

FIFTH AMENDMENT TO AGREEMENT

THIS FIFTH AMENDMENT TO LEASE AND AGREEMENT (Fifth Amendment) made and entered into as of _____ 2020, (Effective Date) is entered into between the CITY OF FRESNO, a California municipal corporation (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 (Leased Premises); and

WHEREAS, in accordance with the terms of the Agreement, Lessee has been using the Leased Premises to cultivate and harvest fiber, feed, seed, and food crops/products to be used solely for non-human consumption and has been irrigating the Leased Premises with recycled undisinfected secondary effluent; 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 a parcel (APN 327-030-38T) to the leasehold as of April 1, 2019, adjusted the fees accordingly, and allowed for five one-year renewal options; and

WHEREAS, the Lessor and Lessee through a Third Amendment to Agreement removed one of the parcels (APN 327-030-38T) from the leasehold and adjusted the fees accordingly, and extended the Agreement through December 31, 2020; and

WHEREAS, through a Fourth Amendment to the Agreement, the Lessor forbore the April 15 and July 15 rental fee installments through December 31, 2020; and

WHEREAS, consistent with the Fourth Amendment, the Lessee has requested approval of a payment arrangement for satisfaction of the forborne rental fee installments and a four-year extension of the lease term from January 1, 2021 through December 31, 2024.

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. Agreement 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 one-year 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.

Following approval of the one year lease extension through December 31, 2020, and provided Lessee is not in default, this Lease may renew for one four-year term, upon mutual agreement of Lessor and Lessee, subject to earlier termination as provided in this Lease.

City Council approval shall be required to execute both lease extensions."

2. Lessee is not in default and the parties mutually agree to exercise the four-year extension of the Agreement for the period of January 1, 2021 through December 31, 2024.

3. Commencing on the Effective Date of this Fifth Amendment and continuing thereafter during the term of the Agreement, Lessee shall pay to Lessor seventeen equal repayment installments (\$6,875.59 each) to satisfy the forborne April 15 and July 15, 2020, rental fee installments. The first repayment installment shall be due and payable no later than December 15, 2020. Thereafter, the remaining repayment installments shall be due and payable on each January 15; April 15; July 15, and October 15 hereunder.

4. The seventeen equal repayment installments are in addition to the rental fee installment payments due and payable in accordance with the schedule set forth in Agreement Article II, Section A, Annual Rental Fee and Due Date, as modified by the Third Amendment.

5. This Fifth 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.

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

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

[Signatures follow on the next page]

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

CITY OF FRESNO,
A California municipal corporation

JAMES COOK,
An individual:

By: _____
Michael Carbajal, Director Date
Department of Public Utilities

By: James Cook _____
Date

Name: James Cook

Title: an individual

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Jennifer M. Quintanilla 10/15/2020
Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Date
Deputy

Addresses:

LESSOR:
City of Fresno
Attention: Ms. Rosa Lau-Staggs
Wastewater Manager
5607 W. Jensen Ave
Fresno, CA 93706
Phone: (559) 621-5130
FAX: (559) 498-1700

LESSEE:
Mr. James Cook
4042 S. Academy
Sanger, CA 93657
Phone: (559) 307-6272
FAX: N/A