ATTACHMENT C

FUELING PERMIT
FUELING PERMIT NO.

This Fueling Permit ("Permit") is issued by the CITY OF PALO ALTO, a California municipal corporation ("City") to GREEN WASTE OF PALO ALTO, a joint venture ("Customer").

SECTION 1. The term of this Permit shall be 90 days ("Initial Term"), commencing on the date of its issuance by the City. The term shall be automatically renewed for successive three-month terms, commencing on the first day of the month immediately following the Initial Term, unless and until this Permit is terminated for convenience upon ninety (90) days' prior written notice or terminated for cause upon 24 hours' notice. For the purposes hereof, the City's city manager or its designee is expressly authorized to terminate this Permit on behalf of the City, and any default hereunder shall be a ground for termination for cause.

SECTION 2. The City will furnish compressed natural gas (CNG) fuel to the Customer, subject to its availability and priority of use by the City, at such times and dates, in such amounts, and in accordance with the terms and conditions of this permit and applicable statutes, laws, ordinances, resolutions, schedules, rates and regulations. The City will be responsible for paying the cost of all fuel dispensed into Customer vehicles, including applicable fuel taxes. If the City's fueling facility is closed for a period of more than 24 hours (excluding Sunday) requiring Customer to fuel its vehicles at another facility, the City shall reimburse Customer for the cost of all fuel dispensed into Customer vehicles at the alternate facility and any applicable fuel taxes, on a temporary basis at market rates, subject to receipt of invoices from the alternate facility. Nothing in this Permit shall be construed to require the City to furnish any available excess CNG fuel to any public, governmental, or non-governmental agency, and the City expressly reserves the right at any time to cease the provision of CNG fuel to any person.

SECTION 3. The City grants to the Customer a non-exclusive, revocable permit and license to enter and re-enter the City Municipal Services Center ("MSC") premises located at 3201 East Bayshore Road, Palo Alto, County of Santa Clara, and operate its motor vehicles expressly identified as "Authorized Motor Vehicles" in Exhibit "A", for the sole purpose of fueling and refueling such motor vehicles at the City's CNG fueling facility ("Facility") between the hours of 10:00 a.m. and 2:00 p.m., Monday through Saturday, but excluding any day on which
permission to enter is temporarily suspended by the City’s fleet manager. The City is not required to give advance notice to the Customer of the closure of the MSC. In the event the City suspends access to the MSC without providing at least three (3) days advance notice to the Customer and Customer cannot readily access a commercially reasonable alternative source of CNG, Customer shall not be liable for any resulting failure to perform or delay in performance under the Agreement for Solid Waste Recyclable Materials, Organics Materials and Yard trimmings Collection and Processing Services between the City of Palo Alto and GreenWaste of Palo Alto, commencing on July 1, 2009 ("Agreement") and such failure shall not constitute a default under the Agreement.

SECTION 4. The Customer, acting by and through its employees-motor vehicle operators, shall fuel its motor vehicles in accordance with the City’s written instructions for the fueling of CNG-fueled motor vehicles, as such instructions are set forth in Exhibit "B". NO PERSON SHALL BE PERMITTED BY THE CUSTOMER TO REMAIN IN THE MOTOR VEHICLE OF THE CUSTOMER DURING THE FUELING OF SUCH VEHICLE, AND A FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE A DEFAULT UNDER THIS PERMIT. Each employee-motor vehicle operator of the Customer shall execute a certification of instruction in the form of Exhibit B before a motor vehicle operated by such employee-motor vehicle operator may be fueled at the Facility. The initiation of CNG fueling of such motor vehicles shall be accomplished by the use of (1) card key ("key"), magnetic card ("card"), or wireless control device ("device") per motor vehicle, up to a maximum of 10 key, cards, or devices. The City will be responsible for paying the cost of the initial set of key, cards or devices. The Customer agrees to be responsible for the safe keeping of the keys, cards and devices and agrees to pay for the safe keeping of the keys, cards and devices and agrees to pay for the destruction, loss or theft of the keys, cards and devices and the cost of their replacements. Only those employee-motor vehicle operators who execute certifications of instructions shall be permitted by the Customer to use the keys, cards and devices and the Customer shall execute a Certification of Customer in the form of Exhibit C in accordance with this provision. A failure to comply with this provision shall constitute a default under this Permit. Notice of the destruction, loss or theft of any key, card or device shall be given by the Customer to the City’s fleet manager as soon as reasonably possible following the discovery of the destruction, loss or theft by any reasonable means, including telephone, facsimile or electronic mail. A failure to
provide such notice shall constitute a default under this Permit.

SECTION 5. The City's fleet manager or his designees will furnish CNG fueling training materials to the Customer's employee-motor vehicle operators at the MSC at such times and dates as may be established, in writing, by the City's fleet manager. Nothing contained in this Permit shall be construed to limit the right of the City's fleet manager to refuse to fuel a Customer vehicle if the employee-motor vehicle operator of the vehicle is not in possession of a valid certification of instruction or has not applied for a certification of instruction.

SECTION 6. All notices, communications or transmittals required under this Permit (excepting the notice of destruction, loss or theft in section 4) shall be made, in writing, shall be delivered through the United States certified mail, return receipt requested, by documented personal delivery, by documented overnight courier service delivery or by receipted facsimile, and shall be addressed to the following addresses, or such other address as a party may designate, in writing, to the other party in like manner:

To City: Director of Public Works
250 Hamilton Avenue
Palo Alto, CA 94301
Tel: (650) 329-2325
Fax: (650) 329-2299

To Customer: Attention: General Manager
GreenWaste of Palo Alto
1500 Berger Drive
San Jose, CA 95112
Tel: (408) 283-4804
Fax: (408) 287-3108

SECTION 7. This Permit is personal to the Customer and shall not be assigned or transferred by the Customer without the prior written consent of the City.

SECTION 8. The Customer, at its sole cost and expense, shall obtain and maintain in full force during the term of this Permit the types of insurance coverage that may be reasonably required by the City's risk manager, including, without limitation, commercial general liability insurance and
automobile liability insurance, each in amounts of not less than $1,000,000. With the exception of workers’ compensation and employer’s liability, the insurance coverage and endorsements reflected in any certificate of insurance shall name the City as an additional insured concerning the Customer’s fueling activities under this Permit. The certificates will contain an endorsement stating that the insurance is primary coverage and will not be canceled or altered by the insurer except after filing with the City’s city clerk thirty (30) days’ prior written notice of such cancellation or alteration, and shall be furnished to the City’s fleet manager before CNG fueling of the Customer’s motor vehicles may occur. All insurance coverage required hereunder will be provided through carriers with Best’s Key Rating Guide rating of A: VII or higher which are admitted to transact insurance business in the State of California. Notwithstanding the policies of insurance, the Customer will be obligated for the full and total amount of any damage, injury, or loss caused by, directly or indirectly, or arising as a result of the Customer’s fueling activity, including such damage, injury, or loss arising after the Permit is terminated or the term has expired. The City shall not be obligated to take out insurance on the Customer’s personal property or the personal property of any person performing labor or services or supplying materials or equipment to the Customer. The Customer may provide and the City may accept proof of self-insurance retention by the Customer.

SECTION 9. The Customer by executing this Permit certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that it will comply with such provisions, as applicable, before commencing fueling activities under the authority of this Permit.

SECTION 10. The Customer agrees to accept all risks, including risk of loss, related to the operation and CNG fueling of the Customer’s motor vehicles at the Facility, agrees to pay for all costs of cleaning up, transporting, storing, and disposing of any hazardous materials or waste spilled at the Facility by the motor vehicle operations of the Customer’s employees, and agrees to protect, indemnify, defend and hold harmless the City, its Council members, officers, employees and agents from any and all demands, claims, or liability of any nature, including death of or injury to any person, property damage or any other loss, caused by or arising out of the
Customer's or its officers', agents', subcontractors' or employees' negligent acts, errors, or omissions, or willful misconduct or conduct for which applicable law may impose strict liability on the Customer in the performance of or the failure to perform its obligations under this Permit, under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Carpenter-Presley-Tanner Hazardous Substance Account Act, the Hazardous Waste Control Law, the Safe Drinking Water and Toxic Enforcement Act, and under any other local, state or federal law, statute, ordinance, rule or regulation, excepting only such damage, death or injury caused by the sole negligence of or willful misconduct by the City.

SECTION 11. Nothing contained in this Permit, nor any act of the City, shall be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer or employee, or principal and agent between the City and the Customer or its agents, employees or contractors. The Customer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which its employees-motor vehicle operators observe the agreements, covenants, terms and conditions imposed on it by this Permit. The Customer agrees to be solely responsible for its own acts and those of its officers, partners, employees, agents, contractors, subcontractors and representatives.

SECTION 12. Neither the failure nor the delay on the part of the City to exercise any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. Any of the requirements of this Permit may be expressly waived by the City, in writing, but no waiver by the City of any requirement of this Permit shall, or shall be deemed to, extend to or affect any other provision of this Permit.

SECTION 13. Any amendment to this Permit shall be binding upon the parties, provided such amendment is set forth in writing signed by the parties. The City's city manager or its designee is authorized to execute any amendments to this Permit, and confer any consents or approvals that may be provided by the City.
SECTION 14. Any provision of this Permit which is characterized as a covenant or a condition shall be deemed both a covenant and a condition. If any provision of this Permit shall be determined by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable in any respect, the validity of all other provisions herein shall remain in full force and effect.

SECTION 15. This Permit shall be deemed a contract made under the laws of the State of California, and for the purposes hereof shall be governed and construed by and in accordance with the laws of the State of California. All exhibits referred to in this Permit and any addenda, appendices, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Permit and shall be deemed to be part hereof. This Permit may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

SECTION 16. In the event that suit is brought by either party, the parties agree that trial of such action shall be vested exclusively in the state court of California in the City of San Jose, County of Santa Clara, or in the United States District Court for the Northern District of California in the
City of San Jose. The prevailing party in any action brought to enforce the terms of this Permit or arising out of this Permit may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

DATED: ____________________

CITY OF PALO ALTO

City Manager

The terms and conditions of this Fueling Permit have been reviewed and understood by the Customer. I represent and warrant that, as the duly appointed representative of the Customer, I, on behalf of the Customer, hereby signify full acceptance of the terms and conditions of this Fueling Permit.

GREEN WASTE OF PALO ALTO

By: ____________________

Title: PRESIDENT

ATTACHMENTS:

EXHIBIT "A": AUTHORIZED MOTOR VEHICLES
EXHIBIT "B": CERTIFICATION OF INSTRUCTION
EXHIBIT "C": CERTIFICATION OF CUSTOMER
## Recycling CNG Units

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<th>Unit#</th>
<th>Vehicle ID#</th>
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<td>263997</td>
<td>10186</td>
</tr>
</tbody>
</table>
EXHIBIT B

CERTIFICATION OF INSTRUCTION

A certification of instruction shall be completed by each individual who may fuel a compressed natural gas-powered motor vehicle of the Customer at the City of Palo Alto’s Municipal Services Center compressed natural gas fueling facility. Each individual will receive CNG fueling materials, including written materials, a video and a live demonstration about the proper use of the City's CNG fueling facility, and will sign and date this form to certify they have received and reviewed the materials. The City has no obligation to fuel a motor vehicle of the Customer until this Certification of Instruction is duly executed.

HOW TO SAFELY FUEL COMPRESSED NATURAL GAS-POWERED VEHICLES

1. No person shall be permitted by the Customer to remain in the motor vehicle while such motor vehicle is being fueled.
2. No smoking or open flame shall be allowed within 50 feet of the fueling station.
3. Compressed natural gas cylinders, which are not in compliance with DOT or ANSI/AGA NGV2 requirements, shall not be fueled.
4. The motor vehicle must be shut off.
5. The hand brake or emergency brake of the motor vehicle must be set.
6. Remove the protective cap on the vehicle fueling receptacle, if applicable.
7. Remove the fueling device from the dispenser.
8. Inspect the fueling hose and connector prior to making the connection.
9. Make connection and ensure the connector is locked in place.
10. Open the fueling valve on the fueling device.
11. Shut off the fueling valve on the fueling device after the fuel flow stops registering on the dispenser.
12. Disconnect the fueling device and return to the dispenser holder.

I HEREBY CERTIFY THAT I HAVE RECEIVED AND REVIEWED MATERIALS ABOUT PROPERLY FUELING COMPRESSED NATURAL GAS-POWERED VEHICLES AS OUTLINED ABOVE.

[Signature]
Date of Instruction

Operator’s Signature

Operator’s Name (Print)
EXHIBIT C

CERTIFICATION OF CUSTOMER

I HEREBY CERTIFY ON THE BEHALF OF THE CUSTOMER THAT THE CUSTOMER WILL NOT PERMIT ANY NONCERTIFIED INDIVIDUAL TO USE THE CITY'S CARD KEY (S), MAGNETIC CARD (S) AND WIRELESS CONTROL DEVICE (S) FOR FUELING COMPRESSED NATURAL GAS-POWERED VEHICLES.

Date ___________________ Name of Customer ___________________

Authorized Signature of Duly Appointed Representative of Customer ___________________
ATTACHMENT D

GENG ROAD
LEASE AGREEMENT
LEASE AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
GREENWASTE OF PALO ALTO

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LEASE AGREEMENT

BETWEEN
CITY OF PALO ALTO
AND
GREENWASTE OF PALO ALTO

This lease agreement (herein "Lease") is made and entered into this _____ day of __________, 2008, by and between the City of Palo Alto, a California chartered municipal corporation (herein "City") and GreenWaste of Palo Alto, a California joint venture (herein "Lessees"). City and Lessee may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Lease." The City Manager serves as Contract Administrator for this Lease on behalf of the City Council.

RECITALS

A. These recitals are a substantive portion of this Lease.

B. In February 2008, City solicited bids for a new solid waste recycling and processing agreement, and on October 20, 2008, City Council authorized the City Manager to enter into a contract with Lessee for services to begin in July 2009 (Refuse Contract).

C. Lessee desires to use a 0.9-acre non-park portion of the 1.9-acre City-owned property located at 2000 Geng Road for the purpose of housing its administrative offices and cart storage in relation to Lessee’s refuse collection and processing activities.

D. City and Lessee mutually desire to enter into this Lease to permit Lessee use of said property as described above.

E. This Lease is a companion document to the Refuse Contract.

Now, therefore, in consideration of these recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

LEASE PROVISIONS

1. PREMISES & FACILITIES.

1.1 Premises. City hereby leases to Lessee, certain real property located in the City of Palo Alto, County of Santa Clara, State of California, commonly known as a portion of the City-owned property located at 2000 Geng Road, Palo Alto and more particularly described in Exhibit A attached hereto and incorporated herein by reference (herein “Property” or “Premises”). The Property consists of approximately a 0.9-acre portion of the 1.9-acre parcel at 2000 Geng Road, Palo Alto, except for the Inventory of Fixtures set forth in Exhibit B attached hereto and incorporated herein by reference. Unless otherwise specifically provided,
provided, Lessee accepts the Property “as-is” on the date of delivery of this Lease.

1.2 Facilities to be furnished by City. City shall furnish the following facilities for Lessee’s use:

(a) One (1) 40’ x 42’ steel garage building on concrete slab with basic wiring.
(b) One (1) 24’ x 65’ steel office building on a concrete slab with basic wiring, plumbing, and interior partitions.
(c) One (1) 12’ x 40’ storage building on a concrete slab.
(d) One (1) 25’ x 30’ steel work shop building on concrete slab with 15’ x 15’ wash slab attached.
(e) Paved and fenced yard area as shown on map attached marked “Exhibit A.”
(f) One 20’ x 40’ locker and meeting room on concrete slab.

1.3 Facilities to be Furnished by Lessee. Lessee shall supply all operating equipment, furniture, fixtures and related items necessary to the conduct of its business, maintenance of its equipment, and property upkeep of the area and buildings. Such facilities may be removed by Lessee upon termination of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall be for eight (8) years, commencing on July 1, 2009 ("Delivery Date"), ending on June 30, 2017, and will coincide with the term of the Refuse Contract. Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the Property in as good condition as it is at the date of commencement of this lease. The Parties expect reasonable wear and tear.

2.2 Option to Extend. Provided Lessee is not in default hereunder, either at the time of exercise or at the time the extended Term commences, Lessee shall have the option to extend the initial Term of this Lease to coincide with the term of any renewal or extension of the Refuse Contract (“Option Period”) with the same terms, covenants and conditions provided herein, except that upon such renewal the Base Rent due hereunder shall be adjusted pursuant to Paragraph 3.2. Lessee shall exercise its option by giving City written notice (“Option Notice”) at least sixty (60) days but not more than one hundred twenty (120) days prior to the expiration of the initial Term of this Lease.

2.3 Early Termination by City. This Lease shall terminate upon the termination of the Refuse Contract for any reason. If City in its sole discretion determines that it requires the Property for any public purpose, City may terminate this Lease upon one hundred twenty (120) days written notice.
3. **RENT.**

3.1 **Base Rent.** The rent to be paid by Lessee shall be in the amount of $12,150 per month without deduction or offset. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at a place (or places) as may be designated in writing from time to time by City.

3.2 **Annual Increase for years 2 through 5.** Commencing on July 1, 2010, during the first five years of the Term of this Lease, the Base Rent shall be increased annually in proportion to the change in the Consumer Price Index (CPI) beginning on the anniversary date of this Lease and effective each year thereafter throughout the Term. The sum shall be adjusted annually resulting in a compound rate of increase.

3.3 **Adjusted Base Rent:** Effective July 1, 2014, the base rent shall be adjusted to the current market value of the Property as determined by an appraiser to be selected by the City, but in no case shall the base rent be less than the base rent at the time of the appraisal. Thereafter, commencing on July 1, 2015 the Base Rent shall be increased annually in proportion to the change in the CPI beginning on the anniversary date of this Lease and effective each year thereafter throughout the Term. The sum shall be adjusted annually resulting in a compound rate of increase.

3.4 **CPI Adjustment.** Lease payments are to be adjusted at the beginning of each year based on the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics. As of June, 2008, the CPI-U was 225.181. The index for the quarter ending just prior to this lease date is established as the base index. Percentage and adjustments to the original lease payments shall be as indicated by percentage changes in said index.

3.5 **Late Charge.** Lessee acknowledges late payment of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to City an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee’s default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

3.6 **Rent Payment Procedures.** Lessee’s obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Rent payments shall be delivered to City’s Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated
place of payment may be changed at any time by City upon ten (10) days’ written notice to Lessee. Lessee specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.7 Partial Payment. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee’s obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

4. SECURITY DEPOSIT.

4.1 Security Deposit. The performance bond posted in connection with the related collection and recycling agreement referenced in Recital B shall cover and insure performance of Lessee’s obligations set forth in this Lease and no further Security Deposit shall be required by Lessee.

5. USE OF PROPERTY.

5.1 Required Uses. Throughout the term of this Lease, Lessee shall use the Premises for the following uses, services and activities for Lessor’s refuse collection business solely in connection with the Refuse Contract (“Required Uses”):

(a) Operations and administrative offices;
(b) Customer service

5.2 Permitted Uses. In addition to the Required Uses, Lessee may also use the Premises for the following uses: minimal Cart, bin and drop box storage and other related uses to be approved in writing by the Director of Public Works. Premises may not be used for any other purposes without City’s prior written consent, which consent may be withheld in the sole and absolute discretion of the City.

5.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property.
property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. Lessee will not use Property in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Property; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Property. Lessee, at its expense, shall keep the Property in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee’s intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

6. **HAZARDOUS MATERIALS.**

6.1. **Compliance with Laws.** Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees.

6.2 **Termination of Lease.** City shall have the right to terminate the Lease in City’s sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee’s action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

6.3 **Assignment and Subletting.** It shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party’s action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.
6.4 **Hazardous Materials Defined.** The term “Hazardous Material(s)” shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances,” “hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “hazardous air pollutant,” “toxic pollutant” or “solid waste” in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq., (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) asbestos, (iii) polychlorinated biphenyls; (iv) flammable explosives; (v) urea formaldehyde; and, (vi) radioactive materials and waste.

6.5 **Hazardous Materials Indemnity.** Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys’ fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Lessee, Lessee’s agents, employees, licensees, or invitees or at Lessee’s direction, of
Hazardous Material, or by Lessee’s failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sub lessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee’s indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. Notwithstanding the above, nothing in this section shall be construed to require Lessee to indemnify the City from Claims arising from the negligence or willful misconduct of City or any claims relating to Hazardous Materials deposited on site before the effective date of this Lease.

6.6 City’s Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil.

7. UTILITIES AND OPERATING EXPENSES.

Lessee shall fully and promptly pay for all expenses associated with the operation of the Property, including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, landscape maintenance, and other public utilities.

8. TAXES.

8.1 Real Property Taxes Defined. The term “real property taxes” as used herein shall mean all taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the Improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, Improvements public utilities or energy within the Premises. The term “real property taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys’ fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by City, on the basis of the assessor’s worksheets or other
available information, shall be included within the meaning of the term “real property taxes.”

8.2 Payment of Real Property Taxes. The Premises are exempt from real property taxes. Lessee shall not be responsible for any real property taxes on the property.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Property, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Property. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

9. MAINTENANCE.

9.1 City and Lessee Responsibilities. Lessee at Lessee’s expense, shall perform all maintenance and repairs, including all painting, and all maintenance of landscaped areas necessary to keep the Premises and all improvements thereto in first-class order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition to the reasonable satisfaction of City, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee’s expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Lease.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City’s expense or to terminate this Lease because of City’s failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City Manager in the City Manager’s sole discretion) after demand by the City, City shall have the right, but not the obligation, to make the repairs at Lessee’s expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or
performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

10. CONSTRUCTION BY LESSEE.

10.1 Minimum Construction. Lessee may in an efficient and workmanlike manner, cause to be designed, constructed, and installed within the Premises, at no cost to City, appropriate improvements to adequately accommodate the services and uses required and permitted by this Lease. Lessee shall prepare the plans and specifications for approval by the City's Building Division and Planning & Community Development Divisions as required by the Palo Alto Municipal Code. Lessee shall obtain approval of the plans and specifications and shall cause the construction to be completed and the Premises to be open for business by July 1, 2009.

10.2 Construction Standards. All design and construction performed by or on behalf of Lessee shall conform to the approved plans, specifications, construction and architectural standards of the City. Once the work is begun, Lessee shall with reasonable diligence prosecute all construction to completion. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by City and shall comply with all applicable governmental permits, laws, ordinances and regulations, and shall meet all other requirements contained in this Lease.

10.3 Cost of Improvements. Lessee shall pay all costs for construction done or caused to be done by Lessee on the Premises as permitted or required by this Lease. Lessee shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Lessee. Promptly after completion of construction, Lessee shall provide to the City Manager a statement of the reasonable and actual costs of construction for the initial improvements, which statement shall be certified as to accuracy and signed by Lessee under penalty of perjury.

10.4 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of City, at its election, upon expiration or earlier termination of this lease and upon City's election, shall remain upon the Premises upon termination of this Lease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. Lessee may remove such fixtures and furnishings upon termination of this Lease if Lessee is not then in default under this Lease, provided that Lessee shall repair to the satisfaction of City any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Premises upon termination of this Lease.

10.5 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify
City against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims.

10.6 Assurance of Completion. Prior to commencement of any construction or alteration expected to cost more than $25,000, Lessee shall furnish the City Manager evidence that assures City that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost. Evidence of such assurance shall take one of the forms set out below and shall guarantee Lessee’s full and faithful performance of all of the terms, covenants, and conditions of this Lease:

A. Completion Bond;
B. Performance, labor and material bonds, supplied by Lessee’s contractor or contractors, provided the bonds are issued jointly to Lessee and City;
C. Irrevocable letter of credit from a financial institution; or
D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by Lessee of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease.

10.7 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the City Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

10.8 As Built Plans. Lessee shall provide the City Manager with a complete set of reproducible “as built plans” reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than $25,000.

11. ALTERATIONS BY LESSEE

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the City Manager.

12. HOLD HARMLESS/INDEMNIFICATION.
12.1 **Indemnification.** To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give City immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive shall survive the expiration of or early termination of the Lease Term.

12.2 **Waiver of Claims.** Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the City Property, from any cause whatsoever, except to the extent caused by City's negligence or willful misconduct.

13. **DAMAGE, DESTRUCTION AND TERMINATION.**

13.1. **Total Destruction.** In the event the Premises or a substantial portion thereof are destroyed by any cause that renders the Premises unfit for the purposes designated in Section 5 (REQUIRED USES OF THE PREMISES), and if the Premises are so badly damaged that they cannot be repaired within ninety (90) days from the date of such damage, either party may terminate this Lease by giving to the other party written notice within ten (10) days of the occurrence of such damage.

13.2. **Insured Partial Destruction.** If the Premises are partially destroyed by any cause insurable under fire insurance with a standard extended coverage casualty endorsement and the destroyed portion can be rebuilt or repaired within 90 days from the date of destruction, City shall repair the damage or destruction with reasonable diligence. In such event, this Lease shall remain in full force and effect; however, until the destroyed Premises are repaired, rental (if any) paid by Lessee to City shall be reduced by such destruction. However there shall be no rent abatement or offset should the damage or destruction be caused by Lessee, its employees, agents or contractors.

13.3. **Non-Insured Partial Destruction.** If the Premises are partially destroyed by any cause not insurable by fire insurance with an extended coverage casualty endorsement but the Premises can still be used for the purposes designated in Section 5 (REQUIRED USES OF THE PREMISES), TENANT may, at its option, terminate this Lease unless City commences rebuilding or repair of the destroyed portion of the Premises within 90 days from the date of destruction. However, there shall be no rent abatement or offset should the damage or destruction be caused by Lessee, its employees, agents or contractors.

Such termination by Lessee shall be accomplished by giving City written notice of
termination not sooner than 90 days nor later than 100 days after the occurrence of such
damage or destruction. This Lease shall terminate on the date such notice of termination
is given to City. If City accomplishes such repair or if Lessee fails to exercise option to
terminate, this Lease shall remain in full force and effect, however, until the destroyed
Premises are repaired; rental paid by Lessee to City (if any) shall be reduced in the same
proportion that Lessee’s square footage leased is reduced by such destruction. However
there shall be no rent abatement or offset should the damage or destruction be caused by
Lessee, its employees, agents or contractors.

Glass breakage shall not be deemed a partial destruction within the meaning of this
clause.

14. **SIGNS.**

Lessee shall not place, construct, maintain, or allow any signs upon the Premises without prior
written consent of City.

15. **ASSIGNMENT AND SUBLETTING.**

15.1 **City’s Consent Required.** Lessee shall not assign this lease, nor any interest therein, and
shall not sublet or encumber the Property or any part thereof, nor any right or privilege
appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or
any portion thereof, without the prior written consent of City. This Lease shall be binding
upon any permitted assignee or successor of Lessee. Consent by City to one assignment,
subletting, occupation or use by another person shall not be deemed to be consent to any
subsequent assignment, subletting, occupation or use by another person. No assignment,
subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee’s
obligations under this Lease. Lessee may have the Property delivered to a subsidiary
company of Lessee, but such arrangement shall in no way alter Lessee’s responsibilities
hereunder with respect to the Property. Any assignment, subletting, encumbrances,
occupation, or use contrary to the provisions of this Lease shall be void and shall constitute
breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.

15.2 **No Release of Lessee.** No subletting or assignment as approved by City shall release
Lessee of Lessee’s obligation or alter the primary liability of Lessee to pay the rent and to
perform all other obligations by Lessee hereunder. The acceptance of rent by City from any
other person shall not be deemed to be a waiver by City of any provision hereof. In the event
of default by any assignee of Lessee or any successor of Lessee in the performance of any of
the terms hereof, City may proceed directly against Lessee without the necessity of
exhausting remedies against said assignee.

16. **DEFAULTS; REMEDIES.**

16.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a
material default, or breach of this Lease, by Lessee:
16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee; provided, however, that if the nature of Lessee’s default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee’s becoming a “debtor” as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee’s assets located at or on the Premises or of Lessee’s interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee’s assets located at or on the Premises or of Lessee’s interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

16.2.1 Terminate Lessee’s right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee’s default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys’ fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably
avoided.

16.2.2 Maintain Lessee’s right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City’s rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. City shall have all remedies provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such property.

17. **INTEREST ON PAST-DUE OBLIGATIONS.**

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. **HOLDING OVER.**

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of two (2) times the Base Rent in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

19. **CITY’S ACCESS.**

19.1 Access for Inspection. City and City’s agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as City may deem necessary. City may at any time place on or about the Premises any ordinary “For Sale” signs and City may at any time during the last one hundred twenty (120) days of the
term hereof place on or about the Premises any ordinary “For Lease” signs, all without rebate of rent or liability to Lessee.

19.2 **Security Measures.** City shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Premises or the Improvements. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City’s prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

19.3 **New Locks.** Lessee may install new locks on all exterior doors. Lessee shall advise City of such action and shall provide City with keys to said locks. Lessee shall also deliver to City the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of City.

20. **INSURANCE.**

Lessee’s responsibility for the Property begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee’s employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit C.

21. **RESERVATION OF AVIGATIONAL EASEMENT.**

City hereby reserves for the use and benefits of the public, a right of avigation over the Premises for the passage of aircraft landing at, taking off, or operating from the adjacent airport operated by the County of Santa Clara. Lessee releases the City from all liability for noise, vibration, and any other related nuisance.

22. **EMINENT DOMAIN.**

22.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

22.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of
the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in proportion to the diminution in value of the Premises.

C. Lessee shall provide City with written notice advising City of Lessee’s choice within thirty (30) days of possession of the part condemned by the condemning public entity.

22.3 City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and (b) any amount specifically designated as a moving or relocation allowance or as compensation for Lessee’s personal property. Lessee shall have no claim against Landlord for the value of any unexpired term of this Lease.

23. **POST-ACQUISITION TENANCY.**

Lessee hereby acknowledges that Lessee was not an occupant of the Premises at the time the Premises were acquired by City. Lessee further understands and agrees that as a post-acquisition Lessee, Lessee is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

24. **DISPUTE RESOLUTION.**

24.1 Unless otherwise mutually agreed to, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

24.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.
24.3 The costs of mediation shall be borne by the Parties equally.

24.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

25. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.

No official or employee of City shall be personally liable for any default or liability under this agreement.

26. NON-DISCRIMINATION.

Lessee agrees that in the performance of this Lease, it shall not discriminate against any employee or applicant for employment because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee agrees to meet all requirements of Palo Alto Municipal Code Section 2.30.510 pertaining to nondiscrimination in employment.

27. INDEPENDENT CONTRACTOR.

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

28. CONFLICT OF INTEREST.

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to City. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

29. MEMORANDUM OF LEASE.

Following execution of this Lease, either party, at its sole expense, shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

30. ESTOPPEL CERTIFICATE.
Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee’s knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

31. **LIENS.**

Lessee agrees at its sole cost and expense to keep the Property free and clear of any and all claims, levies, liens, encumbrances or attachments.

32. **VACATING.**

Upon termination of the tenancy, Lessee shall completely vacate the Property, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Property to verify the condition of the Property and its contents.

33. **ABANDONMENT.**

Lessee's absence from the Property for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Property. Such abandonment will be deemed cause for immediate termination without notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

34. **NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Palo Alto  
Attention: Public Works Director  
250 Hamilton Avenue  
Palo Alto, CA  94301

And to Lessee addressed as follows:

Name:  GreenWaste of Palo Alto  
Address:  1500 Berger Drive  
San Jose, CA  95112
Notices may be served upon either party in person, by first class mail, or by certified mail whether or not said mailing is accepted by party. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

35. **TIME.**

Time shall be of the essence in this Lease.

36. **AMENDMENTS.**

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

37. **SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

38. **CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

39. **SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment of any and all such subleases or subtenancies.

40. **INTEGRATED DOCUMENT.**

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

41. **WAIVER.**

Waiver by City of one or more conditions of performance or any breach of a condition under this
Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

42. **INTERPRETATIONS.**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

43. **SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

44. **GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

45. **VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

46. **COMPLIANCE WITH LAWS.**

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

47. **BROKERS.**

Each party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

48. **ATTACHMENTS TO LEASE.**
The following exhibits are attached to and made a part of this Agreement:

“A” – Description of Subject Property
"B" – Inventory of Fixtures
“C” – Standard Insurance Requirements
IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

CITY OF PALO ALTO

By: __________________________
    City Manager

ATTEST:

________________________________
City Clerk

APPROVED AS TO FORM:

By: __________________________
    Senior Asst. City Attorney

APPROVED:

________________________________
Director of Administrative Services

APPROVED:

________________________________
Director of Public Works

TENANT:

GREENWASTE OF PALO ALTO,
a California joint venture

By: Greenwaste Recovery, Inc.,
a California corporation

By: __________________________
    Name: Richard A. Cristina
    Title: President

By: __________________________
    Name: Jesse Weigel
    Title: Secretary

By: Zanker Road Resource Management,
    Ltd., a California limited partnership

By: Zanker Road Resource Recovery,
    Inc., a California corporation, its
    General Partner

By: __________________________
    Name: Richard A. Cristina
    Title: President

By: __________________________
    Name: Murray B. Hall
    Title: Secretary
LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
GREEN WASTE OF PALO ALTO

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

All that certain parcel of land situate in the City of Palo Alto, county of Santa Clara, State of California, more particularly described as follows:

BEGINNING at a found 3/4" iron pipe at the easterly terminus of the easterly prolongation of the northerly line of that certain 5.9998 Acre parcel as shown on the Record of Survey filed on December 18, 1959 in Book 115 of Maps at page 4, Santa Clara County records; thence North 47° 54' 00" West, 28.80 feet to the TRUE POINT OF BEGINNING; thence North 79° 54' 00" West, 145.39 feet; thence North 17° 24' 43" West, 283.86 feet; thence North 72° 35' 00" East, 113.84 feet; thence South 22° 57' 00" East, 184.25 feet; thence South 16° 29' 54" East, 167.66 feet to the TRUE POINT OF BEGINNING.

Lease contains an area of 40,018 square feet (0.919 Ac.), more or less.

Lease area is shown on attached plat Exhibit B and made a part hereof.

END OF DESCRIPTION

This description is based upon a field survey of the existing lease area for A.P. No. 8-2-1 dated August 26, 1983.

APN: 008-02-032
Facilities to be furnished by City. City shall furnish the following facilities for Lessee’s use:

(a) One (1) 40’ x 42’ steel garage building on concrete slab with basic wiring.

(b) One (1) 24’ x 65’ steel office building on a concrete slab with basic wiring, plumbing, and interior partitions.

(c) One (1) 12’ x 40’ storage building on a concrete slab.

(d) One (1) 25’ x 30’ steel work shop building on concrete slab with 15’ x 15’ wash slab attached.

(e) Paved and fenced yard area as shown on map attached marked “Exhibit A.”

(f) One 20’ x 40’ locker and meeting room on concrete slab.
LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
GREEN WASTE OF PALO ALTO

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
4) Property insurance against all risks of loss to any tenant improvements or betterments.

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<table>
<thead>
<tr>
<th>POLICY</th>
<th>MINIMUM LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Commercial General Liability</td>
<td>$1,000,000 per each occurrence for bodily injury, personal injury and property damage</td>
</tr>
<tr>
<td>(2) Automobile Liability Including Owned, Hired and Non-Owned Automobiles</td>
<td>$1,000,000 Combined Single Limit</td>
</tr>
</tbody>
</table>
(3) Workers’ Compensation
Employers Liability

Statutory
$1,000,000 per accident for bodily injury or disease

(4) Lessee’s Property Insurance

Lessee shall procure and maintain property insurance coverage for:
(a) all office furniture, trade fixture, office equipment, merchandise,
and all other items of Lessee’s property in, on, at, or about the
premises and the building, include property installed by, for,
or at the expense of Lessee;
(b) all other improvements, betterments, alterations, and additions
to the premises.

Lessee’s property insurance must fulfill the following requirements:
(a) it must be written on the broadest available “all risk” policy form or an
equivalent form acceptable City of Palo Alto, including earthquake sprinkler
leakage.
(b) for no less than ninety percent (90%) of the full
replacement cost (new without deduction for depreciation)
of the covered items and property; and
(c) the amounts of coverage must meet any coinsurance
requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the
option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured
retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall
procure a bond guaranteeing payment of losses and related investigations, claim administration and
defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either
   party, reduced in coverage or in limits except after thirty (30) days' prior written
   notice by certified mail, return receipt requested, has been given to the City.

2. Include a waiver of all rights of subrogation against the City and the members of the
   City Council and elective or appointive officers or employees, and each party shall
   indemnify the other against any loss or expense including reasonable attorney fees,
   resulting from the failure to obtain such waiver.

3. Name the City of Palo Alto as a loss payee on the property policy.
4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

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

8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.