

Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** September 29, 2022

**Item Number:** 4

**Item Description:** Urgency Ordinance for Extending the Lease for Real Property at 742 Grayson Street

**Submitted by:** Peter Radu, Assistant to the City Manager

The original report titled “Urgency Ordinance for Extending the Lease for Real Property at 742 Grayson Street” proposed a one-month extension to the lease at 742 Grayson Street for the purposes of continuing homeless services programming there while staff searched for other alternative locations. Staff continue to negotiate with the owners of the Berkeley Inn, but because that process is taking longer than anticipated, staff respectfully submit the attached supplemental report, which is identical to the original except that it would extend the lease at 742 Grayson for three additional months, through December 31, 2022.



Office of the City Manager

CONSENT CALENDAR  
September 29, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Peter Radu, Assistant to the City Manager  
Subject: Urgency Ordinance for Extending the Lease for Real Property at 742 Grayson Street

RECOMMENDATION

Adopt an Urgency Ordinance to extend an existing lease for the real property located at 742 Grayson Street, Berkeley, CA for an additional three months, through December 31, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Approving this recommendation will result in a total outlay of \$79,137 (\$49,500 rent + \$14,982 Zero Waste expenses + \$14,655 toilets and hygiene expenses). These funds will be paid for from the Measure P appropriation to the continuation of the Horizon shelter that was approved by Council with the adoption of the FY23-24 Biennial Budget.

CURRENT SITUATION AND ITS EFFECTS

On April 27, 2021, the Council adopted Urgency Ordinance No. 7,759–N.S. to authorize the lease of 742 Grayson St for the purposes of operating interim shelter for persons experiencing homelessness. That lease was originally set to terminate on Sept 30, 2022. The City uses the property at Grayson to operate both the 50-bed Horizon Transitional Village Program shelter as well as the 40-slip SPARK safe RV parking program.

The City continues to evaluate options and explore leads for continuing the Horizon program, including the potential lease of a motel at 1720 San Pablo Ave (the Berkeley Inn). As this process has taken longer than originally anticipated, staff have requested, and the owners of 742 Grayson have agreed, to a three-month extension of the original lease, with all other terms (including rent at \$16,500/month) in full force and effect.

Staff's goal will still be to complete any lease and transition to a new location before December, but the additional 3 months will prevent any gaps in service as staff continue working on a continuation of the program at a new location. If staff vacate the premises before December, the owners have agreed to terminate the lease early and refund any advance rent paid.

Staff recommend that Council approves this lease extension by passing an urgency ordinance. The costs of this additional month are already covered by a Measure P allocation to the continuation of the Horizon program as part of the FY23-24 Budget.

### BACKGROUND

On April 27, 2021, the Council adopted Urgency Ordinance No. 7,759–N.S. to authorize the lease of 742 Grayson St for the purposes of operating interim shelter for persons experiencing homelessness. Also on April 27, 2021, Council adopted Resolution No. 69,808–N.S., which authorized a contract with Dorothy Day House to operate the Horizon Transitional Village Program, a 50-bed interim shelter, at this site. This lease will terminate on September 30, 2022. On June 28, 2022, Council adopted the FY23-24 Biennial Budget, including \$1,011,900 annually in Measure P funds to continue the Grayson shelter.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Continuing to provide interim housing with no gaps in service for persons experiencing homelessness in Berkeley will help reduce the overall negative impact of encampments on Berkeley’s environment and waterways, including fire and vector hazards, the accumulation of trash/debris, and unmitigated human and animal waste.

### RATIONALE FOR RECOMMENDATION

Adopting the agreement by Urgency Ordinance is appropriate in light of the current shelter crisis and imminent loss of the 742 Grayson St site. By adopting this agreement through an Urgency Ordinance on Sept 29, 2022, it will be possible to continue negotiations for the extension of the program at another location, and will eliminate any gaps in service (and the return of shelter guests to the streets) in the interim.

### ALTERNATIVE ACTIONS CONSIDERED

None. Allowing the lease to end would result in a gap in service between the Grayson location and a new location identified by staff. This would force shelter guests back to the streets, and would also cause Dorothy Day House serious financial challenges in meeting payroll for staff that would be needed to continue the program at another location.

### CONTACT PERSON

Peter Radu, Assistant to the City Manager, 510 981-7045

### Attachments:

#### 1: Ordinance

Exhibit A: Lease Amendment for 742 Grayson St

Exhibit B: April 27, 2021 Council report and original lease

ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH 742 GRAYSON OWNER, LLC, FOR REAL PROPERTY LOCATED AT 742 GRAYSON ST, BERKELEY, CA.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing an ongoing crisis of street homelessness: while overall homelessness declined in Berkeley by 5% from 2019 to 2022, unsheltered homelessness stayed roughly the same during this period, declining only 1%.
- b. To help address this crisis, on April 27, 2021, the City Council authorized the lease of 742 Grayson St and a contract with Dorothy Day House to operate the 50-bed Horizon Transitional Village Program; and
- c. Since July 2021, the Horizon Transitional Village Program has served over 125 residents of Berkeley's most impactful and dangerous encampments; and
- d. On September 30, 2022, the City's lease for 742 Grayson Street will terminate, necessitating a new location to continue the Horizon program; and
- e. On June 28, 2022, with the adoption of the FY23-24 Biennial Budget, the City Council authorized \$1,011,900 annually through FY24 for the continuation of the Grayson shelter, signaling its intent to continue this program beyond the current location at Grayson; and
- f. City staff continue to explore other locations to continue this program and avoid any lapse in service to the shelter guests; and
- g. Extending the existing lease for three months will allow the City sufficient time to fully transition the program to another, more permanent location.

Section 2. The City Manager or her designee is hereby authorized to amend the existing lease with 742 Grayson Owner, LLC for real property located at 742 Grayson Street on the same terms as set forth in Exhibit A. The rent will be \$16,500 for the single month of this extended term. Lease costs will be paid for by Measure P funding previously appropriated for this purpose by the City Council.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## LEASE AMENDMENT FOR 742 GRAYSON STREET

This lease amendment (“**Amendment**”) is made on \_\_\_\_\_ between 742 GRAYSON OWNER LLC, a Delaware limited liability company (“**Landlord**”) and the CITY OF BERKELEY (“**Landlord**”), a Charter City organized and existing under the laws of the State of California (“**Tenant**”), who agree as follows:

This lease amendment is made with reference to the following facts and objectives:

- A. Landlord is the owner of the real property at 742 Grayson Street, Berkeley, California, (“**Premises**”).
- B. Tenant entered into a lease (“**Lease**”) with Landlord on May 13, 2021. The Lease provides that the Term shall extend no later than September 30, 2022.
- C. Tenant is operating a homeless shelter and safe parking program at the Premises. In order to allow the City to complete negotiations for a new shelter location prior to the expiration of the Lease, Landlord and Tenant agree to extend the Lease’s expiration date by one month, at the current base rent and subject to all other terms of the Lease.

Therefore, Landlord and Tenant agree to amend the Lease as follows:

1. **Section 1.7. Term**, is amended to read as follows:

**Term:** The “**Term**” is the period of time starting on the Commencement Date and expiring on March 31, 2022, after which the tenancy shall convert to month to month until no later than ~~September 30, 2022~~ **December 31, 2022**, subject to Landlord and Tenant each having the independent right to terminate such month-to-month tenancy on thirty (30) days prior written notice to the other party. The “**Expiration Date**” shall be March 31, 2022, subject to extension for a month-to-month basis as provided above, but in no event shall the Expiration Date be later than ~~September 30, 2022~~ **December 31, 2022**. Notwithstanding the foregoing, Tenant shall have the right to terminate the Term of this Lease at any time after not less than thirty (30) days prior written notice to Landlord. Landlord may not terminate the Term prior to March 31, 2022, except due to Default by Tenant or in connection with any casualty or condemnation.

2. In all other respects, the Lease executed on May 13, 2021 shall remain in full force and effect.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this lease amendment as of the date written on the first paragraph of this lease.

LANDLORD:

Signature:  \_\_\_\_\_  
Type text here

Title: Chris Freise - Manager / Authorized Signatory

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

TENANT  
CITY OF BERKELEY

By: \_\_\_\_\_  
City Manager

REGISTERED BY:

\_\_\_\_\_  
City Auditor

ATTEST:

\_\_\_\_\_  
Deputy City Clerk



Office of the City Manager

CONSENT CALENDAR  
April 27, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Darrin Rafferty, Acting Assistant to the City Manager  
Subject: Referral Response: Urgency Ordinance for leasing the real property at 742 Grayson

RECOMMENDATION

Adopt an urgency Ordinance to enter into a lease for the real property located at 742 Grayson St., Berkeley for a term of 11 months, after which it becomes a month to month lease through September 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Total rent for the subject property will be \$16,500 per month, inclusive of utilities, as described in Exhibit A. Lease will be funded with general fund associated with Measure P.

CURRENT SITUATION AND ITS EFFECTS

This report responds to the referral “Establishing an Outdoor Emergency Shelter,” that originally appeared on the agenda of the January 21, 2020 Council meeting and was sponsored by Councilmembers Harrison, Davila, Mayor Arreguin and Councilmember Robinson.

Staff spent more than one year looking for a suitable location for the outdoor emergency shelter, however to date, one had not been identified that would be suitable to the community or logistically feasible for operations. Given the lack of an outdoor location, staff entered into negotiations with the property owner of 742 Grayson St. to lease the property for the purpose of an indoor emergency shelter. This property has approximately 45,000 feet of indoor space that could presently accommodate over 50 individuals, appropriately spaced for ample social distancing. There is also a large paved area on the property that could provide other suitable uses, such as off-street recreational vehicle (RV) parking.

BACKGROUND

As of the 2019 Point in Time count, there were 813 unsheltered homeless individuals living in Berkeley. Though the PIT count was not undertaken this year, these numbers have surely increased since the last count was complete with impacts from the COVID-19 pandemic and the financial and employment instability it has caused in many

different populations. The City has made robust investments in shelter, permanent supportive housing, affordable housing and supportive services, and this effort will support helping more unhoused residents move indoors. In January 2020 the City Council directed the City Manager to establish an outdoor emergency shelter as a short-term solution to address the immediate needs of people living outdoors. This item has been significantly delayed due to the unprecedented efforts endeavored by City staff in response to the COVID-19 crisis.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts associated with this report.

#### RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring about the opportunity to shelter at least 50 individuals at a time in a location that is not exposed to the outdoor elements. It will also serve as an opportunity to implement an off-street RV parking program, though this aspect of the program is still being developed. This will provide much needed emergency shelter for unsheltered homeless individuals.

This lease agreement is also subject to an Urgency Ordinance pursuant to the Charter of the City of Berkeley, and would be effective immediately for the critical preservation human health and safety.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff have not identified another location that would have accommodated the emergency shelter.

#### CONTACT PERSON

Darrin Rafferty, Acting Assistant to the City Manager, 510-981-7000

#### Attachments:

1: Ordinance

Exhibit A: Lease Agreement

2: Original Referral Report from the January 21, 2020 City Council meeting titled "Establishing an Outdoor Emergency Shelter" sponsored by Councilmembers Harrison, et al



ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH 742 GRAYSON OWNER LLC, FOR REAL PROPERTY LOCATED AT 742 GRAYSON STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council finds as follows:

- a. The 2019 Alameda County Point in Time count identified 813 unsheltered people living in Berkeley; and
- b. This number has almost certainly increased in light of the economic impacts of the COVID-19 crisis; and
- c. While the City has made significant investments in affordable housing and supportive services in recent years, these interventions are not yet sufficient to serve the entire unsheltered population in the City; and
- d. On January 21, 2020 City Council directed the City Manager to establish an outdoor emergency shelter as a short-term solution to address the immediate needs of people living outdoors and exposed to the elements, transportation-related risks, among other dangerous conditions; and
- e. The City Manager's Office has researched a number of potential sites for such a shelter, and identified the large warehouse and outdoor spaces at 742 Grayson Street as an ideal location; and
- f. The property provides over 45,000 square feet of indoor space that can easily accommodate over 50 tents indoors spaced appropriately for social distancing; and
- g. The large off-street parking lot can be used for RV parking for unsheltered individuals living in RVs; and
- h. The property owner, 742 Grayson Owner LLC, has offered to lease the property to the City for purposes of establishing a homeless shelter for 17 months, at a monthly rent of \$16,500, including most utilities.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease and necessary amendments starting May 1, 2021 with 742 Grayson Owner LLC for real property located at 742 Grayson Street on substantially the same terms as set forth in Exhibit A. The rent will be \$16,500 per month, and will be paid from general fund Measure P monies.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

**LEASE**

**742 GRAYSON STREET,  
BERKELEY, CALIFORNIA**

**LANDLORD:**

**742 GRAYSON OWNER LLC,  
a Delaware limited liability company**

**TENANT:**

**City of Berkeley,  
a Municipal corporation**

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**EXHIBITS:**

Exhibit A	Site Plan of the Property
Exhibit B	Notice of Lease Term Dates
Exhibit C	Rules and Regulations
Exhibit D	Estoppel Certificate
Exhibit E	Technical Memorandum from Terraphase Engineering Inc.

THIS LEASE dated as of March \_\_, 2021 for reference purposes is by and between 742 GRAYSON OWNER LLC, a Delaware limited liability company hereinafter referred to as "**Landlord**", and the CITY OF BERKELEY, a municipal corporation, hereinafter referred to as "**Tenant**".

**ARTICLE 1 - LEASE SUMMARY AND PROPERTY SPECIFIC PROVISIONS**

1.1 **Landlord's Address:** 742 Grayson Owner LLC  
c/o REDCO Development  
Four Embarcadero Center, Suite 1400  
San Francisco, California 94111  
Attention: Chris Freise

With copies to: REDCO Development  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
Attention: Elizabeth C. Trowbridge, Vice President of  
Operations

Rent Payment by Mail: 742 Grayson Owner LLC  
c/o REDCO Development  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94111

For payment of Rent by wire, electronic and ACH: Pursuant to separate instructions from Landlord.

1.2 **Tenant's Address:** City Manager's Office  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704  
Attn: Darrin Rafferty  
Telephone: 510-981-7000  
Email: [DRafferty@cityofberkeley.info](mailto:DRafferty@cityofberkeley.info)

With a copy to: Dorothy Day House  
c/o Robbi Montoya  
PO Box 12701  
Berkeley, CA 94712  
Telephone: 510-228-7587  
Email: r.montoya@dorothydayhouse.org

1.3 **Buildings:** The two Buildings located on the Land and having a commonly known address as 742 Grayson Street, Berkeley, California 94710. Each building may be referred to as a "**Building**" and together as the "**Buildings**."

1.4 **Premises and Property:** The "**Premises**" or "**Property**" means (i) both of the Buildings, including without limitation all space in the Buildings, (ii) the parcel(s) of land where the Buildings are located (the "**Land**"), and (iii) the Exterior Areas (hereinafter defined). Attached hereto as Exhibit A is a site plan that shows a general outline of the Property.

1.5 **City:** The City of Berkeley, County of Alameda, State of California.

1.6 **Commencement Date:** The “**Commencement Date**” shall be the date of this Lease.

1.7 **Term:** The “**Term**” is the period of time starting on the Commencement Date and expiring on March 31, 2022, after which the tenancy shall convert to month to month until no later than September 30, 2022, subject to Landlord and Tenant each having the independent right to terminate such month-to-month tenancy on thirty (30) days prior written notice to the other party. The “**Expiration Date**” shall be March 31, 2022, subject to extension for a month-to-month basis as provided above, but in no event shall the Expiration Date be later than September 30, 2022. Notwithstanding the foregoing, Tenant shall have the right to terminate the Term of this Lease at any time after not less than thirty (30) days prior written notice to Landlord. Landlord may not terminate the Term prior to March 31, 2022, except due to Default by Tenant or in connection with any casualty or condemnation.

1.8 **Monthly Base Rent:** The “**Monthly Base Rent**” shall be \$16,500.00 each month payable in advance by the first day of each month as provided in this Lease. Monthly Base Rent for any partial month shall be prorated on a daily basis.

1.9 **Security Deposit:** None.

1.10 **Permitted Use:** The “**Permitted Use**” shall be for the City, through its employees, agents, and contractors, to establish and operate a temporary homeless shelter at the Property, including the placement and use of recreational vehicles and portable toilet, showers, hand wash facilities in the parking area at the property, and for solid waste service, subject to the provisions set forth in this Lease and as permitted by law.

1.11 **Parking:** All of the existing parking spaces at the Property, subject to the terms of Article 11 of the Standard Lease Provisions.

1.12 **Brokers:** None.

1.13 **Interest Rate:** The lesser of: (a) Ten percent (10%) or (b) the maximum rate permitted by law in the State where the Property is located.

1.14 **Insurance Amounts:**

a. **Commercial General Liability Insurance:** General liability of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

b. **Commercial Automobile Liability Insurance:** Limit of liability of not less than One Million Dollars (\$1,000,000.00) per accident.

c. **Worker’s Compensation and Employers Liability Insurance:** With limits as mandated pursuant to the laws in the State in which the Property is located, or One Million Dollars (\$1,000,000.00) per person and accident, whichever is greater.

d. **Umbrella Insurance:** Limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence.

1.15 **Tenant Improvements:** The improvements installed by the Tenant in the Premises, if any.

1.16 **Exterior Areas; Definitions; Tenant's Rights.** During the Term, Tenant shall have the right to use, and subject to the Rules and Regulations referred to in Article 9 of the Standard Lease Provisions, those portions of the Property outside of the Buildings on the Property (the “**Exterior Areas**”). The Exterior Areas shall include all areas outside of the Buildings on the Property, including access ways,

loading docks, ramps, drives and platforms and any passageways and service ways thereto, the parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas on the Property, fixtures, systems, decor, facilities and landscaping contained, maintained or used in connection with those areas, and shall be deemed to include any city sidewalks adjacent to the Property, any pedestrian walkway system, park or other facilities located on the Land and open to the general public.

1.17 **Operating Expenses.** Tenant shall not be required to pay or reimburse Landlord for real estate taxes for the Property or for Landlord's insurance premiums and other costs and expenses incurred by Landlord in connection with ownership of the Property, except as provided in this Lease.

1.18 **Utilities and Services.**

a. **Utilities.** As used in this Lease, "**Utilities Costs**" shall mean all actual charges for utilities for water, sewer, gas (if applicable) and electricity for the Property. Tenant shall not be responsible for payment of the Utilities Costs except as hereinafter provided. At its sole cost, Tenant shall be responsible for arranging and contracting for telephone and any internet communication services for the Property. In no event shall Landlord be liable for any interruption or failure in the supply of any such utility or other services to Tenant. In no event shall any Rent owed Landlord under this Lease be abated by reason of the failure to furnish, delay in furnishing, unavailability or diminution in quality or quantity of any such utility or other services or interference with Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord, except in the case of the gross negligence or willful misconduct of Landlord as hereinafter provided. Notwithstanding the foregoing, if any portion of the Premises becomes unfit for occupancy because Landlord fails to provide water, sewer, gas, or electricity (individually or collectively, "**Essential Services**") to the Premises (or any portion thereof) for a period in excess of three (3) business day, and the lack of such utility prevents Tenant from making reasonable use of the Premises (or any portion thereof) for the purpose intended by Tenant, then Tenant shall be entitled to a day-for-day abatement of Rent for each consecutive day (after such three (3) business day period that Landlord fails to deliver the utility. In addition, if (a) the Essential Services are not restored within five (5) business days after such utility is interrupted; and (b) the lack of such Essential Services prevents Tenant from making reasonable use of the Premises (or any portion thereof) for the purpose intended by Tenant, then Tenant may immediately terminate this Lease and receive a pro-rata refund of that month's rent payment as its sole and exclusive remedy.

b. **Excess Utility Usage Costs.** After the initial first six months of the Term, Landlord shall have the right to notify Tenant of Tenant's excess usage of utilities at the Property resulting in Utilities Costs in excess of \$2,500 per month ("**Excess Utility Usage**"). The estimated amount of such excess Utilities Costs shall be referred to as the "**Excess Utility Costs**." The parties shall negotiate in good faith to either require Tenant to increase the Monthly Base Rent to include the estimated amount of the Excess Utility Costs for the remainder of the Term or to have Tenant pay such Excess Utility Costs as additional rent on a monthly estimated basis within ten (10) days after receipt of a billing from Landlord.

c. **Intentionally Omitted.**

d. **Tenant's Other Obligation to Maintain:** At its expense, Tenant shall be responsible for the following during the Term of this Lease:

(1) **General.** Tenant shall clean and maintain in good order, condition, and repair and replace when necessary all interior: (i) fixtures, walls, floors, carpets and ceilings; (ii) doors, interior plate glass, showcases (including cleaning both interior and exterior surfaces) of the Property; and (iii) all electrical facilities and all equipment (including all lighting fixtures, lamps, bulbs, fans, vents, exhaust

equipment and systems) for the Property; and (v) any automatic fire extinguisher equipment in or servicing the Buildings to as good of a condition that existed at the commencement of this Lease.

(2) Windows and Doors. Tenant shall repair any damage to the interior and exterior windows and doors of the Buildings.

(3) Intentionally Omitted.

(4) Cleaning and Janitorial. Tenant shall arrange for all cleaning and janitorial service the Property, including without limitation, all cleaning standards recommended by any local, State or Federal authority or by the Center for Disease Control and Prevention to prevent or limit the transmission of COVID-19 and other viral pathogens, such as by way of example only frequent cleaning disinfecting areas touched surfaces, including bathrooms and maintaining daily records of the performance of such cleaning services.

e. **Landlord's Obligation to Maintain**. Landlord shall maintain and repair, but not replace, the roof and roof membrane, the exterior walls, and the structural portions of the Property, and subject to the obligations of Tenant under the provisions of this Lease. Landlord shall repair plumbing, utility, and/or sewer lines and mains which service the Premises, except for any damage caused by Tenant, any of Tenant Parties or any of Tenant's occupants at the Premises in which case Tenant, at its expense, shall make such repair. If the replacement of the roof, roof membrane, exterior walls, or structural portions of the Premises or plumbing, utility or sewer lines and mains is required and Landlord does not agree in its discretion to perform such work, then Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease upon prior written notice to Landlord if the failure to perform such work renders the Premises untenable for Tenant's permitted use under this Lease.

f. **Management and Security**. At its sole cost and expense, Tenant shall be responsible for the management of the Property and for providing security at the Property. Tenant acknowledges and agrees that the operation of a homeless shelter requires constant monitoring and security personnel 24 hours a day, seven days a week. Tenant shall contract with third party vendors to perform all management security service for the Property 24 hours a day, seven days a week. Such security service shall include coverage for all areas of the Property. Under no circumstances shall Landlord be responsible or liable for any damage to any property or injury or death to any person at or about the Property except for the gross negligence or intentional misconduct of Landlord.

g. **Trash Removal**. At its expense, Tenant shall contract for the removal of all trash and refuse from the Property on no less than a weekly basis. If necessary, Landlord will arrange for the removal of bulk trash deposited outside of the perimeter fencing around the Property on a periodic basis as determined by Landlord. Landlord will pay for the cost of removal of such trash, except to the extent it is determined that the trash has been deposited by Tenant or any occupants or users at the Property, in which case Tenant shall be responsible for the removal of such trash.

1.19 **Additional Hazardous Materials Requirements**. In addition to Tenant's obligations under Article 10 of the Standard Lease Provisions, Tenant shall comply with the following provisions with respect to Hazardous Materials (as that term is defined in Article 10):

a. **Environmental Questionnaire; Disclosure**. Prior to the execution of the lease and not more than once every year thereafter, Tenant shall complete, execute and deliver to Landlord an environmental questionnaire and disclosure statement (the "**Environmental Questionnaire**") in the form required by Landlord, and Tenant shall certify to Landlord all information contained in the Environmental Questionnaire as true and correct to the best of Tenant's knowledge and belief. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes, and Landlord

shall be entitled to rely fully on the information contained therein. Such Environmental Questionnaire shall include the names and amounts of all Hazardous Materials, or any combination thereof, if any, that that Tenant intends to store, generate, use or dispose of on, under or about the Premises through the next Disclosure Date. In addition to the foregoing, Tenant shall promptly notify Landlord of, and shall promptly provide Landlord with true, correct, complete and legible copies of, all of the following environmental items relating to the Premises: reports filed pursuant to any self-reporting requirements; reports filed pursuant to any Environmental Laws or this Lease; all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices, and all other reports, disclosures, plans or documents (even those that may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Materials; all orders, reports, notices, listings and correspondence (even those that may be considered confidential) of or concerning the release, investigation, compliance, clean up, remedial and corrective actions, and abatement of Hazardous Materials whether or not required by Environmental Laws; and all complaints, pleadings and other legal documents filed against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials; provided, however, that Tenant shall have no responsibility under this paragraph to disclose, report on, or complete any Environmental Questionnaire regarding any environmental condition that existed on the Property prior to the commencement of the Lease, or regarding any discharge, release, disposal, migration, investigation, remediation, or abatement of any Hazardous Materials or pollutants that were used or deposited on the Property or that migrated onto the Property prior to the commence of the Lease or as the result of the acts or omission of any third party.

b. **Inspection; Compliance.** Landlord and Landlord Parties (as that term is defined in Article 10) shall have the right in its sole discretion, but not the obligation, to inspect, investigate, test, sample and/or monitor the Premises, including any air, soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses or other study or test, including any invasive test at the Premises, at any time following prior written notice to Tenant (a minimum of twenty-four (24) hours except in the case of emergency). Tenant shall provide Landlord with access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Section 1.19 and Article 10, or in the event of a release of any Hazardous Materials on, under, from or about the Premises, Landlord and Landlord Parties shall have the right, but not the obligation, without limitation on any of Landlord's other rights and remedies under this Lease, to immediately enter upon the Premises and to discharge Tenant's obligations under this Section 1.19 and Article 10 at Tenant's expense, including without limitation the taking of emergency or long term remedial action. Landlord and Landlord Parties shall endeavor to minimize interference with Tenant's business but shall not be liable for any such interference. In addition, Landlord shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use or disposal by Tenant or Tenant's Parties of Hazardous Materials on, under, from or about the Premises Landlord agrees that if any testing proves that the Tenant or Tenant's Parties have no responsibility for the presence of said Hazardous Materials, Tenant shall not be liable for any costs or expenses in connection with such inspection, testing and monitoring.

c. **Tenant Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant's Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises, or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of Landlord under this Lease, Tenant shall pay the cost of any cleanup work performed on, under or about the Premises as required by this Lease or any Environmental Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant's Parties. If Landlord has reason to believe that Tenant or Tenant's Parties may have caused or permitted the release of any Hazardous Materials on, under, from or about the Premises, then Landlord may require



Tenant, at Tenant's sole cost and expense, to conduct monitoring activities on or about the Premises satisfactory to Landlord, in its sole and absolute judgment, concerning such release of Hazardous Materials on, under, from or about the Premises. Notwithstanding anything to the contrary contained in the foregoing, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises, or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. Tenant's failure to timely comply with this Section 1.19 shall constitute an event of default under this Lease. Notwithstanding any provision in this Lease to the contrary, in no event shall Tenant be liable to Landlord for any Hazardous Materials stored, released, or disposed of on, under or about the Premises prior to the Commencement Date by anyone other than the Tenant or any of Tenant Parties, or for any contamination due to Hazardous Materials on, under or about the Premises before, during, and after the Commencement Date that was not caused by Tenant or any Tenant Parties.

d. **Tenant's Responsibility at Conclusion of Lease.** Promptly upon the expiration or sooner termination of this Lease, Tenant shall represent to Landlord in writing that (i) Tenant has made a diligent effort to determine whether any Hazardous Materials are on, under or about the Premises, as a result of any acts or omissions of Tenant or Tenant's Parties and (ii) no such Hazardous Materials exist on, under or about the Premises, other than as specifically identified to Landlord by Tenant in writing or that existed on the Property prior to the commencement of the Lease. If Tenant or any of Tenant Parties caused or permitted the storage, release or disposal of any Hazardous Materials on, under, from or about the Premises during the Term of this Lease, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord within thirty (30) days after such request a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises to the condition existing prior to the introduction of such Hazardous Materials by Tenant or any of Tenant Parties. Upon Landlord's approval of such clean up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease or at law or in equity, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all Environmental Laws and as required by such plan and this Lease.

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## STANDARD LEASE PROVISIONS

### ARTICLE 2 - LEASE

2.1 **Lease Elements; Definitions; Exhibits.** The Lease is comprised of the Lease Summary and Property Specific Provisions (the "**Summary**"), these Standard Lease Provisions ("**Standard Lease Provisions**") and all exhibits attached hereto (collectively, "**Exhibits**"), all of which are incorporated together as part of one and the same instrument. All references in any such documents and instruments to "Lease" means the Summary, these Standard Lease Provisions and all Exhibits attached hereto. All terms used in this Lease shall have the meanings ascribed to such terms in the Summary, these Standard Lease Provisions and any Exhibits. To the extent of any inconsistency between the terms and conditions of the Summary, these Standard Lease Provisions, or any Exhibits attached hereto, the Summary and any Exhibits attached hereto shall control over these Standard Lease Provisions.

### ARTICLE 3 - PREMISES

3.1 **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, upon and subject to, the terms, covenants and conditions of this Lease. Each party covenants and agrees, as a material part of the consideration for this Lease, to keep and perform their respective obligations under this Lease.

3.2 **Landlord's Reserved Rights.** Landlord reserves the right from time to time, and upon reasonable prior written notice to Tenant, to do any of the following: (a) make any changes, additions, improvements, maintenance, repairs or replacements in or to the Property if required to do so by any applicable Laws or to the extent necessary in conjunction with any improvements to the Property; (b) close temporarily any areas of the Property while engaged in making repairs, improvements or alterations to the Property; and (c) perform such other acts and make such other changes with respect to the Property, as Landlord may, in the exercise of good faith business judgment, deem to be appropriate. If Landlord is required to reconfigure the Premises as a result of Landlord's exercise of its rights under this Section 3.2, Landlord shall provide Tenant with reasonable advance written notice of the construction schedule to the extent that the Premises are affected, and Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business as a result of any such construction. All measurements of rentable area in this Lease shall be deemed to be correct.

### ARTICLE 4 - TERM AND POSSESSION

4.1 **Term; Notice of Lease Dates.** The Term shall be for the period designated in the Summary commencing on the Commencement Date and ending on the Expiration Date, unless the Term is sooner terminated or extended as provided in this Lease. If the Commencement Date falls on any day other than the first day of a calendar month then the Term will be measured from the first day of the month following the month in which the Commencement Date occurs. Within ten (10) days after Landlord's written request, Tenant shall execute a written confirmation of the Commencement Date and Expiration Date of the Term in the form of the Notice of Lease Term Dates attached hereto as Exhibit B. The Notice of Lease Term Dates shall be binding upon Tenant unless Tenant reasonably objects thereto in writing within such ten (10) day period. The failure or delay by Landlord to request such confirmation or the failure or delay by Tenant to execute and deliver such confirmation shall not delay the Commencement Date or the date Tenant must commence the payment of Rent.

4.2 **Possession.** Tenant acknowledges it will accept possession of the Premises in its then as-is condition, subject to any latent and patent defects, without the construction of any improvements or the grant of any allowances or concessions of any kind. Notwithstanding the foregoing, Tenant will not be

entitled to possession of the Premises until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the first installment of Monthly Base Rent due under this Lease; and (iii) copies of Tenant's insurance certificates as required hereunder; however, any delay in Tenant's possession under this sentence shall not delay the date by which Tenant must pay Rent or the Commencement Date.

**4.3 Condition of Premises.** Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Lease the Premises have not undergone inspection by a Certified Access Specialist. Further, pursuant to Section 1938 of the California Civil Code, Landlord notifies Tenant of the following: "A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although California state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises." Therefore and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, and (c) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, in any Building or at the Property identified by any such CASp inspection, any and all such alterations and repairs within the Premises to be performed by Tenant in accordance with Article 13 of this Lease and if any alterations and repairs to other portions of the Building or the Property are required as a result of Tenant's CASp inspection then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such alterations and repairs; provided, however, unless such repair or alterations relate solely to other alterations to the Premises which Tenant is obligated to, or elects to, remove upon the expiration or earlier termination of the Lease Term (in which case Tenant shall simultaneously also remove any CASp identified alterations and repairs), Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Section 4.3.

## ARTICLE 5 - RENT

**5.1 Monthly Base Rent.** Tenant agrees to pay Landlord, the Monthly Base Rent as designated in the Summary. Monthly Base Rent shall be paid by Tenant in advance on the first day of each and every calendar month ("**Due Date**") during the Term, except that the first full month's Monthly Base Rent shall be paid upon Tenant's execution and delivery of this Lease to Landlord. Monthly Base Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

**5.2 Additional Rent.** All amounts and charges payable by Tenant under this Lease in addition to Monthly Base Rent, if any, to the extent payable by Tenant under this Lease shall be considered "**Additional Rent**", and the word "**Rent**" in this Lease shall include Monthly Base Rent and all such Additional Rent unless the context specifically states or clearly implies that only Monthly Base Rent is referenced. Rent shall be paid to Landlord, without any prior notice or demand therefor and without any notice, deduction or offset, in lawful money of the United States of America.

**5.3 Late Charges & Interest Rate.** If Landlord does not receive Rent or any other payment due from Tenant within five (5) business days after the Due Date, Tenant shall pay to Landlord a late

charge equal to five percent (5%) of such past due Rent or other payment. Tenant agrees that this late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of Tenant's late payment. Accepting any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to any overdue amount nor prevent Landlord from exercising any other rights or remedies available to Landlord. If any installment of Monthly Base Rent or Additional Rent, or any other amount payable by Tenant hereunder is not received by Landlord within five (5) business days after the Due Date, it shall bear interest at the Interest Rate set forth in the Summary from the sixth day after the Due Date until paid. All interest, and any late charges imposed pursuant to this Section 5.3, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease.

#### ARTICLE 6 - SECURITY DEPOSIT

Intentionally Deleted.

#### ARTICLE 7 - TAXES AND OTHER EXPENSES

7.1 **Taxes.** As used in this Lease, the term "**Taxes**" means: All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, license or use fees, excises, transit charges, and other impositions of any kind (including fees "in-lieu" or in substitution of any such tax or assessment) which are now or hereafter assessed, levied, charged or imposed by any public authority upon the Building, Land, Property and/or Premises or any portion thereof, its operations or the Rent derived therefrom (or any portion or component thereof, or the ownership, operation, or transfer thereof), and any and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize the same. Taxes shall not include penalties or interest arising from Landlord's late payment of Taxes as they are due and payable, inheritance or estate taxes imposed upon or assessed against the interest of Landlord, gift taxes, excess profit taxes, franchise taxes, or similar taxes on Landlord's business or any other taxes computed upon the basis of the net income of Landlord. If it shall not be lawful for Tenant to reimburse Landlord for any such Taxes, the Monthly Base Rent payable to Landlord under this Lease shall be revised to net Landlord the same net rent after imposition of any such Taxes by Landlord as would have been payable to Landlord prior to the payment of any such Taxes. Tenant shall pay for or contribute to Taxes as provided in the Summary. Notwithstanding anything herein to the contrary, Tenant shall be liable for all taxes levied or assessed against personal property, furniture, fixtures, above-standard Tenant Improvements and alterations, additions or improvements placed by or for Tenant in the Premises. Furthermore, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services provided herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Property; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

7.2 **Insurance Costs.** As used in this Lease, "**Insurance Costs**" means the cost of insurance obtained by Landlord pursuant to Article 15 (including self-insured amounts and deductibles, if any). Tenant shall pay for or contribute to Insurance Costs as provided in the Summary.

7.3 **Interruption of Utilities.** Landlord shall have no liability to Tenant for any interruption in utilities or services to be provided to the Premises when such failure is caused by all or any of the following: (a) accident, breakage or repairs; (b) strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel; (e) service interruptions or any other unavailability of utilities resulting from causes beyond Landlord's control

including without limitation, any electrical power "brown-out" or "black-out"; or (f) any other cause beyond Landlord's reasonable control. In addition, in the event of any such interruption in utilities or services, Tenant shall not be entitled to any abatement or reduction of Rent (except as expressly provided in Articles 17 and 18 if such failure is a result of any casualty damage or taking described therein), no eviction of Tenant shall result, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease. In the event of any stoppage or interruption of services or utilities which are not obtained directly by Tenant, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant hereby waives the provisions of any applicable existing or future Law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services (including, without limitation, the provisions of California Civil Code Section 1932(1)).

### **ARTICLE 8 - MAINTENANCE AND REPAIR**

8.1 **Landlord's Repair Obligations.** As provided in Section 1.18(e), Landlord shall maintain and repair the roof and roof membrane, the exterior walls, and the structural portions of the Property, and subject to the obligations of Tenant under the provisions of this Lease. Landlord shall repair plumbing, utility, and/or sewer lines and mains which service the Premises. Tenant waives the right to make repairs at Landlord's expense under any applicable Laws (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature).

8.2 **Tenant's Repair Obligations.** Except for Landlord's obligations specifically set forth in Section 8.1 above, Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, preserve and replace, as necessary, the Premises, Buildings and Property and all parts thereof including, without limitation, all Exterior Areas, Tenant Improvements, Alterations, and all furniture, fixtures and equipment, including, without limitation, all computer, telephone and data cabling and equipment, Tenant's signs, if any, door locks, closing devices, security devices, interior of windows, window sashes, casements and frames, floors and floor coverings, shelving, kitchen, restroom facilities and/or appliances of any kind located within the Premises, if any, custom lighting, and any additions and other property located within the Premises, and all landscaping and paving at the Property so as to keep all of the foregoing elements of the Property in good condition and repair, reasonable wear and tear and casualty damage excepted. Tenant shall replace, at its expense, any and all plate and other glass in and about the Building which is damaged or broken from any cause whatsoever except due to the negligence or willful misconduct of Landlord, its agents or employees. Such maintenance and repairs shall be performed with due diligence, lien-free and in a first-class and workmanlike manner, by licensed contractor(s) that are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold, conditioned or delay. If Tenant refuses or neglects to repair and maintain the Premises, Building or Property properly as required hereunder to the reasonable satisfaction of Landlord, then at any time following ten (10) days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance, Landlord may enter upon the Premises, Building or Property, upon prior written notice to Tenant (a minimum of twenty-four (24) hours except in the case of emergency), and make such repairs and/or maintenance. Upon completion thereof, Tenant agrees to pay to Landlord as Additional Rent, Landlord's costs for making such repairs plus an amount not to exceed ten percent (10%) of such costs for overhead, within ten (10) days after receipt from Landlord of a written itemized bill therefor. Any amounts not reimbursed by Tenant within such ten (10) day period will bear interest at the Interest Rate until paid by Tenant.

### ARTICLE 9 - USE

Tenant shall procure, at its sole cost and expense, any and all permits required by applicable Law for Tenant's use and occupancy of the Premises. Tenant shall use the Premises solely for the Permitted Use specified in the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever without Landlord's prior written approval. Tenant shall observe and comply with the Rules and Regulations attached hereto as Exhibit C, as the same may be modified by Landlord from time to time, provided that said Rules and Regulations including any amendments (a) are reasonable; (b) are non-discriminatory; (c) do not materially and adversely affect Tenant's Permitted Use of the Premises; and (d) shall be provided to Tenant at least fifteen (15) days prior to enactment. Tenant shall, at its sole cost and expense, observe and comply with all Laws and all requirements of any board of fire underwriters or similar body relating to the Premises now or hereafter in force relating to or affecting the condition, use, occupancy, or alteration or improvement of the Premises (whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Premises and regardless of the period of time remaining in the Term). Tenant shall not use or allow the Premises to be used for any improper, unlawful or reasonably objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, the Building or the Property, nor commit or suffer to be committed any waste in, on or about the Premises. Without limiting the foregoing, Tenant is prohibited from engaging or permitting others to engage in any activity which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances (whether for commercial or personal purposes) regulated under any applicable law or other applicable law relating to the medicinal use and/or distribution of marijuana (otherwise known as the Compassionate Use Act of 1996) ("Prohibited Drug Law Activities").

### ARTICLE 10 - HAZARDOUS MATERIALS

As used in this Lease, the term "**Environmental Law(s)**" means any past, present or future federal, state or local Law relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. As used in this Lease, the term "**Hazardous Materials**" means and includes any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any Environmental Laws including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("**PCBs**"), and freon and other chlorofluorocarbons. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials, and motor vehicle fuel stored in fuel tanks of motor vehicles used on site in compliance with all Environmental Laws (some or all of which may constitute Hazardous Materials), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about any Building, the Exterior Areas or any other portion of the Property by Tenant, its agents, officers, directors, shareholders, members, managers, partners, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "**Tenant's Parties**"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Property, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Property or any portion thereof by Tenant or any of Tenant's Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's members, shareholders, partners, officers, directors, managers, employees, agents, contractors, successors and assigns (collectively,

"**Landlord Parties**") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the use, release, storage or disposal during the Term of the Lease by Tenant or any of Tenant Parties of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Property. The provisions of this Article 10 will survive the expiration or earlier termination of this Lease. Tenant shall give Landlord written notice of any evidence of Mold, water leaks or water infiltration in the Premises promptly upon discovery of same. Tenant shall give Landlord written notice of any evidence of cracks in any Building's concrete slabs which may result in a vapor intrusion pathway promptly upon discovery of same. Upon receipt of any such notice from Tenant under the preceding two sentences, Landlord shall have the right in its discretion to elect to make or not make the required repair to correct the condition. If Landlord elects not to make such repair, then Tenant as its sole and exclusive remedy may make the repair at Tenant's expense or elect to terminate this Lease upon written notice to Landlord. Tenant shall make such election within thirty (30) days after notice from Landlord that Landlord will not be making the repair. Landlord has provided Tenant notification of ongoing environmental concerns on, in, under or about the Property related to petroleum hydrocarbons and chlorinated volatile organic compounds (CVOCs) detected in soil-vapor and groundwater samples at concentrations exceeding screening criteria established by the San Francisco Bay Regional Water Quality Control Board. Attached hereto as Exhibit E is a copy of the Technical Memorandum dated February 9, 2021 from Terraphase Engineering Inc. outlining the ongoing environmental concerns on, in, under or about the Property. Landlord has notified Tenant that additional relevant documentation regarding the environmental status of the Property can be accessed using the publicly available GeoTracker website.

To the fullest extent permitted by law, Landlord agrees to promptly indemnify, protect, defend and hold harmless Tenant and Tenant's subcontractors, officers, directors, shareholders, employees, agents, successors and assigns from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of environmental contamination and Hazardous Materials which existed on the Premises prior to Tenant's occupancy in violation of applicable Law, or which are caused by the negligence or willful misconduct of Landlord or any of Landlord's subcontractors, officers, directors, shareholders, employees, agents, successors and assigns before, during and after the Term or any extensions. The obligations of Landlord hereunder shall survive the expiration or termination of the Term or any extensions. The indemnification obligations of Landlord created by this section shall be in addition to the indemnification obligations set forth elsewhere herein or provided by applicable law.

#### **ARTICLE 11 - PARKING**

During the Term, Tenant shall be entitled to utilize the number of parking spaces specified in the Summary within the parking areas for the Property. Tenant's visitors shall be entitled to access to the parking areas on the Property designated for visitor use.

#### **ARTICLE 12 - TENANT SIGNS**

Tenant shall have the right to install and maintain, at Tenant's sole cost and expense, one (1) sign (restricted solely to Tenant's name) on the exterior of the Building above the doorway to the Premises or such other location as may be reasonably determined by Landlord, subject to the provisions of this Article 12. Subsequent changes to Tenant's sign and/or any additional signs, to the extent permitted by Landlord herein, shall be made or installed at Tenant's sole cost and expense. All aspects of any such signs shall be subject to the prior written consent of Landlord (which shall not be unreasonably withheld), and shall be

per Landlord's standard specifications and materials, as revised by Landlord from time to time. Tenant shall have no right to install or maintain any other signs, banners, advertising, notices, displays, stickers, decals or any other logo or identification of any person, product or service whatsoever, in any location on or in the Property except as (i) shall have been expressly approved by Landlord in writing prior to the installation thereof (which approval may be granted or withheld in Landlord's sole and absolute discretion), (ii) shall not violate any signage restrictions or exclusive sign rights contained in any then existing leases with other tenants of the Property, if any, and (iii) are consistent and compatible with all applicable Laws, and the design, signage and graphics program from time to time implemented by Landlord with respect to the Property, if any. Landlord shall have the right to remove any signs or signage material installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten (10) days after written demand by Landlord. Any additional sign rights of Tenant, if any, shall be as provided in the Summary.

### **ARTICLE 13 - ALTERATIONS**

13.1 **Alterations.** After installation of the initial Tenant Improvements for the Premises, Tenant may, at its sole cost and expense, make alterations, additions, improvements and decorations to the Premises ("**Alteration(s)**") subject to and upon the following terms and conditions:

a. Tenant shall not make any Alterations which: (i) affect any area outside the Premises including the outside appearance, character or use of any portions of the Building or other portions of the Property; (ii) affect the Building's roof, roof membrane, any structural component or any base Building equipment, concrete slab, services or systems (including fire and life/safety systems), or the proper functioning thereof, or Landlord's access thereto; (iii) in the reasonable opinion of Landlord, lessen the value of the Building or the Property; (iv) will violate or require a change in any occupancy certificate applicable to the Premises; or (v) would trigger a legal requirement which would require Landlord to make any alteration or improvement to the Premises, Building or other aspect of the Property.

b. Tenant shall not make any Alterations not prohibited by Section 13.1(a), unless Tenant first obtains Landlord's prior written consent, which consent Landlord shall not unreasonably withhold, condition or delay, provided Landlord's prior approval shall not be required for any Alterations that is not prohibited by Section 13.1(a) above and is of a cosmetic nature that satisfies all of the following conditions (hereinafter a "**Pre-Approved Alteration**"): (i) the costs of such Alterations do not exceed \$5,000; (ii) to the extent reasonably required by Landlord or by law due to the nature of the work being performed, Tenant delivers to Landlord final plans, specifications, working drawings, permits and approvals for such Alterations at least ten (10) days prior to commencement of the work thereof; (iii) Tenant and such Alterations otherwise satisfy all other conditions set forth in this Section 13.1; and (iv) the making of such Alterations will not otherwise cause a default by Tenant under any provision of this Lease. Tenant shall provide Landlord with ten (10) days' prior written notice before commencing any Alterations. In addition, before proceeding with any Alteration, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Alterations, and (B) if the cost of such Alterations exceeds \$50,000.00, a completion and lien indemnity bond, or other surety satisfactory to Landlord for such Alterations. Landlord's approval of any plans, contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability with respect to such Alterations and will create no liability or responsibility on Landlord's part concerning the completeness of such Alterations or their design sufficiency or compliance with Laws.

c. All Alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings, if any; (ii) lien-free and in a first-class workmanlike manner;



(iii) in compliance with all building codes and Laws; (iv) in such a manner so as not to impose any additional expense upon nor delay Landlord in the maintenance and operation of the Building; (v) by licensed and bondable contractors, subcontractors and vendors selected by Tenant and reasonably approved by Landlord (provided Landlord reserves the right to require Tenant to utilize Landlord's preferred contractors, subcontractors and vendors for certain work performed within the Premises or as to systems serving the Premises as approved by Landlord such as for fire/life safety, HVAC control work, architectural and engineering services), and (vi) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate. Tenant shall pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord to include such Alterations in the causes of loss – special form property insurance obtained by Landlord pursuant to this Lease, if Landlord elects in writing to insure such Alterations; provided, however, Landlord shall not be required to include the Alterations under such insurance. If the Alterations are not included in Landlord's insurance, Tenant shall insure the Alterations under its causes of loss-special form property insurance pursuant to this Lease.

d. Tenant shall pay to Landlord, as Additional Rent, the reasonable costs of Landlord's engineers and other consultants for review of all plans, specifications and working drawings for the Alterations, within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants. In addition to such costs, Tenant shall pay to Landlord, within ten (10) business days after completion of any Alterations, a construction supervision fee equal to five percent (5%) of the total cost of the Alterations and the actual, reasonable costs incurred by Landlord for any services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel.

e. Throughout the performance of the Alterations, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and commercial general liability insurance in compliance with the insurance provisions of this Lease.

**13.2 Removal of Alterations.** All Alterations and the initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord, to the extent that the Tenant Improvements cannot be removed without damaging the Property. Tenant Improvements that are permanently affixed to the Property shall remain upon and be surrendered with the Premises at the end of the Term; provided, however, Landlord may, by written notice delivered to Tenant within thirty (30) days after Landlord's receipt of plans for any Alterations identify those Alterations which Landlord shall require Tenant to remove at the end of the Term. If Landlord requires Tenant to remove any such Alterations, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal to its original condition (or, at Landlord's option, Tenant shall pay to Landlord all of Landlord's costs of such removal and repair).

**13.3 Liens.** Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Property or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any of Tenant's Parties. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such liens to be released of record or bonded so that such lien(s) no longer affect(s) title to the Property, the Building or the Premises. If Tenant fails to cause any such lien to be released or bonded within ten (10) days after filing thereof, Landlord may cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien, and Tenant shall reimburse Landlord within five (5) business days after receipt of invoice from Landlord,

any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord.

#### **ARTICLE 14 - TENANT'S INSURANCE**

14.1 **Tenant's Insurance.** On or before the earlier of the Commencement Date or the date Tenant commences or causes to be commenced any work of any type in the Premises, and continuing during the entire Term, Tenant shall obtain and keep in full force and effect, the following insurance with limits of coverage as set forth in Section 1.14 of the Summary:

- a. Special Form (formerly known as "all risk") insurance, including fire and extended coverage, sprinkler leakage, vandalism, malicious mischief upon property of every description and kind owned by Tenant and located at or about the Premises, or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, furniture, equipment and any other personal property, and any Alterations and initial tenant improvements previously existing or installed in the Premises, in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the Mortgagees of Landlord shall be presumptive.
- b. Commercial general liability insurance coverage on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability (including Tenant's indemnification obligations under this Lease), liquor liability (if Tenant serves alcohol on the Premises), products and completed operations liability. The limits of liability of such commercial general liability insurance may be increased every three (3) years during the Term upon reasonable prior notice by Landlord to an amount reasonably required by Landlord and appropriate for tenants of buildings comparable to the Building.
- c. Commercial Automobile Liability covering all owned, hired and non-owned automobiles.
- d. Worker's compensation, in statutory amounts and employers liability, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death, bodily injury or illness could be asserted against Landlord, Tenant or the Premises.
- e. Umbrella liability insurance on an occurrence basis, in excess of and following the form of the underlying insurance described in Section 14.1.b. and 14.1.c. and the employer's liability coverage in Section 14.1.d. which is at least as broad as each and every area of the underlying policies. Such umbrella liability insurance shall include pay on behalf of wording, concurrency of effective dates with primary policies, blanket contractual liability, application of primary policy aggregates, and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance, subject to customary commercially reasonable deductible amounts imposed on umbrella policies.
- f. Any other form or forms of insurance as Tenant or Landlord or the Mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant of a building similar to the Building would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

14.2 **Requirements.** Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are approved by Landlord and/or Landlord's Mortgagees and are authorized to do business in the state of California (provided that, in any event, the same insurance company shall provide the coverages described in Sections 14.1.a. and 14.1.g. above); (b) be in form reasonably

satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and shall name Landlord, Landlord's property manager and lender and, at Landlord's request, such other persons or entities of which Tenant has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (d) not have a deductible amount exceeding Three Hundred and Fifty Dollars (\$350,000.00), which deductible amount shall be deemed self-insured with full waiver of subrogation; (e) specifically provide that the insurance afforded by such policy for the benefit of Landlord and any other additional insureds shall be primary, and any insurance carried by Landlord or any other additional insureds shall be excess and non-contributing; (f) require the insurer to notify Landlord and any other additional insureds in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof; (g) allows a cross liability or severability of interest endorsement; and (h) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant is required to obtain such insurance as set forth in Section 14.1 above, certificates from the insurance company evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Article 14. Tenant shall cause replacement certificates to be delivered to Landlord not less than ten (10) days after the expiration of any such policy or policies. If any such initial or replacement certificates are not furnished within the time(s) specified herein, Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense.

**14.3 Effect on Insurance.** Tenant shall not do or permit to be done anything which will (a) violate or invalidate any insurance policy or coverage maintained by Landlord or Tenant hereunder, or (b) increase the costs of any insurance policy maintained by Landlord. If Tenant's occupancy or conduct of its business in or on the Premises results in any increase in premiums for any insurance carried by Landlord with respect to the Building or the Property, Tenant shall either discontinue the activities affecting the insurance or pay such increase as Additional Rent within ten (10) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord pursuant to this Lease or otherwise with respect to the Building or the Property shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the use or occupancy of the Premises other than as allowed by the Permitted Use by Tenant or by anyone permitted by Tenant to be upon the Premises, and if Tenant fails to remedy such condition within five (5) business days after notice thereof, Tenant shall be deemed to be in default under this Lease and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

#### **ARTICLE 15 - LANDLORD'S INSURANCE**

During the Term, Landlord shall maintain property insurance written on a Special Form (formerly known as "all risk") basis covering the Property and the Building (excluding, however, Tenant's furniture, equipment and other personal property and Alterations, unless Landlord otherwise elects to insure the Alterations pursuant to Section 13.1 above) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, rental loss coverage, earthquake damage coverage (at Landlord's option), and such additional coverage as Landlord deems appropriate. Landlord shall also carry commercial general liability in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building in the state in which the Building is located. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies that Landlord has in force for other buildings and projects. In addition, at Landlord's option, Landlord may elect to self-insure all or any part of such required insurance coverage. Landlord may, but shall not be obligated to carry any other form or forms of insurance as Landlord or the Mortgagees or ground lessors of Landlord may reasonably determine is advisable. The cost of insurance obtained by Landlord pursuant to this Article 15 (including self-insured amounts and deductibles) shall be included in Insurance Costs, except that any increase in the premium for the property insurance attributable to the replacement cost of the Tenant

Improvements in excess of Building standard shall not be included as Insurance Costs, but shall be paid by Tenant within thirty (30) days after invoice from Landlord.

#### **ARTICLE 16 - INDEMNIFICATION AND EXCULPATION**

16.1 **Tenant's Assumption of Risk and Waiver.** Except to the extent such matter is attributable to the negligence or willful misconduct of Landlord, Landlord and Landlord Parties shall not be liable to Tenant, or any of Tenant's Parties, and Tenant hereby releases Landlord and Landlord Parties, from and against any of the following: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling ceiling tiles masonry, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, (iv) any such damage caused by other tenants or persons in the Premises, occupants of any other portions of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work, (v) any interruption of utilities and services, or (vi) any environmental condition on, in, under or around the Property, including matters disclosed in Exhibit E attached hereto or otherwise publicly available to Tenant, except as otherwise provided in this Lease. Landlord shall in no event be liable to Tenant or any other person for any consequential damages, special or punitive damages, or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section 16.1, all property of Tenant and Tenant's Parties kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. Landlord or its agents shall not be liable for interference with light or other intangible rights.

16.2 **Tenant's Indemnification.** Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and the Landlord Parties harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including, without limitation, attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from (a) any occurrence in the Premises following the date Landlord delivers possession of all or any portion of the Premises to Tenant, except to the extent caused by the negligence or willful misconduct of Landlord, (b) any act or omission of Tenant or any of Tenant's Parties; (c) the use of the Building and the Property and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any of Tenant's Parties, in or about the Premises, the Building or elsewhere on the Property; and (d) any default by Tenant as to any obligations on Tenant's part to be performed under the terms of this Lease or the terms of any contract or agreement to which Tenant is a party or by which it is bound, affecting this Lease or the Premises.. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any property on the Premises, or on adjoining sidewalks, streets or ways, connected with the use, condition or occupancy thereof, whether or not Landlord or any Landlord Parties has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against Landlord or any Landlord Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's indemnification obligations under this Section 16.2 and elsewhere in this Lease shall survive the expiration or earlier termination of this Lease. Tenant's covenants, agreements and indemnification in Section 16.1 and this Section 16.2 are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

16.3 **Landlord's Indemnification.** Except for the gross negligence or willful misconduct of Tenant and/or any of the Tenant's Parties (as hereinafter defined), Landlord shall indemnify and hold harmless Tenant and Tenant's officers, agents, employees, partners, successors, and assigns (collectively, the "**Tenant Parties**") from and against any and all claims arising from Landlord's use of the Premises in the performance of any repairs or maintenance required of Landlord under this Lease, or from the conduct of Landlord's business or from any activity, work, or things done by Landlord in, on, or about the Premises, and shall further indemnify and hold harmless the Tenant Parties from and against any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any negligence of the Landlord, the Landlord Parties, or any of Landlord's agents, contractors, or employees, and from and against all cost, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel satisfactory to Tenant.

#### **ARTICLE 17 - CASUALTY DAMAGE/DESTRUCTION**

17.1 **Landlord's Rights and Obligations.** If the Premises or any Building is damaged by fire or other casualty ("**Casualty**") Landlord may elect it is sole and absolute discretion to either (a) terminate this Lease upon written notice to Tenant, or (b) elect to restore the damaged area to a condition acceptable to Landlord. If this Lease is not terminated due to such Casualty, then Landlord shall repair, reconstruct and restore the portion of the Premises or Building, excluding any improvements and Alterations made by Tenant or for any of Tenant's property. At its expense, Tenant shall be responsible for the repair, reconstruction and restoration of the Tenant's improvements, Alterations and personal property. Under any of the conditions of this Section 17.1, Landlord shall give written notice to Tenant of the estimated time for Landlord to restore the damage within the later of sixty (60) days after the occurrence of such Casualty, or fifteen (15) days after Landlord's receipt of the estimate from Landlord's contractor or, as applicable, thirty (30) days after Landlord receives approval from Landlord's Mortgagee to rebuild.

17.2 **Tenant's Costs and Insurance Proceeds.** In the event of any damage or destruction of all or any part of the Premises, Tenant shall immediately: (a) notify Landlord thereof; and (b) deliver to Landlord all insurance proceeds received by Tenant with respect to the Tenant Improvements and Alterations (to the extent such items are not covered by Landlord's casualty insurance obtained by Landlord pursuant to this Lease) and with respect to Alterations in the Premises that Tenant is required to insure pursuant to Section 13.1, excluding proceeds for Tenant's furniture trade fixtures and other personal property. If, for any reason (including Tenant's failure to obtain insurance which Tenant is required to insure pursuant to Section 13.1 hereof), Tenant fails to receive insurance proceeds covering the full replacement cost of such Alterations which are damaged, Tenant shall be deemed to have self-insured the replacement cost of such Alterations and Tenant improvements, and upon any damage or destruction thereto, Tenant shall immediately pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Landlord's or Tenant's insurance with respect to such items.

17.3 **Abatement of Rent.** If as a result of any such damage, repair, reconstruction and/or restoration of the Premises or any Building, Tenant is prevented from using, and does not use, the Premises or any portion thereof, then Rent shall be abated or reduced, as the case may be, during the period that Tenant continues to be so prevented from using and does not use the Premises or portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises. Notwithstanding the foregoing to the contrary, if the damage is due to the negligence or willful misconduct of Tenant or any of Tenant's Parties, there shall be no abatement of Rent. Except for abatement of Rent as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or

use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

17.4 **Tenant's Termination Right.** Tenant's termination rights shall be as set forth in section 1.7.

17.5 **Waiver of Termination Right.** This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, except as expressly provided herein, Tenant hereby waives any and all provisions of applicable Law that provide alternative rights for the parties in the event of damage or destruction (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

#### ARTICLE 18 - CONDEMNATION

18.1 **Substantial or Partial Taking.** Subject to the provisions of Section 18.3 below, either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under law, by eminent domain or private purchase in lieu thereof (a "**Taking**"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or the Property which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building and/or the Property. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent and all other elements of this Lease which are dependent upon the area of the Premises, the Building or the Property shall be appropriately adjusted to account for any reduction in the square footage of the Premises, Building or Property, as applicable. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds are expressly waived by Tenant, however, Tenant may file a separate claim for Tenant's furniture, fixtures, equipment and other personal property, loss of goodwill and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the amount of Landlord's award.

18.2 **Condemnation Award.** Subject to the provisions of Section 18.3 below, in connection with any Taking of the Premises or the Building, Landlord shall be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award shall be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value shall be the sole property of Landlord. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant shall be granted the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking.

18.3 **Temporary Taking.** In the event of a Taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall perform its obligations with respect to surrender of the Premises and shall pay to Landlord the portion of any award which is attributable

to any period of time beyond the Term expiration date. For purpose of this Section 18.3, a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

18.4 **Waiver.** Tenant hereby waives any rights it may have pursuant to any applicable Laws (including, without limitation, to the extent the Premises are located in California, any rights Tenant might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure) and agrees that the provisions hereof shall govern the parties' rights in the event of any Taking.

#### **ARTICLE 19 - WAIVER OF CLAIMS; WAIVER OF SUBROGATION**

19.1 **Waiver.** Tenant hereby waives its rights against Landlord for any claims or damages or losses, including any deductibles and self-insured amounts, which are caused by or result from (a) any occurrence insured under any property insurance policy carried by Tenant or Landlord, as the case may be, or could be insured against, or (b) any occurrence which would have been covered under any property insurance required to be obtained and maintained by Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waiver shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

19.2 **Waiver of Insurers.** Tenant shall cause each property insurance policy carried by Tenant to provide that the insurer waives all rights of recovery by way of subrogation against Landlord, in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance for an insurable loss, such loss shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

#### **ARTICLE 20 - ASSIGNMENT AND SUBLETTING**

20.1 **Restriction on Transfer.** Tenant shall not assign this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant, Tenant's contractors, and individuals receiving services from Tenant (any such assignment, encumbrance, sublease, license or the like being sometimes referred to as a "**Transfer**"). In no event may Tenant encumber or hypothecate this Lease or the Premises. This prohibition against Transfers shall be construed to include a prohibition against any assignment or subletting by operation of law.

#### **ARTICLE 21 - SURRENDER AND HOLDING OVER**

21.1 **Surrender of Premises.** Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises and exclusive possession of the Premises to Landlord broom clean and in good condition and repair, reasonable wear and tear excepted (and casualty damage excepted), with all of Tenant's personal property, electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (to be removed in accordance with the National Electric Code and other applicable Laws) and those items, if any, of Alterations identified by Landlord pursuant to Section 13.2, removed therefrom and all damage caused by such removal repaired. In this regard, reasonable wear and tear shall be construed to mean wear and tear caused to the Premises by the natural aging process which occurs in spite of prudent application of commercially reasonable standards for maintenance, repair and cleaning and janitorial practices. In any event, Tenant shall cause the following to be done prior to the expiration or the sooner termination of this Lease: (i) all surface areas and bathrooms and showers shall be cleaned and disinfected in accordance with the best protocol practices for the prevention of infection; (ii) all carpets shall be cleaned and shampooed, and all tile or concrete floors cleaned; (iii) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced; (iv) all interior and exterior windows shall be washed; and (v) the plumbing and electrical systems and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken

light bulbs, ballasts, or lenses). If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease, (a) remove any Tenant's Alterations which Tenant is required to remove pursuant to this Lease and repair all damage caused by such removal, and (b) return the Premises or any part thereof to its original configuration existing as of the time the Premises were delivered to Tenant. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property and Alterations identified by Landlord for removal pursuant to this Lease, Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (1) remove and store such items in accordance with applicable Law; and/or (2) upon ten (10) days' prior notice to Tenant, sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable Law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

21.2 **Holding Over.** Tenant will not be permitted to hold over possession of the Premises after the expiration or earlier termination of the Term and extension period without the express written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. If Tenant holds over after the expiration or earlier termination of the Term and extension period with or without the express written consent of Landlord, then, in addition to all other remedies available to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all Additional Rent under this Lease), but at a Monthly Base Rent equal to three hundred percent (300%) of the Monthly Base Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination of this Lease. Any such holdover Rent shall be paid on a per month basis without reduction for partial months during the holdover. The foregoing rate for holdover Monthly Base Rent and any acceptance by Landlord of Monthly Base Rent, including any Monthly Base Rent at the holdover rate, after or for any period after such expiration or earlier termination of the Term of this Lease, shall not constitute consent to or a right to a holdover hereunder or result in an extension of the Term of this Lease. Tenant acknowledges and agrees that Landlord shall have the right to initiate and pursue an unlawful detainer proceeding, and any other proceeding, at any time to recover possession of the Premises as a result of the expiration or termination of the Term of this Lease and to the extent permissible under applicable law, Tenant shall not impose or allege any defense or claim to or otherwise delay any such proceeding. Tenant acknowledges that any holding over in the Premises by Tenant without Landlord's express written consent may compromise or otherwise affect Landlord's ability to develop the Premises and enter into new leases with prospective tenants at the Premises. Therefore, if Tenant fails to vacate and deliver the Premises to Landlord upon the expiration or earlier termination of the Term of this Lease, in addition to any other liabilities and remedies available to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all claims and liability resulting from such failure, including, without limiting the generality of the foregoing, any losses, damages and/or additional costs suffered by Landlord resulting therefrom. Tenant shall be liable, and shall pay to Landlord within ten (10) days after demand, for all losses incurred, damages and expenses incurred by Landlord as a result of such holdover, and shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against all liabilities, damages, losses, claims, suits, costs and expenses (including reasonable attorneys' fees and costs) arising from or relating to any such holdover tenancy, including without limitation, any claim for damages made by a succeeding tenant. Tenant's indemnification obligations hereunder shall survive the expiration or earlier termination of this Lease.

## ARTICLE 22 - DEFAULTS

22.1 **Tenant's Default.** The occurrence of any one or more of the following events shall constitute a "Default" under this Lease by Tenant:



- a. the vacation or abandonment of the Premises by Tenant. "**Abandonment**" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer while in default of any other provision of this Lease;
- b. the failure by Tenant to make any payment of Rent, Additional Rent or any other payment required to be made by Tenant hereunder, where such failure continues for five (5) days after written notice thereof from Landlord that such payment was not received when due; provided that if Landlord provides two (2) or more notices of late payment within any twelve (12) month period, then the third failure of Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder when due in the twelve (12) month period following the second (2<sup>nd</sup>) such notice shall be an automatic Default without notice from Landlord; or
- c. the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 22.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

Any notice sent by Landlord to Tenant pursuant to this Section 22.1 shall be in lieu of, and not in addition to, any notice required under any applicable Law.

### **ARTICLE 23 - REMEDIES OF LANDLORD**

23.1 **Landlord's Remedies; Termination.** In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity (including, without limitation, the remedies of Civil Code Section 1951.4 and any successor statute or similar Law, which provides that Landlord may continue this Lease in effect following Tenant's breach and abandonment and collect rent as it falls due, if Tenant has the right to sublet or assign, subject to reasonable limitations), Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder and to re-enter the Premises and remove all persons and property from the Premises, in accordance with applicable laws governing such repossession; such property may be removed, stored and/or disposed of as permitted by applicable Law. If Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (d) any other amount 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: the total unamortized sum of any Abated Amount (amortized on a straight line basis over the initial Term of this Lease), tenant improvement costs; attorneys' fees; brokers' commissions; any costs required to return the Premises to the conditioned required at the end of the Term; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Alterations, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove; plus (e) all other monetary damages allowed under applicable Law.

As used in Sections 23.1(a) and 23.1(b) above, the "**worth at the time of award**" is computed by allowing interest at the Interest Rate set forth in the Summary. As used in Section 23.1(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). To the extent the Premises are located in California, Tenant hereby waives for Tenant and all those claiming under Tenant all right now or hereafter existing including, without limitation, any rights under California Code of Civil Procedure Sections 1174 and 1179 and Civil Code Section 1950.7 to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

**23.2 Landlord's Remedies; Continuation of Lease; Re-Entry Rights.** In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right to (a) continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, and (b) with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises, in accordance with applicable laws governing such repossession; such property may be removed, stored and/or disposed of as permitted by applicable Law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 23.2, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. No notice from Landlord or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Notwithstanding any reletting without termination by Landlord because of any Default, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

**23.3 Landlord's Right to Perform.** Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. In the event of any Default by Tenant, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act as required to cure such Default on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

**23.4 Rights and Remedies Cumulative.** All rights, options and remedies of Landlord contained in this Article 23 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Article 23 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

**23.5 Costs Upon Default and Litigation.** Tenant shall pay to Landlord and its Mortgagees as Additional Rent all the expenses incurred by Landlord or its Mortgagees in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its Mortgagees shall be made a party to any litigation commenced against Tenant by any third party or any litigation by a third party pertaining to the contemplated use of the Premises as a homeless shelter, at the option of Landlord and/or its Mortgagees, Tenant, at its expense, shall provide Landlord and/or its Mortgagees with counsel approved by Landlord and/or its Mortgagees and shall pay all costs incurred or paid by Landlord and/or its Mortgagees in connection with such litigation.

#### **ARTICLE 24 - ENTRY BY LANDLORD**

Landlord and its employees and agents shall at all reasonable times have the right to enter the Premises to inspect the same, to supply any service required to be provided by Landlord to Tenant under this Lease, to exhibit the Premises to prospective lenders or purchasers (or during the last year of the Term or during any default by Tenant, to prospective tenants), to post notices of non-responsibility, to conduct any examination, study or test at the Premises, whether invasive or non-invasive, and/or to alter, improve or repair the Premises or any other portion of any Building or Property, all as determined by Landlord in its discretion, without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of Rent. In exercising such entry rights, Landlord shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business, and shall provide Tenant with a minimum of twenty-four (24) hours advance written notice of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises.

#### **ARTICLE 25 - LIMITATION ON LANDLORD'S LIABILITY**

Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including as to any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners, and Tenant shall not seek recourse against the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Building, and no other assets of Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Property. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall assume all covenants and obligations on the part of Landlord contained in this Lease that accrue from and after the effective date of such transfer. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises, the Building, the Property and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

#### **ARTICLE 26 - SUBORDINATION**

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "**Mortgage**"). This clause shall be self-operative, but no later than ten (10) business days after written request from Landlord or any holder of a Mortgage (each, a "**Mortgagee**" and collectively, "**Mortgagees**"), Tenant shall execute a commercially reasonable subordination agreement. As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. No later than ten (10) business days after written request by Landlord or any Mortgagee, Tenant shall, without charge, attorn to any successor to Landlord's

interest in this Lease. Tenant hereby waives its rights under any current or future Law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Should Tenant fail to sign and return any such documents within said ten (10) business day period, Tenant shall be in default hereunder.

#### **ARTICLE 27 - ESTOPPEL CERTIFICATE**

Within ten (10) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form substantially similar to the form of Exhibit D attached hereto. Any such estoppel certificate delivered pursuant to this Article 27 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Property, as well as their assignees. Tenant's failure to deliver such estoppel certificate following an additional two (2) business day cure period after notice shall constitute a default hereunder. Tenant's failure to deliver such certificate within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance, and that not more than one (1) month's Rent has been paid in advance.

#### **ARTICLE 28 - Intentionally Deleted**

#### **ARTICLE 29 - MORTGAGEE PROTECTION**

If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Building or Property, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within thirty (30) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, decrease the useable floor area of the Premises or the Property, eliminate any parking spaces, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure).

#### **ARTICLE 30 - QUIET ENJOYMENT**

Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of Rent hereunder), Tenant shall have the right to use and occupy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord, subject to Landlord's right to conduct any examination, study or test at the Premises as provided in this Lease. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building.

#### **ARTICLE 31 - MISCELLANEOUS PROVISIONS**

31.1 **Broker.** Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys'

fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**31.2 Governing Law.** This Lease shall be governed by, and construed pursuant to, the laws of the state of California. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in the county in which the Premises are located. Tenant shall comply with all governmental and quasi-governmental laws, ordinances and regulations applicable to the Building, Property and/or the Premises, and all rules and regulations adopted pursuant thereto and all covenants, conditions and restrictions applicable to and/or of record against the Building, Property and/or the Land (individually, a "**Law**" and collectively, the "**Laws**").

**31.3 Successors and Assigns.** Subject to the provisions of Article 25 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Article 20, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any exhibit attached hereto shall be assignable to or exercisable by anyone other than the original Tenant under this Lease.

**31.4 No Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

**31.5 Professional Fees.** If either Landlord or Tenant should bring suit (or alternate dispute resolution proceedings) against the other with respect to this Lease, including for unlawful detainer, forcible entry and detainer, or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party, including any and all costs incurred in enforcing, perfecting and executing such judgment and all reasonable costs and attorneys' fees associated with any appeal.

**31.6 Waiver.** The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any Rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

**31.7 Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Article and Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. The parties hereto acknowledge and agree that each has participated in the negotiation

and drafting of this Lease; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Lease, the interpretation of this Lease shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman.

31.8 **Time.** Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor.

31.9 **Business Day.** A "business day" is Monday through Friday, excluding holidays observed by the United States Postal Service and reference to 5:00 p.m. is to the time zone of the recipient. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Lease during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day.

31.10 **Payments and Notices.** All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), or by registered or certified mail, postage prepaid, return receipt requested, or by email, addressed to Tenant and Dorothy Day House at the address(es), or if applicable the email addresses, designated in the Summary, or to Landlord at the address(es), or if applicable the email address, designated in the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) upon confirmed transmission if sent by e-mail transmission, provided sender does not receive a "undeliverable" notification and provided such transmission is prior to 5:00 p.m. on a business day (if such transmission is after 5:00 p.m. on a business day or is on a non-business day, such notice will be deemed given on the following business day), (ii) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (iii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs.

31.11 **Prior Agreements; Amendments.** This Lease, including the Summary and all Exhibits attached hereto, contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

31.12 **Separability.** The invalidity or unenforceability of any provision of this Lease shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

31.13 **Recording.** Neither Landlord nor Tenant shall record this Lease or a short form memorandum of this Lease.

31.14 **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

**31.15 Intentionally Deleted.**

**31.16 No Partnership.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

**31.17 Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, without limitation, failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, terrorism, bioterrorism, fire, earthquake, inclement weather including rain, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delay(s)**"), then performance of such act shall be excused for the period of such Force Majeure Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 31.17 shall not apply to nor operate to excuse Tenant from the payment of Monthly Base Rent, or any Additional Rent or any other payments strictly in accordance with the terms of this Lease or to extend the Term or remain in possession after the scheduled expiration or sooner termination of the Term.

**31.18 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Signatures and initials required in this document may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Lease.

**31.19 Tenant's Authority.** If Tenant executes this Lease as a partnership, corporation or limited liability company, then Tenant and the persons and/or entities executing this Lease on behalf of Tenant represent and warrant that: (a) Tenant is a duly organized and existing partnership, corporation or limited liability company, as the case may be, and is qualified to do business in the state in which the Building is located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf; and (c) this Lease is binding upon Tenant in accordance with its terms. Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing such qualification, organization, existence and authorization within ten (10) days after Landlord's request. Tenant represents and warrants to Landlord that Tenant is not, and the entities or individuals constituting Tenant or which may own or control Tenant or which may be owned or controlled by Tenant are not, (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tlstdn.pdf> or any replacement website or other replacement official publication of such list.

**31.20 No Option.** The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until the final lease has been approved by any and all Mortgagee(s) and it has been executed by Landlord and delivered to Tenant.

31.21 **Options and Rights in General.** Any option (each an “**Option**” and collectively, the “**Options**”), including without limitation, any option to extend, option to terminate, option to expand, right to lease, right of first offer, and/or right of first refusal, granted to Tenant is personal to the original Tenant executing this Lease or a Permitted Transferee and may be exercised only by the original Tenant executing this Lease while occupying the entire Premises and without the intent of thereafter assigning this Lease or subletting the Premises or a Permitted Transferee and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than the original Tenant executing this Lease or a Permitted Transferee. The Options, if any, granted to Tenant under this Lease are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise. Tenant will have no right to exercise any Option, notwithstanding any provision of the grant of option to the contrary, and Tenant’s exercise of any Option may be nullified by Landlord and deemed of no further force or effect, if (i) Tenant is in default under the terms of this Lease (or if Tenant would be in such default under this Lease but for the passage of time or the giving of notice, or both) as of Tenant’s exercise of the Option in question or at any time after the exercise of any such Option and prior to the commencement of the Option event, (ii) Tenant has sublet all or more than fifty percent (50%) of the Premises except pursuant to a Permitted Transfer, (iii) Landlord has given Tenant two (2) or more notices of default, whether or not such defaults are subsequently cured, during any twelve (12) consecutive month period of this Lease, or (iv) if in Landlord’s reasonable determination Tenant’s financial condition is not equal to or greater than Tenant’s financial condition as reported by Tenant to Landlord in connection with and as of the execution date of this Lease by Tenant. Each Option granted to Tenant, if any, is hereby deemed an economic term which Landlord, in its sole and absolute discretion, may or may not offer in conjunction with any future extensions of the Term.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the date first above written.

TENANT: City of Berkeley  
a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

LANDLORD: 742 Grayson Owner LLC,  
a Delaware limited liability company

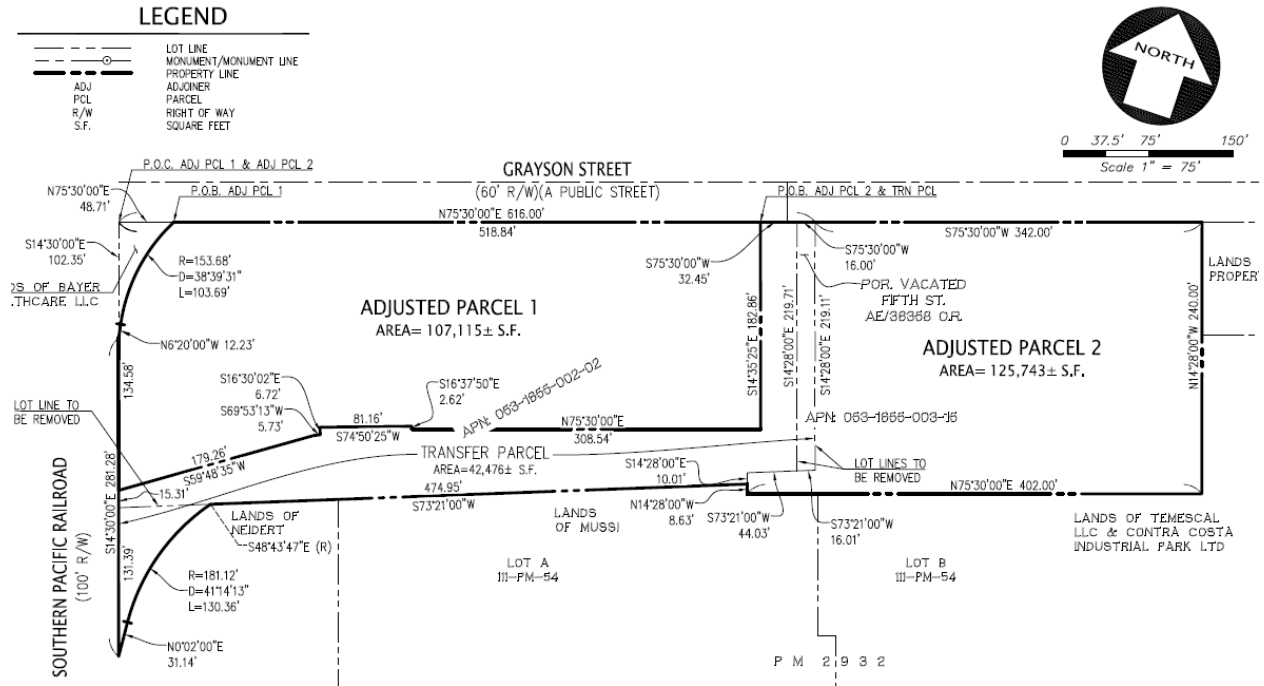
By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A – SITE PLAN OF THE PROPERTY**

This Exhibit is intended only to show the general outline of the Property, as reflected in the outlined below as “Adjusted Parcel 1.” It is not to be scaled; any measurements or distances shown should be taken as approximate.



**EXHIBIT B**

**NOTICE OF LEASE TERM DATES**

Date:

To:

Re: \_\_\_\_\_ dated \_\_\_\_\_ (“Lease”) by and between 742 Grayson Owner LLC, a Delaware limited liability company (“Landlord”) and the City of Berkeley, a municipal corporation (“Tenant”) for the premises commonly known as 742 Grayson Street, Berkeley, California (“Premises”).

Dear:

In accordance with the above-referenced Lease, we wish to advise and/or confirm as follows:

- That Tenant has accepted and is in possession of the Premises and acknowledges the following:
  - Term of the Lease:
  - Commencement Date:
  - Expiration Date:

That in accordance with the Lease, rental payments will/has commence(d) on \_\_\_\_\_ and rent is payable in accordance with the following schedule:

- Rent is due and payable in advance on the first day of each and every month during the Term of the Lease.

**ACCEPTED AND AGREED:**

TENANT: City of Berkeley,  
a Municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

LANDLORD: 742 Grayson Owner LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT C****RULES AND REGULATIONS**

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises, other than Building standard materials, without the prior written consent of Landlord.
2. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building without the prior written consent of Landlord.
3. Landlord shall not in any way be responsible to Tenant for loss of property on the Premises, however occurring, or for any damage to Tenant's property by any janitors or any other employee or any other person.
4. Landlord will furnish Tenant, free of charge, with two keys to each door lock in the Premises. Landlord may impose a reasonable charge for any additional keys. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.
5. Intentionally Deleted.
6. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by Law. Landlord shall have the right to prescribe the weight of all equipment, materials, furniture or other property brought into the Building. Heavy objects, if such objects are considered necessary by Tenant, as determined by Landlord, shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.
7. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds or animals.
8. Tenant shall not use any method of heating or air-conditioning other than that supplied to the Premises by Landlord, with the exception of space heaters inside the Building and propane heaters outside the Building.
9. Intentionally Deleted.

10. The toilet rooms, toilets, urinals, wash bowls and other apparatus, including any portable bathrooms and showers, shall not be used for any purpose other than that for which they were constructed, and no foreign substances of any kind whatsoever shall be thrown therein.
11. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building without the prior written consent of Landlord.
12. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or drywall, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.
13. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by Landlord.
14. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted and the use of a microwave shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations. Notwithstanding the above, cooking within RVs outside the Building shall be permitted.
15. Tenant shall not use in any space any hand trucks or forklifts except those equipped with rubber tires and side guards, or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.
16. Tenant shall not use the name of the Building in connection with, or in promoting or advertising, the business of Tenant, except for Tenant's address.
17. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.
18. Landlord reserves the right to make such other and reasonable non-discriminatory Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Building or Property and for the preservation of good order therein, provided that said Rules do not materially and adversely affect Tenant's Permitted Use of the Premises and shall be provided to Tenant at least fifteen (15) days prior to enactment. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.
19. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except by a paste, or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The method of affixing any such linoleum, tile, carpet or other similar floor covering shall be subject to the approval of Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.
20. Tenant shall not without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises.

**EXHIBIT D**

**ESTOPPEL CERTIFICATE**

The undersigned ("**Tenant**") hereby certifies to \_\_\_\_\_ ("**Landlord**"), and \_\_\_\_\_, as follows:

1. Attached hereto is a true, correct and complete copy of that certain Lease dated \_\_\_\_\_, between Landlord and Tenant (the "**Lease**"), for the premises commonly known as \_\_\_\_\_ (the "**Premises**"). The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Section 6 below.

2. The term of the Lease commenced on \_\_\_\_\_, \_\_.

3. The term of the Lease is currently scheduled to expire on \_\_\_\_\_, \_\_.

4. Tenant has no option to renew or extend the Term of the Lease except: \_\_\_\_\_.

5. Tenant has no preferential right to purchase the Premises or any portion of the Building/Premises except: \_\_\_\_\_.

6. The Lease has: (Initial One)  
( ) not been amended, modified, supplemented, extended, renewed or assigned.  
( ) been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: \_\_\_\_\_.

7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows: \_\_\_\_\_.

8. The current Base Rent is \$ \_\_\_\_\_; and current monthly parking charges are \$ \_\_\_\_\_.

9. The amount of security deposit (if any) is \$ \_\_\_\_\_. No other security deposits have been made.

10. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.

11. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full except \_\_\_\_\_.

12. As of the date hereof, Tenant is not aware of any defaults on the part of Landlord under the Lease except \_\_\_\_\_.

13. As of the date hereof, there are no defaults on the part of Tenant under the Lease.

14. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

15. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.

16. All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

17. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Tenant.

18. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

The foregoing certification is made with the knowledge that \_\_\_\_\_ is about to [fund a loan to Landlord or purchase the Building from Landlord], and that \_\_\_\_\_ is relying upon the representations herein made in [funding such loan or purchasing the Building].

Dated: \_\_\_\_\_, \_\_\_\_.

"TENANT"

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT E**

**TECHNICAL MEMORANDUM FROM TERRAPHASE ENGINEERING INC.  
DATED FEBRUARY 9, 2021 (See attached copy)**





## TECHNICAL MEMORANDUM

To:  
Chris Freise  
REDCO Development LLC  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94111

From:  
Alice Hale Price, PE, Terraphase  
Chris Alger, PG, CHG, Terraphase

Date:  
February 9, 2021

Project Number:  
0337.002.001

Subject: Summary of Environmental Conditions and Documentation Associated with the 742 Grayson Street Property Located in Berkeley, California

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At the request of REDCO Development LLC (REDCO), Terraphase Engineering Inc. (Terraphase) has prepared this memorandum summarizing the site history and current environmental status of the 742 Grayson Street property located in Berkeley, California (“the Site”, also referenced as Area of Concern [AOC] 1 in previous documents; Figure 1). The Site was purchased by REDCO from Henkel Corporation on December 28, 2017. The Site is adjoined to the east by the 800 Grayson Street property, which remains under Henkel Corporation ownership and is often referenced as AOC 2.

As discussed below, the past and current environmental concerns associated with the Site are primarily grouped into two categories: (1) petroleum hydrocarbon impacted soil, soil vapor, and groundwater associated with historical on-Site sources, and (2) nearby, offsite volatile organic compound (VOC) impacts to regional groundwater and soil vapor that encroaches on the Site boundary. Site data suggest that impacts from these separate sources (i.e., the onsite and offsite sources) in both soil vapor and groundwater are likely comingled on-Site.

### Site History

The Site was first developed for industrial use prior to 1903. Railroad tracks are present off-Site to the west of the Site and former railroad spurs were located on the western portion and on the southern boundary of the Site. Historical and recent Site manufacturing operations have included the following:

- a distillery and use of a buried heating oil tank located in the northwestern portion of the Site (1903 Sanborn Map);
- a Stauffer Chemical Works facility and use of two steel aboveground storage tanks (ASTs) and six wooden underground storage tanks (USTs) with unknown contents (1911 Sanborn Map);

- a Wesco Waterpaints Inc. facility including a crude material storage building (1950 Sanborn Map); and
- an adhesives manufacturing facility (National Starch and Chemical Corporation / Henkel) including four former ASTs for solvent storage (containing toluene, hexane, acetone, and 1,1,1-trichloroethane). The ASTs were reportedly situated on concrete and contained within a 3-foot concrete dike and material was transferred to the interior manufacturing areas via overhead piping. The ASTs are identified in the 1974 aerial photograph and 1980 Sanborn map, but appear to have been removed in the 1988 aerial photograph.

Environmental investigations indicated that the above historical activities contributed minor petroleum hydrocarbon impacts to shallow soil. Shallow groundwater occurs between 5 feet and 10 feet below the ground surface.

The current environmental status based on the previous and recent investigations at the Site and communications with RWQCB staff are discussed in the following section.

### **Environmental Status**

As a result of a report to the Alameda County Department of Environmental Health, the San Francisco Bay Regional Water Quality Control Board (RWQCB) filed a California Spill, Leak, Investigation and Cleanup (SLIC) New Case Data Sheet for the Site in 1991 based on detections of tetrachloroethene (PCE), trichloroethene (TCE), and 1,2-dichloroethene (1,2-DCE) in groundwater at the Site. As documented on the RWQCB online database GeoTracker, the RWQCB opened the SLIC case in March 2001. Based on further research by the RWQCB and multiple site investigations in the area, it was concluded by the RWQCB that a regional groundwater contamination problem existed. The RWQCB also concluded that the likely source(s) of VOCs in groundwater and soil vapor were located upgradient (east) from the Subject Site.

Since 1991, extensive environmental investigation of soil, soil vapor, and groundwater has been performed at the Site and the adjoining site to the east (800 Grayson Street). Investigations refer to the Site as constituting AOC 1 and the 800 Grayson Street site as constituting AOC 2.

In 2015, ERM, on behalf of Henkel, began investigating the subsurface conditions at the Site. ERM continued to investigate and present work plans to the RWQCB to address agency requested remediation through 2017, when the RWQCB approved the submitted Updated Phase II ESA (ERM 2017; RWQCB 2017). Following approval of the Updated Phase II ESA, in 2018, ERM conducted a targeted excavation of petroleum hydrocarbon impacted shallow soil within AOC 1 (ERM 2019a, 2019c, 2020).

In 2020, Terraphase conducted a limited subsurface investigation to evaluate current Site conditions in soil, groundwater, and soil vapor at target locations (Terraphase 2020).

#### *Petroleum Hydrocarbon Impacts to Soil, Soil Vapor and Groundwater*

- Soils in the area of the former UST, AST concrete containment area, and along the edge of Building 5 contained petroleum hydrocarbons at concentrations exceeding the RWQCB's Environmental Screening Levels (ESLs) for commercial/industrial properties, which are conservative human health risk screening levels. In July 2019, ERM submitted a *Soil Remediation Summary Report and Request for Closure* which documents the removal of petroleum

hydrocarbon impacted soils exceeding commercial/industrial ESLs; this report was subsequently revised in October 2019 and September 2020 (ERM 2019a, 2019c, 2020). On February 2, 2021, the RWQCB issued a letter stating that no further action is required for petroleum hydrocarbon impacts to shallow soil in AOC 1 (RWQCB 2021).

- As required by the RWQCB (RWQCB 2017), in July 2019, ERM also submitted the Risk Management Plan (RMP; ERM 2019b) for both the Site (AOC 1) and the adjoining Henkel-owned property to the east (AOC 2; 800 Grayson Street) to the RWQCB. The RMP documents guidelines and management methods for potentially-impacted soil and shallow groundwater which may be encountered during subsurface development activities at the Site.
  - Management methods include, but are not limited to, implementation of dust controls and monitoring; allowable on-Site re-use of soil not meeting State of California or Federal hazardous waste criteria; and installation of a vapor intrusion mitigation system in the event of future Site redevelopment. The RMP also specifies that existing on-Site groundwater monitoring wells will require destruction upon closure approval from the RWQCB. To-date, no formal comments have been received from the RWQCB regarding the RMP. Terraphase anticipates that the RWQCB will request an updated RMP that addresses both the existing use scenario (addressed in the current RMP) as well as a redevelopment scenario (not addressed in the current RMP).
- Documented groundwater in the AOC 1 area and west of the Site has been impacted primarily with petroleum hydrocarbons, generally at concentrations below the RWQCB's 2016 ESLs (RWQCB 2016) for commercial site use.<sup>1</sup>
  - In their approval letter (RWQCB 2017), the RWQCB concurred that groundwater containing petroleum hydrocarbon concentrations exceeding the ESLs (RWQCB 2016) is stable and unlikely to further impact beneficial uses of groundwater due to natural subsurface degradation and adsorption.
    - Groundwater data considered by this 2017 letter are presented in Attachment A, Figure 9.
  - Two additional groundwater monitoring wells were installed at the Site by Terraphase in 2020, and off-Site grab groundwater samples were also collected. Groundwater sampling results from this investigation confirmed the presence of petroleum hydrocarbons and vinyl chloride in the groundwater above commercial/industrial ESLs (Figure 2). Generally, the data collected during the 2020 sampling event support the RWQCB's previous conclusions (RWQCB 2017) that the distribution of groundwater containing petroleum hydrocarbon concentrations exceeding the ESLs is defined, stable, and unlikely to further impact beneficial uses of groundwater due to natural subsurface

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<sup>1</sup> The RWQCB approval letter was prepared in 2017 and therefore references the 2016 ESLs (RWQCB 2016) rather than the current 2019 ESLs (RWQCB 2019).

degradation and adsorption. Based on the results, Terraphase concluded that groundwater impacts are adequately characterized, and no additional monitoring wells are needed (Terraphase 2020).

- Henkel, ERM, REDCO and Terraphase have been in ongoing discussions with the RWQCB regarding the case status of the petroleum hydrocarbons in groundwater.
- During the 2020 investigation, Terraphase also installed and sampled temporary soil vapor monitoring probes in the vicinity of the excavation area discussed above (Figure 3). Soil vapor sampling was also previously conducted by ERM in 2015 and 2016 (Attachment A, Figure 16).
  - Benzene was detected at concentrations above commercial/industrial ESLs in the soil-vapor samples collected. The maximum benzene detection was 940 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) (Figure 3).<sup>2</sup>
  - Although the 2020 soil vapor sampling results exceed commercial/industrial screening criteria, Terraphase concluded that no excessive health risk exists under current site use (i.e., there are no buildings overlaying this portion of the Site and therefore there is no completed vapor intrusion pathway) (Terraphase 2020).

#### *Regional VOC Impacts to Soil Vapor and Groundwater*

- Chlorinated VOC (CVOC) concentrations in soil-vapor samples exceed current screening levels for commercial/industrial properties (Figure 3; Attachment A, Figure 16). Compounds exceeding ESLs include: 1,1-dichloroethene (1,1-DCE), 1,1-dichloroethane (1,1-DCA), TCE, and vinyl chloride (Terraphase 2020).
- In their approval letter (RWQCB 2017), the RWQCB stated that the regional VOC groundwater plume does not originate within the Site and does not appear to present a vapor intrusion risk on the AOC 1 parcel as long as the parcel is maintained with commercial or industrial use (e.g., commercial office, warehouse, retail, etc.). The RWQCB stated that no remedial measures pertaining to the regional VOC groundwater plume are required on AOC 1 so long as such use continues.
- The RWQCB concurred that the source of VOC groundwater impacts in the eastern portion of the Henkel site (AOC 2, 800 Grayson Street), and by extension on AOC 1, may be located south of the AOC 2 site. The RWQCB has indicated that they are in discussions with the current owners of the suspected source areas to require that the appropriate parties investigate their sites south of AOC 2 and, based on investigation results, identify the parties responsible for remediating the VOC impacts at the AOC 1 and AOC 2 properties and surrounding areas.

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<sup>2</sup> Sample location SVP-07, shown on ERM's Figure 16, was within the boundary of their subsequent remedial excavation; data from this location does not represent current conditions.

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**References**

- ERM. 2017. Updated Phase II Environmental Site Assessment Report, Henkel Berkeley Facility, 742 and 800 Grayson Street, Berkeley, California. 17 October.
- \_\_\_\_\_. 2018a. Soil Remediation Workplan, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. 16 October.
- \_\_\_\_\_. 2018b. Pre-Excavation Confirmation Soil Sampling Results and Revised Proposed Excavation Limits, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. 15 November.
- \_\_\_\_\_. 2019a. Soil Remediation Summary Report and Request for Case Closure, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. July 30.
- \_\_\_\_\_. 2019b. Risk Management Plan, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. July 31.
- \_\_\_\_\_. 2019c. Revised Soil Remediation Summary Report and Request for Case Closure, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. October 25.
- \_\_\_\_\_. 2020. Area of Concern 1 Soil Remediation Summary Report, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. September 14.
- San Francisco Bay Regional Water Quality Control Board. 2016. Environmental Screening Levels.
- \_\_\_\_\_. 2017. Property at 742 and 800 Grayson Street, Berkeley, Alameda County – Approval of Updated Phase II Environmental Site Assessment Report and Requirement for Submittal of Soil Remediation Implementation Report. December 15.
- \_\_\_\_\_. 2019. Environmental Screening Levels.
- \_\_\_\_\_. 2021. Concurrence with Soil Excavation Completion, National Starch & Chem Company, 742 Grayson Street, Berkeley, Alameda County. February 2.
- Terraphase Engineering Inc. (Terraphase). 2020. Summary of Data Gap Investigation Results, San Francisco Bay Regional Water Quality Control Board Case # 01S0386, 742 Grayson Street Property, Berkeley, California. November 2.

**Attachments:**

## Figures

- Figure 1 – Subject Property Location
- Figure 2 – Groundwater Analytical Results
- Figure 3 – Soil Gas Analytical Results

Attachment A – Figures from ERM’s *Updated Phase II Environmental Site Assessment Report*

- Figure 9 (from ERM 2017) – AOC 1 – COPCs in Groundwater
- Figure 16 (from ERM 2017) – Site Soil Vapor Results

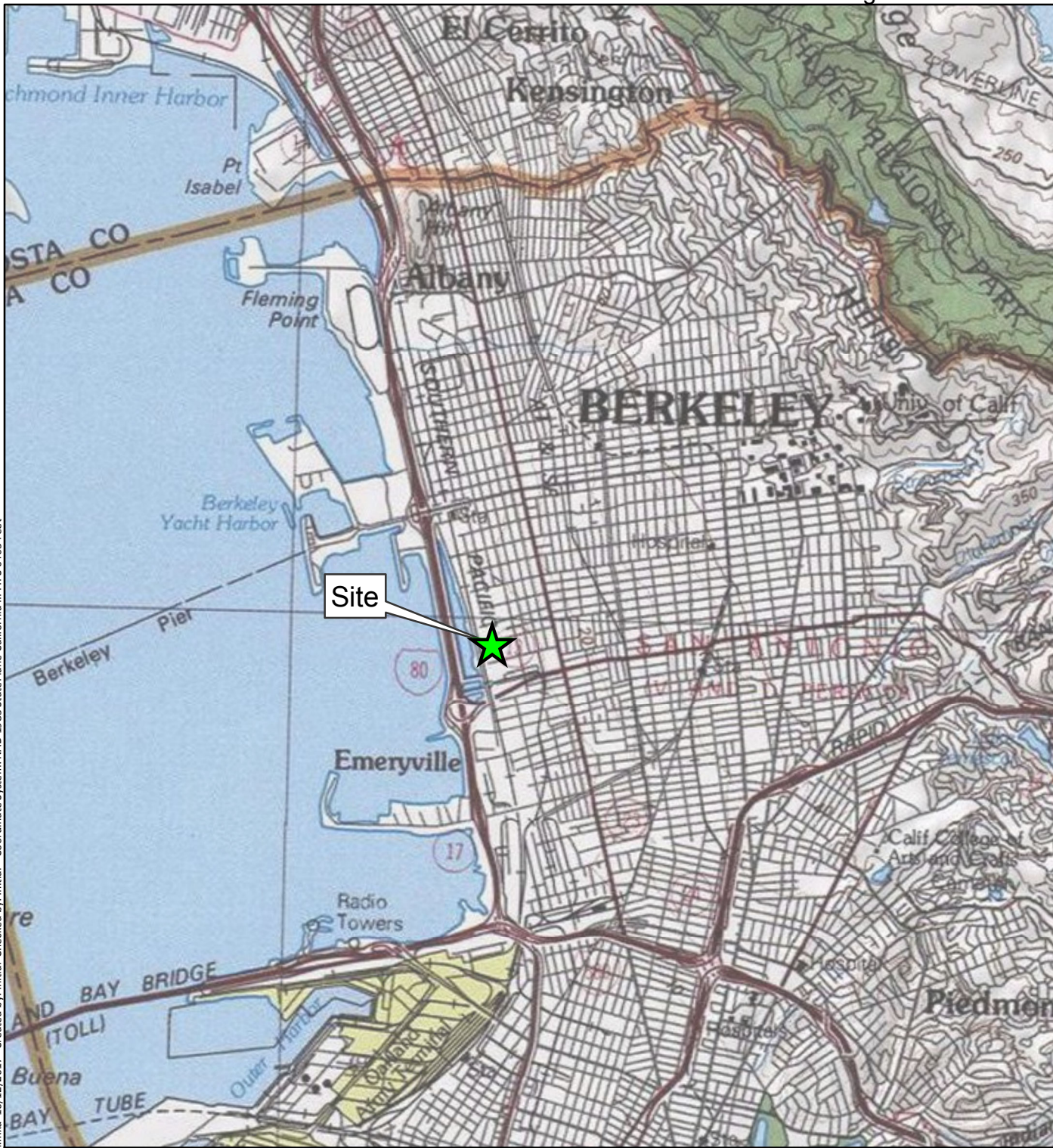
# Figures

Figure 1 – Subject Property Location

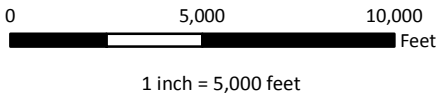
Figure 2 – Groundwater Analytical Results

Figure 3 – Soil Gas Analytical Results





File: K:\GIS\Prj\0246.Lif.Partners\MXD\Figure 1 - Site Location.mxd 10/12/2017 Created by: Initial Checked by: Initial Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet



**Legend**

Site Location

Base Map: USGS Davis 7.5 Minute Quadrangle.

**SAFETY FIRST**



CLIENT: REDCO Development LLP

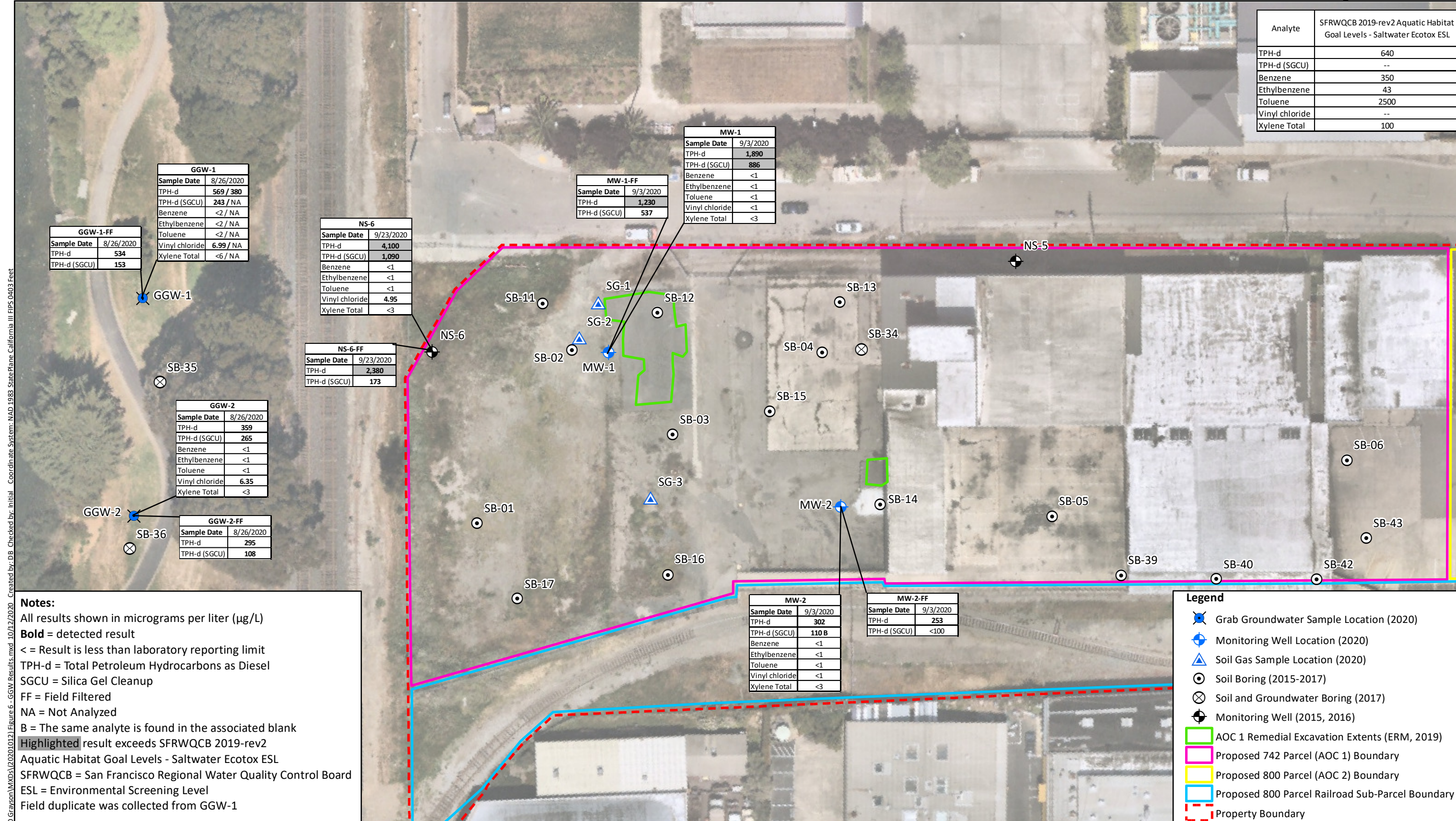
PROJECT: 742 and 800 Grayson Street  
Berkeley, CA

PROJECT NUMBER: 0337.002.002

**Subject Property Location**

**FIGURE 1**

Analyte	SFRWQCB 2019-rev2 Aquatic Habitat Goal Levels - Saltwater Ecotox ESL
TPH-d	640
TPH-d (SGCU)	--
Benzene	350
Ethylbenzene	43
Toluene	2500
Vinyl chloride	--
Xylene Total	100

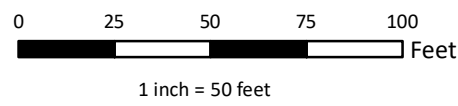


**Notes:**  
 All results shown in micrograms per liter (µg/L)  
**Bold** = detected result  
 < = Result is less than laboratory reporting limit  
 TPH-d = Total Petroleum Hydrocarbons as Diesel  
 SGCU = Silica Gel Cleanup  
 FF = Field Filtered  
 NA = Not Analyzed  
 B = The same analyte is found in the associated blank  
**Highlighted** result exceeds SFRWQCB 2019-rev2 Aquatic Habitat Goal Levels - Saltwater Ecotox ESL  
 SFRWQCB = San Francisco Regional Water Quality Control Board  
 ESL = Environmental Screening Level  
 Field duplicate was collected from GGW-1

**Legend**

- ⊗ Grab Groundwater Sample Location (2020)
- ⊕ Monitoring Well Location (2020)
- ▲ Soil Gas Sample Location (2020)
- ⊙ Soil Boring (2015-2017)
- ⊗ Soil and Groundwater Boring (2017)
- ⊕ Monitoring Well (2015, 2016)
- ▭ AOC 1 Remedial Excavation Extents (ERM, 2019)
- ▭ Proposed 742 Parcel (AOC 1) Boundary
- ▭ Proposed 800 Parcel (AOC 2) Boundary
- ▭ Proposed 800 Parcel Railroad Sub-Parcel Boundary
- ▭ Property Boundary

Notes: Aerial imagery source - Nearmap (May 2020)



 	CLIENT: REDCO Development, LLC	<p><b>Groundwater Analytical Results</b></p> <p><b>FIGURE 2</b></p>
	PROJECT: 742 and 800 Grayson Street Berkeley, CA	
PROJECT NUMBER: 0337.002.002		

File: N:\GIS\PM\0337.002\_REDCO\Grayson\MXD\20201012\Figure 6 -GGW Results.mxd 10/12/2020 Created by: DB Checked by: Initial Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet



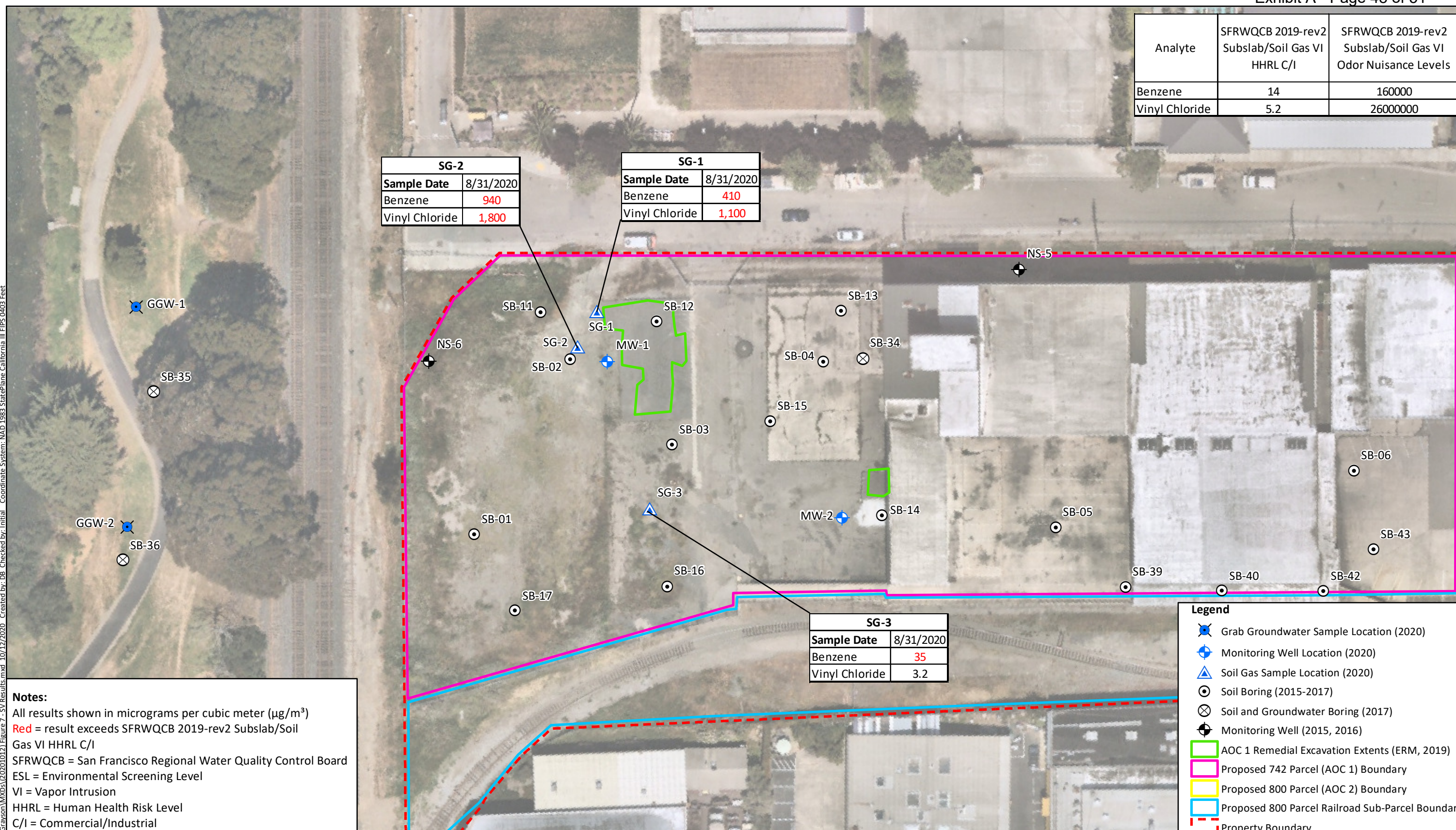
Analyte	SFRWQCB 2019-rev2 Subslab/Soil Gas VI HHRL C/I	SFRWQCB 2019-rev2 Subslab/Soil Gas VI Odor Nuisance Levels
Benzene	14	160000
Vinyl Chloride	5.2	2600000

SG-2	
Sample Date	8/31/2020
Benzene	940
Vinyl Chloride	1,800

SG-1	
Sample Date	8/31/2020
Benzene	410
Vinyl Chloride	1,100

SG-3	
Sample Date	8/31/2020
Benzene	35
Vinyl Chloride	3.2

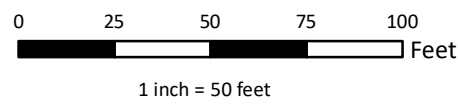
File: N:\GIS\PM\0337.002\_REDCO\_Grayson\MXD\20201012\Figure 7 - SV Results.mxd Created by: DB Checked by: Initial Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet



**Notes:**  
 All results shown in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )  
 Red = result exceeds SFRWQCB 2019-rev2 Subslab/Soil Gas VI HHRL C/I  
 SFRWQCB = San Francisco Regional Water Quality Control Board  
 ESL = Environmental Screening Level  
 VI = Vapor Intrusion  
 HHRL = Human Health Risk Level  
 C/I = Commercial/Industrial

Legend	
	Grab Groundwater Sample Location (2020)
	Monitoring Well Location (2020)
	Soil Gas Sample Location (2020)
	Soil Boring (2015-2017)
	Soil and Groundwater Boring (2017)
	Monitoring Well (2015, 2016)
	AOC 1 Remedial Excavation Extents (ERM, 2019)
	Proposed 742 Parcel (AOC 1) Boundary
	Proposed 800 Parcel (AOC 2) Boundary
	Proposed 800 Parcel Railroad Sub-Parcel Boundary
	Property Boundary

Notes: Aerial imagery source - Nearmap (May 2020)



 	CLIENT: REDCO Development, LLC	<b>Soil Gas Analytical Results</b>  <b>FIGURE 3</b>
	PROJECT: 742 and 800 Grayson Street Berkeley, CA	
PROJECT NUMBER: 0337.002.002		

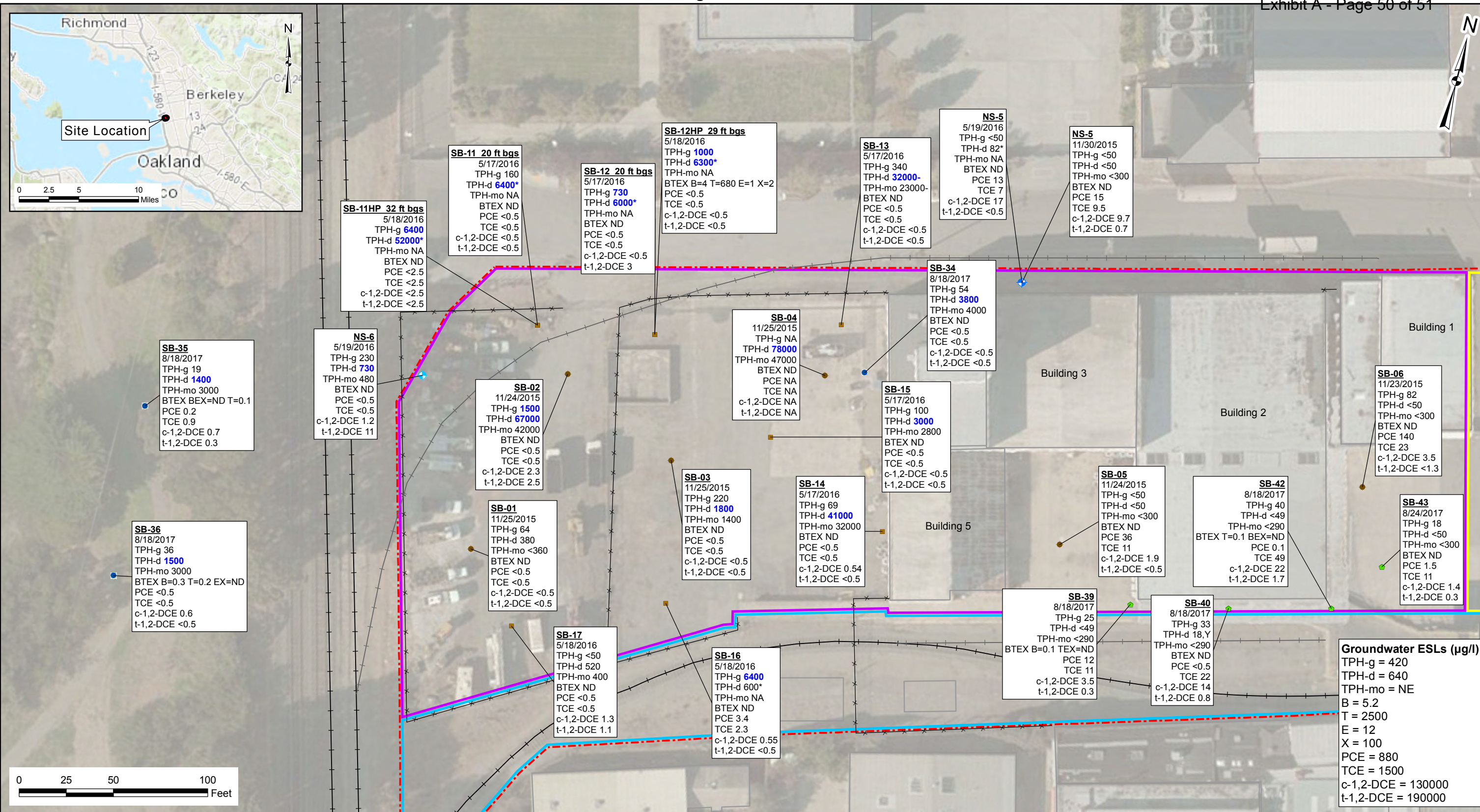
# Attachment A

Figures from ERM's *Updated Phase II Environmental Site Assessment Report*



Created By: G Shenker 9/26/2017 Project: 0318259

M:\Projects\0318259 - Henkel\maps\CSIR\F9 AOC1\GW.mxd



**Groundwater ESLs (µg/l)**

TPH-g	= 420
TPH-d	= 640
TPH-mo	= NE
B	= 5.2
T	= 2500
E	= 12
X	= 100
PCE	= 880
TCE	= 1500
c-1,2-DCE	= 130000
t-1,2-DCE	= 190000

**Legend**

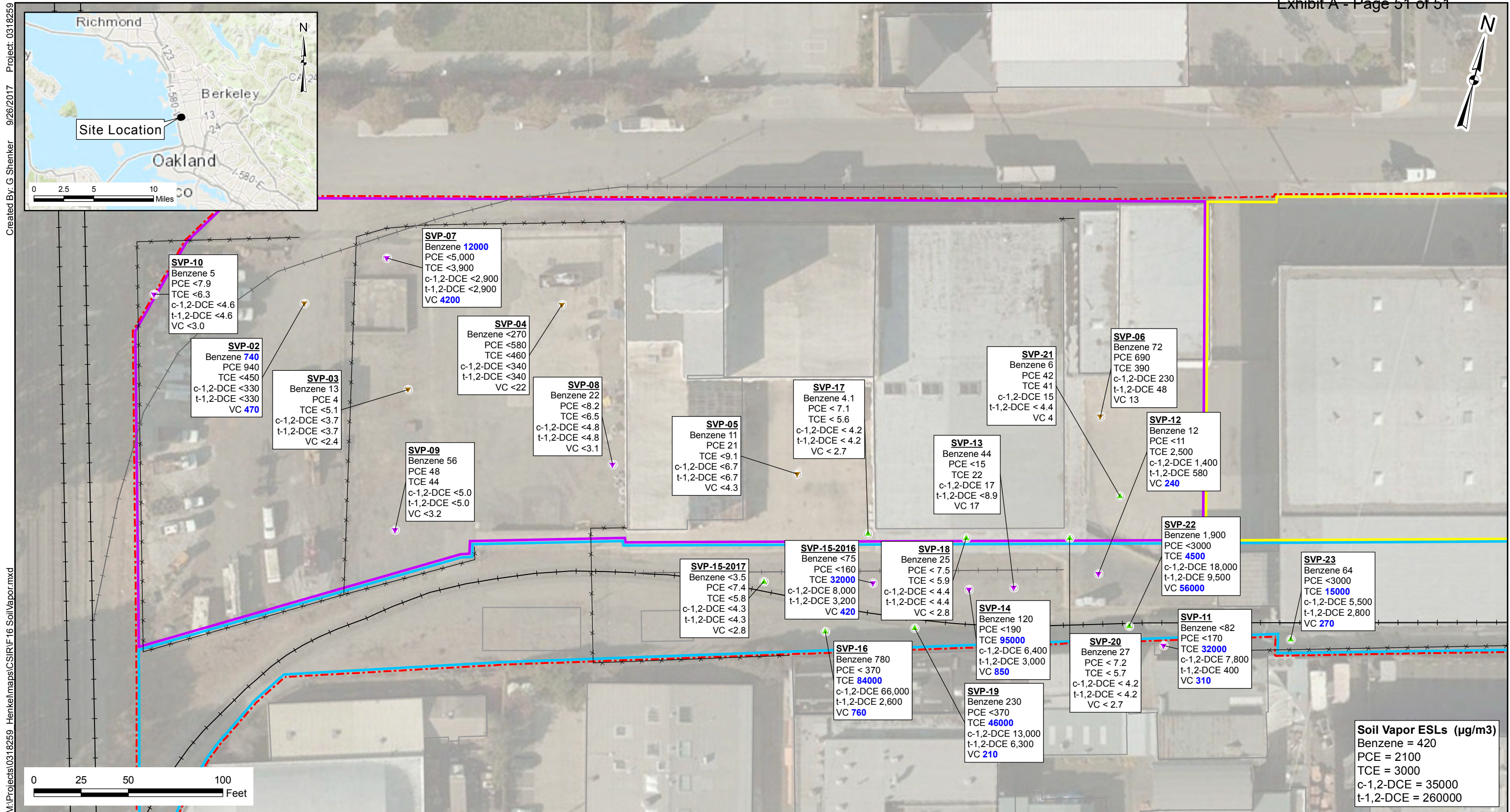
- Soil Boring, 2015
- Soil Boring, 2016
- Soil Boring, 2017
- Soil and Groundwater Boring, 2017
- Monitoring Well, 2015
- Monitoring Well, 2016
- Property Boundary
- Proposed 742 Parcel (AOC 1) Boundary
- Proposed 800 Parcel (AOC 2) Boundary
- Proposed 800 Parcel Railroad Sub-Parcel Boundary
- Buildings
- Rail Line
- Former Rail Spur
- Fence

**Notes:**

Values in Blue indicate a concentration detected above the respective screening level.  
 \* = No silica gel cleanup  
 ND = Compound not detected above laboratory method detection limit.  
 TPH-g = Total Petroleum Hydrocarbons gasoline range  
 TPH-d = Total Petroleum Hydrocarbons diesel range  
 TPH-mo = Total Petroleum Hydrocarbons motor oil range

B = Benzene  
 T = Toluene  
 E = Ethylbenzene  
 X = Xylenes  
 PCE = Tetrachloroethene  
 TCE = Trichloroethene  
 c-1,2-DCE = cis-1,2-Dichloroethene  
 t-1,2-DCE = trans-1,2-Dichloroethene  
 NE = Not Established  
 All results in micrograms per liter (µg/l).  
 ft bgs = feet below ground surface

**Figure 9**  
**AOC 1 - COPCs in Groundwater**  
**Updated Phase II ESA Report**  
**Henkel Corporation**  
**742 and 800 Grayson Street**  
**Berkeley, California**



**Legend**

- Temporary Soil Vapor Well, 2015
- Temporary Soil Vapor Well, 2016
- Temporary Soil Vapor Well, 2017
- Property Boundary
- Proposed 742 Parcel (AOC 1) Boundary
- Proposed 800 Parcel (AOC 2) Boundary
- Proposed 800 Parcel Railroad Sub-Parcel Boundary
- Building
- Rail Line
- Former Rail Spur
- Fence

**Notes:**  
 Values in Blue indicate a concentration detected above the respective screening level.  
 B = Benzene  
 PCE = Tetrachloroethene  
 TCE = Trichloroethene  
 c-1,2-DCE = cis-1,2-Dichloroethene  
 t-1,2-DCE = trans-1,2-Dichloroethene  
 All results in micrograms per cubic meter (µg/m3).

**Figure 16**  
 Site Soil Vapor Results  
 Updated Phase II ESA Report  
 Henkel Corporation  
 742 and 800 Grayson Street  
 Berkeley, California



Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson  
Subject: Establishing an Outdoor Emergency Shelter

RECOMMENDATION

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required:
  - A. Climate-controlled, wind-resistant durable tents with wooden pallets for support.
  - B. Seeking an agency to manage and oversee the emergency shelter.
  - C. Portable toilet service and handwashing service.
  - D. Shower and sanitation services
  - E. Garbage pickup and safe needle disposal.
2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.
3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.<sup>1</sup>
4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

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<sup>1</sup> For example, tents and membrane structures are required to sit at least four inches off the ground, have wooden or concrete floors, and be equipped with smoke alarms. Though all of these requirements are important to the health and safety of Berkeley residents, they are arduous requirements to meet. The purpose is to provide temporary accommodations.

### POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Davila/Hahn) to send the item to Council with a positive recommendation and the following additional amendments made by the author:

1. Refer to the November budget process the costs of \$615,000 associated with establishing the outdoor emergency shelter to be considered with other Measure P Panel of Experts recommendations;
2. Referral to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley. This includes seeking an agency to manage and oversee the outdoor emergency shelter including amenities for trash pick-up, toilets, handwashing stations, showers services, and needle receptacles, as well as provide basic service levels including security, housing support services, and outreach coordinators.
3. Additionally, the committee recommends but does not require, that staff establish protocols based on existing application processes for eligibility allocation and that the eligibility criteria be less restrictive than the HUD criteria.

Vote: Ayes – Davila, Hahn; Noes – None; Abstain – Kesarwani; Absent – None.

### BACKGROUND

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of the unsheltered people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. Roughly 500 people in Berkeley are sleeping in tents or without shelter altogether, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way<sup>2</sup> project that will permanently house 59 people, and the Pathways STAIR Center which has already housed over 100<sup>3</sup> in a year of existence. In total, we are able to shelter about 295 people (not including the 40 emergency shelter beds at Old City Hall), and about 100 of those shelter beds have been added since 2016. We have also expanded mental health and crisis services, are working to find a location for a safe RV parking site, and have provided other homeless services. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching. In addition to the elements, transportation-related deaths were the third leading cause of death among the homeless in Los Angeles County in 2018.<sup>4</sup> Living by highway onramps increases the likelihood of a deadly collision by many factors. Within the next year, we want to provide people with

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<sup>2</sup> <https://bfhp.org/news/berkeley-way/>

<sup>3</sup> "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

<sup>4</sup> <https://www.theguardian.com/us-news/2019/oct/30/homeless-deaths-los-angeles-county>

permanent housing. In the next month, we want to prevent anyone from dying of exposure.

Emergency outdoor shelters should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness, prevent displacement and move into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion. The emergency outdoor shelter has a 180 day suggested length of stay. The goal is that no individual will remain for an extended period of time as placement in an indoor navigation center or permanent housing are more appropriate mid- and long-term options.

The state of California has declared a shelter emergency<sup>5</sup> as has the City of Berkeley.<sup>6</sup> Berkeley's shelter beds are at capacity just about every night. The demand for beds is great – according to the Point in Time count, 98% of survey respondents said that they want to find permanent housing. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs<sup>7</sup> that read “Where Do We Go?” There is currently a community of about 100 individuals living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there are no locations in this vicinity where any number of people can sleep safely. Various public agencies regularly threaten the residents of this property with permanent eviction. Sleeping in parks has long been prohibited by BMC 6.32.020.

A possible location is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned<sup>8</sup> lot surrounded by light industry manufacturing

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<sup>5</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB932](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932)

<sup>6</sup> “Extension of Housing Crisis Declaration.” Item 10, October 31, 2017, Berkeley City Council meeting.

<sup>7</sup> [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=627e4d8c-d4ce-11e9-b703-0050569183fa](http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa)

<sup>8</sup> Attachment 4

to the North, South, and East, and I-80 and Eastshore Highway to the West, so located outside of residential or commercial zones. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. The 611-639 University lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate, room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so the emergency outdoor shelter will not disturb residential or commercial neighbors.<sup>9</sup> Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center, about a mile away from Berkeley Mental Health, and accessible via University Avenue and San Pablo Avenue bus routes.<sup>10</sup> The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Other locations should be considered as appropriate. Ideal locations would be owned and/or managed by the City of Berkeley in non-residential zones and be accessible by public transit.

Several other cities have already<sup>11</sup> established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto<sup>12</sup> established several hundred tents under a bridge, where about 300-400 people sleep every night.<sup>13</sup> The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."<sup>14</sup> MOES provides portable bathrooms, showers, and handwashing stations,

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<sup>9</sup> The Homeless Shelter Crisis Resolution specifies that no planning, zoning, building, or other permit requirements shall be required to the extent that compliance would prevent, hinder, or delay the effects of the shelter crisis. Nonetheless, the site's classification as mixed use light industrial is an advantage,

<sup>10</sup> The proximity to public transportation is a strength of the location though it, like other homeless service providers, would be stronger with dedicated transportation as is called for in Item 33, "Budget Referral: Transportation to Support Mobility-Impaired Individuals Experiencing Homelessness" from the 11/12/19 Berkeley City Council Meeting.

<sup>11</sup> [https://www.vice.com/en\\_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps](https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps)

<sup>12</sup> <https://www.modbee.com/news/local/article226465300.html>

<sup>13</sup> [https://www.youtube.com/watch?v=J\\_gQ54kZXmA&t=65s](https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s)

<sup>14</sup> <https://www.modbee.com/news/local/article234754707.html>



nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto Bee applauded MOES for “easing some suffering, however temporary.”<sup>15</sup> The Modesto Outdoor Emergency Shelter is in the process of closing because they are transitioning residents indoors into a newly constructed homeless shelter.<sup>16</sup> The MOES was always intended to be temporary until long-term accommodations could be constructed, and now that Modesto and Stanislaus County have indoor accommodations for the unhoused, the MOES is being shut down.

The Sacramento Mayor and City Council are also looking at using Modesto’s model.<sup>17</sup> Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but “as the city enters another month in crisis, other alternatives are coming to the fore.”<sup>18</sup> Berkeley previously considered outdoor emergency shelters. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what an outdoor emergency shelter may look like, including how many residents, who provides facilities, how rules are enforced, etc. (see Attachment 9). In the nearly two years since this referral, homelessness has increased, as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that outdoor emergency shelters are an appropriate temporary addendum, and that MOES models best practices for outdoor emergency shelters. Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

### **Durable Tents**

Working with suppliers to provide durable, waterproof tents for those unhoused people who require shelter would be a major step toward improving the health, safety and quality of life of Berkeley’s homeless population. Nearly one third of Berkeley’s homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.<sup>19</sup> Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

Health and safety standards call for wood or concrete floors to raise tents off the ground. Providing wooden pallets underneath tents fulfills this requirement at a low price. If feasible, collecting pallets should be a part of establishing the emergency shelter.

In addition, a portable solar powered system for charging phones, wheelchairs, or other electronics should be provided. Generators are also a possibility, but can be dangerous

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<sup>15</sup> <https://www.modbee.com/opinion/editorials/article234558672.html>

<sup>16</sup> <https://www.abc10.com/article/news/local/modesto/stanislaus-county-prepares-to-close-outdoor-shelter/103-c4b2b17e-e048-4b31-8627-a88fbd8214c2>

<sup>17</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>18</sup> *Ibid.*

<sup>19</sup> 2019 HIRD Report

around so many people. High-quality solar generators are a one-time expense of about \$500-800 but will last for years and can provide power to many people.

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,<sup>20</sup> donated by the Reno-based company Qamp.<sup>21</sup> These tents include a heavy-duty steal frame, screen door, and an insulating heat-reflective roof.<sup>22</sup> These tents are 150D polyester, which has a 200% lifespan compared with average camping tents.<sup>23</sup> Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

Other durable tents include those made by ShiftPod,<sup>24</sup> and Sweetwater Bungalows<sup>25</sup> produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

Since original submission of this item, local fundraising efforts from the unhoused and advocates have been able to replace and weatherize tents for many individuals. If individuals choose to keep their own tents, the City may not need to provide tents for anyone upon initial set-up, though they should be offered to those in need.

### **Staffing**

A successful emergency shelter will require the City or a qualified non-profit providing services its residents or providing referrals to other qualified agencies. All services or referrals to services will be offered but not required. Such services include but are not limited to:

- Coordination of safety and security 24 hours a day
- Governance of the community, including arrangement of the tents
- Coordination of volunteerism and donations
- Supportive services (such as case management and integration with existing homeless services)
- Rehabilitative opportunities to support the transition out homelessness

<sup>20</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>21</sup> <https://qamp.com/products/qamp-tent?variant=35987893763>

<sup>22</sup> *Ibid.*

<sup>23</sup> <https://www.goodcampingtents.com/tent-fabrics/>

<sup>24</sup> <https://shiftpod.com/shiftpod/shelter>

<sup>25</sup> <https://www.sweetwaterbungalows.com/>

Modesto partnered with Turning Point Community Programs to manage all of these services.<sup>2627</sup> The city also invited other charitable organizations like the Salvation Army<sup>28</sup> to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support for those who choose to utilize them would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations. The Pathways Center is a "low barrier" shelter with two key rules: no onsite drug or alcohol consumption, and a zero tolerance policy for abuse and harassment. These same rules would be applicable, and even more important given the close proximity of residents. Engagement with services is encouraged but is not a requirement for staying in the emergency outdoor shelter, as a low-barrier emergency shelter.

The emergency shelter should be open 24 hours a day. Unhoused people want to know where they can go, and if they are removed every morning, that question remains unanswered. Many unhoused people do not utilize traditional shelters because they work nights and need to sleep when the shelter is closed. However, most shelters have limited hours because they provide extensive services, meals, and other amenities, and do not have the resources to maintain this level of service all day. If there is a direct tradeoff between hours of operation and the depth of service, this referral prioritizes hours of operation.

A safe and secure environment is vital to the success of the project. A designated, limited space that would not allow extending tents on to surrounding streets is preferred. Setting up a fence and hiring a security team, as was done in Modesto,<sup>29</sup> would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

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<sup>26</sup> <https://www.tpcp.org/programs/moes/>

<sup>27</sup> <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

<sup>28</sup> <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>

<sup>29</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

Staff should include one program and site manager to oversee the program, two outreach coordinators, and two housing navigators to assist the residents with finding permanent housing.

### **Toilets and Handwashing Stations**

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.<sup>30</sup> In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.<sup>31</sup> As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.<sup>32</sup> The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,<sup>33</sup> because proper sanitation for the homeless is beneficial to entire communities.

The City is making progress setting up public restrooms across the City, which is a positive development. However, restrooms spread throughout the City do not meet the needs of a single community. A highly concentrated group of people (as currently exists on CalTrans land) will have more intense restroom needs, and the City should establish restrooms to account for those needs.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

### **Mobile Shower Services**

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.<sup>34</sup> However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we

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<sup>30</sup> <https://www.cdc.gov/handwashing/why-handwashing.html>

<sup>31</sup> <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

<sup>32</sup> <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

<sup>33</sup> <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

<sup>34</sup> [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

The City of Berkeley previously partnered with the Alameda County Mobile Healthcare for the Homeless<sup>35</sup> program which is on hiatus due to staffing shortages. The program brings primary care to homeless individuals free of charge. If the program resumes service in Berkeley, a partnership with them will help keep residents sanitary and healthy.

### **Trash Pickup**

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. Currently there is a rodent infestation at the encampments on University and Frontage Road negatively affecting quality of life for the residents and visitors to the Marina. To prevent this in the future, we need reliable garbage pickup. Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

As a part of regular refuse pickup, the City or coordinating agency should provide sharps containers or other forms of safe needle disposal. Approximately 8% of homeless adults in the United States have diabetes,<sup>36</sup> and there are many other diseases that require sharps to mediate, including arthritis, hepatitis, HIV/AIDS, blood clotting disorders, and others.<sup>37</sup> Regardless of why an individual may need a sharp, safe disposal is critical to prevent the spread of infection. Putting sharps in the garbage is insufficient and can harm zero waste employees.<sup>38</sup> Sharps boxes can be purchased at drugstores and are inexpensive, but are crucial to the health and safety of all involved.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

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<sup>35</sup> <https://www.achch.org/mobile-health.html>

<sup>36</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318300/>

<sup>37</sup> <https://www.fda.gov/medical-devices/consumer-products/safely-using-sharps-needles-and-syringes-home-work-and-travel>

<sup>38</sup> *Ibid.*

Initiating refuse service is a process typically initiated by the property owner<sup>39</sup> and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

#### REVIEW OF EXISTING PLANS AND POLICIES

The Strategic Plan includes several goals and priorities that are in line with an emergency outdoor shelter, including creating housing support services for our most vulnerable community members and fostering a resilient and connected City. The purpose of an emergency outdoor shelter is to provide basic shelter needs to the most vulnerable as a City, not relying on private development to do so.

The 1000 Person Plan is a comprehensive plan to permanently end homelessness. It costs between \$16 million and \$20 million, depending on the depth of housing subsidies. The emergency outdoor shelter is not intended to supersede the 1000 Person Plan, but complement its goals and efforts. Finding 2 in the 1000 Person Plan says that our system is serving a progressively smaller percentage of the literally homeless population every year, and the emergency outdoor shelter is a low-barrier way to serve more literally homeless people.

#### ALTERNATIVES CONSIDERED

At roughly \$615,000 yearly, this proposal costs less than any aspect of the 1000 Person Plan except for outreach. Concentrating where people living on the streets makes outreach simpler and more cost effective.

With a goal of a 180 day stay, this shelter should serve about 150 people annually. This is equivalent to about \$4,100 per person or about two months' rent at the market rate. Direct subsidies are possible alternative, but direct subsidies cannot serve as many people for as long as an emergency outdoor shelter. In addition, there is currently limited market rate housing to be had.

#### FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations or the General Fund, with the possibility of future funding from Homeless Housing, Assistance, and Prevention (HHAP) funds or other funds.

Please see Attachments 6 and 7 for a full breakdown on cost. Health, Housing, and Community Services provided a cost estimate, and we removed a number of line items to reflect the needs laid out in the item above. The emergency outdoor shelter is intended as an emergency measure, less service-intensive than a navigation center, and thus does not include a community tent and significantly cuts down on staff members. In addition, in April of this year staff elected not to fund community meals through our standard homeless services programming. Furthermore, in the interim, some of the line items in

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<sup>39</sup>

[https://www.cityofberkeley.info/Customer\\_Service/Home/Refuse\\_Start\\_Stop\\_or\\_Change\\_Service.aspx](https://www.cityofberkeley.info/Customer_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx)

the staff memo are being funded through other sources. The Clean and Livable Commons Initiative was funded and includes money for Port A Potties and dumpsters. Other Measure P monies were already allocated for rapid rehousing, thus we did not include that in the budget for this emergency shelter in particular.

In addition, this measure would reduce enforcement costs. The City expends significant resources in both the City Manager's office and the police force by moving unhoused individuals from place to place. By providing a place where people can go, this staff time can be directed back towards neighborhood services and curbing criminal behavior.

#### ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

#### ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2<sup>nd</sup> and University and surrounding areas.
- 5: Pictures of 2<sup>nd</sup> and University and surrounding areas.
- 6: Health, Housing, and Community Services Memo on potential costs
- 7: Edited HHCS Memo on Costs
- 8: BMC Article 9 Section 19.28.100 Section N106
- 9: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.

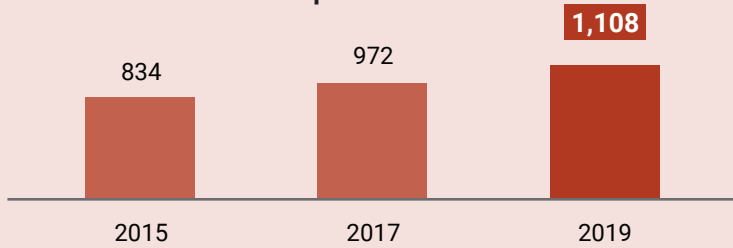
# City of Berkeley

## 2019 EveryOne Counts Homeless Point-in-Time Count & Survey

Every two years, during the last 10 days of January, communities across the country conduct comprehensive counts of people experiencing homelessness in order to measure the prevalence of homelessness in each local community.

The 2019 Alameda County EveryOne Home Point-in-Time Count was a community-wide effort conducted on January 30th, 2019. In the weeks following the street count, a survey was administered across Alameda County. In the city of Berkeley, 257 unsheltered and sheltered homeless individuals were surveyed in order to profile their experience and characteristics.

### Homeless Census Population



### Sheltered/ Unsheltered Population



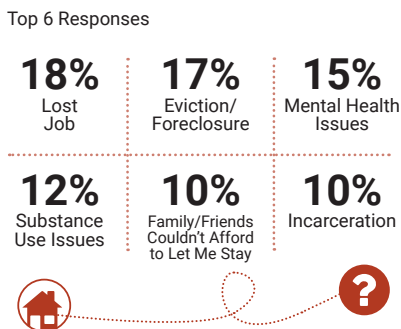
### Duration of Current Episode of Homelessness



### What Might Have Prevented Homelessness



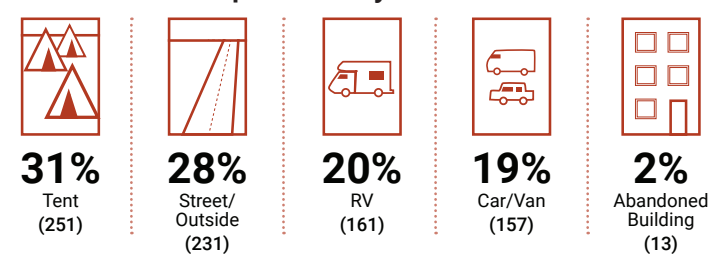
### Primary Causes of Homelessness



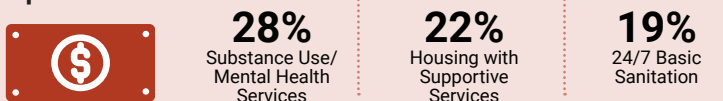
### Sheltered/Unsheltered Population by City

Alameda	99 Sheltered, 132 Unsheltered	Newark	30 Sheltered, 59 Unsheltered
Albany	0 Sheltered, 35 Unsheltered	Oakland	861 Sheltered, 3,210 Unsheltered
Berkeley	295 Sheltered, 813 Unsheltered	Piedmont	0 Sheltered, 0 Unsheltered
Dublin	0 Sheltered, 8 Unsheltered	Pleasanton	0 Sheltered, 70 Unsheltered
Emeryville	0 Sheltered, 178 Unsheltered	San Leandro	74 Sheltered, 344 Unsheltered
Fremont	123 Sheltered, 485 Unsheltered	Unincorporated	28 Sheltered, 321 Unsheltered
Hayward	115 Sheltered, 372 Unsheltered	Union City	0 Sheltered, 106 Unsheltered
Livermore	85 Sheltered, 179 Unsheltered	<b>Total</b>	<b>1,710 Sheltered, 6,312 Unsheltered</b>

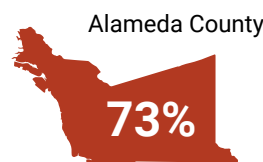
### Unsheltered Population by Location



### How New Money Should Be Spent



### Residence Prior to Homelessness

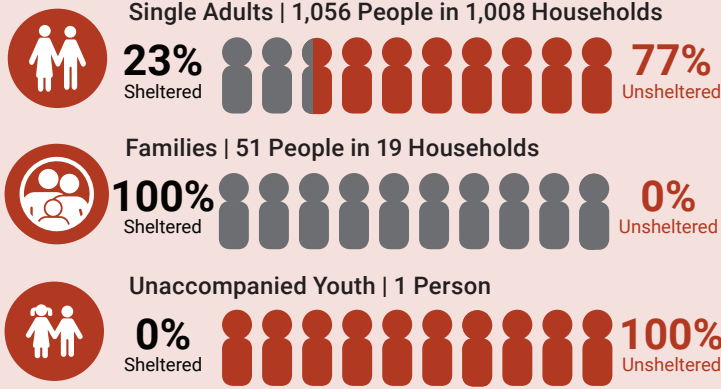


### Length of Time in Alameda County

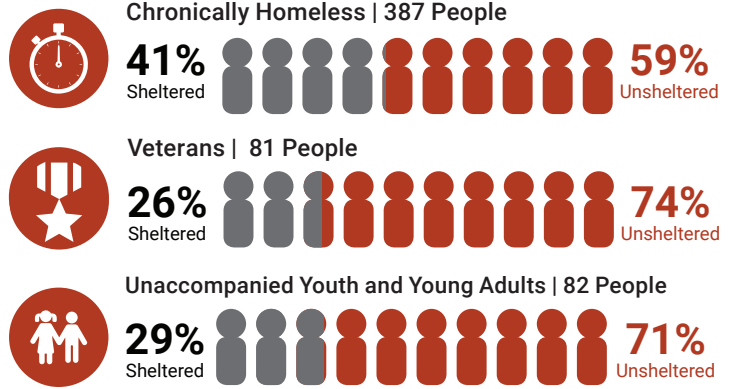




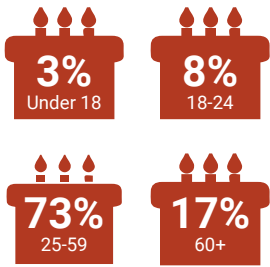
### Household Breakdown



### Subpopulations



### Age

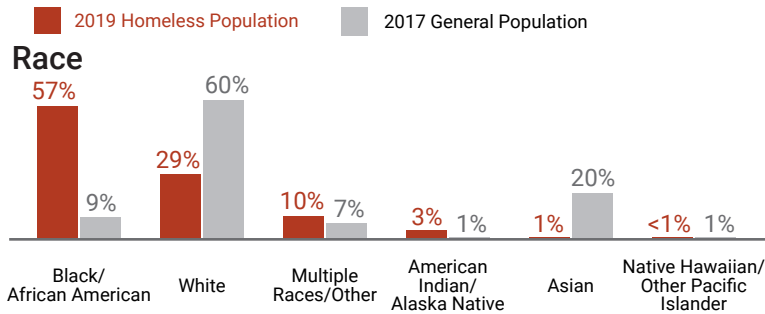


### LGBTQ+ Status

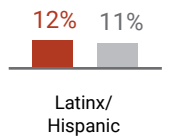
14% of survey respondents identified as LGBTQ+.



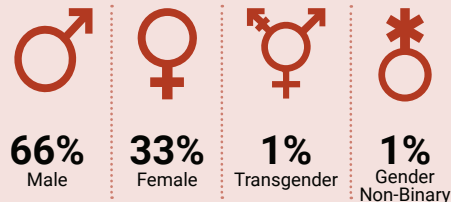
### Race and Ethnicity Compared to General Population



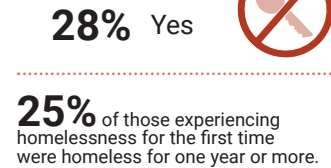
### Ethnicity



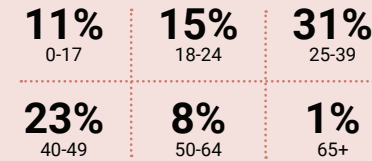
### Gender



### First Episode of Homelessness



### Age at First Episode of Homelessness



### Not Interested in Housing

2% of survey respondents said they were not interested in Independent, Affordable Rental Housing or Housing with Supportive Services.

### Health Conditions

Current health conditions reported by survey respondents.



### Disabling Conditions

41% of survey respondents reported having at least one disabling condition.



A disabling condition is defined by HUD as a developmental disability, HIV/AIDS, or a long-term physical or mental impairment that impacts a person's ability to live independently, but could be improved with stable housing.

**MODESTO CITY COUNCIL  
RESOLUTION NO. 2019-254**

**RESOLUTION APPROVING THE AGREEMENT WITH BERTOLOTTI  
MODESTO DISPOSAL INC., CERES, CA, TO PERFORM GARBAGE  
REMOVAL AND DISPOSAL SERVICES AT THE MODESTO OUTDOOR  
EMERGENCY SHELTER AND FOR HOMELESS ENCAMPMENT BLIGHT  
REMOVAL BY THE MODESTO POLICE DEPARTMENT BEAT HEALTH  
UNIT THROUGH MAY 31, 2021 FOR A TOTAL AMOUNT NOT TO EXCEED  
\$150,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,  
TO EXECUTE THE AGREEMENT**

WHEREAS, in response to an emerging and concentrated homeless population precipitated by recent legal developments and case law the City permitted a temporary homeless encampment at Beard Brook Park, and

WHEREAS, the Modesto Police Department (MPD) established a blight abatement team to assist with on-going City efforts in city-wide cleanup and the temporary encampment at Beard Brook Park, and

WHEREAS, the City established a temporary outdoor shelter underneath the 9<sup>th</sup> Street Bridge known as the Modesto Outdoor Emergency Shelter (MOES) to accommodate the growing number of homeless individuals which Beard Brook Park could no longer sustain, and

WHEREAS, the maintenance and cleanup of both encampments required extensive use of garbage and disposal services which nearly depleted the city-wide blanket purchase order, and

WHEREAS, the Finance Purchasing Division issued an emergency purchase agreement, not to exceed \$50,000, with Bertolotti Disposal designated to cover MOES expenses through December 31, 2019, and

WHEREAS, funding for the emergency purchase agreement has been exhausted,  
and

WHEREAS, the City and Bertolotti desire to enter into a new purchase agreement to include garbage and disposal services for MOES and for MPD's Beat Health expenses for illegal homeless camps and dumping to capture all costs related to encampment cleanup, and

WHEREAS, the total amount for MOES garbage and disposal services through December 31, 2019 is \$105,000, and

WHEREAS, the total amount for MPD's Beat Health homeless encampment blight removal through May 31, 2021 is \$45,000, and

WHEREAS, the total amount of the agreement with Bertolotti for both MOES and homeless encampment blight removal by MPD's Beat Health Unit is \$150,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Bertolotti Modesto Disposal Inc., Ceres, CA, to perform garbage removal and disposal services at the Modesto Outdoor Emergency Shelter and for MPD Beat Health homeless encampment blight removal by the Modesto Police Department Beat Health Unit through May 31, 2021 for a total amount not to exceed \$150,000.

BE IT FURTHER RESOLVED, that the City Manager or his designee is authorized to execute the Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of June, 2019, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
ADAM U. LINDGREN, City Attorney



As homeless men, women and children in Sacramento wait for three new large shelters to open, another model that local officials have repeatedly rejected over the years is now quickly gaining traction.

The “safe ground” model – essentially creating an area where homeless people can live safely in tent cities or in cars – has not been a part of Mayor Darrell Steinberg’s homeless plan. Steinberg has instead been pushing hard for large shelters with rehousing services. But as the city enters its fifth month without a city-run shelter, other alternatives are now coming to the fore.

Councilman Jeff Harris was previously opposed to the “safe ground” model, along with most of the council aside from Councilman Allen Warren. Now, Harris is proposing the city open a temporary homeless camp similar to one Modesto and Stanislaus County opened earlier this year.

TOP ARTICLES



“To get from today until we stand up more shelter beds, which we desperately need, I suggest we take a look at the safe ground model,” Harris said.

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Harris and city staff earlier this month traveled to Modesto to check out that model. He liked what he saw.

The camp, officially called [the Modesto Outdoor Emergency Shelter](#), opened underneath a bridge in a regional park in February. It holds roughly 400 campers who sleep in about 290 white and blue 10-foot-by-10-foot tents donated by a Reno company called Qamp, said Doug Halcomb, the camp’s operations manager.

Local officials provide portable bathrooms and wash stations, and nonprofits provide at least one meal a day, Halcomb said. The camp is fenced in and has two full-time security guards to ensure safety. Providers come to offer medical, mental health and rehousing services to campers. Sacramento-based organization Turning Point handles the day-to-day operations, Halcomb said.

“When I came back from Modesto, I went to the River District and there were more than 150 camps on one city block,” Harris said during a meeting earlier this month. “People were sleeping on the street, defecating in the open. I mean, it’s a mess. This is our city. And this is my district. And that’s what I saw when I came home and I thought, why don’t we do it? Why don’t we try a safe ground model and try to control some of these issues?”





Tents have been assembled in preparation for the new homeless camp under the Ninth Street Bridge at Gateway Park in Modesto, Calif., Tuesday, Feb. 19, 2019. Andy Alfaro  
AALFARO@MODBEE.COM

Opening a “safe ground” for campers could also be cost effective; Harris estimates well under \$1 million. By comparison, the two 100-bed shelters the council approved Tuesday will cost [more than \\$20 million to open and operate for two years](#).

Harris suggested the tent city open next month and close in the spring, after a shelter under the W/X freeway opens. He has a few location ideas in his district – which includes the American River, East Sacramento, South Natomas and part of north Sacramento – but is not sure if they will work.

“It’s not a solution. It’s a way to get from here to there and mitigate the deep impacts on the street in the short term and create safety and hygiene,” Harris said.

Harris previously proposed a [shelter site on Cal Expo property](#), but Cal Expo has not yet approved it.

City Hall has long debated the tent city model. In 2016, a delegation of 20 Sacramento officials [toured tent facilities in Seattle](#), where a network of camps has existed for years. Some officials expressed support for the Seattle model, but the issue was soon dropped.

Councilman Rick Jennings, also struggling to find a site for a large shelter in his south Sacramento district, is pushing for the city to open “safe parking zones,” essentially a safe ground model for car camping.

Volunteers canvassing the county in January found [four times the number of vehicles](#) where people were living than they counted in 2015. Researchers estimate people were sleeping in at least 340 vehicles in the county. This included approximately 100 children. Most of the vehicles were in the city of Sacramento.

The City Council on Tuesday asked staff to come back with a plan for both models. Jennings said he hopes staff can come back with a plan, including costs and potential sites for safe parking zones, within 30 days. He wants to start with a pilot program for about six months. If it goes well, he wants to open more.

“We’re going to look at every possibility within our district, from businesses to nonprofit partners to community centers to parks,” Jennings said Wednesday. “We’re going to look and see if there’s an opportunity at every single one to put a pilot in place so we can get some results.”

Steinberg is supportive of both ideas, he told The Sacramento Bee Wednesday.

“I applaud my colleagues who are working to find creative solutions to our community’s greatest challenge,” Steinberg said in a statement. “Our goal is to get people under a roof with the help they need as quickly as possible. I support any efforts to make their plight even a little better as we aggressively help people get inside.”

Crystal Sanchez, a homeless activist who visited the Modesto site earlier this year, has been urging local officials to replicate the model here. She and other activists, including civil rights attorney Mark Merin, urged Sacramento County Board of Supervisors members to create a safe ground at the former San Juan Motel lot on Stockton Boulevard, where Sacramento Sheriff's deputies [cleared out dozens of campers earlier this year](#). They didn't go for it.

"Modesto is utilizing what is already in place to help their homeless population," Sanchez said. "It is a full-scaled organized community ... It is cost effective and involves every aspect of the community. The local government and the community grassroots have been doing what they do to help."

The Sacramento Regional Coalition to End Homelessness also supports the model as a temporary response until there is enough affordable housing.

"Safe ground means that people experiencing homelessness can camp without fear of harassment from law enforcement and can come and go without the fear that all their possessions have been taken or destroyed," Bob Erlenbusch of SRCEH said. "Equally important is that they can get a good night's sleep without fear of violence from predators who prey on vulnerable people."

James "Faygo" Clark, a local well-known homeless activist, said he is in favor of a safe ground model that rotates locations periodically.

"It would allow people a place to begin to stabilize and move forward," Clark said. "They would need private security, access to trauma-informed services, access to water, sanitation, and trash pickup to succeed. We should also work to ensure that such encampments give the unhoused a voice in their operation."

Warren, [who proposed safe ground sites](#) on his property years ago, said he still supports the model.

"I started on this three years ago and the council wasn't prepared at that time," Warren said. "They seem more willing now."

Merin and other activists [in January 2017 proposed a "safe ground" site](#) near Sacramento Army Depot off Florin Perkins Road.

Councilman Eric Guerra, who represents that area, opposed it, and so did his colleagues.

Now, Guerra, also struggling to find a site for a large shelter, appears to be supportive of a safe parking zone in his south Sacramento district.

Guerra Tuesday suggested staff contact the nonprofit Power Inn Alliance to see if any parking lots could be used in the industrial area for nighttime car camping. A representative for the Power Inn group was unavailable for comment.

#### RELATED STORIES FROM SACRAMENTO BEE

[SACRAMENTO-TIPPING-POINT](#)

#### [100 kids live in cars in Sacramento. So do hundreds of homeless adults. How can we help them?](#)

AUGUST 08, 2019 5:30 AM

[HOMELESS](#)

#### [Large homeless shelters to open in Meadowview, North Oak Park. See when and where](#)

AUGUST 28, 2019 6:21 AM

[LOCAL](#)

#### [Summer temperatures create health hazards for those at Modesto homeless encampment](#)

JUNE 25, 2019 3:58 PM

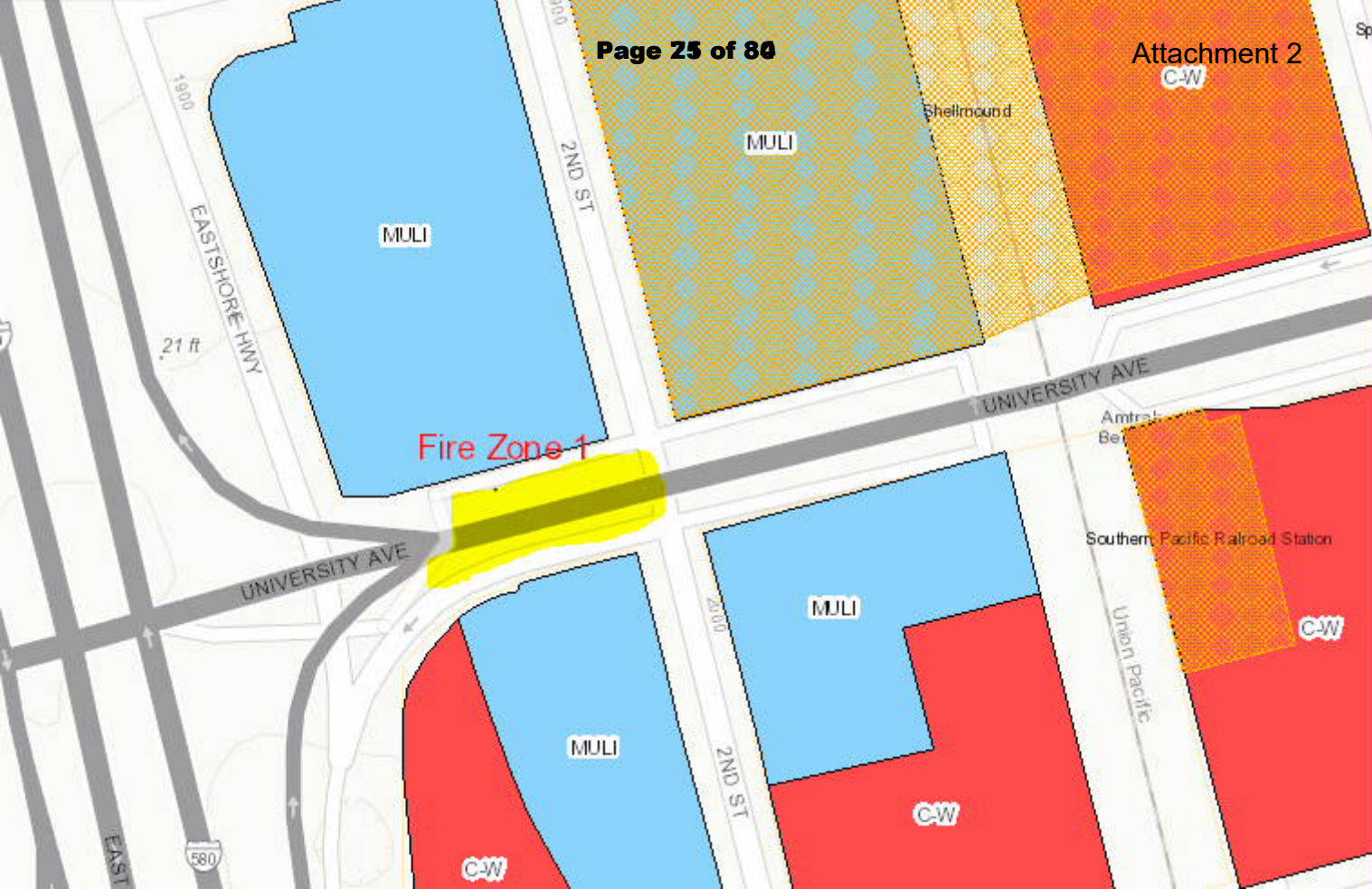
[LOCAL](#)

#### [Where will Modesto's homeless go when shelter opens and there's not enough room?](#)

MAY 17, 2019 5:39 PM

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MULI

MULI

Shellmound

C-W

21 ft

Fire Zone 1

UNIVERSITY AVE

UNIVERSITY AVE

Amtrak  
Be

Southern Pacific Railroad Station

Union Pacific

MULI

C-W

MULI

C-W

C-W

580

EAST









# of People	50
Intensive Services?	Yes
Self Governed?	No

MATERIALS (Start-up)			
Item	Number/ Quantity	Cost	Notes
Tents	50	\$22,000	Assumes \$400 per unit Qamp tent, with none donated
Pallets + Plywood	50	\$2,644	Assumes 10'x10' wooden pallet foundation with plywood cover
Lighting	6	\$6,600	Purchased parking lot flood lamps for site lighting
Generators	2	\$12,000	Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access.
Misc Supplies		\$10,000	Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.
Furniture/sleeping bags/etc.		\$20,000	Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.
Staff Shelter	1	\$4,400	16'x10' shed that can house staff + desks, supplies
Community tent	1	\$200	for common space, meals, etc
Communications		\$2,000	Staff laptops, cell phones
Drinking Water	12775	\$30,660	Assumes 0.7 gallons per person per day in water consumption. No City water connection.
10'x12' sheds for storage	4	\$2,800	For storage of client belongings
<b>TOTAL</b>		<b>\$113,304</b>	

OPERATIONS			
Item	Number/ Quantity	Cost	Notes
Shower truck		\$27,000	Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.
Port-a-potties and handwashing (per each)	4	\$52,000	1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing
20 yard dumpster and weekly service		\$39,840	Berkeley Zero Waste annual fee for 20 yard dumpster with 1x/week trash collection
Medical Waste/ sharps disposal		\$2,400	Assumes monthly service with a qualified vendor
Flex Funding/RRH	100	\$600,000	<i>Only applies if this is a service-intensive program</i>
1 meal/day	18250	\$109,500	<i>Only applies if this is a service-intensive program</i>
IT, facilities maintenance		\$10,000	Budget for repairs and communications network maintenance
Insurance		\$2,000	Liability and property
Indirects (@ .15)	0.1	\$172,024	
Generator operations		\$72,000	To power site/lighting plus shower trailer
<b>TOTAL</b>		<b>\$1,086,764</b>	

STAFFING			
Position	FTE	Cost	Notes
Program and Site Manager	1	\$75,000	Oversees program and provides security
Program Coordinators	7	\$350,000	<i>Staffing level depends on program governance structure</i>
Housing Navigators	2	\$120,000	<i>Only applies if this is a service intensive program</i>
Outreach Coordinators	2	\$130,000	Linked to encampment resolutions
Benefits (@30%)	0.3	\$202,500	Medical, dental, PTO
<b>TOTAL</b>		<b>\$877,500</b>	

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## Article 9. Emergency Housing

### 19.28.100 Emergency Housing and Emergency Housing Facilities.

HCD Appendix N of the 2016 [California Building Code](#) is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

#### APPENDIX N - EMERGENCY HOUSING

##### SECTION N106

##### TENTS AND MEMBRANE STRUCTURES

**N106.1 General.** Tents and membrane structures shall not be used to house occupants for more than 7 days unless such tents and membrane structures are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents and membrane structures may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent or membrane structure shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent or membrane structure during the period of occupancy.

Tents and membrane structures shall comply with Chapter 31 of the [California Fire Code](#) and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the [California Fire Code](#) shall not be subject to additional provisions of Sections N111 and N112 of this appendix.



Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the [California Fire Code](#).

Chart reads from left to right only, not from top to bottom

## What would "Sanctioned Encampments" look like? A quick overview of some elements to consider

<b>LOCATION</b>	100% Resident Discretion	City designated	One/Several locations	Unlimited locations
<b>RESIDENTS</b> <i>Who?</i>	City/Agency Criteria	No Criteria	Resident Criteria	Hybrid
<b>RESIDENTS</b> <i>How Many?</i>	No limit per Encampment	City/Agency determined limit	Resident-determined limit (Who/how decided?)	Variable/Stable
<b>RESIDENTS</b> <i>Criteria?</i>	Resident-Determined	City/Agency determined	Hybrid	Protected Class requirements for criteria?
<b>RESIDENTS</b> <i>Duration</i>	Indefinite/Forever	City/Agency specified – limited time	Resident specified – limited time	
<b>Rules /Code of Conduct</b>	Defined by residents	Defined by City/Agency	Hybrid	
<b>Governance</b>	Resident defined: any system desired, self-governing. What system?	City/Agency Defined	Jointly determined/different areas of governance for each?	
<b>Enforcement of Rules</b>	Residents	City/Agency		
<b>Removal/exclusion of Individuals</b>	Decision and Action by Residents	Decision and Action by City/Agency	No removal or exclusion	
<b>Engagement with Services</b> <i>Housing</i>	Not Necessary	Required	Voluntary	Who decides?
<b>Engagement with Services</b> <i>Other (health, jobs, etc.)</i>	Not necessary	Required	Voluntary	Who decides?
<b>Facilities</b> <i>Provision</i>	Provided by community/Not for profits	Provided by City	Hybrid/Mix	
<b>Facilities</b> <i>maintenance</i>	Residents	City/Agency	Not for Profit Org.	Shared responsibilities
<b>First Amendment issues</b>	"Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech? Code Pink – type concerns?			
<b>Self-Governance</b>	What system?	Who picks system?	Who ensures fairness?	Recourse?
<b>City/Agency</b>	Which agency?	Scope of Responsibility?	Funding?	

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