

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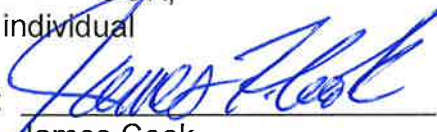
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IN WITNESS WHEREOF, the parties have executed this Second Amendment, at Fresno, California, the day and year first above written.

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