

COMMERCIAL GROUND LEASE

START DATE AND PARTIES

THIS COMMERCIAL GROUND LEASE (“Lease”) is made as of September 1, 2021 by and between **THE CITY OF TACOMA**, a first class municipal corporation of the State of Washington (“**City/Landlord**”), and **PIERCE CONSERVATION DISTRICT** (“**Tenant**”).

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

RECITALS

- A. The purpose of this Lease is to set forth the parties’ agreement to develop, implement, and assess local agriculture education programming and operations (“**Project**”) by using public lands for urban agriculture.
- B. The City of Tacoma’s Environmental Action Plan (Resolution 39427, 2016) directs the City to “[s]upport urban agriculture and clear legal hurdles so [community members] can sell produce grown in the city.” The purpose of the Environmental Action Plan (EAP) is to operationalize elements of the Tacoma 2025 Strategic Plan (Resolution 39016, 2015) and One Tacoma Comprehensive Plan (2015), the latter which includes policies to support access to healthy foods (DD-10), farmers and neighborhood markets (DD-10.3), and opportunities to grow food for personal consumption, donation, sales, and educational purposes (DD-10.4). Consistent with these plans’ overarching guidance, the EAP provides functional strategies and implementable actions to support public health, employment, and stewardship of the natural and built environment, among other strategic goals.
- C. The City of Tacoma is contracting with Pierce Conservation District, defined in statute as a public body corporate and politic, meaning it is a governmental subdivision of Washington State and a legal entity. Statute expressly authorizes conservation districts, as a type of special purpose district, to conserve local natural resources. Conservation districts are non-regulatory and do not levy taxes or issue bonds. Pierce Conservation District helps people in Pierce County implement best practices to conserve land, air, water, vegetation, forests, wild rivers, wilderness, fish, wildlife, open space, and related natural resources that are basic assets of the state and necessary to protect and promote the health, safety, and general welfare of its people. The City is contracting with Pierce Conservation District to deliver educational programming and technical support in Tacoma to increase cultivation, access to, and consumption of local produce by using public lands.
- D. The City owns land identified as Pierce County Parcel Numbers 0220132050 (with a situs address of 4326 South 36th ST, Tacoma WA 98409) and 0220132051 (with no current situs address)(collectively “**Properties**”).The Properties are located adjacent to the City’s landfill and transfer centers. The entirety of Parcel 022132050 is vacant, while portions of Parcel 0220132051 are currently being utilized as stormwater retention pond sites. Both parcels were acquired for the development of stormwater retention facilities. However, only portions of Parcel 0220132051 are currently being used for a stormwater retention pond and Parcel 0220132050 is not being used at this time. The City intends to fully utilize both parcels in the future, however, until the City finds it necessary to development the Properties as such, in the interim, the entirety of Parcel 0220132050 and portions of Parcel 0220132051 are suitable for temporary redevelopment into an urban agriculture site. (Refer to Exhibit A for general description of Properties and Leased Premises).

- E. The Tenant intends to establish user agreements for any site users. In any event, Tenant shall be ultimately responsible for any and all costs associated with the Project, including but not limited to permitting, site prep, utilities, clean up, and maintenance of the Leased Premises.
- F. The parties acknowledge that there may be permitting and land use approvals necessary for the Project, including but not limited to, conditional use permits, and that any permit conditions shall be complied with in addition to the terms and conditions of this lease.
- G. The parties agree that it is in the best interest of both organizations and their respective constituents to cooperate in order to facilitate small-scale agriculture within the jurisdictional limits of the City of Tacoma to provide many benefits to both parties and to the public by locating the Project on the Properties, including, but not limited to:
 - 1. Creating a low impact use for an underused parcel of publicly owned property;
 - 2. Providing lease income to the City for a currently underused vacant parcel of publicly owned property;
 - 3. Providing maintenance cost reductions to the City by having the Premises maintained by Tenant, and by their presence, discouraging or deterring illegal dumping and other related nuisance-related calls for service in the neighborhood;
 - 4. Enhancing the appearance of the property;
 - 5. Facilitating affordable access to land, infrastructure, and equipment for the purpose of aspiring farmers to develop skills and launch farm businesses;
 - 6. Educating and providing technical support for aspiring farmers in cultivation and business operations;
 - 7. Supporting minority- and women-owned business development;
 - 8. Localizing food sources and using sustainable cultivation practices, thereby decreasing the impact on natural resources from consumption;
 - 9. Increasing food security and improving nutritional equity by delivering 10% of the agriculture operations' fresh, healthy produce at no cost to the poor or infirm;
 - 10. Demonstrating and providing community educational opportunities and site tours related to sustainable cultivation, irrigation, composting, and related practices;
 - 11. Providing lessons to City staff about potential improvements to Tacoma Municipal Code and City of Tacoma programs, including equity-focused food services.

SECTION 1 – BASIC TERMS

1. **Lease Data; Exhibits.** The following definitions apply, except as otherwise specifically modified herein:

1.1 Leased Premises. The entirety of the real property identified as Pierce County Parcel Numbers 0220132050 (with a situs address of 4326 South 36th ST, Tacoma WA 98409) comprising approximately 9,100 square feet (0.21 acres +/-) and only that portion of Parcel Number 0220132051 (with no current situs address) directly abutting and surrounding Parcel Number 022132050 comprising approximately 12,200 square feet total (0.28 acres +/-), the general limits of which are further shown on the attached Exhibit A. The agreed rentable area of the Leased Premises consists of approximately 21,300 square feet (0.49 acres +/-).

1.2 Commencement Date: September 1, 2021.

1.3 Primary Term / Extension Term / Termination. The Primary Term of this Lease shall end December 31, 2024, with an option to extend for two (2) additional one (1) year Extension Terms. (See Section 2). Tenant may terminate this Lease at any time and for any reason upon ninety (90) days prior written notice to Landlord, at which time the Tenant will return the site to the conditions set forth in Section 12.1 below within 120 days of the end date of the Lease.

1.4 Base Rent. Tenant shall pay annually Base Rent in the amount of **One Hundred Fifty One Dollars and 90/100 (\$151.90)**, in accordance with the United States Department of Agriculture's rate for annual cash rent for irrigated cropland in Pierce County and Section . The Base Rent will be adjusted annually as set forth in Section 3 below.

1.5 Notice Addresses.

Landlord:

The City of Tacoma
Department of Public Works
747 Market Street, Room 737
Tacoma, Washington 98402
Attn: Real Property Services

With a Copy to:

The City of Tacoma
Solid Waste Utility
3510 S Mullen St
Tacoma, Washington 98409
Attn: Shane Pettit

The City of Tacoma
Office of Environmental Policy and Sustainability
326 East D Street
Tacoma, Washington 98421
Attn: Patrick Babbitt

Tenant:

Pierce Conservation District
P.O. Box 1057
308 W. Stewart Avenue
Puyallup, WA 98371
Attn: Harvest Pierce County

With a Copy to:

Erica Hernandez (Urban Farmer)
3560 South Tyler Street
Tacoma, WA 98409

1.6 Use. Tenant shall use the Leased Premises for grounds maintenance and horticultural operations only, which will consist of clearing, added soil, garden beds, irrigation, fencing, a small shed for tool storage, a produce washing station consisting of a pop-up tent and removable tables, and a plastic greenhouse. The Leased Premises shall be used for growing edible produce only (fruit and vegetables) and shall not be used for marijuana growing, landscape plants, or livestock. The Tenant shall use the Leased Premises for edible produce processing, distribution, and sales. The Tenant shall use the Leased Premises in a manner that allows non-emergency and emergency access to the Landlord, as set forth in Section 11. To ensure Landlord access, the Tenant will help maintain shared access gates and paths upon mutually agreed upon locations that provide both Tenant and Landlord access to the Leased Premises and adjacent parcels. The Tenant shall take measures to reduce (or eliminate) invasive plants on site. All presently proposed improvements are depicted on the site plan attached as Exhibit B.

1.7 Hours of Operation. Tenant will have personnel and/or permittees at the Leased Premises primarily between the hours of 6 AM to 9 PM depending on seasonal activities, but on occasion Tenant's personnel may need access to the Leased Premises outside of those hours. Landlord will provide an access or gate key to Tenant for after-hours entry to any fence or gate constructed by Landlord that surrounds the leased area.

1.8 Biennial Reporting. Tenant will provide a report every six months to document operational costs, the number of community educational and demonstration events or tours, the pounds of food donated to the poor or infirm, and lessons learned.

SECTION 2 – TERM

Tenant shall have the option to extend the Term of this Lease for two (2) additional one (1) year terms (the "Extension Term"), on the same terms and conditions as contained in this Lease. Tenant may terminate this Lease at any time and for any reason upon ninety (90) days prior written notice to Landlord, at which time the Tenant will return the site to the conditions set forth in Section 12.1 within 120 days of the end date of the Lease. To exercise the extension option, Tenant shall give Landlord written notice ("Tenant's Extension Notice") at least ninety (90) days, but no sooner than one-hundred and eighty (180) days, prior to the Termination Date ("Tenant's Extension Deadline"). Tenant's Extension Notice shall be effective to extend the Term of this Lease without further documentation. In addition, and notwithstanding any provision of this Lease or any case law to the contrary, Tenant specifically acknowledges and agrees that any grace period for exercise of the option to extend shall not exceed thirty (30) days. Notwithstanding the foregoing Extension Terms, Landlord shall have the right to terminate this Lease during any Extension Term (but not during the Primary Term) upon not less than ninety (90) days advance written notice.

SECTION 3 - RENT

3.1 Base Rent. Commencing on the Commencement Date, and annually thereafter for the term of the Lease, Tenant shall pay to Landlord in care of the City Finance Director at 747 Market Street, Tacoma, Washington 98402, without notice, set-off or deduction whatsoever, the Annual Base Rent amounts identified in Section 1.4, and as adjusted as provided herein. Annual Base Rent, as adjusted, shall be payable in advance no later than the 30th day following each annual anniversary date of the Commencement Date. Except in the event of holdover, upon termination or expiration of the Lease, rent for partial months paid in advance shall be prorated and refunded to the Tenant. On the first anniversary of the Commencement Date and on every

anniversary of such date thereafter (including the anniversary of the Commencement Date during any Additional Term), the Annual Base Rent will be adjusted upwards by two percent (2%) in line with approximate inflation (the Consumer Price Index) for fruits and vegetables measured by the United States Department of Agriculture. Any adjustment of Annual Base Rent will become effective immediately. In no event will the Annual Base Rent be less than the then current Annual Base Rent.

3.2 Additional Rent. All other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be deemed "**Additional Rent**" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and the cost thereof to Landlord shall also be Additional Rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all Additional Rent upon demand.

3.3 Late Charge; Interest. If Tenant fails to pay any amount due under this Lease within ten (10) days of the due date, a late charge equal to five percent (5%) of the unpaid amount shall be assessed and be immediately due and payable. In addition, beginning thirty (30) days after the due date, interest shall accrue on the delinquent amount at a per annum rate which is the lesser of the highest interest rate permitted by applicable law or twelve percent (12%) per annum.

SECTION 4 - CONDUCT OF BUSINESS

4.1 Use of Leased Premises. Tenant shall only use the Leased Premises for the purposes specified in Section 1.6. Tenant shall not use or permit the use of the Leased Premises for any other business or purpose, without the prior written consent of Landlord.

4.2 Appearance of Leased Premises. Tenant shall maintain the Leased Premises in a clean, orderly, and neat appearance, permitting no offensive odors or excessive noise to be emitted from the Leased Premises and neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers, which are removed at regular intervals. Provided, however, that Tenant shall not be responsible for any offensive odors created or caused by Landlord's landfill operations or the improvements constructed to remediate the landfill.

4.3 Unlawful Use. Tenant shall not use or permit the Leased Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, rule or regulation ("**Applicable Laws**") or in any manner that may create a nuisance. Tenant shall promptly comply, at its sole expense, with, and obtain all licenses and permits required by Applicable Laws and with the requirements of any board of fire underwriters or similar body, relating to or affecting the condition, use or occupancy of the Leased Premises or the business conducted thereon.

4.4 Hazardous Substances and Dangerous Waste

(a) "**Hazardous Substances and Dangerous Waste**" shall mean any matter (whether gaseous, liquid or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under Washington Administrative Code (WAC) 173-303, pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos containing materials. "Hazardous Substances and Wastes" shall include ordinary garden and plant related products (including without limitation, fertilizers, pesticides, fungicides) and cleaning and maintenance products which are used with due care and in strict compliance with WAC 173-303 and the instructions of the manufacturer of such products in the reasonable and prudent conduct of Tenant's business on the Leased Premises. Tenant shall cause to be kept on-site within the Leased Premises all Safety Data Sheets ("SDS"). SDSs are applicable to

any and all products kept and used on-site in its normal course of greenhouse operations and could be subject to review of Landlord.

(b) Tenant shall store, use, and dispose of any Hazardous Substances and Wastes used for ordinary gardening in compliance with WAC 173-303. With respect to any Hazardous Substances and Wastes stored, used, generated or disposed of from the Leased Premises, Tenant shall (i) promptly, timely and completely comply with all governmental requirements for recording and recordkeeping; (ii) submit to Landlord true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authority; (iii) within five (5) business days of Landlord's request, provide evidence satisfactory to Landlord that Tenant has complied with, and is in compliance with WAC 173-303, and (iv) comply with WAC 173-303 regarding the use, sale, transportation, generation, treatment and disposal of Hazardous Substances or Wastes. The Tenant shall also comply with all Applicable Laws and regulations regarding the use, sale, transportation, generation, treatment and disposal of ordinary garden and plant related products. Prior to the expiration and surrender of the Leased Premises by Tenant, Tenant shall remove any and all Hazardous Substances and Wastes, including ordinary garden and plant related products which Tenant, its employees, agents, contractors, permittees, and/or users have brought onto the Leased Premises after obtaining the prior written consent of Landlord. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents affiliates and employees harmless from and against all claims, costs, damages, judgments, penalties, fines, losses, liabilities and expenses, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations contained in this Section 4.4 which arise during the Lease Term as a result of such breach and any contamination that may result therefrom. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents, affiliates and employees harmless from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities, including attorneys' fees and costs, arising out of or in connection with removal, cleanup remediation and restoration work and materials necessary to return the Leased Premises and any other property of whatever nature to their condition existing immediately prior to the presence of Tenant's Hazardous Substances and Wastes, including ordinary garden and plant related products on or about the Leased Premises; provided that Landlord's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as the actions would not potentially have any material adverse, long-term or short-term effect on the Leased Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section 4.4 shall survive the expiration of this Lease.

(c) Landlord shall have the right in its sole discretion to conduct Phase 2 Environmental Site Assessment (ESA), utilizing a contractor of Landlord's choice at the end of the Lease Term, upon the earlier termination of this Lease, upon Tenant's default hereunder or if Landlord reasonably believes that Hazardous Substances or Wastes, including ordinary plant and garden related products are being improperly stored, used, sold, generated, released or disposed of from the Leased Premises in violation of the terms of this Section 4.4. Tenant shall be responsible for the cost of the Phase 2 ESA and any required remedial, restorative or removal work if the Phase 2 ESA discloses soils or groundwater contaminated with Hazardous Substances or Wastes products attributable solely to Tenant, its employees, agents, contractors, permittees or users permittees. Tenant's cleanup responsibility is strictly limited to the Hazardous Substances and Wastes that Tenant brought on to the Leased Premises and not any of the Hazardous Substances or Wastes that existed prior to the Commencement Date, nor any subsequent releases or migration. Failure of Landlord to conduct a Phase 2 ESA to detect conditions attributable to Tenant, its employees, agents, contractors, permittees or users, whether such audit is conducted or not, shall not operate as a release of Tenant of its liability as stated in this Lease or by operation of law. Tenant's obligations herein shall survive the expiration of this Lease.

4.5 Liens and Encumbrances. Tenant shall keep the Leased Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Leased Premises. If any lien is filed against the Leased Premises or adjacent or underlying property owned by Landlord as a result of the action or

inaction of Tenant, its employees, agents, contractors, permittees or users, Tenant shall upon demand provide Landlord with a bond in the amount required by law to remove the lien of record.

4.6 Signs. Without Landlord's written consent, Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs, lettering or other advertising matter of any nature or kind whatsoever within the Leased Premises without first obtaining a permit from the City. All signs installed by Tenant shall be removed by it at its sole expense, and it shall repair all damage resulting from such installation or removal, either by the end of the Lease term or the earlier termination of the Lease.

SECTION 5 - UTILITIES AND OTHER CHARGES

5.1 Utility Charges. Tenant shall be responsible, and pay prior to delinquency, for all charges for utilities or services used or consumed by Tenant, including the charges, if any, for installing meters for Tenant's use. Meter locations and installation methods shall be subject to Landlord's prior written approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established by law or regulation from time to time for the same. Landlord shall not be liable for an interruption of the supply of any such utilities to the Leased Premises.

5.2 Licenses and Taxes. Tenant shall pay when due all license, excise, business and occupation and other fees and taxes covering the business conducted on the Leased Premises and all personal property taxes levied with respect to all personal property located at the Leased Premises. If any governmental authority levies a tax or license fee on rents payable under this Lease or rents accruing from use of the Leased Premises or a tax or license fee in any form against Landlord or Tenant because of or measured by or based upon income derived from the leasing or rental thereof or a transaction privilege tax, such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord for the amount thereof upon demand. If any such amount is paid directly to the taxing authority by Landlord, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement.

5.3 Real Property Taxes. Tenant shall pay Landlord as Additional Rent, (a) all real property taxes, (b) surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Leased Premises arising solely as a consequence of this Lease, and (c) any taxes levied or assessed in lieu thereof, in whole or in part.

5.4 Leasehold Excise Tax. Tenant shall pay Landlord as Additional Rent, all leasehold excise tax (if required by RCW 82.29A in lieu of real property taxes). Leasehold excise tax is calculated by the State using a percentage multiplier of either the rent required hereunder or an imputed fair market rental value, and as a result, Tenant shall be responsible for any increases in leasehold excise tax, if applicable, that result from an increase in rent for the Leased Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Lease.

SECTION 6 - DEPOSIT

No Deposit shall be required.

SECTION 7 – CONDITION OF PREMISES; INITIAL IMPROVEMENTS AND ALTERATIONS

7.1 Condition of Leased Premises. Tenant acknowledges that the Leased Premises is adjacent to a landfill, recycling and transfer center and stormwater retention pond. Tenant has inspected or will inspect the Leased Premises, and ACCEPTS THE LEASED PREMISES IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY

REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY (collectively, the “Condition of the Leased Premises”).

7.2 Environmental Restrictions. The parties acknowledge the Leased Premises is subject to and the parties shall comply with all conditions, restrictions, and limitations now appearing of record including, but not limited to, those restrictions provided on title to the Leased Premises, all environmental and land use conditions contained in documents associated with the Consent Decree, including, but not limited to the Restrictive Covenant recorded on the Tacoma Landfill property, and the City’s Institutional Controls Plan for such property, as such may be amended from time to time and which Landlord has provided to Tenant (collectively the “Environmental Restrictions”), as well as zoning ordinances and local, county and state restrictions, conditions, laws, ordinances and rules. Landlord shall review the Tenant’s plans to assist the Tenant’s determination that the plans are in compliance with any and all Environmental Restrictions and assist in seeking approval from the applicable regulators. The City’s review is solely for the purpose of protecting the City’s interest in the Leased Premises and no approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Lease shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Lease or meets any particular standard, code or requirement, or is in conformance with approved design documents, and no liability shall attach with respect thereto.

SECTION 8 - INSURANCE AND INDEMNITY

8.1 Indemnification.

8.1.1 Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or Tenant’s licensee, assignee, permittee or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in or about the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Leased Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, agents, employees, permittees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence.

8.1.2 Landlord shall indemnify Tenant only to the extent of Landlord’s own negligence or that of its officers, agents, employees, guests or invitees.

8.1.3 TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 8 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

8.2 Insurance.

8.2.1 Coverage and Limits. At all times throughout the Lease term Tenant shall, at its own expense, procure and maintain comprehensive or commercial general liability insurance with broad form and stop gap (employer's liability) endorsements in minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for property damage, bodily injury, death, or loss and minimum limits of \$1,000,000 per individual and per occurrence for personal injuries and death, to indemnify both Landlord and Tenant against any such claims, demands, losses, damages, liabilities and expenses. Landlord shall have the right to periodically review the appropriateness of such limits in view of inflation, changing industry conditions and court decisions and to reasonably require an increase in such limits upon ninety (90) days prior written notice to Tenant.

8.2.2 Landlord shall be named as additional insureds and shall be furnished with a certificate and a copy of such policy or policies of insurance prior to the Commencement Date and thereafter upon Landlord's request therefor which shall bear an endorsement that the same shall not be canceled nor materially reduced in coverage or limits without thirty (30) days prior written notice to Landlord. If Tenant is a State of Washington or local government and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.

8.2.3 All insurance required under this Lease shall (a) be issued by insurance companies authorized to do business in the State of Washington and acceptable to Landlord; (b) be issued as a primary policy, or under the blanket policy, not contributing with and not in excess of coverage which Landlord may carry; (c) in the case of the liability policy, contain a contractual liability coverage endorsement covering Tenant's indemnification duty; and (d) have deductibles approved in writing by Landlord.

SECTION 9 - ASSIGNMENT AND SUBLETTING

9.1 Assignment or Sublease. Tenant shall not sublet or assign in whole or in part the Leased Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord, which consent will not be unreasonably withheld, except that Tenant may permit the use of space on the Leased Premises to individual persons who have been approved by Tenant to participate in the Project with the understanding and agreement that Tenant shall be responsible and liable for those persons and any guests or invitees thereof, and by the Landlord agreeing to such, it shall in no way be interpreted to mean that Tenant be released of any of its duties, obligations and responsibilities hereunder.

9.2 Assignment by Landlord. If Landlord sells or otherwise transfers the Leased Premises, or if Landlord assigns its interest in this Lease, and such purchaser, transferee or assignee assumes Landlord's obligations hereunder arising thereafter, Landlord shall thereupon be relieved of all liabilities hereunder arising thereafter, but this Lease shall otherwise remain in full force and effect.

SECTION 10 - DEFAULT OF TENANT

10.1 Defaults. Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term or condition of this Lease or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Leased Premises, and if such failure continues for or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion, elect to terminate this Lease and all of the rights of Tenant in or to the Leased Premises by giving Tenant ninety (90) days written notice of Landlord's intent to terminate.

If Landlord elects to terminate this Lease, Landlord may recover from Tenant as damages, the following:

(i) Unpaid rent accruing up to the date the Landlord takes possession of the Leased Premises or terminates the Lease; plus

(ii) Any other amount reasonably necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Leased Premises after such default (for a period not to exceed three (3) months), and (c) removal of Tenant's improvements to the extent Landlord did not consent to the improvements remaining after the Lease termination.

For purposes of this Section 10.1 (and elsewhere within this Lease where applicable), the terms "rent" and "rental" shall be deemed to be the annual Base Rent and all Additional Rent and other sums required to be paid by Tenant pursuant to the terms and conditions of this Lease.

In addition to the foregoing, in the event that Tenant defaults under any material term or condition of this Lease two or more times during any one (1) year period, regardless of whether Tenant satisfactorily cures such default within any time set forth herein, such instances of default shall be grounds for Landlord to terminate the lease.

10.2 Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed to waive, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 3.3 from the date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel, terminate or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

SECTION 11 - ACCESS BY LANDLORD

11.1 Right of Entry. Tenant agrees that its leasehold interest is subject to Landlord's right and obligation to maintain the adjacent stormwater facilities and that the Landlord shall have the right at all reasonable times to enter into and upon the Leased Premises for the purpose of maintaining, repairing, replacing, inspecting and monitoring the same. Landlord will conduct its activities to minimize disruption or damage to the Leased Premises.

11.2 Emergency Access. The Landlord owns and maintains emergency and non-emergency access to the Leased Premises. For non-emergency access, the Landlord must provide one (1) days' notice and minimize disruption of and damage to the activities where possible. The one (1) day notice shall be waived for access in response to the City of Tacoma Comprehensive Emergency Management Plan, SWM Emergency Response and Evacuation Plan, Consent Decree, Landfill Post-Closure, Solid Waste Umbrella Permit, National Pollutant Discharge and Elimination System (NPDES), or to meet other federal, state, or local requirements or emergencies. Landlord operates the Tacoma Landfill, adjacent to the Leased Premises, and has undertaken extensive environmental cleanup and remediation actions at the Tacoma Landfill site. Landlord is under continuing obligations for environmental cleanup, monitoring, and maintenance at the Tacoma Landfill site under the terms of a Consent Decree with the United States Environmental Protection Agency ("EPA"), and also is subject to regulation by the Washington State

Department of Ecology (“Ecology”) and the Tacoma-Pierce County Health Department, with respect to landfill post-closure care requirements, and City of Tacoma Recovery and Transfer Center operations.

SECTION 12 - SURRENDER OF PREMISES

12.1 Surrender of Leased Premises. At the expiration or termination of this Lease, Tenant shall remove all improvements from the Leased Premises at its sole expense and restore it to the same condition as on the Commencement Date and in compliance with all Environmental Restrictions.

12.2 Holding Over. If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, except for Base Rent which shall be increased by two percent (2%) in line with approximate inflation (the Consumer Price Index) for fruits and vegetables measured by the United States Department of Agriculture from the amount in effect during the last year of the term hereof and converted to monthly payments which tenancy may be terminated by either party, with or without cause, upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at one and one half (1.5) times the Base Rent payable during the last month of the term hereof, and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

SECTION 13 - MISCELLANEOUS

13.1 Notices. Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses set forth in Section 1.5 or to such other address as a party shall from time to time advise in writing. If mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

13.2 Successors or Assigns. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors and permitted assigns.

13.3 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

13.4 Recording. Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord.

13.5 Force Majeure. Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder or war.

13.6 Consent not to be unreasonably withheld. Unless otherwise provided, neither party shall unreasonably withhold its consent, permission, or approval for any act which may be required or desired by the other party under the provisions of this Lease.

13.7 Recycling. Tenant will take reasonable steps to prevent the unnecessary generation of refuse through the choice and use of products and packaging and other materials in its business that minimize solid waste or that are durable, reusable or recyclable. If so required by Landlord, Tenant will provide or obtain recycling containers for use in its business by its employees and customers and will recycle acceptable materials in the recycling containers and will otherwise participate in any recycling program established by Landlord or required by Applicable Laws.

13.8 Quiet Enjoyment. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Leased Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

13.9 Entire Agreement - Applicable Law – Legal Expenses. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Leased Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by, and construed in accordance with the laws of the state of Washington without recourse to any principle of Conflicts of Laws. Venue in any lawsuit brought under this Lease shall be in the Superior Court of Pierce County, Washington. If either party brings or maintains an action against the other related to this Lease, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred therein.

13.10 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Landlord and the Tenant. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Lease and the collateral instruments shall be exclusively enforceable by the Landlord and the Tenant, their successors, and assigns. No term or provision of this Lease is intended to be, or shall be, for the benefit of any person not a party hereto, and no such person shall have any right or cause of action hereunder, except as may be otherwise provided herein.

13.11 Execution by Landlord and Tenant. Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

TENANT

PIERCE CONSERVATION DISTRICT

By: _____
Selena Corwin, Acting Executive Director

Approved as to form:

LANDLORD

THE CITY OF TACOMA

Elizabeth Pauli, City Manager

Approved:

Michael P. Slevin III, P.E.
Environmental Services Director

Andy Cherullo
Finance Director

Approved as to form:

Saada Gegoux
Risk Manager

Deputy City Attorney

EXHIBIT A



Lease area comprising all of Parcel 0220132050 and portion of Parcel 0220132051. Lease area cont. approx. 0.49 acres total.

EXHIBIT B

The Site Plan identifies approximate site activities.

Site activities are depicted in Image 1 and include a wash station, tool shed, and greenhouse (yellow), vegetable growing areas (green), and access paths (blue). These activities fit within the Leased Premises, which includes Parcel 0220132050 and a portion of Parcel 0220132051. The Leased Premises is depicted with a red dashed line.

