

LEASE

2047 Arnold Industrial Way, Suite A
Concord, California

This lease is dated July 1, 2019 (the “**Effective Date**”) and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**County**”) and BERKELEY FOOD AND HOUSING PROJECT, a private non-profit California corporation (“**Lessee**”).

Recitals

- A. The County is the owner of the property located at 2047 Arnold Industrial Way, Concord, California (the “**Property**”). The Property has been improved with a building (the “**Building**”) and a parking lot. Lessee desires to lease that portion of the Building known as Suite A, which consists of approximately 2,400 square feet of rentable space (the “**Premises**”), and to have non-exclusive use of 5 parking stalls on the Property.
- B. The County and Lessee are parties to a contract dated July 1, 2019, under which the Lessee will operate the County Coordinated, Outreach, Referral and Assessment Center and Warming Center for homeless support at the Premises (the “**Service Contract**”), a copy of which is attached as Exhibit A.
- C. The parties desire that Lessee lease the Premises from the County only while the Service Contract is in effect.

The parties therefore agree as follows:

Agreement

1. Lease of Premises. In consideration of the rents and subject to the terms herein set forth, the County hereby leases to the Lessee and the Lessee hereby leases from the County, the Premises, subject to all easements and encumbrances of record.
2. Term. The “**Term**” of this lease is two years, commencing July 1, 2019 and continuing through June 30, 2021. If the then-current Service Contract is renewed for another two years, this lease may be renewed for additional two two-year period (each such renewal, a “**Renewal Term**”) upon (i) the mutual consent of the parties, and (ii) the County’s receipt of a renewal notice from Lessee at least sixty days prior to the end of the Term. Upon the commencement of a Renewal Term, all references to the Term of this lease will be deemed to mean the Term as extended pursuant to this Section.
3. Early Termination. If the Service Contract is terminated for any reason, the Term of this lease will end upon the earlier to occur of (i) the expiration of the Initial Term or the Renewal Term, as applicable, and (ii) ten days after the termination of the Service Contract.

4. Rent. Each month during the Term, Lessee shall pay rent to the County in the amounts set forth below, without offset or demand on or before the first day of each month; provided, however, monthly Rent for July 2019, August 2019 and September 2019 is due not later than (i) ten days after this lease is fully executed, or (ii) October 1, 2019, whichever occurs earlier.

a. Initial Term.

\$1,382.00 per month commencing July 1, 2019 and ending June 30, 2020.

\$1,423.00 per month commencing July 1, 2020 and ending June 30, 2021.

b. First Renewal Term.

\$1,466.00 per month commencing July 1, 2021 and ending June 30, 2022.

\$1,510.00 per month commencing July 1, 2022 and ending June 30, 2023.

c. Second Renewal Term.

\$1,555.00 per month commencing July 1, 2023 and ending June 30, 2024.

\$1,602.00 per month commencing July 1, 2024 and ending June 30, 2025.

Rent for any fractional month will be prorated and computed on a daily basis with each day's rent equal to one-thirtieth (1/30) of the monthly Rent.

5. Additional Payment Terms.

a. Late Rental Payments: In the event Lessee fails to pay County any amount due under this lease within five (5) days after such amount is due, Lessee shall pay to County a late charge of One Hundred and No/100 Dollars (\$100) per occurrence (the "**Late Charge**"), plus interest on the unpaid balance at a rate of one and one-half percent (1.5%) per month, from the date the payment was due and payable until paid in full. Lessee shall pay all Late Charges as additional rent on or before the date the next installment of rent is due. County and Lessee hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix County's actual damage from any late payments and, thus, that Lessee shall pay as liquidated damages to County the Late Charge specified in this Section, which is the result of the parties' reasonable endeavor to estimate fair average compensation for the late payment (other than attorneys' fees and costs). County's acceptance of the Late Charge as liquidated damages does not constitute a waiver of Lessee's default with respect to the overdue amount or prevent County from exercising any of the rights and remedies available to County under this lease.

b. Form and Place of Payment: Lessee shall pay all rents and fees in cash or by personal check, certified check, or money order, payable to the County of Contra Costa, by delivering same on or before due date to Contra Costa County, Public Works Department – Real Estate Division, 255 Glacier Drive, Martinez, California 94553, or at such other place as County may designate from time to time.

- c. Returned Checks: If a check written by Lessee is returned for insufficient funds, County may impose a reasonable service charge in addition to any Late Charge and in addition to any charges imposed by the bank. County may require Lessee to pay rent by certified check or money order if Lessee's bank or banks have returned one or more personal checks within the preceding twelve (12) month period.
 - d. Definition of Rent: "**Rent**" means all amounts due from Lessee to County under this lease.
6. Use. Except as otherwise provided herein, the Premises may be used by the Lessee only to operate the County Coordinated, Outreach, Referral and Assessment Center and Warming Center for homeless support.

Lessee may not use the Premises for any other purpose without the prior written consent of the County. Any use of the Premises other than as described herein without the County's prior written consent is a default of this lease.

7. Utility Obligations. County is responsible for the cost of all utilities provided to the Premises, including gas, electricity, water, pest control, sewer, and security alarm services. Lessee shall pay one hundred percent (100%) of all other services provided to the Premises, including but not limited to, telephone, refuse collection and janitorial services.
8. Condition of Premises. Lessee is leasing the Premises in an "as is" physical condition with no warranty, express or implied, on the part of the County as to the condition of the improvements, the condition of the soil or the geology of the soil.
9. Maintenance and Repairs.
- a. Structures and Grounds. Except as provided herein, Lessee shall, at its sole cost and expense throughout the Term of this lease, maintain the non-structural portions of the interior of the Premises in the same condition as existed at the commencement of this Lease. All maintenance, repairs, and replacements must be of a quality substantially equal to the original material and workmanship. The Director of Public Works, or his or her designee, is the sole judge of the quality of maintenance.

County shall maintain the exterior of the Building in good condition and shall repaint or treat as often as reasonably required in the sole discretion of the County. Lessee may not paint, or change the color of, the exterior of the Building.

Upon written notice by the County, Lessee shall perform whatever reasonable maintenance the County deems reasonably necessary and which is Lessee's responsibility hereunder. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, the County has the right to enter upon the Premises and perform such necessary maintenance, the total cost of which shall be

reimbursed by Lessee to the County as additional rent, without offset, upon Lessee's receipt of the County's request for reimbursement.

- b. County shall provide or cause to be provided adequate enclosures, screened areas and/or suitable covered metal receptacles on the Property for the short-term accumulation and storage of solid waste, such as rubbish, trash, and garbage. Such enclosures and/or screened areas must be designed in such a way as to prevent, to the extent possible, odors, fumes, attraction of pests and dispersal of wastes due to wind or water runoff and must be serviced regularly by qualified waste removal and disposal services.
 - c. Utilities. The County shall repair and maintain the interior electrical, lighting, water and plumbing systems in good order, condition and repair; provided, however, if such systems are damaged as a result of Lessee's abuse, vandalism, or negligence, then the cost of the repair will be borne by Lessee and will be reimbursed to the County as additional rent, without offset, upon Lessee's receipt of the County's request for reimbursement.
 - d. HVAC. County shall maintain and repair the heating, ventilating, and cooling (HVAC) systems, including the air conditioning system if the County elects to install an air conditioning system to serve the Premises. County shall furnish HVAC to the Premises, twenty-four (24) hours per day, seven days per week, three hundred sixty-five (365) days per year.
 - e. Parking; Exterior Lighting. The County shall maintain the parking lot and exterior lighting system in good order, condition and repair.
 - f. Fire Extinguishers. The County is providing fire extinguishers for the Premises in accordance with the direction received from the fire marshal. County shall maintain, repair, and replace the fire extinguishers.
 - g. Code Violations. The County is responsible for correcting any building code violations that may exist in the Premises, provided the County is not responsible for correcting building code violations that arise out of a change in Lessee's use or occupancy of the Premises.
10. Covenant against Liens. Lessee may not permit any mechanic's, material man's, or other lien against the Premises, or the property of which the Premises forms a part, in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien is filed against the Premises, or property of which the Premises forms a part, Lessee will cause the lien to be discharged.
11. Taxes. Lessee agrees to pay before delinquency all taxes (including, but not limited to, possessory interest tax), assessments, license fees, and other charges that are levied and assessed upon Lessee's interest in the Premises, or upon Lessee's personal property installed or located in or on the Premises, by Contra Costa County or other legally authorized government authority. Lessee may pay any taxes and assessments under protest, without

liability, cost or expense to the County, to contest the amount in good faith. However, Lessee is not responsible for federal or state income or any real property taxes and assessments arising from county (i) failure to timely pay any such taxes and assessments or (ii) misconduct.

Payment of taxes, assessments, license fees, or other charges levied and assessed upon Lessee's interest, (i) does not reduce the Rent due to the County under this lease, and (ii) is the liability of the Lessee.

12. Quiet Enjoyment. Provided the Lessee is in compliance with the terms of this lease, the County covenants that the Lessee will peaceably and quietly have, hold, and enjoy the Premises during the Term.
13. Improvements. The County intends to make improvements to the Building. The County will use reasonable efforts to prevent the construction of the improvements from interfering with Lessee's use of the Premises.
14. Assignment and Sublease. Lessee may not assign this lease or sublease the Premises or any part thereof at any time during the Term.
15. Alterations and Additions. Lessee may not make any alterations, erect any additional structures, or make any improvements on the Premises without the prior written consent of the Director of Public Works or his or her designee. In the event Lessee makes alterations or constructs additions that violate the conditions contained in this lease (an "**Unauthorized Addition**"), at the County's sole discretion, Lessee shall remove any Unauthorized Addition at Lessee's sole cost and expense. If Lessee is required to remove any Unauthorized Addition, Lessee, at its sole cost and expense, shall restore the Premises to the conditions existing immediately prior to the existence of the Unauthorized Addition. If Lessee is not required to remove any Unauthorized Addition, such Unauthorized Additions shall remain on and be surrendered with the Premises on expiration or termination of this lease.

If Lessee wishes to make any alterations, erect any additional structures, or make any additional improvements to the Premises as provided in this Section, Lessee may not commence construction until Lessee has the prior written consent of the County. In addition, a Notice of Lessor Non-Responsibility must be posted and recorded by Lessee during construction in accordance with Civil Code Section 3094. Lessee shall mail a copy of such Notice of Lessor Non-Responsibility to Lessor upon filing it with the County Recorder.

16. Insurance.
 - a. Liability Insurance. Throughout the Term, the Lessee shall maintain in full force and effect, at its sole expense, a comprehensive general liability or commercial general liability insurance program covering bodily injury (including death), personal injury, and property damage. The limits must be not less than one million dollars per occurrence and two million dollars aggregate. The policy must name the County, its officers, agents

and employees, individually and collectively, as additional insureds. The liability insurance maintained by the Lessee must be primary.

- b. Property Insurance. The County will maintain property insurance coverage on its real property. The Lessee has no interest in the proceeds of insurance on the County's real property, improvements, equipment, or fixtures. The Lessee shall sign all documents necessary or proper in connection with the settlement of any claim or loss by the County. The Lessee shall maintain in full force and effect, at its sole expense, a standard All Risk policy, which may exclude earthquake and flood, to insure its own personal property, contents, improvements and betterments within or on the Premises. The coverage must be for not less than 90% of the actual cash value of the personal property. The Lessee shall name the County as an additional insured and loss payee with respect to the improvements and betterments.
 - c. Worker's Compensation and Employer's Liability Insurance. The Lessee shall maintain in full force and effect, at its sole expense, (i) statutory California Workers' Compensation coverage including a broad form all-states endorsement, and (ii) employer's liability coverage for not less than one million dollars per occurrence for all employees engaged in services or operations at the Premises.
 - d. Evidence of Insurance. Within thirty days of execution of this lease, the Lessee shall provide to the County, on a form approved by the County, an original copy of a Certificate of Insurance. The Certificate of Insurance must certify that the coverage required by this lease has been obtained and remains in force for the period required by this lease.
 - e. Notice of Cancellation or Reduction of Coverage. The Lessee shall cause all policies it is required to obtain under the terms of this lease to contain a provision that the County is to receive written notification of any cancellation or reduction in coverage at least thirty days prior to the effective date of such cancellation or reduction. Any such notification is to be sent to the County in accordance with Section 24 - Notices.
 - f. Waiver of Subrogation. Except as may be specifically provided elsewhere in this lease, the County and the Lessee hereby each mutually waive any and all rights of recovery from the other in the event of damage to the Premises or any personal property that is caused by acts of God, perils of fire, lightning, and the extended coverage perils, as defined in insurance policies and forms approved for use in the State of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with this waiver.
17. Surrender of Premises. On the last day of the Term, or sooner termination of this lease, the Lessee shall peaceably and quietly leave and surrender to the County the Premises, along with their appurtenances and fixtures, all in in the same condition as existed at the commencement of this lease, ordinary wear and tear, damage by casualty, acts of God and circumstances over which the Lessee has no control excepted.

18. Abandonment. The Lessee may not vacate or abandon the Premises at any time during the Term. If the Lessee abandons, vacates, or surrenders the Premises, or is dispossessed by process of law, or otherwise, the County may deem any personal property belonging to the Lessee that remains on the Premises to be abandoned.
19. Waste, Nuisance. The Lessee may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the neighborhood in which the Premises is located.
20. Inspection. The County may enter the Premises at any time in an emergency and with 24-hours' notice in a non-emergency to determine that (i) the Premises is being reasonably cared for, (ii) no waste is being made and that all actions affecting the Premises are done in the manner best calculated to preserve the Premises, and (iii) the Lessee is in compliance with the terms and conditions of this lease.
21. Destruction. If damage occurs that causes a partial destruction of the Premises during the Term from any cause, the County may, at its option, make repairs within a reasonable time. Partial destruction does not void this lease, except that the Lessee is entitled to a proportionate reduction in Rent while such repairs are being made. The proportionate reduction in Rent is to be calculated by multiplying Rent by a fraction, the numerator of which is the number of square feet that are unusable by the Lessee and the denominator of which is the total number of square feet in the Premises.

If the County does not elect to make repairs, or if (i) partial destruction occurs in the last twelve (12) months of the Term, and (ii) the repairs or restoration cannot be completed within one hundred eighty (180) days following the date of the partial destruction, then this lease may be terminated by either party upon thirty (30) days' written notice, without cost, obligation or liability to the other party, except as described herein, provided the Service Contract is terminated simultaneously.

This lease will terminate in the event of a total destruction of the Premises.

22. Indemnification. The Lessee shall indemnify, defend and hold County, its officers, agents and employees harmless from any and all claims, costs and liability, for any damage, injury or death, including without limitation, all consequential damages from any cause whatsoever, to any person or the property of any person arising directly or indirectly from or connected with this lease, the Lessee's operations, or the Lessee's use or possession of the Premises, save and except claims or litigation arising through the sole negligence or sole willful misconduct of County, its officers or employees, and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, County may make by reason of such matters.

23. Default and Remedies.

a. The occurrence of any of the following events is a default under this lease:

- i. The Lessee's failure to pay rent in accordance with Section 4 of this lease.
- ii. The Lessee's failure to comply with any other material term or provision of this lease if such failure is not remedied within thirty (30) days after receipt of a written notice from the County to the Lessee specifying the nature of the breach in reasonably sufficient detail (a "**Notice of Default**").

1. If the required cure of the noticed failure cannot be completed within thirty (30) days, the failure to cure will not be deemed to be a default of this lease if the Lessee has attempted to cure the failure within the thirty-day period and has diligently and continuously attempted to complete the cure as soon as reasonably possible. In no event will the cure period extend beyond the sixty-day period after Lessee's receipt of the Notice of Default.

2. Notwithstanding the foregoing, the issuance of a third Notice of Default in any twelve-month period that relates to the same, or substantially similar, Lessee failure is a default that is not subject to a cure period.

b. Upon the occurrence of a default by the Lessee, the County may reenter and repossess the Premises and remove all persons and property from the Premises, after giving the Lessee written Notice of Default and in accordance with due process of law.

24. Notices. Any notice required or permitted under this lease shall be in writing and sent by overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To Lessor: Berkeley Food and Housing Project
 1901 Fairview St.
 Berkeley, CA 94703
 Attn: Maurice Lee

To County: Contra Costa County
 Public Works Department
 Attn: Principal Real Property Agent
 255 Glacier Drive
 Martinez, CA 94553

Either party may at any time designate in writing a substitute address for that set forth above and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all notices will be deemed effective (i) the next business day, if sent by overnight courier, or (ii) three days after being deposited in the United States Postal system.

25. Successors and Assigns. This lease binds and inures to the benefit of the heirs, successors, and assigns of the parties hereto.
26. Holding Over. If Lessee remains in possession of the Premises after the expiration of the Term, such holding over does not constitute a renewal or extension of this lease, but will be construed to be a tenancy from month to month on the same terms and conditions set forth in this lease, except that the monthly rent due and payable hereunder will be 125 % of the rent payable as of the last month of the Term.
27. Time is of the Essence. In fulfilling all terms and conditions of this lease, time is of the essence.
28. Governing Law. The laws of the State of California govern all matters arising out of this lease.
29. Severability. If any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this lease will not in any way be affected or impaired.

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30. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this lease. All previous conversations, negotiations, and understandings are of no further force or effect. This lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. This lease may be modified only by a writing signed by both parties.

The parties are executing this lease on the date set forth in the introductory paragraph.

COUNTY OF CONTRA COSTA,
a political subdivision of the State of
California

BERKELEY FOOD AND HOUSING PROJECT,
a private non-profit California Corporation

By: _____
Brian M. Balbas
Director of Public Works

By: _____
Kajsa Minor
Board President

By: _____
George Fruehan,
Board Secretary

RECOMMENDED FOR APPROVAL:

By: _____
Karen Laws
Principal Real Property Agent

By: _____
Julin Perez
Senior Real Property Agent

APPROVED AS TO FORM
SHARON L. ANDERSON, COUNTY COUNSEL

By: _____
Kathleen M. Andrus
Deputy County Counsel