

LICENSE AGREEMENT

This License Agreement (this "Agreement") by and between the City of Napa, a California charter city ("Licensor"), and First & Main NV, LLC, a California limited liability company ("First & Main"); Coombs Street, LLC, a California limited liability company ("Coombs Street") and Napa County Landmarks, Incorporated, a California non-profit corporation ("Napa County Landmarks") is effective as of the date last signed by the City, which is identified on the signature page as the "Effective Date". First & Main, Coombs Street and Napa County Landmark are hereinafter referred to individually as a "Licensee" and collectively as the "Licensees."

RECITALS

A. Licensor is the owner of that certain real property located in Napa, California identified as Napa County Assessor's Parcel Number 003-167-020 (the "Property").

B. First & Main owns that certain real property located at 1006 First Street in Napa, California and identified as Napa County Assessor's Parcel Number 003-167-010.

C. Coombs Street owns that certain real property located at 1118 First Street in Napa, California and identified as Napa County Assessor's Parcel Number 003-166-016.

D. Napa County Landmarks owns that certain real property located at 1026 First Street in Napa, California and identified as Napa County Assessor's Parcel Number 003-167-011.

E. Licensees desire to have access to and make use of the portion of the Property designated as a solid waste, recyclable materials and compostables enclosure facility for the disposal of Licensees' solid waste, recyclable materials and compostables.

F. Licensees' use of the Premises (defined below) for disposal of Licensee's solid waste, recyclable materials and compostables benefits the public because it will facilitate the effective management of solid waste and minimize littering.

G. This license is located within an area where the City is contemplating improvements to the Brown Street corridor as part of a larger development project, which may affect the use of the Premises for a solid waste enclosure and will likely result in the Licensor exercising Section 10.b., Termination for Convenience, of this Agreement.

H. Licensees acknowledge the likelihood of Licensor exercising Section 10.b., Termination for Convenience, of this Agreement pursuant to Recital G and desire to be granted temporary use of the Premises for the disposal of Licensees' solid waste, recyclable materials and compostables.

I. Licensor is willing to grant a revocable license to Licensees under the following terms and conditions to allow Licensees temporary use of the Premises for the disposal of Licensees' solid waste, recyclable materials and compostables.

J. This Agreement serves as the permit contemplated by Napa Municipal Code Section 12.36.070.

NOW, THEREFORE, the Licensor and the Licensees, for the mutual consideration described herein agree as follows:

1. Grant of License. Licensor grants to Licensees, their tenants and authorized representatives, a revocable non-exclusive license for access to and use of the portion of the Property designated as a solid waste, recyclable materials and compostables enclosure facility, shown

on "Exhibit A" (the "Premises"), for the purpose of disposal of Licensees' solid waste, recyclable materials and compostables generated from the properties identified in Recitals B-D above, including the obligation to maintain the interior and exterior of said facility, for the non-exclusive use and benefit of the businesses operated by Licensees and their tenants.

2. Term of License.

a. This Agreement shall commence on the Effective Date and shall continue as a temporary and revocable use through December 31, 2029 ("Initial Term"), unless earlier terminated in accordance with Section 10 herein this Agreement.

b. Licensees shall have the option to extend the Initial Term of this Agreement for one additional successive period of five (5) years (the "Extended Term") provided Licensees are not in default hereunder at the expiration of the Initial Term. This Agreement will automatically renew unless either party provides notice of termination to the other party 120 days prior to expiration of the Initial Term. The terms of this Agreement shall govern any Extended Term. Licensees shall have no right to extend the term beyond the Extended Term. The Initial Term and Extended Term shall hereinafter be collectively referred to as the "Term."

3. Compensation. Commencing on January 1, 2025, and on each January 1st thereafter during the Term, each Licensee shall pay the Licensor an annual administrative fee of \$932 for the Licensee's use of the Premises. The administrative fee will be adjusted annually by the change in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-Hayward, CA, for the proceeding September through August period, with the first adjustment being applied to the payment amount due on January 1, 2026, and subsequent adjustments on each January 1st thereafter during the Term.

4. Condition of Licensees' Use.

a. Licensees' use of the Premises shall not hinder, impair, or otherwise preclude Licensor's use of the Property or the Premises. Licensor's use of the Premises, however, does not include use of the solid waste, recycling and compostable containers that are paid for, utilized, and stored by Licensees within the Premises, and Licensor's use of the Premises will not unreasonably impair Licensees' ability to use the Premises as described herein.

b. Licensees' use of the Premises shall be at Licensees' sole cost and expense, including the cost of increased or additional solid waste, recyclable materials and compostables collection service necessitated by the volume of Licensees' solid waste, recyclable materials and compostables deposited at the Premises.

c. Solid waste, recyclable materials and compostables must always be transported to the Premises in covered watertight containers, or equivalent, to ensure that solid waste, recyclable materials, compostables and related debris is not loose, blown, leaking, or generally contributing to or causing unsightly or unsanitary conditions in or about the Premises or the Property.

d. No alterations, additions, or changes to the Premises may be made by Licensees without the prior written consent of Licensor, at Licensor's sole and absolute discretion.

e. Licensees understand and acknowledge that all improvements installed or placed in or about the Premises are owned by Licensor and that Licensees have no right or title to the Premises or its improvements other than the right of use conveyed by this Agreement. The Premises are designed to, and shall, accommodate four 95-gallon solid waste carts, one 4-

yard recycle compactor, and six 65-gallon compost carts. The Premises cannot be used for general storage. The Licensees shall inform the Licensor of any changes to the quantity or mixture of solid waste, recyclable materials or compostable bins stored on the Premises.

f. Licensees, at their sole cost and expense, shall maintain the interior and exterior of the Premises in a neat and sanitary order and condition. Once a month, Licensees shall pressure wash the interior of the Premises (enclosure) and any area of the Property surrounding the Premises, including the pathways between licensees locations and the Premises that may be soiled from the transport of solid waste, recyclable materials, compostables and debris to and from the Premises. Licensees shall pressure wash the interior of the Premises and surrounding area and pathways of the Property more often, if necessary, to maintain a clean and sanitary environment. Licensees' pressure washing operations must comply with local, state, and federal stormwater laws, including Napa Municipal Code Chapter 8.36 Storm Water Quality Control Ordinance.

g. Within thirty (30) days from the Effective Date, Licensees shall submit for review and approval as to substance by the Utilities Director and as to form by the City Attorney, a Trash Enclosure Maintenance Agreement by and between First & Main, Coombs Street and Napa County Landmarks which outlines the respective obligations of the parties for compliance with the obligations of Licensees set forth herein and which apportions the cost of such obligations amongst First & Main, Coombs Street and Napa County Landmarks. The City shall be a third-party beneficiary to the Trash Enclosure Maintenance Agreement, with the right but not the obligation, to enforce the terms thereof.

h. If Licensees fail to maintain the Premises in accordance with the terms set forth herein, and such failure continues for 30 days after written notice thereof from Licensor to Licensees, the Licensor reserves the right to hire a third-party management company to clean, maintain and manage the Premises at Licensees' sole cost and expense. In such case, Licensees shall pay Licensor for such costs within thirty (30) days of Licensees' receipt of an invoice from Licensor.

i. Licensees shall be responsible for the repair of any and all damage to the Premises occurring during the Term whether such damage is to the interior or exterior of the Premises, including damage caused by acts of nature or third parties, provided however that the Licensees are not responsible for repair of any damage caused by the Licensor, its employees or contractors. At Licensor's option, if Licensees fail to make any needed repairs and such failure continues for 30 days after written notice thereof from Licensor to Licensees, Licensor may perform and make such repairs and replacements and charge Licensees for the same. In such case, Licensees shall pay Licensor for such costs within thirty (30) days of Licensees' receipt of an invoice from Licensor. Licensor shall be responsible for the repair of all damage to the Premises caused by Licensor, its employees or contractors.

j. Notwithstanding the fact that Licensees' use of the Premises is non-exclusive, Licensees' use of their own solid waste, recyclable materials, and compostable containers shall be exclusive during the term of this Agreement.

5. Liability and Indemnity.

a. Licensees have inspected the Premises and agree to use and occupy it in its present state and condition. Licensees acknowledge that Licensor has made no representations or warranties either express or implied as to the condition of the Premises or its suitability for Licensees' desired use. As a material part of the consideration for this Agreement, Licensees

assume all risk of damage to the Premises or injury to persons in, upon or about the Premises from Licensees' use of the Premises or causes attributable to Licensees' use of the Premises, except that which is caused by an action or omission of Licensor, its officers, employees, invitees, contractors and agents, or the failure of Licensor to observe any of the terms and conditions of this Agreement, which failure has persisted for 30 days after written notice to Licensor of such failure, and Licensees waive all claims in respect thereof against Licensor.

b. To the full extent permitted by law and with counsel reasonably acceptable to Licensor, each Licensee shall indemnify, defend, release and hold harmless Licensor, its elected and appointed officials, officers, agents and employees (collectively, "Licensor Indemnitees"), from and against any and all claims, suits, liabilities, actions, damages, penalties, fines or causes of actions, including claims for witness and attorney's fees (collectively, "Liability"), asserted by any person, including Licensee, its tenants, employees, and agents, for personal injury, death or damage to property including the loss of use, economic losses and resulting damage of any kind caused by a Licensee's use of the Premises, any action or omission done, suffered or permitted by Licensee, its tenants, employees, and agents or a Licensee's failure to comply with this Agreement, all applicable laws or permit requirements, which failure has persisted for 30 days after written notice to Licensees of such failure. A Licensee will not be obligated to indemnify Licensor for the proportionate share of the Liability caused by Licensor's active negligence or willful misconduct. This provision of this indemnification shall survive the expiration or earlier termination of this Agreement. A Licensee's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by a Licensee, including, but not limited to, workers' compensation insurance.

6. Insurance. Without limiting each Licensee's indemnification obligations provided herein, each Licensee shall take out and maintain, throughout the term of this Agreement, the following policies of insurance against injury and or death to persons or damage to property which may arise from or in connection with the activities hereunder of Licensee, its tenants, employees, and agents:

a. Comprehensive commercial general liability insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), with minimum limits of Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Four Million and 00/100 Dollars (\$4,000,000.00) in the aggregate. Said policy shall contain, or be endorsed with, the following provisions:

i. The Licensor, its elected and appointed officials, officers, employees and agents, are covered as additional insureds for liability arising out of the operations performed by, at the direction of, or on behalf of Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the Licensor, its elected and appointed officials, officers, agents and employees.

ii. For claims related to Licensee's use of the Premises, the Licensee's insurance is primary coverage to the Licensor, and any insurance or self-insurance programs maintained by the Licensor is excess to Licensee's insurance and will not be called upon to contribute with it.

iii. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to Licensor, its officers, employees and agents.

b. Workers' Compensation insurance meeting statutory limits of Labor Code which policy shall contain or be endorsed to contain a waiver of subrogation against Licensor, its officers, agents, and employees. The requirements of this paragraph shall extend to any tenants of Licensee and may be satisfied by a policy of Licensee covering Licensee's tenants or by a policy of Licensee's tenant meeting the requirements described herein. If Licensee has no employees, or tenants with employees, Licensee may sign and file the following certification in lieu of insurance:

"I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of this contract."

c. Each Licensee shall furnish Licensor with certificates and endorsements affecting the required coverage prior to City's execution of this Agreement. Each policy provided hereunder shall be endorsed to provide at least thirty (30) days written notice to Licensor prior to cancellation, material reduction or amendment of the policy regarding the Premises and at least ten (10) days written notice of any non-renewal of policy. The endorsements shall be on forms provided by Licensor or as approved by Licensor's Risk Manager. Any deductible or self-insured retention over \$50,000.00 shall be disclosed to and approved by Licensor. If Licensee does not keep all required insurance policies in full force and effect, Licensor may after fifteen (15) days' prior written notice to Licensee, in addition to other remedies under this Agreement, take out the necessary insurance, and Licensee agrees to pay the cost of said insurance. The policies shall name Licensor as an additional insured as its interests may appear and shall provide for a waiver of subrogation against Licensor. If Licensee's insurance does not provide for a waiver of subrogation against Licensor, Licensee's insurance will have no obligation to include a waiver of subrogation against Licensor in Licensee's insurance policy.

7. Uses prohibited. Licensees shall not use or permit the use of the Premises in whole or in part during the Term for any purpose or use in violation of any laws, regulations or ordinances applicable thereto. Licensees shall at all times during the Term do all things necessary to maintain the Premises in a safe, clean and sanitary manner and in compliance with any and all federal, state, or local laws, regulations or ordinances now or later enacted concerning the Premises or the conduct of Licensees in and on the Premises. Licensees shall not use, or permit the Premises or any part thereof to be used by Licensees, their respective tenants or authorized representatives, for any purpose other than that which is permitted pursuant to this Agreement; and Licensees shall not make, or permit any use to be made, of the Premises, nor acts done, which will cause a cancellation of any insurance policy covering the Premises or any part thereof, nor shall Licensees keep or use, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Licensees shall, at Licensees' sole cost and expense, comply with any and all requirements, pertaining to the Premises, or any insurance organization or company, necessary for the maintenance of reasonable public liability insurance covering the Premises.

8. Hazardous Materials.

a. Licensees agree that they will not cause or permit any hazardous material (as defined herein) to be generated, brought onto, used, stored, released or disposed of on, under, about or within the Premises by Licensees, or their agents, employees, contractors, subcontractors, invitees or other third parties. In the event during the Term of this Agreement it is determined

that the Premises is contaminated by hazardous materials through no action or inaction of Licensees, their employees, agents, contractors or invitees, Licensees shall have the right to terminate this Agreement upon thirty (30) days written notice to City but shall not have the right to sue City for damages.

b. If any party becomes aware of any actual or threatened release of hazardous materials on, under, or about the Premises or any inquiry, investigation, proceeding or claim by any agency or person regarding the presence of hazardous materials on, under, or about the Premises, that party shall give the other parties written notice of the same within five (5) days of learning of it and shall simultaneously furnish the other parties copies of any claim, notices of violation, reports, or other writings received.

c. To the fullest extent permitted by law, each Licensee shall, with counsel reasonably acceptable to Licensor, indemnify, defend, release, and hold harmless Licensor Indemnitees, regarding all Liability arising out of or resulting from Licensee's use or storage of any hazardous materials on or about the Premises, the release of any hazardous material in or about the Premises or the violation of any environmental law by a Licensee, its agents, contractors, or invitees including, but not limited to, losses attributable to diminution in the value of the Premises, liability for penalties, costs, fines, claims, expenses, actions, acts of remediation, obligations, or changes resulting from a Licensee's use or storage of hazardous materials or any release or violation. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

d. If the presence of any hazardous material brought onto the Premises by a Licensee or a Licensee's employees, agents, contractors, and/or invitees results in contamination of the Premises, the Licensee shall promptly take all necessary actions, at Licensee's sole cost and expense, to return the Premises to the condition that existed prior to the introduction of such hazardous material; provided however, the Licensee shall first obtain the City's approval of the proposed remediation action. Remediation shall not limit a Licensee's indemnification obligation set forth above.

e. As used herein, hazardous materials shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the federal, state or local government, including:

(1) "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC §§960114 and (33) and regulations issued pursuant thereto;

(2) "Extremely hazardous substances," "hazardous chemicals," and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC §§1102(a), 1121(e) and 1122(c) and regulations issued pursuant thereto;

(3) "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR §1910.1200;

(4) Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in 1-3 above; and

(5) Any materials not covered by, or exempted from, the sources listed in subsections (1)-(4) above that may nevertheless pose a threat to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, radon, PCB's, radioactive material, toxic pesticides and herbicide, solvents, and materials containing asbestos or formaldehyde.

9. Assignment. This Agreement is for the sole purpose as stated herein and is not assignable without the prior written consent of Licensor, and any attempt to assign or otherwise transfer this Agreement contrary to the provisions of this paragraph shall be void.
10. Termination.
 - a. For Cause. This Agreement may be terminated for cause by any party. If any party is in default under the terms of this Agreement (“defaulting party”), the other party (“demanding party”) shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within 30 business days of the notice. If: (a) the defaulting party fails to cure the default within 30 business days of the notice, or (b) if more than 30 business days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within 30 business days of the notice, then the demanding party may terminate this Agreement upon written notice to the defaulting party.
 - b. Termination for Convenience. The City may terminate this Agreement for convenience (with or without cause) by providing 180 days’ prior written notice of termination to Licensees effective upon the date stated in the notice.
11. No liens. Licensees shall keep the Premises free from any and all liens arising out of Licensees’ use of the Premises, materials furnished, or obligations incurred by Licensees.
12. Taxes. Licensees recognize that this Agreement may create a possessory interest subject to property taxation and that Licensees may be subject to the payment of property taxes levied on such interest. Licensees shall pay, before delinquency, all taxes, assessments, fees and other charges (“taxes”) that are levied or assessed during the term against Licensees’ interest in the real property or improvements installed or located in or upon the Premises. The foregoing notwithstanding, Licensees shall have the right, at no cost or other detriment to Licensor, to contest with the taxing authorities the imposition or amount of any such taxes.
13. Relocation. Licensees acknowledge and understand that the Premises are owned by the Licensor and licensed to Licensees. Upon termination of this Agreement, Licensees agree to voluntarily vacate the Premises and to make no claim for relocation costs, benefits, or assistance of any nature.
14. Attorney Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney’s fees, costs, and expenses incurred, whether or not such action proceeds to judgment.
15. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
16. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties.
17. Joint and Several Liability. Licensees are jointly and severally liable for the obligations of Licensees identified in this Agreement.

18. Notices. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other parties; authorized representatives by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's authorized representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

Licensor: City of Napa
Attn: Utilities Director
P. O. Box 660
Napa, CA 94559

Licensees: First & Main NV, LLC
2654 W Pueblo Ave
Napa, CA 94558

Coombs Street, LLC
3160 Crow Canyon Road 400
San Ramon, CA 94583

Napa County Landmarks, Incorporated
1026 1st Street
Napa, CA 94558

19. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, this Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
20. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.
21. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.
22. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.
23. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

24. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensor and the Licensees. The parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.

(Signature provisions on following pages)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

LICENSEES:

FIRST & MAIN NV, LLC

By: _____
Michael Holcomb, Owner

COOMBS STREET, LLC

By: _____
Christopher M. George, Sole Member

NAPA COUNTY LANDMARKS, INCORPORATED

By: _____
Terry Wunderlich, Board President

LICENSOR:

CITY OF NAPA, a California charter city

By: _____
Phil Brun, Utilities Director

Date: _____
"Effective Date"

ATTEST

By: _____
Tiffany Carranza, City Clerk

APPROVED AS TO FORM:

By: _____
Christopher J. Diaz,
Interim City Attorney

COUNTERSIGNED:

By: _____
Erika Leahy, City Auditor

EXHIBIT "A"
Premises

