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AND WHEN RECORDED RETURN TO:

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This Lease and Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By:

Name:

Title:

LEASE AND AGREEMENT

Between

CITY OF FRESNO, CALIFORNIA, a Municipal Corporation

And

James F. Cook

Regarding

Fresno-Clovis Regional Wastewater Reclamation Facility Properties and Effluent

APNs:

327-030-22ST

327-040-08ST

327-040-11ST

327-040-26ST

THIS LEASE AGREEMENT (Agreement) is made and effective upon the date of final signature, (Effective Date), by and between the City of Fresno, California, a California municipal corporation (Lessor) and James F. Cook, an individual (Lessee).

### RECITALS

- A. Lessor owns the Fresno-Clovis Regional Wastewater Reclamation Facility, a publicly owned treatment works (Facility), including certain appurtenant properties acquired by Lessor for the future expansion of percolation and/or infiltration ponds around the Facility which are the subject of this Lease and more specifically described below (Leased Premises).
- B. The Facility generates recycled undisinfected secondary effluent (Effluent).
- C. Lessee desires to lease the Leased Premises and irrigate portions thereof with Effluent for Lessee's cultivation of feed, fiber, seed, and food crops/products thereof to be used solely for non-human consumption.
- D. In pursuit of the public interest Lessor desires to lease the Leased Premises to Lessee and dispose of Effluent upon the terms and conditions herein.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, such parties, and each of them, do agree as follows:

- 1. **Leased Premises.** Lessor leases to Lessee, on the terms and conditions set forth in this Agreement, the Leased Premises including any appurtenances/improvements thereon, in "as is" condition. The Leased Premises are as shown more specifically on the Vicinity Map attached as Exhibit A. The Leased Premises contain approximately the following:

APN 327-030-22ST, 42 acres

APN 327-040-08ST, 160 acres

APN-327-040-11ST, 78 acres

APN 327-040-26ST, 120 acres

- 2. **Term.** The initial term of this Lease shall commence on the Effective Date and end December 31, 2028. Subject to any earlier termination as provided in this Agreement, the Lease may renew for one four-year option term upon the Parties' mutual written agreement. Lessee must provide Lessor with written notice of Lessee's desire to extend the lease no later than ninety days prior to expiration of the initial term.

- 2.1. **Definition.** The phrase, "the life of this Agreement," and all readily identifiable variations thereof, when used in this Agreement, means the full term of this Agreement, as specified in Section 2 above, unless this Agreement shall be terminated earlier as herein provided. If the Agreement is terminated earlier, said phrase and said variations thereof, shall mean the period during which this Agreement shall be in full force and effect.

- 3. **Termination.**

- 3.1. This Agreement shall terminate upon the earlier of: (i) Lessor's written notice following Lessee's filing for protection under the federal bankruptcy

laws, or any bankruptcy petition or petition for receiver commenced by a third party against Lessee; (ii) Lessor's written notice of termination following Lessor's determination that the Leased Premises/portion thereof are required for a public or governmental purpose; (iii) a party's written notice as provided for in this Agreement; or (iv) expiration. Any such termination shall not relieve a party of obligations due and owing at the time of termination.

3.2. Immediately upon any such termination, Lessee shall make re-delivery of the Leased Premises as provided in Section 4.

3.3. Upon any termination of this Lease, Lessor shall (i) at Lessor's option, either pay Lessee the reasonable fair market value of growing crops planted and cultivated by Lessee, or allow Lessee to hold over (in the manner provided for in Section 5 of this Agreement) in order to complete the next occurring harvest of said crops at Lessee's sole cost and expense, and (ii) refund to Lessee any unearned rental fees.

4. **Re-Delivery.** Upon any termination of this Lease, subject to Section 3 of this Agreement, Lessee shall have no right(s), title or interest in or to the Leased Premises and Lessee shall peaceably and quietly discontinue use of the Leased Premises and quit and deliver up such to Lessor. Lessee shall be required to return the Leased Premises to the condition as when received, ordinary wear and tear excepted. In the event Lessee fails to so return the Leased Premises to Lessor in the condition as when received, Lessor shall, upon giving written notice to Lessee, have the right to make all necessary restoration and invoice Lessee for all related costs incurred. Lessee agrees to pay, upon demand, such reasonable charges billed by Lessor pursuant to this section. The provisions of this Section shall survive termination of this Lease.

#### 5. **Holding Over.**

5.1. If Lessee remains in possession of and/or fails to vacate the Leased Premises or any part thereof, on or before the expiration or termination date of this Agreement, and thus hold over, with or without the written consent of Lessor, such holding over occupancy shall be a tenancy from month to month only. Such hold over tenancy may be terminated by either party upon a minimum of thirty days advance written notice upon the other party. The holdover tenancy shall then terminate effective the last day of the first full month following notice of termination.

5.2. During any hold over, Lessee agrees to pay and shall pay to Lessor monthly rental, fees, and charges for the Leased Premises, at the rate in effect at the time of the commencement of the hold over.

5.3. Except as otherwise specifically provided within this Section, any such holding over shall be subject to all the terms, covenants, conditions, restrictions, reservations, prohibitions, warranties, agreements, and provisions of this Agreement.

#### 6. **Rent**

6.1. **Payment.** Commencing on the Effective Date of this Agreement and continuing thereafter during the term of this Agreement, as additional consideration to the public purposes and uses underlying this Agreement,

including disposition and recycling of Effluent, Lessee shall pay to Lessor an annual rental fee for the Leased Premises according to the following schedule, subject to non-renewal/earlier termination as provided in this Agreement:

- Year 2025 \$243,200 (To be prorated based on Effective Date) (Effective Date through December 31, 2025)
- Year 2026 \$243,200 (January 1, 2026 through December 31, 2026)
- Year 2027 \$243,200 (January 1, 2027 through December 31, 2027)
- Year 2028 \$243,200 (January 1, 2028 through December 31, 2028)
- Year 2029 \$243,200 Option 1 Extension for 4 years – Year 1 of 4
- Year 2030 \$243,200 Extension Year 2 of 4
- Year 2031 \$243,200 Extension Year 3 of 4
- Year 2032 \$243,200 Extension Year 4 of 4

- 6.2. Total annual rental fee in each year hereunder shall be due and payable in advance in four (4) equal installments (\$60,800 each) due and payable on each January 15<sup>th</sup>; April 15<sup>th</sup>; July 15<sup>th</sup>; and October 15<sup>th</sup> hereunder. The annual rental fees due hereunder for any period less than a full calendar year shall be prorated.
- 6.3. **Late Charge.** Rent shall be considered late if it is not received by Lessor within ten calendar days after the due date. A monthly late payment charge equal to ten (10) percent of the overdue amount of rent shall be added for every month or part of a month that the rent is late. The late fee shall be assessed as part of the rent, accruing monthly until the delinquent amount is received by Lessor.
- 6.4. **Place of Payment.** All fees/charges due to be paid to Lessor by Lessee hereunder shall be paid to Lessor (make check payable to City of Fresno) at the address shown below or at such other address to which Lessor, by service of written notice upon Lessee, may direct the payment thereof from time to time during the term hereof:

City of Fresno- Department of Public Utilities  
Wastewater Management Division  
5607 W. Jensen Avenue  
Fresno, California 93706-9458

7. **Utilities and other Costs.** During the term of this Agreement and except to any extent otherwise expressly provided in this Agreement, Lessee shall pay all utility charges arising from use of the Leased Premises to the extent utilities are available and necessary, except for utility charges arising from operation of Effluent lift pumps. Lessee will pay, defend, and hold Lessor free and harmless from all charges for utility services to the Leased Premises. Lessee shall pay all utility charges directly to the provider before charges are delinquent. Lessor shall not be liable for any loss, injury, or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause

whatsoever, and rent shall not abate as a result thereof.

All other costs, in the preparation of the Leased Premises for crops and all expenses in the production and harvesting thereof, and all tools and labor necessary thereof for the production and harvesting of the crops thereon, shall be incurred as the sole cost and expense of Lessee.

## 8. Authorized Use of Premises and Effluent.

- 8.1. **Authorized Uses of the Leased Premises and Effluent.** Leased Premises and Effluent shall be used exclusively for cultivating and harvesting fiber, feed, and seed crops for non-human consumption. Except to any extent expressly provided for in this agreement, Lessee shall bear all costs incurred by it to use the Leased Premises and Effluent for this purpose.
- 8.2. **Required Use of Effluent.** Lessee shall be required to use recycled undisinfected secondary Effluent made available by Lessor, at no cost to Lessee. If there is a need to use other source(s) of irrigation water, Lessee may do so at Lessee's expense upon Lessor's prior written consent. Lessee shall pay all other water charges, electrical charges, or taxes in connection with the delivery of well and/or Fresno Irrigation District water.
- 8.3. **Good Farming Practices.** Lessee shall, at all times, act in a good farmer like manner and in accordance with the best practices in the area and shall use its best endeavors and skills to operate a clean and efficient business. Without limiting the foregoing and unless otherwise expressly provided in this Agreement, Lessee shall (i) keep down and control the growth of noxious weeds and grasses on the Leased Premises including non-farmable areas, fence lines, and road rights of way, if any, provided that Lessee shall cooperate to keep down and control the growth of noxious weeds and grasses on non-farmable portions of the Leased Premises. Lessee acknowledges that weeds become problematic if not checked. The Lessor, after 15 days' notice to Lessee to abate noxious weeds on the Leased Premises, will abate such weeds at Lessee's expense, including the cost of any administrative fees associated with such abatement; and (ii) Lessee shall abide by all legal and regulatory requirements of the Facility, the requirements of the California Regional Water Quality Control Board (CRWQCB), and the requirements of the California Code of Regulations (CCR) Title 22, summarized in Exhibit B to this Agreement, as such may be amended from time to time. Without waiving any rights or remedies available to Lessor in law and equity, Lessee shall reimburse Lessor for any fines or penalties imposed by regulatory agencies, and any costs associated with said action, resulting from Lessee's violation of any such requirements contained herein.
- 8.4. **Reporting of Applications to Soil.** In addition to any other reports required by law, Lessee shall submit to Lessor, on a quarterly basis,, as well as the year subsequent to the end of the Lease term, and at other times upon the Lessor's written request, (i) an estimated accounting of all nitrogen supplements used on the Leased Premises, together with a listing of all fertilizers, herbicides, soil amendments, the types of crops and the amount of acreage for each during the term of this Agreement, and (ii) any information

necessary to comply with the reporting requirements of California Regional Water Quality Control Board (CRWQCB) Order No. R5-2018-0080 Waste Discharge Requirements for the Fresno-Clovis Regional Wastewater Reclamation Facility, and any subsequent order(s) issued by the CRWQCB pertaining to recycled water. A copy of CRWQCB Order No. R5-2018-0080 for the Facility is available from Lessor upon request. This provision shall survive expiration or termination of this Agreement.

**8.5. Limitations on Use of Leased Premises and Effluent.**

8.5.1. Lessee shall neither use, suffer, nor permit the use of the Leased Premises and Effluent for any improper, immoral, unlawful, or unauthorized purpose(s).

8.5.2. Lessee shall neither use, suffer, nor permit the use of the Leased Premises and Effluent for any purpose nor allow any activity therein which would create a nuisance.

8.5.3. Except to the extent required by good farming practices as consented to in advance by Lessor, Lessee shall not construct improvements upon the Leased Premises or alter, improve, remove trees from or add to the Leased Premises or any existing structure on such Premises. Lessee may not change, modify, add, or remove any improvements from the Leased Premises.

8.5.4. Lessee shall not plant or cultivate food crops for human consumption.

8.5.5. Lessee shall not place a mobile residence that is intended to be occupied as a residence on the Leased Premises.

8.5.6. Lessee may store equipment used for the crops being grown on the Leased Premises for the term of this Agreement. Stored equipment shall not block any roadways.

8.5.7. Lessee may store bailed hay crops in the vicinity of the Leased Premises. All bailed hay crops must be stacked in an orderly manner and may not be stored on roadways and shall not interfere with Lessor's daily activities. Any bail storage that is considered an interference will be removed at Lessee's expense, including an administrative fee.

**8.6. Conflict Between "Authorized" and "Unauthorized" Uses.** With respect to any use of the Leased Premises and Effluent which may be contemplated or undertaken under authority of this Agreement, if any such use may, in any way whatsoever, reasonably be deemed to involve a conflict between "Authorized" and "Unauthorized" uses as set forth herein, the prohibitions, restrictions and limitations set forth within this Agreement shall, in any and all such cases, prevail, and no "unauthorized" use of the Leased Premises, in whole or in part, shall be undertaken by Lessee or Lessee's successors or assigns, employees, agents, representatives unless and until such use is limited to the degree/extent necessary to eliminate any element/portion thereof giving rise to any such conflict.

**8.7. Mortgage of Crops and Agricultural Liens.** As further consideration for,

and to secure rights and benefits granted to Lessee hereunder, Lessee agrees to execute an agricultural lien and/or financing statement documents upon the reasonable request of Lessor. It is anticipated that Lessee may finance some or all of the growing of crops on the Leased Premises by a crop loan. Lessor agrees to subordinate any security interest or lien it may hold with respect to any crops grown on the Leased Premises to a third-party crop financing.

## 9. Taxes.

- 9.1. **Personal Property Taxes.** Lessee shall pay, before delinquency, all taxes, assessment, and other charges levied or imposed by any governmental entity on any part or all of the personal property of Lessee that Lessee places in, on, or about the Leased Premises.
- 9.2. **Real Property Taxes.** Lessee agrees to pay, before delinquency, as and when due, any and all real property taxes, assessments, or charges for or on the Leased Premises, including without limitation, possessory interest taxes, that any government entity may levy or assess against the Leased Premises. Taxes include, without limitation, any special assessments imposed on or against the Leased Premises for any Lessee improvements to the Leased Premises.
- 9.3. **Possessory Interest.** Notification to Lessee pursuant to California Revenue and Taxation Code Section 107.6: A possessory interest subject to property taxation may be created by entering into this Agreement and Lessee may be subject to the payment of property taxes levied on such interest. Any interest in real property that exists because of possession, exclusive use, or a right to possession or exclusive use of land owned by the Lessor, and any improvements thereon, is a taxable possessory interest unless the possessor is exempt from taxation. With regard to any possessory interest to be acquired by Lessee under this Agreement, Lessee, by its signature hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Agreement, Lessee either took a copy of this Agreement to the office of the Fresno County tax assessors or by some other appropriate means independent of the Lessor or any employee, agent, or representative of Lessor determined, to Lessee's full and complete satisfaction, how much Lessee will be taxed, if at all.
- 9.4. **Lessor Protection Against Taxes.** Lessee shall indemnify, defend, and hold Lessor harmless from any liability for personal and real property taxes and assessments including, without limitation, any interest, penalty, or other expense relating to the taxes and assessments, and from any lien therefore or sale or other proceeding to enforce payment thereof.

## 10. Obligations of Lessee.

- 10.1. **Alterations/Additions/Modifications/Improvements.** Lessee shall not make any alterations, additions, modifications, or improvements in, on, or to any part of the Leased Premises, at any time during the term of this Agreement, for any purpose whatsoever, unless consented to in advance by Lessor.

10.2. **Inspection/Acceptance of Leased Premises.** Lessee expressly warrants, stipulates, acknowledges, agrees, and/or represents to Lessor as set forth within the following sub-paragraphs of this paragraph:

10.2.1. **Inspection and Examination of Leased Premises by Lessee.** Prior to executing this Agreement, Lessee inspected and examined the Leased Premises and any improvements located in and/or on same and the facilities appurtenant thereto and determined and/or was assured, by means independent of Lessor or any employee, agent, or representative of Lessor, to Lessee's full and complete satisfaction, the condition thereof, and Lessee also determined or was assured, to Lessee's full and complete satisfaction, by means independent of Lessor or any employee, agent, or representative of Lessor, of the truth of all facts material to this Agreement, and this Agreement is/was executed by Lessee as a result of Lessee's inspection and investigation and not as a result of any representations made by Lessor or any employee, agent, or representative of Lessor.

10.2.2. **Acceptance of Leased Premises by Lessee in "as is" Condition.** Neither Lessor nor any agent for Lessor has made any representation or promise regarding the Leased Premises, except as expressly set forth in this Agreement. Lessor is leasing the Leased Premises to Lessee in "AS IS" condition, subject to Lessor's obligations to maintain only those portions of the Leased Premises as set forth in this Agreement. Lessee has inspected the Leased Premises and by taking possession accepts the Leased Premises "AS IS," having exercised reasonable due diligence to discover any facts or conditions regarding the Leased Premises that are within Lessee's attention, observation, actual and constructive notice.

10.3. **Liability For Damage.** Lessee shall be liable for and shall promptly repair any damage to the Leased Premises where such damage shall be attributable to any act or omission on the part of Lessee, Lessee's employees, contractors, subcontractors, agents, representatives, associates, guests, and/or invitees. Should Lessee fail or be unable to promptly affect any such repairs, Lessor shall have the right to make such repairs, and Lessee agrees to reimburse Lessor for all reasonable costs of such repairs, including reasonable administrative costs.

10.4. **Maintenance/Repair of Leased Premises.**

10.4.1. **Maintenance and Repair Costs.** Lessee shall keep the Leased Premises and all its fixtures, equipment, and personal property in a clean and orderly condition and appearance. Lessee shall undertake at its sole cost and expense such maintenance and repairs, in a reasonable and timely manner consistent with the circumstances, as shall be required in order to maintain any pumps, pipelines, stand pipes, and ditches on the Leased Premises (Premises Improvements) in a good operating condition, provided that such obligation shall not extend to Major Repair Events and Major Repair



Costs as defined below and except that Lessee shall not be responsible for normal wear and tear. Lessee shall be responsible for any damage to the Premises Improvements resulting from Lessee's negligence or willful misconduct.

Lessee shall use equipment in good repair that complies with applicable regulations. Equipment must be free of leaking fluids. If any fluids leak from the equipment or during servicing, the Lessee shall notify the Lessor within 24 hours, specifying the type and volume of the fluid. Lessee will be responsible for removing any soil contaminated due to fluid leaks.

- 10.4.2. **Major Repair Events and Costs.** For the purpose of this Agreement, a "Major Repair Event" shall consist of any of the following in connection with the Premises Improvements, but not the Effluent Improvements: (a) Overhaul of any pump and/or motor; (b) Replacement of the pump bowls; (c) Repair or replacement of standpipes or pipelines; or (d) Repair or replacement of stand pipe gates and/or valves.

"Major Repair Costs" shall mean all expenses arising from a Major Repair Event. Lessor shall undertake in a reasonably and timely manner consistent with the circumstances, repairs and replacements due to a Major Repair Event, unless the parties negotiate otherwise. No party to this Agreement shall be in any way obligated to enter into, continue, or conclude any such negotiations. Lessee may agree or not agree to share in the Major Repair Costs in its sole and absolute discretion. Lessor shall be responsible for any damage to the Premises Improvements resulting from Lessor's negligence or willful misconduct.

Lessor at its sole cost and expense shall be responsible for replacement or reconditioning of pumps and related improvements used for the distribution of Effluent, the "Effluent Improvements."

- 10.5. **Disposable Waste.** Lessee shall make proper arrangement for the disposal of any and all solid or liquid waste which may result from or be incidental to Lessee's use of the Leased Premises

- 10.6. **Control of Hazards and Nuisances.** Unless otherwise expressly provided in this Agreement, Lessee shall keep the Leased Premises and each and every part thereof in a neat, clean, and orderly condition, and shall prevent the accumulation of, and shall maintain said Leased Premises free from any refuse or waste materials which might be or constitute a potential health, environmental, or fire hazard or public or private nuisance. Lessee in its pursuit hereof shall not cause or knowingly permit to occur any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the Leased Premises, or arising from Lessee's use(s) or

occupancy(ies) thereof, including, but not limited to, soil and ground water conditions.

- 11. Lessor's Right to Enter and to Emergency Discharge of Effluent.** Lessor's representatives shall have the right to enter upon all or any part of the Leased Premises at any and all reasonable hours on any day of the week for any lawful purpose(s) including: (i) the purpose of determining whether or not Lessee is complying with the provisions hereof and fulfilling its obligations hereunder; (ii) the purpose of inspecting same; (iii) the purpose of making any required repairs of an emergency nature to which Lessee cannot adequately respond; and (iv) to perform soil sampling and testing. Lessee understands that Lessee may be billed by Lessor for the full cost of performing such repairs.

Lessee acknowledges and agrees that in the event of an emergency, Lessor shall have the absolute right to discharge treated Effluent onto the Leased Premises, at any time and in any amount, provided that Lessor shall reimburse Lessee for any actual damages incurred by Lessee resulting directly and proximately from said emergency discharge and further provided that Lessor shall abate and refund rental fees on the affected acreage for the period such acreage is rendered unusable for Lessee's purposes hereunder. Lessor shall have no other or further liability, responsibility or obligation to Lessee as of result of such emergency discharge of Effluent. In this regard Lessee understands and voluntarily agrees to assume the risk inherent in farming in an area subject to discharge of Effluent.

## **12. Default.**

- 12.1. Default by Lessor.** Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor under this Lease within a reasonable period of time, but in no event later than thirty days after written notice is served upon Lessor by Lessee specifying wherein Lessor has failed to perform any such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty days may reasonably be deemed to be required for performance, then Lessor shall not be in default if Lessor commences performance within such thirty day period and thereafter diligently prosecutes the same to completion.

### **12.2. Default by Lessee.**

- 12.2.1. Defaults.** The occurrence of any of the following events shall constitute a material default and breach of this Agreement by Lessee:

12.2.1.1. The vacating or abandonment of the Leased Premises by Lessee.

12.2.1.2. The failure by Lessee to use the Leased Premises for lawful purposes only and/or failure by Lessee to comply with or observe any statute, law, ordinance, rule, regulation, standard or requirement of any federal, state, or local government entity with respect to Lessee's occupancy(ies) and/or use(s) of any part or all of the Leased Premises, as such statutes, laws, ordinances, rules, regulations, standards or requirements exist(ed)

on the commencement date of the term hereof or as such may exist at any time and from time to time during the life hereof, where any such failure shall be evidenced by either a finding or judgment of any court of competent jurisdiction or where any such shall be admitted by Lessee in any proceeding brought against Lessee by any government entity.

12.2.1.3. The inability of and/or failure by Lessee to obtain, pay for, and maintain in full force and effect at all times during the life of this Agreement, without any lapse in coverage, such insurance and surety as shall be required of Lessee hereunder.

12.2.1.4. The occurrence of any of the following:

12.2.1.4.1. Lessee's becoming insolvent, or failing in business, or the making by Lessee of any general arrangement or an assignment for the benefit of creditors;

12.2.1.4.2. The filing by or against Lessee of a petition to have Lessee adjudged as bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty days);

12.2.1.4.3. The appointment of a receiver to take possession of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Agreement, where possession is not restored to Lessee within thirty days; or

12.2.1.4.4. The attachment, execution or other judicial seizure of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Agreement, where such seizure is not discharged within thirty days.

12.2.1.5. Any attempted/purported hypothecation, encumbrance, sale, assignment, or transfer of this Agreement, in whole or in part, and/or any of Lessee's rights, title and interests in or to any part or all of the Leased Premises and Effluent and/or in or to any part or all of the improvements and appurtenances thereto which exist(ed) therein or thereon at the Effective Date of this Agreement or which may at any time and from time to time be constructed/installed therein or thereon during the life of this Agreement, or any attempted/purported sub-letting/renting of any part or all of the Leased Premises

and Effluent by Lessee to any other person or entity whomsoever, or Lessee's following any occupancy/use of the Leased Premises, in whole or in part, by any person/entity, other than Lessee, without Lessor's prior written consent pursuant to and in conformity with the provisions of this Agreement.

12.2.1.6. The failure by Lessee to make any payment of rent or any other required payment, as and when due hereunder, where such failure shall continue for a period of ten days following service of notice thereof upon Lessee by Lessor.

12.2.1.7. The failure by Lessee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Agreement to be kept, observed, undertaken, fulfilled, and/or performed by Lessee, other than those hereinabove within sub-paragraphs 12.2.1.1 through 12.2.1.6 of Section 12, where such failure shall continue for a period of thirty days following service of notice thereof upon Lessee by Lessor; provided, however, that if the nature of Lessee's default is such that more than thirty days are reasonably required for its cure, then Lessee shall not be deemed to be in default and breach of this Agreement if Lessee commenced such cure within said thirty day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible following service of such notice upon Lessee by Lessor.

### 12.3. Lessor's Remedies.

12.3.1. **Abandonment.** If Lessee abandons the Leased Premises, this Agreement shall continue in effect. Lessor shall not be deemed to terminate this Agreement as a result of such material default and breach other than by written notice of termination served upon Lessee by Lessor, and Lessor shall have all of the remedies available to Lessor under Section 1951.4 of the California Civil Code so long as Lessor does not terminate Lessee's right to possession of the Leased Premises, and Lessor may enforce all of Lessor's rights and remedies under this Agreement, including the right to recover the rent as it becomes due under the Agreement. After abandonment of the Leased Premises by Lessee, Lessor may, at any time thereafter, give notice of termination.

12.3.2. **Termination.** In addition to the terms set forth in Section 3, upon the occurrence of any material default and breach of this Agreement by Lessee as set forth within sub-section 12.2.1 above, Lessor may then immediately, or at any time thereafter, terminate this Agreement by service of a minimum of ten days

advance written notice to such effect upon Lessee. The exact termination date shall be specified within such notice.

12.3.2.1. Such notice shall, at a minimum, set forth the following:

12.3.2.1.1. The default and breach which resulted in such termination by Lessor; and

12.3.2.1.2. A demand for possession, which, in the event only ten days advance notice shall be given by Lessor, shall be effective at 12:00:01 a.m., on the eleventh calendar day following the date on which the notice in which such demand is contained shall be sufficiently served upon Lessee by Lessor in conformity with the provisions of subsection 16.2 of this Agreement; or, if more than the minimum number of days advance notice shall be given, at 12:00:01 a.m., on the next day following the date specified within such notice as being the date of termination hereof.

12.3.2.2. Such notice may contain any other notice which Lessor may, at its option, desire or be required to give (e.g., "Demand for Payment" of any and all monies due and owing).

12.3.3. **Possession.** Following termination of this Agreement by Lessor pursuant to any of the provisions of subsection 12.2, without prejudice to other remedies Lessor may have by reason of Lessee's default and breach and/or by reason of such termination, Lessor may:

12.3.3.1. Peaceably re-enter the Leased Premises upon voluntary surrender thereof by Lessee; or

12.3.3.2. Remove Lessee and/or any other persons and/or entities occupying the Leased Premises therefrom, and remove all personal property therefrom and store all such property not belonging to Lessor in a public warehouse or elsewhere at the cost of and for the account of Lessee, using such legal proceedings as may be available to Lessor under the laws or judicial decisions of the State of California; or

12.3.3.3. Repossess the Leased Premises or relet the

Leased Premises or any part thereof for such term (which may be for a term extending beyond the term of this Agreement) at such rental and upon such other terms and conditions as shall be determined solely by Lessor, with the right to make reasonable alterations and repairs to the Leased Premises.

12.3.4. **Recovery.** Following termination of this Agreement by Lessor pursuant to any of the provisions of subsection 12.2, Lessor shall have all the rights and remedies available to Lessor under Section 1951.2 of the California Civil Code. The amount of damages Lessor may recover following such termination of this Agreement shall include:

12.3.4.1. The value at the time of award of the unpaid rent which had been earned at the time of termination of this Agreement;

12.3.4.2. The value at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Agreement until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

12.3.4.3. The value 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 for the same period Lessee proves could be reasonably avoided; and

12.3.4.4. Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.

12.3.5. **Additional Remedies.** Following the occurrence of any material default and breach of this Agreement by Lessee as set forth within subsection 12.2.1, above, in addition to the foregoing remedies, Lessor may maintain Lessee's right to possession, in which case this Agreement shall continue in effect whether or not Lessee shall have abandoned the Leased Premises and, so long as this Agreement is not terminated by Lessor or by a decree of a court of competent jurisdiction, Lessor shall be entitled to enforce all of Lessor's rights and remedies hereunder, including the right to recover the rent as it becomes due under this Agreement, and, during any such period, Lessor shall have the right to remedy any default of Lessee, to maintain or improve the Leased Premises without terminating this Agreement, to incur expenses on behalf of Lessee in seeking a new sub-tenant, to

cause a receiver to be appointed to administer the Leased Premises and any new or existing sub-leases and to add to the rent payable hereunder all of Lessor's reasonable costs in so doing, with interest at the maximum reasonable rate then permitted by law from the date of such expenditure until the same is repaid.

12.3.6. **Other.** In the event Lessee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Agreement, Lessor shall be entitled to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Agreement.

12.3.7. **Cumulative Remedies.** Each right and remedy of Lessor provided for in this subsection 12.3 or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Lessor from exercising any other rights or from pursuing any other remedies provided for in this Agreement or now or hereafter available to Lessor under the laws or judicial decisions of the State of California.

12.3.8. **Indemnification.** Nothing contained within this subsection 12.3 affects the right of Lessor to indemnification by Lessee, as herein elsewhere provided, for liability arising from personal injuries or property damage prior to the termination of this Agreement.

### 13. **Destruction Of Improvements.**

13.1. **General.** Other than as provided for in subsection 10.4, in the event that any or all of the improvements located in or on the Leased Premises, or any part thereof, shall be partially or totally destroyed at any time during the life hereof, the respective rights and obligations of the parties hereto with respect to the reconstruction, restoration, and/or repair of such improvements, and with respect to the matter of the continuance or termination of this Agreement following any such destruction, shall be controlled by the provisions of this Section 13.

13.2. **Definitions.** For the purposes of this Agreement, the following definitions shall apply:

13.2.1. **Partial Destruction:** As used in this Agreement "partial destruction," shall mean a destruction of any improvements to such an extent that the then currently estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction shall not exceed fifty percent of the then currently estimated total replacement cost of the destroyed improvements (excluding land and personal properties.)

- 13.2.2. **Total Destruction:** As used in this Agreement "total destruction," shall mean a destruction of any improvements to such an extent that the then currently estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction shall exceed fifty percent of the then currently estimated total replacement cost of the destroyed improvements (excluding land and personal properties.)
- 13.3. **Notice by Lessee.** Lessee shall notify the Lessor of any instance of damage to or destruction of the Leased Premises immediately upon Lessee's becoming aware of any such an occurrence.
- 13.4. **Partial And/or Total Destruction as the Result of a Negligent or Willful Act by Lessee.** In the event any or all of the improvements located in or on any part or all of the Leased Premises shall, at any time during the life hereof, suffer either partial or total destruction, if such destruction shall be the result of any negligent or willful act by Lessee, this Agreement shall continue in full force and effect, without any abatement of rent, and Lessee shall, at Lessee's expense, promptly commence the reconstruction, restoration, replacement, and/or repair of such improvements and shall diligently prosecute and complete said reconstruction, restoration, replacement, and/or repair, within a reasonable period of time, so as to restore said improvements to as good or better condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction.
- 13.5. **Partial and/or Total Destruction Not the Result of a Negligent or Willful Act by Lessee.**
- 13.5.1. **Partial Destruction Not Substantially Interfering with Lessee's Occupancy and Use of Premises.**
- 13.5.1.1. In the event the Leased Premises shall be partially destroyed and such destruction shall have been caused by other than a negligent or willful act by Lessee and Lessee shall determine that such destruction does not substantially interfere with Lessee's occupancy and use of the Leased Premises or Lessee's operations therein and thereon, Lessee shall, within ten days following the occurrence of any such destruction, serve Lessor with written notice of such determination along with Lessee's request that Lessor restore such partially destroyed improvements. Upon service of any such notice and request by Lessee, Lessor, within thirty days after the date of any such destruction, shall, at Lessor's option, either:
- 13.5.1.1.1. Serve Lessee with written notice of Lessor's intent to restore said premises, at Lessor's expense, to substantially the same condition as existed just prior to the



occurrence of such destruction (except for Lessee's fixtures, equipment and/or Lessee-installed improvements which Lessor shall not be obligated to replace, repair, and/or restore), in which event, subject to the provisions of subsection 13.6, below, this Agreement shall continue in full force and effect; or

13.5.1.1.2. If Lessor determines that restoration is not fiscally prudent, Lessor shall serve Lessee with a minimum of thirty days but not more than sixty days advance written notice of cancellation and termination of this Agreement, in which event, subject to the provisions of subsection 13.5.1.3, below, this Agreement shall be canceled and terminated as of the date specified within such notice.

13.5.1.2. If for any reason Lessor shall fail to provide Lessee with notice pursuant to the provisions of either subsection 13.5.1.1.1 or 13.5.1.1.2, above, within the period of time allowed therefore, or in the event Lessor shall serve Lessee with notice pursuant to the provisions of 13.5.1.1.1, above, and shall either fail to commence such repair and restoration within sixty days following the date of any such destruction, or, if commenced during such period, shall fail to fully repair, reconstruct and/or restore the Leased Premises within one hundred twenty days following the date of such destruction, then, in either such event, at any time prior to completion of the repairs, reconstruction, and/or restoration by Lessor, Lessee shall have the right to cancel and terminate this Agreement by service of a minimum of 30 days advance written notice upon Lessor to this effect, in which event, notwithstanding Lessor's commencement or completion of the required work following service of such notice by Lessee, this Agreement shall be canceled and terminated as of the date specified within Lessee's notice to Lessor.

13.5.1.3. In the event Lessor serves Lessee with notice of Agreement cancellation and termination as provided for in subsection 13.5.1.1.2, above, Lessee shall have the right, within thirty days following service of such notice upon Lessee, to serve written notice upon Lessor of Lessee's intention to repair such destruction at Lessee's cost and expense, without any reimbursement from Lessor, in which event, subject to the provisions of

subsection 13.6, below, this Agreement shall continue in full force and effect, and Lessee shall proceed to make such repairs as are required to restore the Leased Premises, as soon as reasonably possible, to substantially the same condition as existed just prior to the occurrence of such destruction. If Lessee does not serve such notice within said thirty-day period, this Agreement shall then be canceled and terminated, as of the date specified in Lessor's notice to Lessee.

- 13.5.2. Partial Destruction Substantially Interfering with Lessee's Occupancy and Use of Premises.** At any time during the life hereof, if the Leased Premises are partially destroyed and such destruction shall have been caused by other than a negligent or willful act by Lessee and if such destruction may reasonably be deemed by Lessee to substantially interfere with Lessee's occupancy and use of the Leased Premises or Lessee's operations therein or thereon, Lessee shall have the right to cancel and terminate this Agreement, as of the date of such destruction, provided such right shall be exercised by service of written notice upon Lessor to this effect within thirty days following the date of such destruction. In the event Lessee shall fail to make such determination and serve such notice during such period, Lessor may then proceed pursuant to either of the options provided Lessor within subsection 13.5.1.1.1 or 13.5.1.1.2, above, and the provisions of subsections 13.5.1.2 and 13.5.1.3, above, shall then become and be applicable and the actions of the parties hereto with respect to such destruction shall then be governed thereby.
- 13.5.3. Partial Destruction near End of Term.** Notwithstanding the foregoing provisions of this subsection 13.5, in the event the Leased Premises shall be partially destroyed during the last one hundred twenty days of the then current initial or renewal term of this Agreement, and such destruction shall have been caused by other than a negligent or willful act by Lessee, either party hereto may cancel and terminate this Agreement, at any time during the remainder of the then existing term (or option period, if any) by service of a minimum of thirty days advance written notice to such effect upon the other party, in which event this Agreement shall be canceled and terminated as of the date specified within such notice.
- 13.5.4. Total Destruction.** If the Leased Premises are totally destroyed, at any time during the life hereof, as a result of any casualty not caused by a negligent or willful act of Lessee, this Agreement shall be automatically canceled and terminated as of the date of such total destruction.
- 13.6. Abatement Of Rent.** In the event the Leased Premises shall be partially destroyed and such destruction shall be caused by other than a negligent or willful act by Lessee, if Lessor or Lessee repairs or restores the Leased Premises pursuant to the provisions of either 13.5.1.1.1, 13.5.1.3, or 13.5.2,

above, the rent payable by Lessee to Lessor hereunder, for the period during which such repairs, reconstruction, and/or restoration continues, shall be abated in proportion to the degree to which Lessee's use of the Leased Premises is impaired and Lessor shall re-compute the rental to be paid by Lessee during any such period(s) so as to require Lessee to pay rental, at the rate(s) then applicable pursuant to the provisions of subsection 6.1, only on that/those portion(s) of the Leased Premises then still reasonably remaining available to Lessee for its beneficial occupancy and use during any such period(s). Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such destruction, repair, and/or restoration.

- 13.7. **Relief from Obligations and Equitable Adjustment of Rental Upon Termination.** Unless otherwise expressly provided in this Agreement, in the event this Agreement shall be terminated pursuant to any of the foregoing provisions of this Section 13, the parties hereto shall be relieved of all further obligations, one to the other, hereunder, not accrued to the date of cancellation and termination hereof, except that Lessee shall not be relieved of its obligations to vacate and surrender possession of the Leased Premises and to pay, if, as and when applicable and appropriate, prorated rental for any and all portions of the Leased Premises occupied and/or used by Lessee following the date of occurrence of the destruction which results in the termination of this Agreement through the date of such termination, and except that Lessor shall repay to Lessee any unearned rent theretofore paid or on deposit with Lessor under this Lease not needed for crediting by Lessor toward payment of any unpaid amount(s) due to be paid to Lessor by Lessee pursuant to the provisions of this Agreement.

14. **National Emergency and Condemnation/Eminent Domain.**

14.1. **Total Taking/Condemnation of Leased Premises.**

14.1.1. In the event that the Government of the United States takes over the operation of the Leased Premises or any part thereof, by requisition or other unilateral action as the result of a national emergency or otherwise, this Agreement shall terminate as of the effective date of any such taking; or, if all of the Leased Premises shall be taken by public authority pursuant to condemnation action(s) under the laws of eminent domain, this Agreement shall terminate as of the date of title vesting in such proceeding.

14.1.2. Unless otherwise expressly provided in this Agreement, upon termination of this Agreement as a result of either of the events described within subsection 14.1.1, the parties hereto shall be relieved of any and all obligations hereunder, one to the other, which obligations are not in default as of the date of such termination and Lessor shall promptly return, on a pro rata basis, any then unearned rent theretofore paid by Lessee hereunder.

14.1.3. Lessor shall not be liable to Lessee for any injury to Lessee's business or loss of income or any other injury or loss suffered by Lessee as a result of any such taking and/or termination.

- 14.2. **Partial Taking/Condemnation of Leased Premises.** In the event that only a part of the Leased Premises shall be taken as a result of any of those actions described in subsection 14.1.1, if such partial taking shall not otherwise preclude Lessee's continued beneficial occupancy and use of those portion(s) of the Leased Premises not so taken, as reasonably determined by Lessee, this Agreement shall continue in full force and effect and those certain parcel(s) of land so taken shall be automatically deleted from the Premises leased by Lessor to Lessee hereunder, as of the date of such taking and/or title vesting, and the rent then being paid to Lessor by Lessee shall then be adjusted by taking the total rental then being paid by Lessee pursuant to the provisions hereof on the date immediately preceding the date of such taking and/or title vesting, and subtracting that certain portion of rent then being paid for the portion(s) of the Leased Premises deleted from this Agreement.
- 14.3. **Awards.** In the event that all or part of the Leased Premises shall be taken as a result of any of those actions described in subsection 14.1.1, the rights of the parties hereto with respect to such award(s) as shall be paid for such taking shall be as follows:
- 14.3.1. Subject to subsection 14.3.2 below, Lessor shall be entitled to the entire amount of any and all compensation awarded by reason of the taking of the Leased Premises and any and all Lessor-owned improvements then located therein or thereon, and Lessee waives any right or claim to any part of said amount from Lessor or the condemning authority.
- 14.3.2. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of:
- 14.3.2.1. The taking of or injury to any Lessee-owned improvements then located on the Leased Premises, including the value of the then existing leasehold interest and to the extent of Lessee's interest therein, based on the value of the then remaining unexpired portion of the term of this Agreement, as said value shall be determined in the proceedings for the taking of such operations and awarding such compensation; and
- 14.3.2.2. Any and all cost or loss (including loss of business) which may be incurred by Lessee as a result of Lessee's having to remove Lessee's improvements and personal property (including, but not limited to, improvements, trade fixtures and equipment) to a new location.
- 14.4. **Notice and Execution.** Upon service of process upon Lessor in connection with either any taking over of Leased Premises or portion thereof by the United States Government or any condemnation or potential condemnation, Lessor shall immediately give Lessee notice thereof in writing. Lessee shall immediately execute and deliver to Lessor any and all instruments which

may be required to fully effectuate any and all of the provisions of this Section 14 of this Agreement if, as and when any such instruments shall be required of Lessee.

**15. Indemnification, Insurance and Exemption of Lessor.**

15.1. **Indemnification.** To the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Lessee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

Lessee acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of Lessee or in connection with Lessee's use or occupancy of the Property, Lessee's activities or the activities of any of Lessee's representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

Lessee's use and occupancy of the Property shall be at Lessee's sole risk and expense. Lessee accepts all risk relating to Lessee's occupancy and use of the Property. City shall not be liable to Lessee for, and Lessee hereby waives and releases City from, any and all liability, whether in contract, tort, strict liability or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Property.

Lessee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold City harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Lessee, or any of Lessee's consultants, contractors or subcontractors, to comply with the insurance requirements set forth in this

Agreement.

The provisions of this Section shall survive the expiration or termination of this Lease.

**15.2. Insurance Requirements.**

15.2.1. Throughout the life of this Agreement, LESSEE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The CITY, its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "CITY") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

15.2.2. If at any time during the life of the Agreement or any extension, LESSEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to LESSEE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve LESSEE of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

15.2.3. The fact that insurance is obtained by LESSEE shall not be deemed to release or diminish the liability of LESSEE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LESSEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of LESSEE, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

15.2.4. Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

#### MINIMUM LIMITS OF INSURANCE

LESSEE, or any party the LESSEE subcontracts/contracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY and each of their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY :

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY :

\$1,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. PROPERTY: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of LESSEE'S business property.

5. POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

#### UMBRELLA OR EXCESS INSURANCE

In the event LESSEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY and each of their officers, officials, employees, agents and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

LESSEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and LESSEE shall also be responsible for payment of any self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. LESSEE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, LESSEE shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, LESSEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General, Pollution and Automobile Liability policies of insurance shall be endorsed to name CITY, its officers, officials, employees, agents and volunteers as additional insureds.

LESSEE shall establish additional insured status for the City and for all ongoing and completed operations by use of endorsements providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85 or CG 20 26 04 13.

The Commercial General, Pollution and Automobile Liability policies of insurance shall be endorsed so LESSEE's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

If LESSEE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by LESSEE.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, employees, agents and volunteers.



The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. Full replacement value of any permanent improvements on the Leased Premises, with the CITY named as a Loss Payee.
2. The coverage shall contain:
  - (i) No coinsurance penalty.
  - (ii) No limitations or exclusions for vacancy of any part of the Premises.
  - (iii) No special limitations on the scope of protection afforded to City.

**PROVIDING OF DOCUMENTS** - LESSEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, LESSEE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of LESSEE shall also be required to provide all documents noted herein.

**SUBCONTRACTORS** - If LESSEE subcontracts or contracts any or all of the services to be performed under this Agreement or any work on the premises, LESSEE shall be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

- 15.3. **Exemption of Lessor.** Except to any extent expressly provided in this Agreement, Lessee hereby specifically warrants, covenants and agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the personal property of Lessee located in or upon the Leased Premises under authority hereof, whether belonging to Lessee, or Lessee's employees, customers, agents, contractors, sub-contractors, tenant, sub-lessee of Lessee, or any other person whomsoever; nor shall Lessor be liable for any injury to the person of Lessee or Lessee's employees, agents, contractors, sub-contractors, tenants, sub-lessees, customers, or invitees, whether or not the said damage or injury results from conditions arising in or on any part or all of the Leased Premises or in or on any of the improvements/facilities appurtenant thereto or located thereon, or from other sources or places. Lessee also covenants and agrees that Lessor shall not be liable for any damages arising from any act or neglect on the part of any third parties.

16. **General Provisions.**

- 16.1. **FSA Matters.** Lessor and Lessee acknowledge that the Farm Service Agency of the United States Department of Agriculture (FSA) has established contract acres (formerly known as crop acreage bases) and farm program yields for certain crops grown on the Leased Premises. Solely for FSA purposes, the Leased Premises may be combined into

another FSA farm unit as other farmland owned or leased by Lessee or any entity in which Lessee holds a beneficial interest. In the event that Lessee elects to participate in one or more of the farm programs administered by FSA, Lessor agrees to execute such documents as shall be reasonably requested by Lessee in order to participate in such programs, consistent with constitutional and local law requirements and this Agreement. Lessee shall comply with all applicable FSA program requirements at Lessee's expense. Lessee also agrees to comply with all applicable FSA rules and regulations regarding the control of weeds and erosion on all farmed and non-farmed acres, except to any extent otherwise expressly provided in this Agreement, and Lessee shall annually certify crops with FSA. Lessee agrees to defend, indemnify and hold the Lessor harmless from any and all losses, liability, claims and damages arising under this subsection 13.1.

- 16.2. **Non-Transferability.** Lessee shall not at any time sell, transfer, or assign or sublet this Agreement and the Leased Premises, (or any specific rights hereunder), in whole or in part, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, provided that solely to comply with FSA requirements Lessor's Director of Public Utilities/designee(s) thereof and each of them may consent in writing/execute related documents in any case of assignment or sublease, upon the terms and conditions herein, to an immediate family member of Lessee and each of them or to an entity in which an immediate family member of Lessee and each of them owns in the aggregate an interest in excess of fifty percent.
- 16.3. **Non-Discrimination.** Lessee shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, sexual orientation, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the entire term and performance of this Agreement, Lessee agrees as follows:
- 16.3.1. Lessee will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- 16.3.2. Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, and status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Lessee shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without

regard to their race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

16.3.3. Lessee will, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.

16.3.4. Lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Lessee's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

16.4. **Liens and Claims.** Except to any extent expressly provided for in this Agreement, Lessee shall not suffer or permit to be enforced against Lessor's title to the Leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of Lessor), and Lessee shall pay all such liens, claims and demands before any action is brought to enforce same against said Leased Premises; and Lessee agrees to hold Lessor and said Leased Premises free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith. Lessor shall have the right at any time to post and maintain on said Premises such notices as may be necessary to protect Lessor against liability for all such liens, claims and demands. This paragraph shall survive expiration or termination of this Agreement.

16.5. **Independent Contractor.** Lessee is and throughout this Agreement be an independent contractor and not an employee, partner or agent of the Lessor. Neither party shall have any right to control, supervise or direct the manner or method or choice by which the other party or its contractors shall perform its or their work or function. However, each party shall retain the right to verify that the other is performing its respective obligations in accordance with the terms hereof.

Neither Lessee, nor any of its officers, associates, agents or employees shall be deemed an employee of the Lessor for any purpose. Lessee shall not be entitled to nor shall it receive any benefit normally provided to employees of the Lessor such as, but not limited to, vacation payment, retirement, health care or sick pay. The Lessor shall not be responsible for withholding income or other taxes from the payments made to Lessee. Lessee shall be solely responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Lessee pursuant to this Agreement.

- 16.6. **Inability of Lessor to Perform.** This Agreement and the obligations of Lessee hereunder shall not be affected or impaired because Lessor is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Lessor.
- 16.7. **Partnership/Joint Venture.** This Agreement does not evidence a partnership or joint venture between Lessee and Lessor. Except to the extent expressly provided for in this Agreement, (i) the Lessor does not grant, convey, or delegate to Lessee any tangible or intangible property interest or express or implied agency, license, right or authority; (ii) Lessee shall have no authority to bind the Lessor absent Lessor's express written consent; (iii) either Party shall be free from obligations or liabilities under contracts entered by the other; and (iv) each Party shall bear its own costs/expenses in pursuit hereof.
- 16.8. **Review/Examination of Agreement.** Submission of this instrument by Lessor for review, examination and/or execution by or on behalf of Lessee does not constitute a reservation of or option to obtain a lease and this instrument is not effective as a lease or otherwise, unless and until authorized and executed and delivered by both Lessor and Lessee.
- 16.9. **Interpretation of Provisions.** Nothing herein contained shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by Lessor in and to the Leased Premises, or in any manner waiving or limiting Lessor's control over the operation, maintenance, etc., of the Leased Premises or in derogation of such governmental rights as Lessor possesses, except as is specifically set forth herein.
- 16.10. **Invalid Provisions.** In the event any term, covenant, condition or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

- 16.11. **Captions and Paragraph Numbers.** The captions, paragraph and subparagraph numbers and/or alphabetical identifiers appearing in this Agreement are inserted solely for the purpose of convenience in reference and in no way define, limit, construe, or describe the scope or intent of such sections, paragraphs or subparagraphs of this Agreement nor in any way whatsoever affect this Agreement.
- 16.12. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.
- 16.13. **Personal Service.** Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.
- 16.14. **Amendment.** This Agreement may not be changed, amended, or otherwise modified in any way whatsoever, except in writing, authorized by Lessor and signed by both Lessor and Lessee.
- 16.15. **Acknowledgment by Lessee.** By its signature(s) hereunto affixed, Lessee expressly acknowledges that Lessee clearly understands that neither this Agreement, itself, nor the issuance of this Agreement by Lessor to Lessee nor acceptance of this Agreement by Lessee constitutes, in any way whatsoever, any agreement by or on behalf of Lessor to enter into any further/other agreement, permit, lease, or other arrangement of any type whatsoever, beyond the term of or in addition to this Agreement.
- 16.16. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- 16.17. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.
- 16.18. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
- 16.19. **Precedence Of Documents.** In the event of any conflict between the body of this Agreement and any exhibit or Attachment hereto, the terms and

conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or Attachment. Furthermore, any terms or conditions contained within any exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, and shall be null and void.

- 16.20. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- 16.21. **Non-Solicitation.** Lessee represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights/benefits hereunder.
- 16.22. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by the party chargeable with the waiver.
- 16.23. **Assigns/Successors.** Subject to subsection 16.2, above, this Agreement and all rights, benefits, duties, liabilities and obligations hereunder shall inure to the benefit of, and be binding upon the parties, signatories, and their respective principals, successors, transferees, agents, servants, representatives and assigns.
- 16.24. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
- 16.25. **Observation of Governmental Regulations.** Lessee agrees that, at all times hereunder, Lessee shall comply with and conform to all current and future federal, state and local laws, regulations, ordinances and rules applicable to this Agreement, and to all orders of any governmental agency which shall be applicable to the Leased Premises, treated secondary Effluent usage or Lessee's activities thereon. Nothing herein shall be construed to be a limitation upon Lessor's police power.
- 16.26. **Final Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both Lessor and Lessee.
- 16.27. **Counterparts.** This Agreement may be executed in any number of counterparts and any party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of

which counterparts taken together will be deemed to be but one and the same instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

[SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed by its duly authorized officers, and Lessee has caused the same to be executed by its duly authorized partner(s) with signature(s) notarized, all as of the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

James F. Cook,

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

By: James F. Cook 3-13-25

\_\_\_\_\_  
Brian Barr Date  
Director of General Services

Name: James F. Cook Date 3-13-25

Title: operator  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

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

By: Jennifer M. Quintanilla 3/18/25  
Senior Deputy City Attorney Date

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

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
TODD STERMER, CMC  
City Clerk

REVIEWED BY: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Date

Addresses:  
CITY:  
City of Fresno, Department of Public  
Utilities  
Attention: Director of Public Utilities  
2600 Fresno Street, Room 4019  
Fresno, CA 93721  
Phone: (559) 621-6888  
E-mail:

LESSEE:  
James F. Cook  
4042 S. Academy Ave.  
Sanger, CA 93657  
Phone: (559)307-6272  
E-mail: cas4hay@yahoo.com

- Attachments:  
EXHIBIT A - VICINITY MAP - PLATS OF LEASED PREMISES  
EXHIBIT B - Title 22 RECYCLED WATER RECLAMATION SPECIFICATIONS



# CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Fresno )

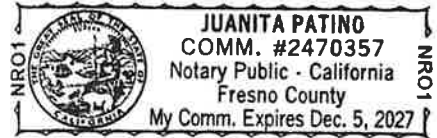
On March 13, 2025 before me, Juanita Patiño, Notary Public,  
(here insert name and title of the officer)

personally appeared James F. Cook

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Juanita Patiño

(Seal)

## Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_.

The signer(s) capacity or authority is/are as:

- Individual(s)  
 Attorney-in-Fact  
 Corporate Officer(s) \_\_\_\_\_ Title(s)

- Guardian/Conservator  
 Partner - Limited/General  
 Trustee(s)  
 Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

### Additional Information

#### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- form(s) of identification  credible witness(es)

Notarial event is detailed in notary journal on:

Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

#### Other

- Additional Signer(s)  Signer(s) Thumbprint(s)

\_\_\_\_\_

EXHIBIT A  
VICINITY MAP - PLATS OF LEASED PREMISES







EXHIBIT B

General Water Requirements

## GENERAL WATER REQUIREMENTS

- A. The discharge of undisinfected secondary effluent to surface waters or surface water drainage courses, either by direct discharge or runoff from the use area, is prohibited.
- B. Undisinfected secondary effluent shall always remain within the approved use area.
- C. The use of undisinfected secondary effluent shall be limited to irrigation of fodder, fiber, and seed crops for non-human consumption.
- D. There shall be no irrigation or impoundment of undisinfected secondary effluent within 50 feet of drainage courses, within 100 feet of any irrigation well or within 150 feet of any domestic well.
- E. The perimeter of the use area shall be graded to prevent ponding along public roads or other public areas.
- F. Undisinfected secondary effluent shall not be applied within 25 feet of property lines and 30 feet of public roads.
- G. Public contact with undisinfected secondary effluent shall be precluded through such means as fences, signs, or acceptable alternatives. Signs shall be as shown herein.
- H. Areas irrigated with undisinfected secondary effluent shall be managed to prevent breeding of mosquitoes. More specifically:
  - a. Tail water must be returned. All irrigation water must infiltrate completely within a 48-hour period.
  - b. Ditches must be maintained free of emergent, marginal, and floating vegetation.

- c. Low-pressure and unpressurized pipelines and ditches accessible to mosquitoes shall not be used to store undisinfected secondary effluent.
- I. Undisinfected secondary effluent shall be managed to prevent runoff onto adjacent properties not owned or controlled by the User.
- J. The use of must comply with the recycling requirements of Title 22, California code of Regulations, Section 60301, et seq.
- K. The use of undisinfected secondary effluent shall not cause a nuisance or pollution as defined by the California Water Code, Section 13050.
- L. Supplementing undisinfected secondary effluent by connection with a domestic drinking water source or an irrigation or industrial well requires an air gap device or back flow prevention device that complies with Title-17, California Code of Regulations, Section 7583, et seq.
- M. All reasonable steps shall be taken to minimize or prevent any discharge, which was reasonable likelihood of adversely affecting human health. In such an event, the User shall orally report the circumstances to the regional Board within 24 hours from the time of discovery. Personnel employed to manage irrigation shall be advised of the source of the reclaimed water and appropriate precautions during handling.
- N. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property; do not protect the User from liability under Federal, State, or local laws, and do not create a vested right to continue recycling.