

## **FOURTH AMENDMENT TO AGREEMENT**

THIS FOURTH AMENDMENT TO LEASE AND AGREEMENT (Amendment) is entered into effective April 1, 2020, (Effective Date), and amends the Agreement (defined below) 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, the Agreement is due to expire on December 31, 2020, neither party is currently in default on its obligations under the Agreement, and Lessee has demonstrated good, safe farming practices in the use of final effluent to irrigate non-food crops; and

WHEREAS, on March 30, 2020, Lessee contacted Lessor and indicated that due to the current national emergency caused by the COVID-19 global pandemic, Lessee's farming operations have experienced economic hardship making it impractical to continue operations under the terms of the Agreement and subsequent amendments; and,

WHEREAS, the Lessor and Lessee now desire to amend the Agreement to modify Lessee's rental fee obligations as set for the below.

## AMENDMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. This Amendment shall remain in effect between the Effective Date and December 31, 2020. Upon expiration or termination of this Amendment, the terms of the Agreement shall apply.
2. Lessor agrees to forbear payment of the rental fee installments (\$58,442.50 each) due and payable on April 15, and July 15, 2020. These rental fee installments will be due and payable, in full, on December 31, 2020.
3. Consistent with City Council direction, Lessor agrees to present the issue of forgiveness of the April and July rental fee installments to the City Council for consideration prior to December 31, 2020.
4. The Parties acknowledge that any modification to this Fourth Amendment will be subject to approval by the City Council. Should Lessee desire to negotiate a payment plan or other arrangement for paying the April and July rental fee installments, in lieu of making full payment on December 31, 2020, Lessee must provide written notice to Lessor no later than August 1, 2020 to allow sufficient time for the proposal to be presented to the City Council prior to expiration of this Amendment.
5. For the duration of this Amendment, Lessor will not assess late payment charges for the unpaid April 15 and July 15 rental fees pursuant to Article II of the Agreement.
6. For the duration of this Amendment, Lessor will not serve a notice of default on Lessee pursuant to Article V, Section 1(f) for failure to pay the April 15 and July 15 rental fee installments.
7. For the duration of this Amendment, Lessor will not exercise any of its rights and remedies, as identified in Article V of the Agreement, pertaining to nonpayment of the April 15 and July 15 rental fee installments.
8. Except as otherwise provided herein, the terms of the Agreement and subsequent amendments and additional annual extensions remain in full force and effect.
9. By signing below, the undersigned certify that they have read and understand, and agree to be legally bound by this Fourth Amendment.
10. Should any term and condition expressly set forth in this Fourth Amendment conflict with the terms and conditions of the Agreement, the terms and conditions expressly set forth in this Fourth Amendment will prevail.

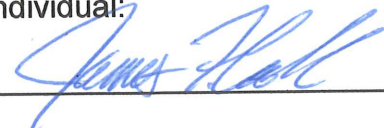
**[Signatures follow on the next page]**

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

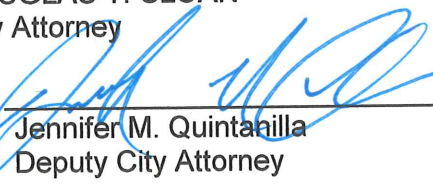
JAMES COOK,  
An individual:

By:   
Michael Carbajal, Director  
Department of Public Utilities

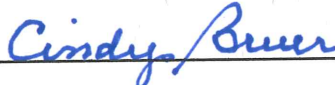
By:   
Name: James Cook

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: an individual

By:  7/15/2020  
Jennifer M. Quintanilla Date  
Deputy City Attorney

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

By:  7/20/2020  
Date  
Deputy

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

LESSEE:  
James Cook  
4042 S. Academy  
Sanger, CA 93657  
Phone: (559) 307-6272

# CALIFORNIA ALL PURPOSE 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

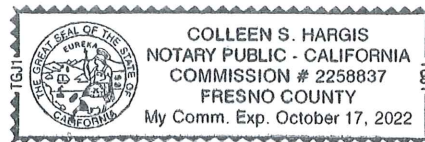
On 7/6/2020 before me, COLLEEN S. HARGIS Notary Public,

personally appeared JAMES FRANKLIN 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: Colleen S. Hargis (Seal)

OPTIONAL

Description of Attached Document

Title or Type of Document: 4th AMENDMENT Number of Pages: 3

Document Date: 7/6/2020 Other: TO AGREEMENT