

## **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 September 30, 2020. Upon expiration or termination of this Amendment, the terms of the Agreement shall apply.

2. Lessor agrees to waive the rental fee installments (\$58,442.50 each) due and payable on April 15, and July 15, 2020.

3. For the duration of this Amendment, Lessee agrees not to plant or harvest any crops on the Leased Premises.

4. Lessee agrees that for the duration of this Amendment, Lessee will continue to fulfill the Maintenance/Repair obligations specified in Article IV, Section D of the Agreement. Lessee also agrees to comply with the provisions in Article I, Section B.3 and Article IX, Section A concerning control of weeds on the Leased Premises.

5. Lessee agrees to maintain the insurance requirements identified in Article VIII, Section B of the Agreement.

6. The occurrence of any of the following events shall constitute a breach of this Amendment by Lessee:

- i. Lessee continues to plant and harvest crops on the Leased Premises for the duration of this Amendment.
- ii. The failure of Lessee to fulfill Lessee's Maintenance/Repair and weed control obligations as stated in Section 4 of this Amendment.
- iii. The failure of Lessee to fulfill Lessee's Insurance obligations as stated in Section 5 of this Amendment.

7. Upon occurrence of a breach of this Amendment, Lessor may immediately terminate this Amendment in accordance with the procedure set forth in Article V, Section B.2.b of the Agreement. If terminated, all waived rental fee installments will be immediately due.

8. In the event the circumstances necessitating this Amendment cease prior to September 30, 2020, Lessee may exercise an option to terminate this Amendment by Lessee's written notice served on Lessor at least ten days prior to the proposed termination date. If this Amendment is terminated by Lessee prior to September 30, 2020, the rental fee shall be prorated and shall be due and payable on the termination date of this Amendment.

9. Except as otherwise provided herein, the terms of the Agreement and subsequent amendments and additional annual extensions remain in full force and effect.

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

11. 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.

12. This Amendment is subject to the approval by the City Council.

**[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: James Cook  
Name: James Cook

Title: an individual

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: Jennifer M. Quintanilla 4/21/2020  
Deputy City Attorney Date

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

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

Addresses:  
LESSOR:  
City of Fresno  
Attention: Rosa Lau-Staggs  
Wastewater Manager  
5607 W. Jensen Ave  
Fresno, CA 93706  
Phone: (559) 621-5130  
E-mail: Rosa.Staggs@fresno.gov

LESSEE:  
James Cook  
4042 S. Academy Ave  
Sanger, CA 93657  
E-mail: Cookssmog@verizon.net

# 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

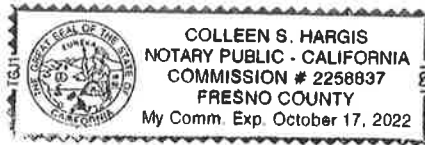
On 4/17/2020 before me, COLLEEN S. HARGIS Notary Public,

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 TO AGREEMENT Number of Pages: 2

Document Date: 4/17/2020 Other: \_\_\_\_\_