

### **THIRD AMENDMENT TO AGREEMENT**

THIS THIRD AMENDMENT TO LEASE AND AGREEMENT (Third Amendment) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, is entered into between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as the Lessor), and JAMES COOK, an individual (Lessee).

#### **RECITALS**

WHEREAS, the Lessor and Lessee entered into a "Lease and Agreement Between City of Fresno and James Cook Regarding Fresno-Clovis Regional Wastewater Reclamation Facility Properties and Effluent for APNs: 327-030-41, 327-030-22s, 327-040-08, 327-040-11, 327-040-26," effective January 1, 2017 (Agreement), for Lessee to lease five parcels at Lessor's Fresno-Clovis Regional Wastewater Reclamation Facility; and

WHEREAS, the Lessor and Lessee through a First Amendment to Agreement modified the Agreement by removing one of the parcels (APN 327-030-41) from the leasehold as of January 1, 2019, and adjusted the fees accordingly; and

WHEREAS, the Lessor and Lessee through a Second Amendment to Agreement modified the Agreement by adding an parcel (APN 327-030-38T) to the leasehold as of April 1, 2019, and adjusted the fees accordingly; and

WHEREAS, the Lessor and Lessee through a Third Amendment to Agreement desire to remove one of the parcels (APN 327-030-38T) from the leasehold and adjust the fees accordingly; and

WHEREAS, the Lessor and Lessee desire to keep the terms of the Lease and Agreement and subsequent amendments and additional annual extensions unchanged; and

WHEREAS, the Lessee has requested the first one-year extension for the period of January 2020 through December 2020 as specified in the Lease and Agreement.

#### **AMENDMENT**

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein, and for good and valuable consideration hereby acknowledged, the parties hereby agree that the aforesaid Agreement is amended as follows:

1. Lease Article I, Section A, Grant and Description of Lease Premises, the first line citing APN numbers is amended to delete:

"APN 327-030-38T, 51 acres"

2. Lease Article II, Section A, Annual Rental Fee and Due Date, is amended to read as follows:

"Commencing on the Effective Date of this Lease and then continuing thereafter during the term of this Lease, as additional consideration to the public purposes and uses underlying this Lease 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 Lease:

- Year2019 \$233,770
- Year2020 \$233,700 (Option 1 Extension)
- Year2021 \$233,700 (Option 2 Extension)
- Year2022 \$233,700 (Option 3 Extension)
- Year2023 \$233,700 (Option 4 Extension)
- Year2024 \$233,700 (Option 5 Extension)

Total annual rental fee shall be due and payable in advance in four equal installments (\$58,442.50 each) due and payable on each January 15th; April 15th; July 15th and October 15th hereunder. The annual rental fees due hereunder for any period less than a full calendar year shall be prorated.

3. The Lessee is not at default, has demonstrated good, safe farming practices in the use of final effluent to irrigate non-food crops and requests a one-year extension of the Lease and Agreement for the period of January 2020 through December 2020 be granted.

4. This Third Amendment shall become part of and subject to the terms and conditions of the Agreement, which except as modified herein, remains unchanged and in full force and effect.

5. Should any term and condition expressly set forth in this Second Amendment conflict with the terms and conditions of the Agreement, the terms and conditions expressly set forth in this Third Amendment will prevail.

6. By signing below, the undersigned certify that they have read and understand, and agree to be legally bound by, this Third Amendment.

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IN WITNESS WHEREOF, the parties have executed this Third Amendment, at Fresno, California, the day and year first above written.

CITY OF FRESNO, CALIFORNIA  
A Municipal Corporation

JAMES COOK,  
an individual

By: \_\_\_\_\_  
Michael Carbajal, Director  
Department of Public Utilities

By:   
James Cook  
Farm Operator

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By:   
Amanda Freeman, Senior Deputy

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

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

Addresses for Notice:

Lessor:  
City of Fresno - Regional Wastewater  
Reclamation Facility  
Attn: Ms. Rosa Lau-Staggs  
5607 W. Jensen Avenue  
Fresno, CA 93706

Lessee:  
Mr. James Cook  
4042 S. Academy  
Sanger, CA 93657