

**WATERSHED NURSERY
LEASE AGREEMENT**

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AGREEMENT TO LEASE

THIS AGREEMENT TO LEASE (hereinafter referred to as the "Agreement") is made and entered into as of this 17th day of December, 2019, to be effective as herein below set forth, by and between the CITY OF RICHMOND, a municipal corporation and charter city (hereinafter called "Landlord") and THE WATERSHED NURSERY, a California corporation (hereinafter called "Tenant").

WHEREAS, Tenant engages in native plant nursery operations and desires to continue to lease from Landlord the Premises as defined in Section 1.1 for the purposes permitted in Section 9 of this Agreement; and

WHEREAS, Landlord and Tenant desire to enter into this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Premises.

1.1 Landlord is the owner of that certain real property located in the City of Richmond (hereinafter sometimes referred to as the "City"), County of Contra Costa, State of California and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Premises").

1.2 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the purposes permitted in Section 9 of this Agreement

Section 2. Term of Agreement.

2.1 Initial Term.

The effective date of this Agreement shall be December 17, 2019 (hereinafter called "Effective Date"). The Term of this Agreement shall be for ten (10) years commencing upon the Effective Date and continuing through December 18, 2029, (hereinafter called the "Term") at which time this Agreement shall automatically terminate unless Tenant exercises its two (2) successive one (1) year option periods as provided for in Section 2.2 of this Agreement

2.2 Option Term.

Landlord hereby grants to Tenant the option to extend the term of this Agreement for two (2) additional one (1) year periods commencing when the

prior term expires upon each and all of the following terms and conditions (such periods are referred to herein as the "Extended Term"):

2.2.1 In order to exercise an option to extend, Tenant must give written notice of such election to Landlord and Landlord must receive the same at least thirty (30) days but not more than ninety (90) days prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options may only be exercised consecutively.

2.2.2 Base Rent for any Extended Term shall be subject to an annual adjustment as provided in Section 3.2 of this Agreement.

2.2.3 Except for the provisions of this Agreement granting options to extend the Term, all of the terms and conditions of this Agreement, except where specifically modified by this Section 2.2 shall apply.

2.2.4 All renewal options granted pursuant to this Section 2.2 shall be personal to Tenant.

The exercise of this option term is subject to the condition that Tenant is not in default under the terms of this Agreement. Notwithstanding the provisions of this Section 2.2 otherwise, Landlord shall have the right to terminate Tenant's leasing of the Premises (or any portion thereof) during any Extended Term upon ninety (90) days written notice to Tenant, with or without cause, for any reason.

2.3 *Reserved Easements.*

Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements (including easements for construction, maintenance, repair, replacement and reconstruction of such utility easements) over, under, through, across or on the Premises, provided Landlord shall use reasonable efforts to provide that such work occurring ON any easement is located such that it will not unreasonably interfere with Tenant's use and enjoyment of the Premises. Tenant shall not be obligated to maintain or repair easement facilities unless the need for

repair is caused by Tenant's negligence or other wrongful conduct. Tenant shall be given reasonable notice before commencement of any work on the Premises. Work occurring shall, to the extent reasonably practicable, not result in the closure of Tenant's business on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord to at least the condition in existence prior to the work referred to in this Section, at its expense, if not so repaired by the party installing and maintaining the utility lines.

Section 3. Rental Payments.

3.1 Base Rent.

During the Term Tenant shall pay to Landlord as monthly rental, without deduction, setoff, prior notice or demand, the sum of **Four Hundred Eleven Dollars (\$410.00)** on or before the fifth (5th) day of each month, commencing on the Effective Date, and continuing during the Term or any Extended Term. The monthly rent for the first month or portion of it (as provided in Section 3.7 below) shall be paid on the Effective Date.

3.2 Additional Rent.

In addition to paying Base Rent specified in Section 3.1 of this Agreement, Tenant shall pay as additional rent Tenant's Share (as defined in Section 3.3.6) of the Allocable Operating Expenses (as defined in Section 3.3.1). The Allocable Operating Expenses, together with any and all other amounts, other than Base Rent, payable by Tenant to Landlord pursuant to the terms of this Lease, are sometimes collectively referred to in this Lease as "Additional Rent." Base Rent and Additional Rent are collectively referred to in this Agreement as the "Rent." Without limitation on other obligations of Tenant which shall survive the expiration of this Agreement, the obligations of Tenant to pay the Additional Rent shall survive the expiration or earlier termination of the Term or any Extended Term.

3.3 Definitions.

As used in this Section 3, the following terms shall have the meanings hereinafter set forth:

- 3.3.1 "Allocable Operating Expenses" shall mean those "Operating Expenses" and "Tax Expenses" that are to be allocated to Tenant under the terms of this Agreement.
- 3.3.2 "Operating Expenses" shall mean all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership and operation of the Premises, including, without limitation:
- (i). all license, permit and inspection fees;
 - (ii). premiums for any insurance maintained by Landlord with respect to the Premises; it is understood that the Tenant shall carry necessary insurance and name Landlord on said insurance;
 - (iii). wages, salaries and related expenses and benefits of all on-site and off-site employees engaged in the operation, maintenance and security of the Premises;
 - (iv). all supplies, materials and equipment rental;
 - (v). all landscape maintenance, repair, replacement, janitorial, service and security costs, including all costs for the provision of closed circuit television installation and monitoring;
 - (vi). management fees or a management cost recovery equal to a market rate management fee;
 - (vii). professional services fees;
 - (viii). costs incurred (to the extent savings are achieved) which are intended to decrease other Operating Expenses;
 - (ix). amortization over the useful life of the cost of capital improvements (together with interest thereon at the rate paid by Landlord or which would have been paid if Landlord had borrowed such funds);
 - (x). all charges for heat, water, gas, electricity and other services and utilities not separately metered and paid directly by Tenant and which are used or consumed in the Premises, including all costs for the provision of heat, water, gas, electricity and other services and utilities at the Premises in the first place; and
 - (xi). All other operating, management and other expenses incurred by Landlord in connection with the ownership and operation of

the Premises. Landlord shall not collect in excess of one hundred percent (100%) of all of Landlord's Operating Expenses and Landlord shall not recover, through Operating Expenses, any item of cost more than once. Landlord may determine some items of Operating Expenses and Tax Expenses on a cash basis and other items on an accrual basis, so long as such determination is consistently applied to the same item during all accounting periods.

3.3.3 "Expense Year" shall mean each calendar year in which any portion of the Term or any Extended Term falls, through and including the calendar year in which the Term or any Extended Term expires.

3.3.4 "Tax Expenses" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary that are incurred by Landlord in connection with the Premises. Tax Expenses shall not include any taxes directly paid by Tenant pursuant to Section 6 of this Agreement and any items included as Operating Expenses or specifically excluded as Operating Expenses. If Tenant makes any alterations to the Premises which cause an increase in Tax Expenses, any such increase shall be one hundred percent (100%) allocable to Tenant as Tax Expenses.

3.3.5 "Tenant's Direct Expenses" shall mean those goods or services for which Tenant is responsible for providing and paying directly in, at or upon the Premises. Tenant shall provide for the maintenance and repair of the Premises, including janitorial services and supplies for those services and regular garbage collection.

3.3.6 "Tenant's Share" shall mean Landlord's reasonable determination of Tenant's responsibility to pay Allocable Operating Expenses, based on such factors as Landlord may reasonably determine, including but not limited to the size of the Premises, the nature of Tenant's permitted use (as defined in Section 9), occupancy rates, hours of operation, and fixture counts. Landlord may apply different methods of calculation to different items of Allocable Operating Expenses as shall be appropriate, in Landlord's reasonable determination, to account for appropriate means of allocating such items. Tenant's Share shall not include Tenant's Direct Expenses.

Tenant's Share shall include one hundred percent (100%) of the amount by which the premiums for insurance maintained by Landlord in connection with the Premises exceed the premiums that would have been payable by landlord but for Tenant's use and occupancy of the Premises.

3.4 Calculation and Payment of Additional Rent.

3.4.1 Calculation of Allocable Operating Expenses. Tenant shall pay to Landlord, in the manner set forth in Section 3.4.2, below, and as Additional Rent, Tenant's Share of Allocable Operating Expenses for each Expense Year.

3.4.2 Statement of Actual Allocable Operating Expenses and Payment by Tenant. Within ninety (90) days after the close of each calendar year, or as soon after such ninety (90) day period as is practicable, Landlord shall provide to Tenant a statement (the "Statement"), which Statement shall be itemized with reasonable particularity and shall state the actual Allocable Operating Expenses incurred or accrued for the preceding Expense Year, and which shall indicate the amount of Tenant's Share of Allocable Operating Expenses for such Expense Year. Upon receipt of the Statement for each Expense Year commencing or ending during the Term or any Extended Term, Tenant shall pay, upon the later to occur of its next installment of Base Rent due or within thirty (30) days after receipt of the Statement, the full amount of Tenant's Share of Allocable Operating Expenses for such Expense Year, based on the number of days that Tenant was required to pay Rent during the Expense Year, less the amounts of Allocable Operating Expenses paid by Tenant during the previous Expense Year. If Tenant paid more Estimated Allocable Operating Expenses than the actual Tenant's Share of Allocable Operating Expenses (an "Excess"), then Landlord shall pay the Excess to Tenant within thirty (30) days of the date of the Statement. The provisions of this Section 3.4.2 shall survive the expiration or earlier termination of this Agreement.

3.4.3 Statement and Payment of Estimated Allocable Operating Expenses. Tenant shall pay to Landlord each month at the same time and in the same manner as monthly Base Rent, one-twelfth (1/12) Landlord's most recent estimate of Tenant's Share of Allocable Operating Expenses. Landlord shall use reasonable efforts to deliver to Tenant a statement, itemized with

reasonable particularity and setting forth Landlord's reasonable estimate of the total amount of Allocable Operating Expenses for the then- current Expense Year and Tenant's Share of Allocable Operating Expenses (the "Estimated Allocable Operating Expenses"), within ninety (90) days after the close of each calendar year, or as soon after such ninety (90) day period as is practicable. If on the basis of such statement Tenant owes an amount of Estimated Allocable Operating Expenses that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall pay the excess to Tenant within fifteen (15) days of the date of the statement. If, on the basis of such statement, Tenant owes an amount that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within fifteen (15) days after delivery of the statement. Notwithstanding anything to the contrary in this Agreement, during the first Expense Year, Landlord shall have the right to adjust Estimated Allocable Operating Expenses by written notice to Tenant no more than two (2) times in the first Expense Year. If, on the basis of such adjusted statement Tenant owes an amount of Estimated Allocable Operating Expenses that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall pay the excess to Tenant within fifteen (15) days of the date of the statement. If on the basis of such adjusted statement, Tenant owes an amount that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within fifteen (15) days after delivery of the statement.

3.5 *Base Rent Adjustment.*

The amount of Base Rent payable hereunder shall be adjusted annually ("Adjustment Date") commencing with the first annual anniversary date (12 months after the Effective Date of the Term) ("Anniversary Date") and thereafter on each Anniversary Date of the Effective Date during the Term or any extension thereof as provided in Section 2.2 above. Such adjustments shall consist of a four (4) Percent increase of the prior year's Base Rent. Landlord shall determine the adjusted Base Rent payable and shall note such adjustment and how it was computed on the Statement

3.6 *Extended Term Rent.*

Commencing with the first day of the Extended Term, Tenant agrees to pay to Landlord the monthly rent which was payable by Tenant for the last month of the immediately preceding year, increased by the method as recited in Section 3.5 above.

3.7 *Prorated Rent.*

Rent for any period during the Term hereof which is less than one (1) month shall be prorated based on a thirty (30) day month. All Rent shall be paid to Landlord at the address Landlord may from time to time designate in writing.

3.8 *Security Deposit.*

Tenant shall pay to Landlord Twelve Hundred Dollars (\$1,200.00) as the security deposit within five (5) working days of the Effective Date. Landlord has the right to use the deposit for any cleanup and/or repair of the Premises caused by Tenant. Any balance of the deposit will be returned to Tenant upon receipt of notification and proof of vacation of the Premises.

Section 4. General Covenants.

Upon Tenant paying the Rent for the Premises as herein provided, and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term and any Extended Term hereof subject to the provisions of this Agreement.

Section 5. Acceptance of Premises.

Tenant's taking possession of the Premises on the Effective Date shall constitute Tenant's acknowledgment that the Premises are in good condition and that Tenant accepts the Premises "AS IS".

Section 6. Taxes.

Tenant shall pay all taxes which may be levied, imposed or assessed upon or against the Premises, or any possessory interest right which Tenant may have in or to the Premises by reason of its use or occupancy thereof, and upon or against the structures, personal property and improvements located thereon. Tenant recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant agrees to pay all taxes, assessments, and charges on goods, merchandise, appliances, equipment and property owned by it in or about said Premises.

Section 7. Safety Precautions.

Tenant agrees not to (a) employ or use ways or means, which are, dangerous on account of fire, explosions or other hazardous risks over and above those normally associated with the type of business permitted in Section 9 of this Agreement, or (b) load or unload, handle or store in, on or around the Premises any material or substance which would be dangerous because of the reasons set forth in (a) above, or would cause a cancellation of, or an increase in premiums payable under any policy of insurance maintained by Landlord in connection with the Premises, if any.

Section 8. Compliance with Laws.

8.1 Compliance Generally.

Tenant shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, and the orders and decrees of any courts or administrative bodies or tribunals including municipal or harbor authorities, with respect to this Agreement, including without limitation environmental laws, employment discrimination laws, maritime laws and prevailing wage laws. Compliance under this provision includes compliance with all provisions of the Municipal Code of the City of Richmond ("Municipal Code"), including Chapter 2.28 and Chapters 2.50, 2.52, 2.56, and 2.60, if applicable, which are herein incorporated by reference. Tenant shall be responsible for paying any fines or charges which may be levied by said agencies, departments, authorities, tribunals, administrative bodies or courts for violations of said laws, orders,

decrees, rules, regulations, ordinances and requirements arising out of Tenant's use and occupancy of the Premises.

8.2 Compliance with Richmond Municipal Code Section 2.28.030.

Tenant agrees to observe the provisions of Section 2.28.030 of the Richmond Municipal Code obligating every contractor or subcontractor under a contract or subcontract with the City for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor. Said Section 2.28.030, if applicable, is, by this reference, made a part of this Agreement.

8.3 Compliance with Richmond Municipal Code Chapter 2.60.

Tenant agrees to comply with the requirements of the Chapter 2.60 of the Richmond Municipal Code ("Living Wage Ordinance") which is incorporated into this Agreement by this reference. As required under Section 2.60.070, Tenant shall, upon request, promptly provide to Landlord documents and information verifying its compliance with the Living Wage Ordinance. Also as required by Section 2.60.070, Tenant shall notify each of its affected employees with regards to the wages that are required to be paid pursuant to the Living Wage Ordinance.

Section 9. Use of the Premises.

9.1 Tenant shall use the Premises for growing and selling California native plants on the Premises only and for no other purpose, in all cases, subject to the terms of this Agreement. All other uses, such as educational events, shall require the prior written approval of Landlord, and shall be conducted consistent with the provisions of the Agreement.

9.2 Tenant hereby promises and agrees to conduct its nursery

activities on the Premises in a conscientious manner in accordance with approved horticultural practices, best management practices (BMPs) and integrated pest management program (IPM) protocols.

9.3 Tenant agrees it will use due diligence to require all persons entering upon the Premises not to use the Premises in whole or in part during the Term or any Extended Term of this Agreement for any purpose other than as hereinabove set forth, except with the prior written consent of Landlord, at its sole discretion. Tenant shall bring, at its own cost and expense, its own machinery, equipment, fixtures and other personal property necessary or convenient to its operations of the Premises.

Section 10. Maintenance. Alterations and Surrender of Premises.

10.1 Tenant shall, throughout the Term or any Extended Term of this Agreement and so long as it shall remain in possession of the Premises, maintain the Premises in good, safe and sanitary condition and keep the Premises in good repair. Except as provided in Section 15 of this Agreement, Landlord shall not have any responsibility to maintain the Premises or to make repairs. No hazardous materials are allowed to be used or stored at the Premises at any time. Components currently used in Tenant production include: fertilizer, "Garden Safe" Schultz brand slug and snail bait, Neem oil, fungicide, Bacillus thuringiensis spray, hormones for cuttings, and mosquito dunks. Whenever possible, Tenant shall employ the organic option for addressing pest problems. Tenant takes responsibility for impact to Premises or clean up required from use of these components. Tenant will follow the City's integrated pest management (IPM) policy and ordinance as adopted.

10.2 Tenant shall not commit, suffer or permit any nuisance in or about the Premises.

10.3 Tenant shall not make any alterations and/or improvements to the Premises without the prior written consent of Landlord. Tenant shall apply for and exercise diligent good faith efforts to obtain all necessary land use approvals (the "Land Use Approvals"), including but not limited to City design review and zoning as are necessary for any alterations and/or improvements. Landlord's consent to alterations and/or improvements shall not substitute for or guarantee grant of Land Use Approvals.

10.4 Landlord's approval of any alterations and/or improvements does not obligate the City to approve such alterations and/or improvements. The City retains its discretion to approve or disapprove any alterations and/or improvements. Any alterations and/or improvements made shall remain on and be surrendered with the Premises on expiration or termination of the Term or any Extended Term, except that Landlord may elect within thirty (30) days before expiration of the Term or any Extended Term, or within thirty (30) days after termination of the Term or any Extended Term, to require Tenant to remove any

alterations and/or improvements which Tenant has made to the Premises. If Landlord so elects, Tenant at its sole cost and expense shall restore the Premises to the condition designated by Landlord in its election, before the last day of the Term or any Extended Term, or within sixty (60) days after notice of election is given, whichever is later.

10.5 Where Landlord consents to Tenant's alterations and/or improvements to the Premises as provided in this Section, such alterations and/or improvements shall not be commenced until ten (10) days after Landlord has received notice from Tenant stating the date the installation of the alterations and/or improvements is to commence so that Landlord can post and record an appropriate notice of non-responsibility.

10.6 The costs of maintenance and repair of any Tenant alterations and/or improvements and the costs of ordinary maintenance and repair of the Premises shall be paid for by the Tenant. Tenant shall return the Premises to Landlord in as good condition as when delivered, less ordinary wear and tear.

Section 11. Duty to Guard Goods. Fire Equipment.

11.1 Except to the extent caused by Landlord's sole active negligence or willful misconduct, Landlord shall have no liability for any loss or damage to the goods, material, property and equipment of Tenant or third persons, upon or used in connection with the Premises irrespective of the source of such loss or damage. Tenant shall provide at its own expense such security guards or alarm system as it may deem necessary for the security and protection of goods, material, property and equipment and Tenant's operations.

11.2 Tenant further agrees, at its own cost and expense, to maintain upon the Premises at all times such fire equipment as may be prescribed from time to time, including any periodic inspection and certification as may be required by Landlord and the Fire Marshal of the City of Richmond, or other competent authority. Tenant shall cause all goods, materials, property and equipment to be stored in such a manner that any fire equipment and controls on the Premises are readily accessible at all times. In the event of any danger or damage to Landlord's property caused by fire, earthquake, or like hazard, Landlord shall be immediately notified by Tenant of such danger or damage.

Section 12. Utilities.

Tenant hereby covenants and agrees to pay for all water, sewer, heat, gas, trash collection, electricity, telephone service and any other utilities which may be furnished to or used in or upon the Premises by Tenant during the Term of this Agreement.

Section 13. Indemnification.

13.1 To the fullest extent allowed by law, Tenant shall defend, indemnify and hold harmless the City of Richmond, and its elected or appointed officials, officers, employees and agents (the "Indemnified Parties"), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, expert witness fees and other defense costs, resulting from injury to or death sustained by any person (including Tenant's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with this Agreement, regardless of Tenant's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission of an Indemnified Party, except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of the City of Richmond, or its elected or appointed officials officers, agents, or employees. The indemnification obligations of Tenant shall extend to claims asserted after termination of this Agreement for whatever reason.

13.2 In claims against any person or entity indemnified under Section 13.1 above by an employee of Tenant, anyone directly or indirectly employed by Tenant or anyone for whose acts Tenant may be liable, the indemnification obligation under Section 13.1 above shall not be limited by a limitation on amount or type of damages, compensation of benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

13.3 Submission of insurance certificates, endorsements, or other proof of compliance with the insurance requirements in Section 14 below does not relieve Tenant from liability under this Section. These indemnification, hold harmless and defense obligations shall apply whether or not such insurance policies are applicable to any such damages or claims for damages.

Section 14. Insurance.

Tenant, at its own cost and expense, shall carry and maintain the insurance coverage set forth in Exhibit "B" attached hereto and incorporated herein by reference throughout the Term or any Extended Term of this Agreement.

Section 15. Destruction of Premises.

15.1 Due to Risk Covered by Insurance. Any loss, damage to or destruction of the Premises covered by the insurance provided for in this Agreement, during the Term or any Extended Term of the Agreement shall have no effect upon the Term or any Extended Term, the Rent payable hereunder or any of Tenant's obligations hereunder, but that portion of the Premises owned by Landlord so destroyed shall be promptly repaired or rebuilt by Tenant to substantially the same condition as it was in immediately before destruction, Landlord making available to Tenant for such repairs and rebuilding any funds collected from insurance carried by it with respect to such loss, damage or destruction. If the existing laws do not permit the restoration, either party can terminate this Agreement immediately by giving notice to the other party absent the notice period prescribed in Section 2.2 of this Agreement.

15.2 Due To Risk Not Covered by Insurance. If the Premises shall, during the Term or any Extended Term of this Agreement, be damaged in whole or in part by any cause of whatsoever nature arising from activities of Tenant within the Premises from a risk not covered by the insurance provided for in this Agreement whether or not caused by the default or neglect of Tenant, its employees, agents, or contractors. the same shall be promptly repaired, rebuilt or replaced by Tenant at its sole cost and expense. If the existing laws do not permit the restoration, either party can terminate this Agreement immediately by giving notice to the other party absent any notice period prescribed otherwise in this Agreement

15.3 Alternative Elections. If the cost of restoration exceeds five (5) percent of the then replacement value of the Premises destroyed, Tenant can elect to terminate this Agreement by giving notice to Landlord within fifteen (15) days after determining the restoration cost and replacement value. If Tenant elects to terminate this Agreement, Landlord, within fifteen (15) days after receiving Tenant's notice to terminate, can elect to pay to Tenant, at the time Landlord notifies Tenant of its election, the difference between five (5) percent of the

replacement value of the Premises and the actual cost of restoration, in which case Tenant shall promptly restore the Premises as provided herein.

15.3 Waiver of Civil Code Sections. Tenant waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) with respect to any destruction of the Premises.

15.4 New Lease Area and Relocation Benefits. If this Agreement is terminated for any reason set forth in this Section 15 or any other Section of this Agreement, Landlord shall have no obligation to provide Tenant a new lease area or relocation benefits.

Section 16. Relocation Benefits.

As further and additional consideration for leasing the Premises, Tenant does hereby voluntarily and knowingly release and forever discharge Landlord, and their successors and assigns, from any and all claims or demands for relocation assistance benefits which may arise by reason of Article 9 of Chapter 4 of Division 24 of the Health and Safety Code of the State of California, or by reason of Chapter 16 of Division 7 of Title I of the Government Code of the State of California, or by reason of the federal act entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (public Law 91-646), as amended, or by reason of any law or regulation of the United States of America, the State of California, or the City of Richmond.

Section 17. Waiver of Claims.

Tenant hereby waives any claims against the Landlord, its officers, agents and employees, for damage or loss caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out.

Section 18. Sublease and Assignment.

18.1 Prohibition against Voluntary Assignment. Subletting and Encumbering. Tenant shall not voluntarily assign or encumber its interest in this Agreement or in the Premises, or sublease all or any part of the Premises, or allow any other

person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Landlord's written consent of such assignment, encumbrance, sublease. Any such occupancy or use shall be at Landlord's sole discretion. Landlord's consent to assignment, encumbrance, sublease, occupancy or use shall not be unreasonably withheld. Any assignment, encumbrance or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this paragraph.

If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of fifty- one (51) percent of the value of the assets of Tenant, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one (51) percent of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph shall not apply to corporations the stock of which is traded through an exchange or over the counter.

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Agreement, all rent from any subletting of all or a part of the Premises as permitted by this Agreement. and Landlord, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Agreement; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

18.2 Involuntary Assignment No interest of Tenant in this Agreement shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment:

18.2.1 If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a bankruptcy proceeding in which Tenant is the bankrupt party; or, if Tenant is a partnership or consists of more than one person or entity, if another partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

18.2.2 If a writ of attachment or execution is levied on this agreement;

18.2.3 If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises.

An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Agreement, in which case this Agreement shall not be treated as an asset of Tenant.

If a writ of attachment or execution is levied on this Agreement, Tenant shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Tenant, or if a receiver is appointed, Tenant shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

Section 19. No Liens or Encumbrances.

Tenant shall keep the Premises and Tenant's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Tenant's acts or omissions. Tenant shall have the right to contest any lien in good faith provided Tenant shall pay any judgment rendered prior to execution thereon.

Section 20. Events of Default.

If Tenant defaults in the performance of any of the covenants, conditions or agreements contained in this Agreement, then Tenant shall be deemed to have breached the Agreement and Landlord may re- enter and regain possession of the Premises in the manner prescribed by California law.

Section 21. Right of Entry as Agent.

In any case in which provision is made herein for the termination of this Agreement by the Landlord or in the case of abandonment or vacation of the Premises by Tenant, Landlord in lieu of declaring forfeiture, may enter upon the Premises. To such end, Tenant hereby irrevocably appoints Landlord its agent to remove any and all persons or property on said Premises and place any such property in storage for the account of and at expense of Tenant. Tenant further agrees to hold Landlord harmless from any loss or

damage or claim arising out of the action of the Landlord pursuant to this Section.

Section 22. Interest on Past Due Invoices.

Sums required to be paid to Landlord hereunder not paid within :fifteen (15) days after invoice is sent by Landlord to Tenant shall bear interest at the rate of ten (10) percent per annum from the date due until paid.

Section 23. Late Charge.

Tenant acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation: processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord when due, Tenant shall pay to Landlord an additional sum of Seventy-Five Dollars (\$75.00) as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

Section 24. Signs.

No signs or placards of an advertising or promotional nature shall be painted, inscribed or placed in or on the Premises or on any building or structure located thereon without the prior written consent of Landlord at Landlord's sole discretion. Tenant agrees to remove promptly and to the satisfaction of Landlord, at the cost and expense of Tenant, upon the expiration of the Term or any Extended Term or the earlier termination of this Agreement, any and all signs and placards placed by it upon the Premises pursuant to this Section.

Section 25. Inspection of Premises.

Landlord or its duly authorized representative, or agents or other persons for it, may enter upon the Premises at any and all reasonable times during the Term or any Extended Term of this Agreement for the purpose of determining whether or not Tenant

is complying with the terms and conditions hereof or for any other purpose incidental to rights of Landlord.

Section 26. Holding Over.

If Tenant holds over after expiration or termination of this Agreement without the written consent of Landlord, Tenant shall pay for each month of hold-over tenancy rent equal to one hundred and fifty (150%) percent of the prior year's Rent, together with such other amounts as may become due hereunder. No holding over by Tenant after the Term or any Extended Term shall operate to extend the Term or any Extended Term. Any holding over with the consent of Landlord in writing shall thereafter constitute a month-to-month lease, terminable upon thirty (30) days written notice from either party, at a monthly rental rate equal to that which Tenant was obligated to pay for the month immediately preceding the end of the Term or any Extended Term, together with such other amounts as may become due hereunder.

Section 27. Waiver.

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default, right or remedy provided Landlord in this Agreement. No act or conduct of Landlord shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term or any Extended Term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Agreement. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Section 28. Attorneys' Fees.

If either party commences a lawsuit against the other to enforce any provision of this Agreement, the prevailing party shall be entitled to such attorney's fees and costs including expert witness fees and costs, of suit as the court may deem reasonable.

Section 29. Nondiscrimination.

Tenant herein covenants by and for itself, its agents, employees and officers and all persons claiming under or through it that this Agreement is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, sex, sexual orientation, creed, national origin, or ancestry, in the leasing, subleasing, contracting, subcontracting, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased and assigned; nor shall Tenant itself, nor any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, sub-lessees, subtenants, users or vendors in the Premises herein leased and assigned.

Section 30. Disclosure.

Tenant understands and agrees State Public Records Law (Government Code Section 6250 et seq.) applies to this Agreement and any and all records, information, and materials submitted to the City of Richmond in connection with this Agreement. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the State Public Records Law. Tenant hereby authorizes the City of Richmond to disclose any records, information and materials submitted to the City of Richmond in connection with this Agreement.

Section 31. Terms Binding on Successors.

All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinabove set forth.

Section 32. Time of Essence.

Time is expressly declared to be of the essence of this Agreement.

Section 33. Termination of Prior Lease.

In the event there is any prior existing lease or rental agreement between the Tenant and

Landlord covering the Premises, it is agreed and understood that this Agreement shall terminate and expire any such existing lease or rental agreement as of the Effective Date of this Agreement.

Section 34. Notices.

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed as follows:

Landlord: City of Richmond
450 Civic Center Plaza,
Richmond, CA 94804
Attn: City Manager
Attn: City Attorney's Office

To Tenant: The Watershed Nursery
601 Canal Blvd Suite A
Richmond, CA 94804
Attn: Project Manager

Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated within three (3) days from the time of mailing if mailed as provided in this paragraph.

Section 35. Entire Agreement

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the

subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, and shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST: THE CITY OF RICHMOND, a municipal corporation and charter

BY:

Parola Christ [Signature] 4/3

City Clerk

City Manager

[Signature]

City Attorney

THE WATERSHED NURSERY, a private corporation

BY: [Signature]

TITLE: President

BY: [Signature]

TITLE: Vice President

EXHIBIT A - Description and Map of the Premises

Exhibit A

APN 560-310-013 (City of Richmond GIS record 209622) which lies west of Canal Blvd, and South of entrance drive to 601 Canal Blvd, and APN 560-310 (vacated Richmond Ave) portion which lies west of parcel 560-310-013 (City of Richmond GIS record 208780) and east of parcel 556-110-003.



EXHIBIT B - Insurance Requirements

**City of Richmond - Insurance Requirements – Type 4:
Leases of City Property**

In all instances where LESSEE or its representatives will be leasing or using City of Richmond (City) property for an extended period, the City requires the following minimum insurance requirements and limits.

LESSEE shall procure and maintain for the duration of the contract or lease agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the LESSEE's, its agents', representatives', employees' or vendor's use of the premises. **Maintenance of proper insurance coverage is a material element of the contract or lease agreement. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.**

LESSEE agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability insurance, LESSEE shall look solely to its insurance for recovery. LESSEE hereby grants to CITY, on behalf of any insurer providing Commercial General Liability insurance to either LESSEE or CITY with respect to the services of LESSEE herein, a waiver of any right to subrogation which any such insurer of said LESSEE may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and original, separate policy endorsement, naming the City as an additional insured for general liability coverage, as well as a waiver of subrogation for Workers' Compensation insurance (if applicable), shall be received and approved by the City **before occupancy may occur**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of the Lease.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of LESSEE.

Minimum Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001).
2. Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto).
3. Original and Separate Additional Insured Endorsements for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
4. Workers' Compensation Insurance as required by the State of California including Employer's Liability (for LESSEE's with employees).
5. Original and Separate Waiver of Subrogation for Workers' Compensation Insurance (if applicable).
6. Property insurance against all risks of loss to tenant improvements, betterments and contents.

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease. If LESSEE is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If Lessee is a sole proprietor (has no employees) than Lessee must sign "Contractor Release of Liability" found at: http://www.ci.richmond.ca.us/index.aspx?nid=61 .
General Liability <i>(primary and excess limits combined)</i>	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate). Policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the LESSEE, its employees, agents or others with LESSEE's permission. Policy shall be endorsed to name the City of Richmond as an additional insured per the conditions detailed below.

**City of Richmond - Insurance Requirements – Type 4:
Leases of City Property**

Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage.
Property Insurance – Only applicable to leases of City property involving tenant improvements, betterments and contents	Total value of all tenant improvements, betterments, and contents. The City of Richmond shall be named as loss payee as its interest may appear. The insurer shall waive all rights against City.

Required Policy Conditions	
Additional Insured Endorsement	Applicable to General Liability Coverage. The City of Richmond, its officers, officials, employees, agents and volunteers are to be covered as Insureds for all liability arising out of ownership, maintenance or use of that part of the premises leased or used by the LESSEE.
Primary and Noncontributory	The LESSEE's insurance coverage must be primary as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the LESSEE, shall be excess of the LESSEE's insurance, and shall not contribute with it.
A. M. Best Rating	A:VII or Better. If the A.M. Best Rating falls below the required rating, LESSEE must replace coverage immediately and provide notice to City.
Waiver of Subrogation Endorsement Form	LESSEE's insurer will provide a Waiver of Subrogation In favor of the City for Workers' Compensation Insurance during the life of this contract. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61 .
Deductibles and Self-Insured Retentions	Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City or the LESSEE shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses. LESSEE is responsible for satisfaction of the deductible and/or self-insured retention for each loss.

Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverages and cover those insured in the underlying policies.

Sublets

LESSEE shall not sublet the premises without the advance written consent of the City. Sublessees shall be subject to all of the requirements stated herein. Sublessee(s) must furnish to the City for review and approval, separate certificates and endorsements.

LESSEE agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either LESSEE or any sublessee(s) to take out or maintain the required insurance policies. The fact that insurance is obtained by LESSEE, and/or LESSEE's Sublessees, will not be deemed to release or diminish the liability of LESSEE, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from LESSEE or any third party will not be limited by the amount of the required insurance coverage.

**City of Richmond - Insurance Requirements – Type 4:
Leases of City Property**

Verification of Coverage

All original certificates and endorsements shall be received and approved by the City before LESSEE may occupy the premises. The City of Richmond reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage at any time.

Original insurance certificates and required policy endorsements shall be mailed or delivered to the Designated Project Manager for the City of Richmond.

Insurance certificates and endorsements may be faxed to the Designated Project Manager. However, Lessee must mail the original certificates and endorsements to Designated Project Manager once faxed.

Continuous Coverage

LESSEE shall maintain the required insurance for the life of the contract or lease agreement. Should the LESSEE cease to have insurance as required during this time, LESSEE's right to use or occupy the premises may be rescinded. In the event that LESSEE fails to comply with the City's Insurance requirements, the City may take such action as it deems necessary to protect the City's interests including but not limited to termination of the contract or lease agreement, eviction, or other actions as the City deems appropriate.

If LESSEE's use or occupancy of the premises extends beyond the expiration dates of the required insurance policies initially approved by the City, LESSEE must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the Designated Project Manager.**

Cancellation

LESSEE shall ensure that coverage shall not be cancelled, reduced or otherwise materially changed except after thirty (30) days' prior written notice has been given to the City.

Reporting Requirements

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 or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.

CITY COUNCIL CONSENT CALENDAR

On motion of Councilmember Myrick, seconded by Councilmember Johnson, the items marked with an (*) were approved by the unanimous vote of the City Council:

***I-1.** Authorized the city manager to execute a ten (10) year lease agreement between the City of Richmond and the Watershed Nursery at 601 A Canal Boulevard.

***I-2.** Adopted **Resolution No. 114-19** authorizing submission of reimbursement requests for the Wastewater Treatment Plant Critical Improvement Projects from the Clean Water State Revolving Fund (CWSRF) Loan in the amount of \$50,000,000.

***I-3.** Adopted **Resolution No. 115-19** incorporating the emergency support functions as annexes into the City of Richmond's Emergency Operations Plan.

***I-4.** Approved a contract with Public Resources Advisory Group to provide financial advisory services in an amount not to exceed \$150,000 over a three-year term, with the option to renew the contract for an additional two years, for a total contract amount not to exceed \$250,000 based on the same terms, if approved by both parties.

***I-5.** Directed the city manager and staff to explore potential revenue enhancement and cost recovery measures, including researching and preparing potential ballot measures for City Council consideration; and authorized the city manager to hire a consultant for an amount not to exceed \$25,000 to analyze potential revenues and expenditures for Kids First. This item was continued from the December 3, 2019, meeting.

***I-6.** Approved contracts with Allied Universal to provide security guard services at 325 Civic Center Plaza, 403 Civic Center Plaza, 440 Civic Center Plaza, 450 Civic Center Plaza, 330 25th Street, 2525 Macdonald Avenue, 2705 Macdonald Avenue, 326 27th Street, and 1322 Canal Boulevard from January 1, 2020, to December 31, 2022, with a two-year option to extend upon agreement by both parties, in an amount not to exceed \$1,742,947; and appropriated Fiscal Year (FY) 2020-21 funds in the amount of \$561,716, FY 2021-22 funds in the amount of \$579,118, and FY 2022-23 funds in the amount of \$602,113 to cover the cost of the contracts.

***I-7.** Approved an interagency agreement with the Contra Costa County Health Services Department to provide mental health outreach services from July 1, 2019, through June 30, 2020; and accepted and appropriated \$146,795 in Assembly Bill 109 Realignment funds.

***I-8.** Approved a purchase from First Spear of California for tactical safety equipment for the Police Department's High Risk Entry Team in an amount not to exceed \$24,568.05.

***I-9.** Approved the purchase of five (5) 2020 Ford F250 trucks from The Ford Store San Leandro in an aggregate amount not to exceed \$130,000.