on Liability**. Landlord's rights hereunder are solely for Landlord's benefit, and Landlord has no duty to exercise them for the benefit of Tenant or others. Landlord and Landlord's councilmembers, employees, officers, directors, and agents shall not be personally liable for any deficiency.

20.8 **Easements and Other Rights**. Tenant acknowledges that the Lease is subject to all existing easements and rights-of-way for location of roadways, utilities and any type of facility over, across, in, under and upon the Premises or any portion thereof. Tenant further acknowledges that Landlord may grant such additional easements and rights-of-way over, across, in, under and upon the Premises as it may determine to be in the public interest; provided that any such additional easement or right-of-way shall not unreasonably interfere with the access to, and the use and possession of, the Premises by Tenant. This Lease does not include any mineral rights.

20.9 **Quiet Enjoyment**. If Tenant pays all sums and performs all its other obligations under this Lease, Tenant will and may peaceably and quietly have, hold and enjoy the Premises subject to this Lease and to rights to which the Lease is subordinate. Tenant acknowledges that it may be subject to inconveniences and disturbance arising from the development and environmental investigation and remediation of the Former Army Base, such as entry detours, construction, and additional noise, dust and vibrations, as well as the rights of Caltrans as set forth in the Caltrans Easement.

20.10 **Service of Process**. Tenant hereby appoints as its agent, to receive the service of all dispossessory or distraint proceedings and notices thereunder, the person in charge of or occupying the Premises at the time, and, if no person will be in charge of or occupying the same, then such service may be made by attaching the same to the main entrance of the Premises.

20.11 **Negotiated Transaction**. The parties mutually acknowledge that this Lease has been negotiated at arm's length. The provisions of this Lease will be deemed to have been drafted by all of the parties and this Lease shall not be interpreted or constructed against any party solely by virtue of the fact that such party or its counsel was responsible for its preparation.

21. WAIVERS AND ACKNOWLEDGEMENTS.

21.1 **Waiver of Jury Trial**. Each party, on behalf of itself, its employees, contractors, agents, successors and assigns, hereby waives any right to a trial by jury with respect to any dispute arising under this Lease or in connection with Tenant's use, possession or occupancy of the Premises or Landlord's and/or Army's exercise of its rights and the fulfillment of its obligations herein. Each party acknowledges that it has had the opportunity to consult with counsel with respect to the meaning and significance of this Section.

Landlord's Initials:_____ Tenant's Initials: _____

21.2 **No Commitment for Future Conveyance or Relocation Assistance**. Tenant understands and acknowledges that (a) this Lease is subject to, and limited by, the terms and conditions of the Caltrans Easement, (b) this Lease is not and does not constitute a commitment by Landlord to any renewals or extension of the use or occupancy authorized herein for a term beyond the Term or to any future reuse or disposal, (c) Caltrans has the right to terminate the Caltrans Easement and thereby terminate this Lease pursuant to the terms of the Caltrans Easement, (d) Tenant is not entitled to, and waives any claim to severance damages, in the event Tenant is required to vacate the Premises as a result of Caltrans exercise of its reserved rights under the Caltrans Easement, (e) this Lease does not create any right or expectation for Tenant to acquire the Premises, in whole or in part, nor any obligation by the Landlord to assist Tenant, monetarily or otherwise, with moving, locating substitute space, or otherwise relocating or discontinuing its operations at the Former Army Base on or before the Expiration Date or earlier termination of this Lease, and (f) Tenant is not entitled to, and waives any claim to relocation benefits, in the event Tenant is required to vacate the Premises as a result of Caltrans exercise of its reserved rights under the Caltrans Easement.

Tenant's Initials: _____

21.3 **Acceptance in AS-IS Condition**. Tenant understands and acknowledges that Tenant is fully familiar with the condition of the Premises and the Former Army Base, that the Premises are being accepted by Tenant in their current condition, "AS-IS" and "WITH ALL FAULTS" and, as such, Landlord makes no warranty concerning the state of repair or physical condition of the Premises or the Former Army Base or as to the Premises' usability generally or as to its fitness for any particular purpose, including the use identified in this Lease. Tenant understands and acknowledges that Landlord has made no commitment to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises or the Former Army Base.

Tenant's Initials: _____

22. Assignment and Assumption.

22.1 Effective as of the Effective Date, Landlord hereby transfers all of Landlord's rights and obligations pertaining to the Premises under the Caltrans Easement, including, without limitation, the use limitations, Caltrans' access requirements, relocation requirements, Hazardous Materials requirements, permitting requirements and insurance requirements.

22.2 Effective as of the Effective Date, Tenant hereby accepts Landlord's transfer and assumes all of Landlords' obligations under the Caltrans Easement.

22.3 Landlord agrees that the indemnification obligations herein apply to any Liabilities with respect to this assignment.

23. Covenants Run with the Land.

23.1 The provisions, covenants, conditions, and Easement (as defined in the Caltrans Easement) provided herein shall be covenants running with the land pursuant to California Civil Code Section 1468, and shall benefit and burden Landlord, Caltrans and their successors.

23.2 Notwithstanding any other provision in the Caltrans Easement, the reservations and conditions in the FHWA Deed remain in full force and effect and run with the land. These reservations and conditions include, but are not limited to, the provisions in paragraphs A through J of the FHWA Deed. The exercise of its rights under these reservations and conditions will be at no cost to the United States.

24. Multiple Originals; Counterparts. This Lease may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts. The parties hereto shall be entitled to rely upon facsimile copies or electronic copies of a party's signature to this Lease.

THIS LEASE AND THE L/DDA CONTAIN ALL AGREEMENTS OF THE PARTIES CONCERNING THIS SUBJECT MATTER, SUPERSEDING ANY SUCH PRIOR AGREEMENTS, REPRESENTATIONS OR WARRANTIES, AND MAY BE AMENDED OR MODIFIED ONLY BY A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES.

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[*Signatures on next page*]

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

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

Tenant and the persons executing this Lease on Tenant's behalf represent and warrant that they are duly authorized and empowered so to execute and deliver this Lease, and that this Lease is binding upon Tenant in accordance with its terms.

TENANT:

CALIFORNIA WASTE SOLUTIONS, INC.,
a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

LEASE DEFINITIONS

In addition to the definitions set forth in the Lease, the following capitalized terms are defined below for the purposes of this Lease.

"**Affiliate**" means any entity that is directly or indirectly wholly-owned by Tenant and directly or indirectly Controlling, Controlled by, or under common Control with, such Tenant.

"**Applicable Laws and Requirements**" mean all applicable present and future statutes, regulations, rules, guidelines, ordinances, codes, orders, and the like, and all amendments and modifications thereto (collectively, "**Laws**" or individually "**Law**"), of any federal, state, or local agency, department, commission, board, bureau, office or other governmental authority to the extent of its jurisdiction relating to or affecting this Lease, the design and construction of the Improvements, and/or the use of the Premises by Tenant, Tenant's agents, contractors, Affiliates, employees, guests, visitors, invitees, subtenants, licensees, permittees or other persons or entities, including, but not limited to:

(a) Those Laws pertaining to reporting, licensing, permitting, investigation, remediation or abatement of emissions, discharges, or releases (or threatened emissions, discharges or releases) of Hazardous Materials in or into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials;

(b) Those Laws pertaining to the protection of the environment and/or the health or safety of employees or the public;

(c) Those Laws pertaining to taxes, assessments, rates, charges, fees, municipal liens, levies, excises or imposts;

(d) The FHWA Deed and the Caltrans Easement;

(e) The 2021 Addendum No. 2;

(f) All licenses and permits issued by, and other determinations and approvals made by, governmental agencies pertaining to the Premises;

(g) All applicable mitigation measures; and

(h) All plans required to be prepared by Tenant by the City as part of the project approvals.

"**Control**" means the ownership (direct or indirect) by any one Person and if applicable, together with that Person's Affiliates, spouse and/or children and/or trusts for their benefit, of more than fifty percent (50%) of the profits or capital of another Person, and Controlled and Controlling have correlative meanings.

"**CUP**" means that certain Conditional Use Permit_____issued by the City.

"**Development**" is anticipated to consist of (a) construction of a recycling facility with an approximately 171,000 square foot building consisting of an administrative office, material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area and a dispatch area and parking for personnel and collection trucks and (b) the operation of the recycling facility subject to the terms of the CUP.

"**Hazardous Materials**" shall mean any substances that are toxic, corrosive, inflammable, or ignitable, petroleum and petroleum byproducts, lead, asbestos, any hazardous wastes, and any other substances that have been defined as "hazardous substances," hazardous materials, "hazardous wastes," "toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601, et seq., 33 U.S.C. section 1251, et seq., 42 U.S.C. section 6901, et seq. (RCRA), 42 U.S.C. section 7401, et seq., 42 U.S.C. section 9601, et seq. (CERCLA), 49 U.S.C. section 1801, et seq. (HMTA); or California statutes beginning at California Health and Safety Code section 25100, et seq., section 25249.5, et seq., and 25300, et seq., and California Water Code section 13000, et seq., the regulations and publications adopted and promulgated pursuant to such statutes and any similar statutes and regulations adopted hereafter. Hazardous Materials shall not include substances stored on the Premises that are stored as part of the normal construction and operation of the Premises and that otherwise comply with all Applicable Laws and Requirements.

"**Person**" means any individual, partnership, corporation (including 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, or any other governmental entity.

"**Port Tariff Rate**" means Tariff No. 2-A pursuant to Port Ordinance 4559, effective July 1, 2020, adopted on June 11, 2020 by the Port of Oakland Board of Port Commissioners, or its successor, or if discontinued during the Term, the then market rate as determined by an independent broker or appraiser.

"**Prime Rate**" means the rate of interest published in the "Money Rates" column of Wall Street Journal as the Prime Rate, as such rate may change from time to time (or, if such rate is no longer published in the Wall Street Journal, such reasonable substitute as Landlord may select).

"**Real Property Taxes**" means any form of general or special assessment, license fee, license tax, business license fee, real property transfer tax, possessory interest tax, any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Former Army Base or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, sanitary, fire, street, drainage or other improvement district, or any other governmental entity or public corporation, as

against (a) any legal or equitable interest of Landlord in the Former Army Base or any portion thereof, (b) Landlord's right to rent or other income therefrom, (c) the square footage thereof, (d) the act of entering into any lease, (e) the occupancy of Tenant or Tenants generally, or (f) Landlord's business. The term "real property taxes" will also include any tax, fee, levy, assessment or charge including, without limitation, any so-called value added tax, (i) which is in the nature of, in substitution for or in addition to any tax, fee, levy, assessment or charge hereinbefore included within the definition of "real property taxes," (ii) which is imposed for a service or right not charged for prior to June 1, 1978, or if previously charged for, which has been increased since June 1, 1978, (iii) which is imposed or added to any tax or charge hereinbefore included within the definition of real property taxes as a result of a "change in ownership" of the Property or any portion thereof, as defined by applicable statutes and regulations, for property tax purposes, or (iv) which is imposed by reason of this transaction, any modification or change hereto or any transfer hereof.

"**Remediation**" means investigate, remove, removal, remedy, remediate, remediation, and monitor Hazardous Materials, all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto, development of environmental remediation plans and securing regulatory approval for such plans, compliance with regulatory agency notification requirements. "Remove" or "removal" means the cleanup or removal of released Hazardous Materials from the environment, such actions as may be necessary taken in the event of the threat of release of Hazardous Materials into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of Hazardous Materials, the disposal of removed material, removal of underground storage tanks and associated pipes, special handling and disposal of excavated soils classified as hazardous waste, treatment and special disposal of displaced groundwater classified as hazardous waste, abatement or removal of any Hazardous Materials, or taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms "remedy" or "remediate or remediation" mean those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a Hazardous Material into the environment, to prevent or minimize the release of Hazardous Materials so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.

"**Tenant Parties**" means Tenant and its affiliates, volunteers, employees, contractors, suppliers, agents, representatives, invitees, and subtenants.

"**Year**" or "**year**" means a calendar year.

EXHIBIT B

FHWA DEED

[ATTACHED]

EXHIBIT C

CALTRANS EASEMENT

[ATTACHED]

EXHIBIT D

PREMISES
(LEGAL DESCRIPTION AND PLAT)

[ATTACHED]

EXHIBIT E

INSURANCE CERTIFICATES

[ATTACHED]

ATTACHMENT D

Construction Jobs Policy

California Waste Solutions

I. Purpose. This Construction Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in the construction of Private Improvements on the Project Site, as described in that certain Lease and Disposition and Development Agreement between the City of Oakland and California Waste Solutions, Inc. dated _____. Contractors participating in construction of Private Improvements agree to comply with terms of this Policy as a condition of performance of such construction, as more particularly set forth herein.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"**Apprentice**" shall mean an individual who is enrolled in a Registered Apprenticeship Program.

"**Apprentice Work Hours**" shall mean Project Work Hours performed by Apprentices.

"**Background Check Requirement**" shall mean a law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism or by the Port of Oakland or the Department of Homeland Security.

"**City**" shall mean the City of Oakland.

"**Contractor**" shall mean any entity employing individuals to perform Project Construction Work, including Prime Contractors and subcontractors of any tier.

"**Developer**" shall mean California Waste Solutions, Inc. and its successors, assigns, agents, and transferees under the L/DDA.

"**Jobs Center**" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"**L/DDA**" shall mean the Lease and Disposition and Development Agreement entered into by City and Developer respecting development of the Project Site, as may be amended from time to time.

"**L/DDA Effective Date**" shall mean the Effective Date of the L/DDA as defined therein.

"**New Apprentice**" shall mean a Resident who is newly enrolled (less than 3 months) as an Apprentice.

"**Policy**" shall mean this Construction Jobs Policy.

"**Prime Contractor**" shall mean a Contractor awarded a contract directly by Developer or Tenant, or a construction manager retained by Developer or Tenant, for performance of Project Construction Work.

"Private Improvements" shall mean any construction work on the Project Site, including site improvements and core and shell building improvements, except for any construction project subsequent to completion of initial construction for which all Prime Contracts, in aggregate, are worth less than one million dollars ($1,000,000), excluding the cost of any furniture fixtures or equipment.

"**Project**" shall mean the redevelopment activities occurring on the Project Site.

"**Project Construction Work**" shall mean construction of any Private Improvements.

"**Project Work Hours**" shall mean hours of Project Construction Work performed on the Project Site.

"**Project Site**" shall mean the Project Site as defined in the Recitals and Attachments to the L/DDA.

"**Registered Apprenticeship Program**" shall mean a labor-management apprenticeship program that is currently registered with the State of California's Division of Apprenticeship Standards.

"**Resident**" shall mean an individual domiciled in the City for at least six months prior to the date such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date, attached hereto as Schedule 1.

"Tenant" shall mean any entity leasing space within the Project Site.

"**Union**" shall mean construction trades union(s).

III. EMPLOYMENT REQUIREMENTS.

A. Alternative Approaches. Each Contractor shall either follow the processes set forth in Section III.B, below, or satisfy the percentage requirement set forth in Section III.C, below.

B. Hiring and Referral Processes.

1. Contractor Procedures. Contractors shall undertake the

following steps in the following order, in an effort to retain Residents:

a. Step One: Assign to perform Project Work any current employees who are Residents;

b. Step Two: Utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified, in cooperation with the Unions, as Residents;

c. Step Three: Request that the Union hiring hall refer Residents;

d. Step Four: If the above steps have not enabled satisfaction of the percentage requirement set forth in Section III.C.1 of this Policy, request referral of Residents from the Jobs Center; and

e. Step Five: Fairly consider workers referred by the Jobs Center within three (3) business days of notification.

C. Percentage Requirements.

1. Residents. The percentage requirement of this Section III.C is satisfied if, for each construction trade in which a Contractor performs Project Construction Work, at least 50% of Project Work Hours in such construction trade are performed by Residents.

2. Bonus for Retention of New Apprentices. For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works directly or indirectly for a Prime Contractor (including such Prime Contractor's subcontractors of any tier) during the term of the Prime Contractor's Project Construction Work, such Prime Contractor shall be entitled to 500 "bonus" hours that may be credited against the requirement for Project Work Hours performed by Residents under Section III.C.1.

D. Apprentices.

1. New Apprentice Sponsorship Requirements for Prime Contractors. In each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor (for the avoidance of doubt, including its subcontractors of any tier), such Prime Contractor and/or any of its subcontractors of any tier shall sponsor one or more New Apprentice(s) and employ such New Apprentice(s) for an aggregate of at least 1000 hours of Project Construction Work and/or construction work on other projects during the term of the Prime Contractor's Project Construction Work.

2. Twenty Percent Utilization Requirement. For all Project Work Hours in aggregate, performed by any Contractor, Apprentice Work Hours shall constitute at least 20% of Project Work Hours.

E. Hiring Discretion. Nothing in this Policy shall require that any Contractor hire any particular individual; each Contractor shall have the sole discretion to make hiring decisions with regard to any individual referred by the Jobs Center or any other person or entity.

F. Funding Restrictions. For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will, after consultation with Developer, work collaboratively with the funding agency to adapt the requirements of this Policy to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and such requirements shall be applied to such portions of the Project Construction Work in question for the period required by such agency, and shall automatically become terms of this Policy with respect to such Project Construction Work.

G. Contact Person. At least two weeks prior to performance of Project Construction Work, or within two business days after execution of a contract for performance of Project Construction Work, whichever is later, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

H. Employment Needs Projections.

1. Prime Contractor. Within one month of being awarded a prime contract for Project Construction Work, any Prime Contractor shall project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and apprentices needed by trade, at different stages of performance of the contract.

2. Contractors. Each Contractor shall, at least one month before commencing performance of Project Construction Work, or within two business days after execution of a contract for performance of Project Construction Work, whichever is later, project employment needs for performance of the Project Construction Work, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and Apprentices needed by trade, at different stages of performance of the Project Construction Work.

3. Compliance Plan. Prior to commencement of construction, a Prime Contractor may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with

this Policy. If such a plan is agreed to by the Prime Contractor and the City, then compliance with the plan shall be compliance with this Policy.

I. Worker Qualifications. Unless a criminal background check is required by a Background Check Requirement, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by a Background Check Requirement, unless the Background Check Requirement provides otherwise, the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories related to job requirements and responsibilities; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. If a criminal background check yields information that is of concern to the Employer, the applicant will be given an opportunity to review the findings and discuss the report with the Employer, including an opportunity for the applicant to present information rebutting the accuracy or relevance of the report. To the extent that a Background Check Requirement conflicts with any of the provisions set forth in this Section, the Background Check Requirement will prevail. Unless a credit history is required by the Background Check Requirement, an Employer shall neither request nor independently research prospective workers' credit histories.

J. Project Labor Agreement. As more particularly set forth in the L/DDA, Developer has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the Project Construction Work, with all contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

IV. MISCELLANEOUS.

A. Contracts/Subcontracts. Developer and each Tenant shall include compliance with this Policy as a material term of any contract under which Project Construction Work will be performed (including any lease or applicable construction management agreement). If Developer or Tenant complies with this Section IV.A, such entity shall not be liable for any breach of this Policy by any Contractor. Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor under this Policy. If a Contractor enters into a

subcontract in violation of this Section IV.A., then such Contractor shall be liable for any breach of this Policy with respect to Project Construction Work performed by such subcontractor. If a Contractor complies with this Section IV.A, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

B. Assurance Regarding Preexisting Contracts. Each Contractor warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into such contract, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

C. Third Party Beneficiaries. The City is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The City shall not delegate any of its responsibilities to any other third party, require the consent of any other third party or act solely upon the direction of any other third party in performing its obligations or exercising its rights under this Policy.

D. Reporting Requirements. Contractors shall submit weekly certified payroll records to the City, with an indication as to which Project Work Hours were worked by Residents and New Apprentices. Each Contractor shall also provide other records or information requested by the City regarding fulfillment of responsibilities under this Policy. All such records and information shall be considered public documents. Prior to such documents being released to the public, the City will redact identifying information from such documents to protect privacy of individuals.

E. Determination of Status. A Contractor's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Contractor obtains reasonable written documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Contractor retains such documentation and makes it available to City for inspection at reasonable times.

F. Remedies.

1. Liquidated Damages for Percentage Requirements. If a Contractor fails to satisfy at least one of the alternative approaches set forth in Section III.A of this Policy, then as the sole and exclusive remedy therefor, such Contractor shall pay to the City liquidated damages in an amount equal to twenty dollars ($20) for each hour short of the percentage requirement. For example, if there are one thousand (1,000) Project Work Hours with four hundred fifty (450) Project Work Hours performed by

Residents, then the liquidated damages shall be in an amount equal to $20 x 50 = $1,000. A Contractor shall not owe liquidated damages if it negotiates a compliance plan with the City pursuant to Section III.H.3, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

2. Specific Performance. Except with respect to Contractor's failure to satisfy at least one of the alternative approaches required by Section III.A (for which the sole and exclusive remedy is set forth in Section IV.F.1, the City may bring an action for specific performance to ensure compliance with this Policy.

3. No Breach of Certain Agreements. So long as Developer has included compliance with this Policy as a material term of any contract under which Project Construction Work will be performed, a Contractor's noncompliance with this Policy shall not constitute a breach of the L/DDA.

G. Exemptions

1. For Core Workers. The requirement of sections III.B and III.C, shall not apply to Project Work Hours performed by members of a Contractor's core workforce (and such hours shall not be considered Project Work Hours for purposes of determining satisfaction of the percentage requirements of Section III.C.1). For a Contractor that is certified by the City of Oakland as a Very Small Local Business Enterprise, a Small Local Business Enterprise, or a Local Business Enterprise, a member of the core workforce is a worker who has appeared on payroll records for at least 750 hours of work in the 180 days prior to that Contractor's commencement of the applicable Project Construction Work. For any other Contractor, a member of the core workforce is a worker who has appeared on payroll records for at least 1,500 hours of work in the 365 days prior to that Contractor's commencement of the applicable Project Construction Work. Exemption of core workforce hours may apply only up to a maximum of 50% of any Contractor's Project Work Hours.

2. Out-of-State Workers. The requirements of Sections III.B and III.C shall not apply to Project Construction Work performed by residents of states other than the State of California (and such hours shall not be considered Project Work Hours for purposes of determining satisfaction of the percentage requirements of Section III.C.1). Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other than the State of California exceeds thirty percent of the Project Work Hours in such calendar year, then for all subsequent years of work on the Project, the first sentence of this Section IV.G.2 shall not apply, and the requirements of Sections III.B and III.C shall be applicable to all Project Construction Work, including those performed by residents of states other than the State of California.

H. Material Term. This Policy is a material term of any contract into which it is incorporated.

I. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date.

J. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

K. Successors and Assigns. This Policy shall be binding upon successors, representatives, assigns, agents, and transferees of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor, representative, assign, agent, or transferee of that entity.

L. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

ATTACHMENT E

Operations Jobs Policy

California Waste Solutions

I. Purpose. This Operations Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site, as described in that certain Lease and Disposition and Development Agreement between the City of Oakland and California Waste Solutions, Inc. dated _____. Employers in the Project Site agree to comply with terms of this Operations Jobs Policy as a condition of entry into any agreement to which this Operations Jobs Policy is attached. This Policy does not cover construction hiring or employment.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"**Background Check Requirement**" shall mean a law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism or by the Port of Oakland or the Department of Homeland Security).

"**City**" shall mean the City of Oakland.

"**Developer**" shall mean California Waste Solutions, Inc., and its successors, assigns and transferees.

"**Disadvantaged Worker**" shall mean a Resident who, prior to commencing work at the Project Site, is domiciled in a Targeted Employment Area (as defined in California Government Code section 7072) and can provide written documentation of facing one of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) having received public income assistance or food stamps within the past twelve months; (4) having a criminal arrest or conviction record; (5) having been continuously unemployed for at least 27 weeks; (6) having been emancipated from the foster care system; (7) being a veteran of the U.S. military, or (8) being disabled, as defined in the Americans With Disabilities Act of 1990. The City shall distribute to Employers upon request a list of Targeted Employment Areas within the City.

"**Employer**" shall mean any entity employing at least two full time equivalent individuals to perform On-Site Jobs. For example, this threshold would be satisfied by employment of either two full-time workers or four half-time workers to perform On-Site Jobs.

"**Jobs Center**" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"**Large Employer**" shall mean Developer and any other entity that (i) has a total job count of twenty (20) or greater, and (ii) is either leasing space within the Project Site or

performing operations within the Project Site. For purposes of this definition, "total job count" shall mean the number of full-time equivalent individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply contract with the entity in question, or working under any related subcontract or agreement of any tier.

"**L/DDA**" shall have the meaning set forth in Section I, above.

"**L/DDA Effective Date**" shall mean the Effective Date of the L/DDA, as defined therein.

"Oversight Commission" shall mean the Community Jobs Oversight Commission established by City ordinance and charged with various functions related to the monitoring and enforcement of the Jobs Policies applicable to the Project and other projects occurring on the former Oakland Army Base site.

"**On-Site Job**" shall mean any non-construction job for which at least fifty percent of the work hours during any calendar year are performed on the Project Site.

"**Policy**" shall mean this Operations Jobs Policy.

"**Project**" shall mean the redevelopment activities occurring on the Project Site.

"**Project Site**" shall mean the Project Site as defined in the Recitals and Attachments to the L/DDA.

"**Resident**" shall mean an individual domiciled in the City for at least six (6) months prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date.

"**Tenant**" shall mean any entity leasing space in the Project Site.

III. Local Hiring.

A. Hiring Process.

1. Long-Range Planning. As soon as the information is available following a Large Employer's execution of a contract under which it will operate at the Project Site and within thirty (30) days of each January 1 thereafter, the Large Employer shall provide to the City and the Jobs Center information regarding such Large Employer's good faith projection of the number and type of On-Site Jobs that such Large Employer reasonably believes it will need to fill during the applicable calendar year and the basic qualifications anticipated to be necessary for such On-Site Jobs.

2. Initial Hiring Process.

a. Notification of Job Opportunities. At least four (4) weeks prior to the date that a Large Employer is anticipated to commence operations in the Project Site, or if such Large Employer executes a contract under which it will operate at the Project Site less than four (4) weeks prior to such anticipated date, within two (2) business days following the execution of such contract and prior to commencing operations, (any such period, the "Initial Notice Period"), such Large Employer shall notify the Jobs Center of openings for non-management On-Site Jobs and provide a clear and complete description of job responsibilities and qualifications therefor, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. After notification as described in Section III.A.2.a, above, the Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the Initial Notice Period, or until all non-management On-Site Jobs are filled, whichever is sooner. The Large Employer shall make best efforts to fill all openings for non-management On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the Initial Notice Period the Large Employer has been unable to fill all available non-management On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods to fill the positions(s), although the Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

c. Pre-opening Transfer.

(1) Pre-opening Transfer by Large Employers. Provisions of Section III.A.2 are not applicable to a Large Employer that is closing or relocating a facility located inside or outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by Section III.A.3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located inside or outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made under the provisions of this Section III.A.2.

d. Jobs Center Feedback. Following the completion of the initial hiring process set forth in this Section III.A.2, at the request of the City a Large Employer shall meet and confer with the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Large Employer and any future Employer, as relevant, and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

3. Ongoing Hiring Process.

a. Notification of Job Opportunities. After a Large Employer has commenced operations at the Project Site, it shall continue to use the Jobs Center in accordance with this Section III.A.3 as a resource to fill On-Site Jobs. When a Large Employer has an opening for an On-Site Job available, the Large Employer shall notify the Jobs Center of such job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. After notification pursuant to Section III.A.3.a., above, a Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five (5)-day period after initial notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five (5)-day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

4. Priorities for Initial and Ongoing Hiring. In exercising its efforts required by this Policy to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, each Large Employer shall apply the following priorities in hiring Residents:

i. First Priority: Residents of zip codes 94607, 94612, 94608, and 94609;

ii. Second Priority: Residents of the Oakland Enterprise Zone Targeted Employment Area as designated on the L/DDA Effective Date, attached hereto as Schedule 3; and

iii. Third Priority: other Residents of the City of Oakland.

5. Nondiscrimination. Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

6. Worker Qualifications. Unless a criminal background check is required by a Background Check Requirement, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by a Background Check Requirement, unless the Background Check Requirement provides otherwise, the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories related to job requirements and responsibilities; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. If a criminal background check yields information that is of concern to the Employer, the applicant will be given an opportunity to review the findings and discuss the report with the Employer, including an opportunity for the applicant to present information rebutting the accuracy or relevance of the report. To the extent that a Background Check Requirement conflicts with any of the provisions set forth in this Section, the Background Check Requirement will prevail. Unless a credit history is required by the Background Check Requirement, an Employer shall neither request nor independently research prospective workers' credit histories. To the extent that this Section III.A.6 conflicts with any requirements of this Policy related to Disadvantaged Workers, this Section III.A.6 shall control.

B. Monitoring and Enforcement.

1. Safe Harbor Provision. Any Large Employer for whom at least fifty percent (50%) of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent (25%) of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year. For purposes of determining the percentages of workers hired for On-Site Jobs during a particular year that were Residents and Disadvantaged Workers, a Disadvantaged Worker shall be counted as both a Resident and a Disadvantaged Worker.

2. Credit for Hiring at Other Locations. Large Employers shall receive credit toward achievement of the Safe Harbor percentages set forth in Section III.B.1 for any hires of Residents and/or Disadvantaged Workers to perform jobs at other locations, so long as such Residents and/or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*) (e.g., if a Large Employer hires ten (1) workers for On-Site Jobs in a year, and six (6) are Residents, and such Large Employer also hires one Resident to perform a job at another location with such compensation, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed to be Residents.

3. Retention Incentive. For every 2,000 hours that any one Resident and/or Disadvantaged Worker who performs an On-Site Job works for a Large Employer, that Large Employer shall be entitled to a "bonus" hiring credit of one individual/position for the applicable category towards achievement of the Safe Harbor percentages set forth in Section III.B.1, above. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2000^{th}) hour for such Large Employer, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed to be Residents. For any employee that does not work on an hourly basis, hours shall be counted towards this threshold on the basis of forty (40) hours per week of full time employment, so long as that employee actually works or is otherwise paid for at least forty hours in all weeks in question.

4. Liquidated Damages. Each Large Employer agrees that, if during a particular year it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, or satisfied the Safe Harbor percentage set forth in Section III.B.1, above, then as the sole and exclusive remedy therefor, it shall pay to the City liquidated damages in the amount of $5,000.00 per On-Site Job short of the Safe Harbor percentage set forth in Section III.B.1, above. For example, if a Large Employer hires ten workers for On-Site Jobs in a year, and four are Residents and two are Disadvantaged Workers, then the liquidated damages shall total seven thousand five hundred dollars ($7,500). Of this amount, five thousand dollars ($5,000) is based on failure to meet the fifty percent (505) Safe Harbor percentage for hiring of Residents, with safe harbor in this case requiring five Residents to be hired, and actual performance having been four hires. The remaining two thousand five hundred dollars ($2,500) is based on failure to meet the twenty-five percent (25%) Safe Harbor percentage for Disadvantaged Workers, with safe harbor amount in this case requiring at least two and one half (2.5) Disadvantaged Workers to be hired, and actual performance having been two hires; as shortfall in this case would be one-half of a single hire, liquidated damages would be half of one On-Site Job, or two thousand five hundred dollars ($2,500). Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

5. Compliance Records. Each Large Employer shall make available to the City on an annual basis (as of January 1 each year), and each Employer shall make available upon written request by the City, records sufficient to determine compliance with this Policy. City shall keep such records confidential except as required to be released pursuant to applicable law. Prior to such documents being released to the public pursuant to applicable law, the City will redact identifying information to any extent required by law.

6. Additional Enforcement Mechanisms. Except as set forth in Section III.B.4 above, the City shall be entitled to all remedies at law or in equity for any failure to comply with this Policy. Further, Employers who repeatedly violate this Policy may be debarred from future City contracts.

IV. Temporary Employment Agencies. No Large Employer may enter into any contract or other arrangement to supply workers for the performance of more than thirty percent (30%) of the On-Site Jobs within that Large Employer's control at any given time with any person or entity other than the Jobs Center unless granted approval to do so by the City Administrator.

The City Administrator shall reasonably consider any request for approval to obtain workers other than through the Jobs Center by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV may reasonably be expected to create significant economic or operational hardship for the Large Employer.

V. Living Wages

Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*).

VI. Miscellaneous.

A. Contact Person. Within thirty (30) days of having entered into any contract (including any assignment of all or any portion of a lease) related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Determination of Residency Status. A Large Employer's determination of (i) whether any individual is a Resident or (ii) any individual's status within the priorities set forth in Section III.A.4 shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Large Employer obtains reasonable written documentation demonstrating that such individual's status at the time that such individual is assigned or hired and such Large Employer such documentation and makes it available to City for inspection at reasonable times.

C. Determination of Disadvantaged Status. The Jobs Center shall make determinations of Disadvantaged Worker status, The Jobs Center shall make such determinations promptly upon request from such an Employer, a worker, or the City.

D. Assignments, Subleases and Contracts. Developer and each Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in any portion of the Project Site. If a Developer or Tenant complies with this Section IV.D, such Developer or Tenant shall not be liable for any breach of this Policy by a party receiving such assignment or entering into such sublease where that breach is (i) related to the interest so assigned or subleased and (ii) first arises after the date of such assignment or sublease. Developer and each Employer shall include compliance with this Policy as a material term of any contract or other agreement under

which any On-Site Jobs may be performed. If an Employer complies with this Section VI.D, such Employer shall not be liable for any breach of this Policy by another entity acting pursuant to such contract or other agreement. If the Developer, an Employer, or a Tenant enters into a contract in violation of this Section VI.D., then upon request from the City, it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

E. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

F. Funding Restrictions. For any portions of the Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements of this Policy, the City will, after consultation with Developer, work collaboratively with the funding agency to adapt the requirements of this Policy to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and such requirements shall be applied to such portions of operations on the Project Site for the period required by such agency, and shall automatically become terms of this Policy with respect to such operations.

G. Third Party Beneficiaries. The City is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The City shall not delegate any of its responsibilities to any other third party, require the consent of any third party, or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

H. Out-of-State Workers. The requirements of Section III of this Policy shall not apply to positions filled by residents of states other than the State of California, and such positions shall not be considered for purposes related to the percentage requirement of Section III.B.1 and the liquidated damages calculation of Section III.B.4.

I. Retaliation Prohibited. An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the City or participating in any proceedings related to enforcement of this Policy against the Employer.

J. Material Term. This Policy is a material term of any contract into which it is incorporated.

K. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date, attached hereto as Schedule 2.

L. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

M. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor of that entity.

N. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding, has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

O. Hiring Discretion. Nothing in this Policy shall require that any Employer hire any particular individual; each Employer shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.