

THIRD AMENDMENT TO AGREEMENT

THIS THIRD AMENDMENT TO LEASE AND AGREEMENT (Third Amendment) made and entered into as of this 12th day of December, 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:  12/16/19
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

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO LEASE AND AGREEMENT (Second Amendment) made and entered into as of this 22nd day of March, 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 this Second Amendment desire to add an additional parcel (APN 327-030-38T) to the leasehold, and adjust the fees accordingly; and

WHEREAS, the Lessor and Lessee desire to lengthen the term of the Agreement by adding options for three additional one-year extensions, and require City Council approval prior to the first lease extension being executed.

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 read:

"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:

- Year 2017 \$265,100 (January 1, 2017 through December 31, 2017)
- Year 2018 \$265,100 (January 1, 2018 through December 31, 2018)
- Year 2019 \$233,770 (January 1, 2019 through December 31, 2019) and
 \$18,436.50 (April 1, 2019 – through December 31, 2019)
- Year 2020 \$258,352 (Option 1 Extension)
- Year 2021 \$258,352 (Option 2 Extension)
- Year 2022 \$258,352 (Option 3 Extension)
- Year 2023 \$258,352 (Option 4 Extension)
- Year 2024 \$258,352 (Option 5 Extension)

Total annual rental fee in Years 2017 and 2018 hereunder shall be due and payable in advance in four equal installments (\$66,275 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.

Total Annual rental fee for Years 2019-2024 shall be due and payable in advance in four equal installments (\$64,588 each), due and payable on each January 15th, April 15th, July 15th and October 15th hereunder. The exception is the payment for the period of January 1, 2019 through March 31, 2019 in which the payment will be \$58,442.50.”

3. Lease Article III, Section A, Term of Lease, is amended to read as follows:

“The initial term of this Lease shall commence on the Effective Date and end December 31, 2019. Provided Lessee is not in default, this Lease may renew for up to five one-year option terms upon Lessee's written notice of renewal served on Lessor not later than ninety days prior to expiration of the current term, subject to earlier termination as provided in this Lease. City Council approval shall be required to execute the first lease extension.”

4. This Second 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 or 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 Second Amendment will prevail.


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

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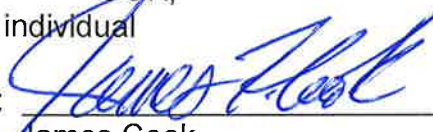
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IN WITNESS WHEREOF, the parties have executed this Second Amendment, at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: 
Michael Carbajal,
Director of Public Utilities

JAMES COOK,
an individual

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:  3/22/19
Deputy Maxwell Carlson

Addresses:

Lessor:
City of Fresno - Regional Wastewater
Reclamation Facility
Attn: Mr. Conrad Braganza
5607 W. Jensen Avenue
Fresno, CA 93706

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

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO LEASE AND AGREEMENT (Amendment) made and entered into as of this 14th day of May, 2018, 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 now desire to modify the Agreement by removing one of the parcels from the Agreement as of January 1, 2019, and adjusting the fees accordingly, as set forth below.

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 read:

"APN 327-030-41, 65 acres, for Years 2017 and 2018 only."

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:

- Year 2017 \$265,100 (January 1, 2017 through December 31, 2017)
- Year 2018 \$265,100 (January 1, 2018 through December 31, 2018)
- Year 2019 \$233,770 (January 1, 2019 through December 31, 2019)
- Year 2020 \$233,770 (Option 1 Extension)
- Year 2021 \$233,770 (Option 2 Extension)

Total annual rental fee in Years 2017 and 2018 hereunder shall be due and payable in advance in four equal installments (\$66,275 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.

Total Annual rental fee for Years 2019-2021 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.”

3. This 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.

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

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

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

CITY OF FRESNO,
a California municipal corporation

By: Brian S. Spindor
Assistant Director
Department of Public Utilities

JAMES COOK
an individual

By: James Cook
James Cook
Farm Operator

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Amanda Freeman
Amanda Freeman, Senior Deputy

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Cindy Bruer 5/14/18
Deputy

Addresses:

City of Fresno - Regional Wastewater
Reclamation Facility
Attn: Mr. Conrad Braganza
5607 W. Jensen Avenue
Fresno, CA 93706

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