MISSION RANCH MUNICIPAL WELL AGREEMENT

This Mission Ranch Municipal Well Agreement (this Agreement) is made and entered into as of this ___ day of April, 2018, (Effective Date), by and between the CITY OF FRESNO, a municipal corporation (the City), on the one hand, and C & A FARMS, LLC, a California limited liability company (Applicant), on the other hand (each individually, a Party, and jointly, the Parties).

RECITALS

A. Applicant owns agricultural real property consisting of approximately 350 assessed acres located within the municipal corporate limits of the City of Fresno, and which, as of the Effective Date, is used to grow organic almonds, and is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the Property or the Mission Ranch Project Area).

B. Applicant intends to develop the Property for urban purposes, in accordance with the policies and procedures set forth in the Fresno Municipal Code (FMC), at an unspecified future date. As of the Effective Date, Applicant farms organic almonds on the Property and plans to continue to utilize the Property for an agricultural purpose until it is developed for urban purposes.

C. Consistent with the foregoing, and specifically for the Property that is the subject of this Agreement, Applicant recorded that certain First Amendment to Declaration Regarding Farming and Planning Criteria dated December 1, 2015, (the Applicant's Farming Plan) in the Official Records of Fresno County as Document No. 2016-0033622-00. Applicant's Farming Plan defines the groundwater monitoring frequency, Applicant must perform for private wells located in proximity to the Property.

D. Applicant has requested that the City allow it to construct a new groundwater well and rehabilitate an existing groundwater well on the Property at the locations indicated in Exhibit A attached hereto and incorporated herein by reference.

E. Subject to the terms and conditions of this Agreement, Applicant shall: (1) construct a new municipal public water supply well, which shall be utilized exclusively by Applicant as an agricultural irrigation well to serve the Property (or any portion thereof) until the Property is developed for urban purposes (the Municipal Well), or this Agreement terminated as provided herein; and (2) rehabilitate one of the existing groundwater wells on the Property for use by Applicant as an agricultural irrigation well for the Property, but not to serve as a future municipal public water supply well (the Rehabilitation Well). The period of time during which the Municipal Well is used exclusively by Applicant for agricultural irrigation shall be known herein as the "Interim Period."

F. Pursuant to FMC Section 6-402, any well drilling permit issued to Applicant to construct a new groundwater well or rehabilitate an existing groundwater well for the purposes of agricultural irrigation shall be conditioned upon: (1) Applicant, at

its sole expense, installing water meters on said groundwater wells to measure the volume of groundwater extractions; (2) Applicant establishing a utility account with the City for purposes of billing its groundwater extractions; and (3) the payment of fees for all water extraction from said wells by the user at the rate specified in FMC Section 6-505 (Recharge Fee). In addition, FMC Section 15-2716-11 requires that any groundwater extracted from a groundwater well for irrigation purposes must be solely used on the premises where the groundwater well is located.

G. Consistent with FMC Section 15-2716-9, Applicant previously submitted an irrigation water use plan dated November 11, 2014.

H. Consistent with Section 16 of this Agreement, Applicant requests that the City: (1) waive the Recharge Fees and any other fees related to the Municipal Well and the Rehabilitation Well, and (2) waive the requirements of FMC Section 15-2716-11 such that water extracted from the groundwater wells on the Property (including the Municipal Well and the Rehabilitation Well) may be used on any legal parcel within the acreage that comprise the Mission Ranch Project Area.

I. Subject to the terms and conditions of this Agreement, the City is willing to grant the aforementioned waivers.

AGREEMENT

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

1. **Municipal Well Site**.

   a. **Criteria**. The site on the Property where the Municipal Well shall be located (the Municipal Well Site) shall conform with the following:

      i. The Municipal Well Site shall be a separate legal parcel with a minimum area of 14,000 square feet to accommodate: (1) setback requirements; (2) perimeter site development requirements (i.e. perimeter walls, access gates, landscaping, lighting, sidewalks, and similar); (3) treatment facility and chemical dosing station requirements; (4) standby power generation equipment; (5) vehicle access and maneuvering for carbon and other chemical deliveries; and (6) heavy equipment and vehicle access for well inspection, maintenance, and repair activities.

      ii. The Municipal Well Site must abut, and be directly accessible from, a paved public roadway (Public Street) (e.g., California Avenue, Hughes Avenue, Marks Avenue or Church Avenue).

iii. The Municipal Well Site shall be developed, constructed, and placed into operation in conformance with City Standards. "City Standards" means the municipal well requirements set forth in Exhibit B attached hereto and incorporated herein by reference. The City reserves the right to modify, revise, and amend City Standards after the Effective Date of this Agreement in response to changes in law affecting public health and safety, and federal and state primary and secondary drinking water standards; provided that such amended City Standards shall only apply to the Municipal Well to the extent all then-existing groundwater wells in the City's jurisdiction are subject to the same requirements.

b. **Submission of Municipal Well Site Plan.** The review and approval process for the Municipal Well Site's location, dimensions, layout, and configuration shall be subject to the following procedure:

i. **Applicant's Initial Submission of Municipal Well Site Plan.** Applicant shall prepare and submit for review to the Director of Public Utilities (the Director), a proposed conceptual site layout for the proposed Municipal Well Site (the Municipal Well Site Plan). The Municipal Well Site Plan shall include all of the following: (1) setback requirements; (2) Municipal Well Site access from the Public Street; (3) location of chemical feed facilities (chlorine and corrosion inhibitor); (4) location of future carbon treatment facilities; (5) location of perimeter walls, access gates, landscaping, lighting, sidewalks, and similar; (6) location of electrical power supply; and (7) location of standby power generation equipment.

ii. **City's Response to Municipal Well Site Plan.** The Director shall review Applicant's proposed Municipal Well Site Plan and, within thirty days of receipt, provide written comments to Applicant regarding changes and corrections to be incorporated into the Municipal Well Site Plan such that the Municipal Well Site Plan is consistent with the requirements in Exhibit B.

iii. **Applicant's Submission of Revised Municipal Well Site Plan.** After incorporating changes and corrections required by the Director, Applicant shall submit the revised Municipal Well Site Plan to the Director for review to confirm that the changes and corrections have been incorporated.

iv. **Applicant's Option to Withdraw.** Notwithstanding anything in this Agreement to the contrary, Applicant may at any time elect to withdraw its application for the Municipal Well if it determines that the Director's changes and corrections are not commercially viable or for any other reason in its sole discretion.

c. **Test Municipal Well**. Upon satisfactory submission, as determined by the Director, of a feasible Municipal Well Site Plan, Applicant shall drill a test well, subject to approval of a Test Well Drilling Plan (as defined below), and the e-log results of said test well shall be provided to the Director.

i. **Test Well Drilling Plan.** Prior to mobilizing vehicles, equipment, materials, and licensed personnel to the Municipal Well Site to drill the test wells, Applicant shall submit a test well drilling plan to the Director for review and comment to ensure that the well drilling procedure and data collection is consistent with the City's standard methods and approach for constructing test wells (Test Well Drilling Plan). The Director shall review Applicant's Test Well Drilling Plan, and within five days of receipt, provide written comments to Applicant regarding changes and corrections required. Upon resubmitting the Test Well Drilling Plan with the required changes and corrections, the Director shall authorize Applicant to drill the test well.

ii. **Approval of the Test Well.** If the e-log results from the test well meet City Standards, Applicant shall construct a cluster monitoring well to perform water quality testing.

iii. **Rejection of the Test Well.** If the test well results do not meet City Standards, Applicant shall have opportunities to cure such deficiency. If such cure(s) fail(s) to render the test well in compliance with City Standards, then, City may reject Applicant's Well Site Plan .Applicant may propose an alternate Test Well Drilling Plan or Municipal Well Site and submit a new proposed Municipal Well Site Plan in accordance with the procedures specified in Section 1.b. of this Agreement).

d. **Current Proposed Municipal Well Site.** As of the Effective Date, Applicant proposes the Municipal Well Site location as depicted in Exhibit A hereto. Applicant intends to submit a Municipal Well Site Plan for this site in accordance with this Agreement. If the Municipal Well Site depicted in Exhibit A does not meet the City Standards, then Applicant may propose an alternate Municipal Well Site in accordance with the procedures specified in Section 1.b of this Agreement).

2. **Water Quality & Transfer of Municipal Well Site.** The City's acceptance of the Municipal Well Site from Applicant is contingent upon Applicant demonstrating through water quality testing that, at the time of transfer of the Municipal Well Site from Applicant to City at the end of the Interim Period, the water extracted from the Municipal Well complies with or is capable of complying with all federal and state primary and secondary drinking water standards in effect as of the Effective Date (whether via treatment or some other methodology). Water extracted from

the Municipal Well by Applicant during the Interim Period shall not be required to meet federal and state primary and secondary drinking water standards nor shall Applicant have any obligation to treat the water prior to the transfer of the Municipal Well to the City, except as otherwise required by law for irrigation purposes.

Following approval of the Test Well, Applicant shall perform water quality testing and submit all results to the Director in accordance with this Section 2.

a. **Water Quality Testing Results Comply with Drinking Water Standards.** Upon submitting water quality testing results (via sampling from the Test Well) to the Director confirming that the Municipal Well water complies with all federal and state primary and secondary drinking water standards in effect as of the Effective Date: (i) the City shall accept the Municipal Well Site within a reasonable time from the receipt of the test results; and (ii) Applicant, at its sole cost, shall take all necessary steps for the Municipal Well Site to become a separate legal parcel dedicated to the City. The City shall promptly support Applicant in creating such legal parcel on an expedited basis.

b. **Water Quality Testing Results that do not Comply, but are Capable of Complying with Drinking Water Standards.** Upon submitting water quality testing results to the Director confirming that the Municipal Well water does not comply with, but is capable of complying with all federal and state primary and secondary drinking water standards in effect as of the Effective Date (whether via treatment or some other methodology), then Applicant shall be required to install, at its sole cost, an industry standard treatment system acceptable to the Director prior to the date when operational control of the Municipal Well Site and Municipal Well are transferred from Applicant to the City in accordance with the procedures described in this Agreement.

    i. If a treatment technology is available to bring the water in compliance with all federal and state primary and secondary drinking water standards in effect as of the Effective Date, then City's acceptance of the Municipal Well shall be conditioned upon the installation of such treatment system at the end of the Interim Period. Any such treatment technology shall be substantially similar, from an operational perspective, as other City treatment systems. The City will withhold the issuance of certificates of occupancy for the Applicant's urban development plan, until such time that treatment technology is installed, tested, and accepted by the City or Applicant delivers an alternative water supply for its urban development plan.

    ii. If such a treatment technology is not available for such purposes or Applicant is unwilling to install such technology, then the City shall

reject the Municipal Well Site, and Applicant may propose an alternate Municipal Well Site in accordance with the procedures specified in this Agreement (Section 1.b of this Agreement).

c. **Water Quality Testing Results Not Capable of Complying with Drinking Water Standards.** Upon submitting water quality testing results to the Director confirming that the Municipal Well water is not capable of complying with all federal and state primary and secondary drinking water standards, the City shall reject the Municipal Well Site; Applicant may propose an alternate Municipal Well Site in accordance with the procedures specified in Section 1.b of this Agreement).

d. **Transfer Separate Legal Parcel to City.** Following the creation of such separate legal parcel, (i) Applicant shall record a grant deed transferring the Municipal Well Site to the City, and (ii) the City shall contemporaneously grant an exclusive license to Applicant consistent with Section 3 of this Agreement.

e. **Treatment System.** Applicant shall not be required to install wellhead or any other water quality treatment technology during the Interim Period when the Municipal Well is used exclusively for agricultural purposes, unless otherwise required to bring water in compliance with applicable laws for irrigation water. Any treatment system installed by Applicant at the end of the Interim Period prior to acceptance of the Municipal Well by City, shall meet City Standards and Applicant shall be solely responsible for costs and installation thereof. Treatment systems not meeting City Standards shall be deemed unacceptable.

3. **Exclusive License for Development and Use of the Municipal Well.** Upon transferring title to the City for the separate legal parcel to be used for the Municipal Well Site, the City shall grant Applicant an exclusive license to use the Municipal Well Site, construct and use the Municipal Well on an exclusive basis for agricultural irrigation purposes for the Interim Period only (the Exclusive License).

a. The specific terms of the Exclusive License are set forth in Exhibit C attached hereto and incorporated herein by reference.

b. During the Interim Period, Applicant shall be required, pursuant to the Exclusive License, to (i) clean, repair, refurbish, and generally maintain the Municipal Well consistent with City Standards and (ii) maintain the Municipal Well Site in a reasonably neat and clean, condition consistent with industry standards for municipal wells. Applicant's use of the Municipal Well during the Interim Period shall be governed by Section 8 of this Agreement.

c. Subject to Section 19, if Applicant fails to comply with conditions of this Agreement, the City may revoke the Exclusive License, and take immediate possession of the Municipal Well Site and Municipal Well.

4. **Municipal Well Construction.** Upon the City issuing the Exclusive License to Applicant, City shall concurrently issue a notice to proceed, authorizing Applicant to begin development of the Municipal Well Site and construction of the Municipal Well. Applicant shall not begin site development or well construction activities prior to City's issuance of a notice to proceed, which the City shall use commercially reasonable efforts to expedite following the Effective Date. The following criteria shall apply to Municipal Well construction:

a. **City Standards.** The Municipal Well shall be constructed in accordance with City Standards, which are more specifically described in Exhibit B. No substitutions or variances from the City Standards shall be authorized, without prior written approval of the Director.

b. **Construction Inspections.** All construction activities associated with the Municipal Well shall be subject to inspection by City, at City's expense, during construction in the ordinary course of work. If construction activities proceed without the required City inspection(s) the work shall be rejected and Applicant shall be required to perform the work again under inspection by the City.

5. **Final Acceptance Inspections; Ownership.** The City shall not accept the Municipal Well as mechanically, operationally, and hydraulically ready for service until the City performs final inspections, at City's expense, and operational testing and commissioning, at Applicant's expense, to confirm and validate that the Municipal Well meets City Standards. The City's final inspection shall include a camera inspection of the Municipal Well to confirm that the quality, workmanship, and placement of Municipal Well casings and screens are consistent with City Standards. Upon passing City's final inspection, City shall issue Applicant a Notice of Completion for construction of the Municipal Well. Consistent with the City's practice for similar municipal wells, City shall at all times retain ownership of the Municipal Well. Ownership of the Rehabilitation Well shall at all times remain with Applicant.

6. **Municipal Well Development Costs.** All costs associated with developing the Municipal Well Site, constructing the Municipal Well, and placing the Municipal Well into operation for irrigation purposes, including all costs associated with purchasing and installing wellhead treatment systems (if required) at the end of the Interim Period and repairing and replacing aged, worn, and deteriorated components of Municipal Well prior to transferring operational control of the Municipal Well to the City consistent with this Agreement, shall be the exclusive obligation of Applicant, and shall not be subject to reimbursement by the City or cost-sharing with the City. During the Interim Period, the City shall not be

responsible for any costs associated with developing or operating the Municipal Well and the Municipal Well Site.

7. **Destruction of Existing Irrigation Wells; Rehabilitation of Existing Irrigation Well.**

a. After City's acceptance and prior to Applicant placing the Municipal Well into service, Applicant shall destroy three of the four existing irrigation wells located on the Property, and more specifically depicted on Exhibit A (the Abandoned Wells or AW).

i. The three Abandoned Wells shall be destroyed by properly licensed contractors and in accordance with all applicable state and local law. For the purposes of this Agreement, a destroyed well is a well that is filled with neat cement, or other material and method allowed by applicable state and local law, and never to be used again.

ii. The Parties acknowledge that Applicant may continue to use all other groundwater wells located on the Property other than the three Abandoned Wells to be destroyed. All other wells may be used for agricultural use in accordance with the Sustainable Groundwater Management Act of 2014 (SGMA).

iii. Applicant's failure to destroy the three Abandoned Wells, will be considered a default. If Applicant fails to cure this default pursuant to Section 19, the City, at its discretion, may exercises its right to require Applicant to pay the Recharge Fee rather than revoke the Exclusive License. Applicant shall continue to pay Recharge Fee until the three existing irrigation wells are destroyed.

b. Upon approval by the City Council of the City of Fresno, the City shall process any permit to allow Applicant to rehabilitate the Rehabilitation Well in accordance with the permit set forth in Exhibit D attached hereto and incorporated herein by reference. The Rehabilitation Well shall be equipped with a flow meter that can record and monitor groundwater extraction rates on a continuous basis, and report the data in real-time to the City's supervisor control and data acquisition (SCADA) system. In addition, Applicant shall be required to establish a separate utility account with the City for the Rehabilitation Well.

8. **Municipal Well Use Terms.**

a. **Use of Municipal Well.** Upon receiving written acceptance from the Director that the Municipal Well complies with City Standards, Applicant may use the Municipal Well for the Interim Period to irrigate the Property.

b. **Crop Replacement.** If Applicant desires to replace the existing crop of organic almonds with an alternate crop, then Applicant's groundwater extractions shall at all times comply with SGMA.

c. **Interim Period.** The Interim Period shall last as long as the Municipal Well is being utilized by Applicant exclusively for agricultural irrigation purposes not to exceed the term of this Agreement as set forth in Section 35. During the Interim Period, Applicant may develop a portion of the Mission Ranch Project Area to urban uses while simultaneously continuing to use the Municipal Well and the Municipal Well Site on an exclusive basis to irrigate its remaining agricultural uses on other portions of the Mission Ranch Project Area. Any development of the Mission Ranch Project Area for non-agricultural purposes shall be conditioned upon the provision of an adequate water supply by Applicant pursuant to the FMC and applicable laws.

d. **Applicant's Farming Plan.** For the duration of the Interim Period, Applicant shall at all times comply with the Applicant's Farming Plan, which is recorded in the Official Records of Fresno County as Document No. 2016-0033622-00, and which defines the groundwater monitoring frequency Applicant must perform for private wells located in proximity to the Property.

e. **Periodic Well Inspections.** Due to the uncertain duration of the Interim Period, Applicant is required, at Applicant's cost, to conduct camera inspections of the Municipal Well to assess and monitor the condition of the well casings and screens every ten years from the Effective Date.

i. Applicant shall schedule the camera inspections such that a City representative shall be onsite at the Municipal Well Site to witness the well inspection.

ii. The first camera inspection to assess the condition of the casing and screens shall be conducted ten years following the Effective Date, and subsequent inspections shall be conducted every ten years thereafter.

iii. If the City determines that the results of a camera inspection require the Municipal Well to be scheduled for casing and screen maintenance, then Applicant shall complete the required casing and screen maintenance within six months of the camera inspection being completed. The costs to perform the casing and screens maintenance shall be borne exclusively by Applicant.

9. **Development within the Mission Ranch Project Area.** Applicant, or its affiliates, may develop any portion of the Mission Ranch Project Area for urban

uses in accordance with the development policies and procedures defined in the FMC, and conditions specified in this Agreement.

a. **Municipal Well Requirement for Urban Development Plans.** For the Mission Ranch Project Area, the City shall condition all urban development plans submitted by Applicant, its affiliates or successors to provide for adequate water supply (whether through municipal well or other tangible water supply permitted under the FMC) which meet the urban demands of the urban development plan consistent with methodologies prescribed by the FMC and applicable law. Any application for urban development within the Mission Ranch Project Area submitted by Applicant, its affiliates or successors to the City, which cannot establish the existence of sufficient water supply to service such project, will not be complete for the purposes of the Permit Streamlining Act. Furthermore, Applicant's, or its affiliates' or successors' failure to provide the required and conditioned water supply consistent with the FMC and applicable law for any development project within the Mission Ranch Project Area shall result in City's withholding Certificates of Occupancy for such project.

b. **Municipal Well Operational Transfer.** In lieu of providing a new water supply (whether through municipal well or other tangible water supply permitted under the FMC) with adequate capacity to meet the demands for an urban development plan as provided above, Applicant, or its affiliates or successors, may elect, at its sole discretion, to terminate the Interim Period and transfer operational control of the Municipal Well to the City to fulfill the water supply conditions placed upon any of Applicant's, or its affiliates' or successors', urban development plans, or series of urban development plans, within the Mission Ranch Project Area. Should an urban development plan, or series of urban development plans, be conditioned to require municipal water supply that is greater than the actual production capacity of the Municipal Well (as determined by an industry standard pump test), then Applicant, or its affiliates or successors, may "redeem" the actual production capacity of the Municipal Well as an in-lieu credit for the municipal water supply capacity required ("**In-Lieu Credit(s)**"), and the Applicant, or its affiliates or successors, shall provide adequate water supply (whether through a municipal well or other water supply permitted under the FMC) to fulfill the water supply capacity requirements of the urban development or series of urban developments. Applicant may take advantage of the In-Lieu Credits set forth in this Section 9.b. only if the Municipal Well has a minimum capacity of 1,000 GPM at the time of transfer; should the capacity of the Municipal Well be less than 1,000 GPM at the time of transfer, Applicant shall receive no In-Lieu Credits.

10. **Well Condition at Transfer.** At the end of the Interim Period and prior to the City accepting operational control for the Municipal Well, the City shall, at

Applicant's expense, conduct a condition assessment of the Municipal Well Site and the Municipal Well to confirm and validate that the Municipal Well Site and the Municipal Well is consistent with City Standards.

a. The condition assessment shall include camera inspection of the Municipal Well casing and screens.

b. Applicant shall be required to clean the well screens prior to the City accepting the Municipal Well using industry standard methods.

c. Worn, deteriorated, degraded, and otherwise aged components of the pump and motor components related to the Municipal Well and Municipal Well Site identified during the condition assessment shall be documented and submitted to Applicant for repair or replacement with new components, reasonable wear and tear excepted.

d. The foregoing obligation to repair or replace shall not apply to the electrical facilities related to the Municipal Well, the Municipal Well shaft or stem or any other portion of the equipment located at the Municipal Well Site.

11. **Well Improvements (if any).** The transfer of operational control of the Municipal Well at the end of the Interim Period shall not be considered complete until Applicant completes a condition assessment of the Municipal Well Site and Municipal Well (at Applicant's expense) in accordance with Section 10 of this Agreement and Applicant makes all required improvements to the Municipal Well in accordance with Section 10 of this Agreement. The City shall not issue Certificates of Occupancy associated with Applicant's urban development plan after the Interim Period, until such time that the required well improvements to the Municipal Well have been completed and accepted by the City in accordance with Section 10 of this Agreement.

12. **Warranty**. Upon transferring operational control of the Municipal Well to the City at the end of the Interim Period, Applicant shall provide the City directly with a two-year warranty for the pump and pump motor components associated with the Municipal Well, reasonable wear and tear excepted; provided that the City has operated and maintained the Municipal Well in accordance with commercially reasonable standards. The two-year warranty shall commence from the date of City's acceptance of the Municipal Well for operational use.

13. **Water Capacity Fee.** Consistent with applicable law, Applicant shall pay any then-current Water Capacity Fee charges for all urban development projects proposed for the Mission Ranch Project Area in accordance with the FMC and Master Fee Schedule. No such charges are due for acreage that is used for agricultural purposes within the Mission Ranch Project Area.

a. Applicant shall not be issued or granted any water-related fee credits for any costs associated with developing the Municipal Well Site, construction

of the Municipal Well and appurtenances, well head treatment facilities, or any costs associated with testing or improving the Municipal Well Site or Municipal Well prior to transferring operational control of the Municipal Well Site and Municipal Well to the City.

b. Applicant shall not be reimbursed for any costs associated with development of the Municipal Well Site, construction of the Municipal Well and appurtenances, well head treatment facilities, or any costs associated with testing or improving the Municipal Well Site or Municipal Well prior to transferring operational control of the Municipal Well Site and Municipal Well to the City.

14. **Sustainable Groundwater Management Act of 2014 (SGMA); GSA Requirements.**

a. If the North Kings Groundwater Sustainability Agency (or any other groundwater sustainability agency under SGMA) (GSA) limits or otherwise controls the quantity of groundwater Applicant may extract from the Property utilizing the Municipal Well or the Rehabilitation Well, nothing in this Agreement shall be construed to circumvent such restrictions under SGMA. The extractions for the combined Municipal Well and Rehabilitation Well shall be monitored and reported using the flow meters installed on each well.

b. The City's agreement to waive charging Applicant the City's Recharge Fee, as described in Section 16 of this Agreement, does not relieve Applicant from paying extraction fees or similar assessments, if any, adopted by the GSA under SGMA. On, or before, January 30, 2020, Applicant's use of the Municipal Well for agricultural irrigation purposes may be subject to all fees and operational requirements established by the GSA, if any.

c. To the extent the GSA has authority to address adverse quality or quantity impacts and if (i) the GSA enforces such authority and (ii) the GSA determines that Applicant's use of the Municipal Well creates such adverse groundwater quality or quantity impacts on surrounding private wells while Applicant is using the Municipal Well for irrigation purposes, then Applicant shall implement corrective actions (if any) in accordance with the GSP and applicable law.

15. **Water Meter Requirement.** Applicant shall install a water meter on the Municipal Well and the Rehabilitation Well at Applicant's expense pursuant to FMC Section 6-402. Additionally, Applicant shall submit an application to the City to establish a utility account for the Municipal Well and the Rehabilitation Well. Applicant shall receive a monthly utility bill for the Municipal Well and the Rehabilitation Well, and the monthly utility bill will report the groundwater extractions recorded for the Municipal Well and the Rehabilitation Well during the

billing period. Applicant shall not be charged the Recharge Fee for groundwater extractions, but Applicant shall be charged a monthly account maintenance charge, which shall be $25 per month per meter.

16. **City Waivers.**

a. **Recharge Fee.** The City hereby waives the Recharge Fee for the Municipal Well and the Rehabilitation Well until the termination of this Agreement. The Recharge Fee waiver set forth herein includes all fixed, monthly, use, variable, quantity, volumetric, connection or other charges related to the ownership and operation of the Municipal Well and the Rehabilitation Well whether in effect now or in the future (except for purchase of a flow meter that can record and monitor groundwater extraction rates on a continuous basis, and report the data in real-time to the City's supervisor control and data acquisition (SCADA) system). The City acknowledges that such Recharge Fees do not apply to the other existing groundwater wells located at the Mission Ranch Project Area; provided such wells are not modified, deepened, rehabilitated, or otherwise improved in a manner that, by law, would result in a fee being paid by Applicant for any extraction of groundwater at the Mission Ranch Project Area. If such wells are modified, deepened, rehabilitated, or otherwise improved in a manner that would, by law, result in a fee being paid by Applicant for any extraction of groundwater at the Mission Ranch Project Area, then the Recharge Fee shall apply to any such impacted well.

b. **Premises Limitation.** The City hereby waives the requirements of FMC Section 15-2716-11 to the extent that all groundwater wells located on the Property (including the Municipal Well and the Rehabilitation Well) may be used on any legal parcel that forms part of the Mission Ranch Project Area.

17. **Notices.** Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the Parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

18. **Binding.** Subject to Section 21 of this Agreement, once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

19. **Applicant's Right to Cure.** Except as otherwise expressly provided herein, Applicant shall have a right to cure any default under this Agreement as follows: (a) if Applicant defaults in the performance of any of its covenants, obligations, liabilities or undertakings under this Agreement, and such default continues unremedied for a period of 30 days after written notice of such default is given to Applicant by City, and (b) (i) such default could not reasonably be expected to be cured by Applicant within such 30 day period, and (ii) Applicant commences curing such default within such 30 day period and thereafter diligently proceeds to cure such default, then such 30 day period will be automatically extended for so long as reasonably required by Applicant to cure such default, up to a maximum of 90 days after receipt of the notice to Applicant of the default; provided that such 90 day period shall continue to be automatically extended to the extent City is not materially prejudiced as a result of Applicant having additional time to cure such default.

20. **Termination for Breach.** Subject to Section 19, if either party materially defaults in the performance of any condition or covenant in this Agreement, the other party may terminate this Agreement upon 30 days' notice.

21. **Covenants To Run with the Land.** All of the grants, covenants, terms, provisions and conditions in this Agreement shall run with the Property and shall apply to, and bind the successors and assigns of, Applicant so long as the Municipal Well is used exclusively or agricultural purposes.

22. **Compliance with Law**. In providing the services required under this Agreement, Applicant shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23. **Waiver**. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

24. **Governing Law and Venue**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

25. **Headings**. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

26. **Severability**. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

27. **Interpretation**. The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

28. **Discretionary Approval.** Notwithstanding anything to the contrary in this Agreement, whenever provision is made for City to provide an acceptance or approval, that acceptance or approval shall not unreasonably be withheld. City's failure to provide acceptance or approval when Applicant fails to meet the express provisions of this Agreement, including City Standards, shall not be unreasonable.

29. **Attorney's Fees**. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

30. **Exhibits**. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

31. **Precedence of Documents**. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the Parties, provided for within the body of this Agreement, and shall be null and void.

32. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

33. **No Third-Party Beneficiaries**. The rights, interests, duties and obligations specified within this Agreement are intended for the specific Parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

34. **Extent of Agreement**. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Applicant.

35. **Assignment**.

a. Except as set forth in Section 34.b, Applicant may, without the prior consent of the City, assign its rights and obligations under this Agreement, in whole, or in part, as follows: (i) to a party providing financing to Applicant; (ii) to an Affiliate of Applicant; or (iii) to any acquirer of any portion of the Property. An "Affiliate" means any Person which directly or indirectly, owns or controls or is controlled by or is under common control with Applicant. For purposes of this definition, "control" means the power to direct the management and policies of a Person, directly or indirectly, whether though the ownership of voting securities, by contract or otherwise, the terms "controlling" and "controlled" have the meaning correlative to the foregoing. For purposes of this definition, "Person" includes an individual, a corporation, a partnership, a limited liability company, a joint venture, a trust, or an unincorporated organization. For all other assignments, this Agreement shall not be assigned without the consent of City, which consent shall not be unreasonably withheld.

b. Without limiting the foregoing, Applicant may, without the prior consent of the City, assign its rights and obligations with respect to the In-Lieu Credits, in whole, but not in part, as follows: (i) to a party providing financing to Applicant (ii) to an Affiliate of Applicant; or (iii) to any acquirer of any portion of the Property.

c. Applicant will notify City in writing of any assignment under this Section 34, whether or not City's consent to such assignment is required. The written notice of any assignment will include contact information for the assignee. All permissible or consented to assignees must expressly assume in writing all of Applicant's obligations with respect to the portion of the Agreement that is the subject of such assignment. Such assumption will be set forth in a written assumption agreement(s) reasonably acceptable to the City. Any partial assignment under this Section 34 shall not relieve Applicant of its obligations under this Agreement .

d. No assignment, whether in whole or in part, shall serve to modify any term of this Agreement. In the event of an assignment of Applicant's right to use the well (Section 8), the aggregate use by Applicant and any assignee shall be subject to the terms of this Agreement and applicable laws and standards.

e. Any attempt to assign this Agreement where the City's consent is required which is made without such consent having been first obtained is void and a default of this Agreement.

36. **Term**. Unless otherwise terminated earlier as provided herein, this Agreement and any license issued hereunder shall expire thirty (30) years from the Effective Date hereof and, upon such expiration, any and all benefits of this Agreement to Applicant, its affiliates or successors, shall cease.

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Wilma Quan-Schecter,
City Manager

C & A Farms, LLC,
a California limited liability company

By: _____

Name: Farid Assemi

Title: General Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ 6.20.19
Raj Singh Badhesha
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention: Director of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721
Phone: (559) 621-8600
FAX: (559) 475-1233

APPLICANT:
C&A Farms, LLC
Attn: Legal Department
1306 W. Herndon Ste. 101
Fresno CA 93711
559-440-8350

Attachments:

Exhibit A – Mission Ranch Project Area
Exhibit B – City Standards
Exhibit C – Exclusive License
Exhibit D – Permit for the Rehabilitated Well

Exhibit A – Mission Ranch Project Area

APN	Planted Acres	Assessed Acres
464-020-07	10.25	11.04
464-020-08	1.04	1.12
464-020-09	1.48	1.57
464-020-12	4.65	5.00
464-020-13	4.65	5.00
464-020-15	17.65	18.59
464-020-16	0.09	0.52
464-020-19	8.29	8.92
464-020-25	23.47	25.25
464-020-26	5.58	6.00
464-020-28	7.97	8.57
464-020-29	8.80	9.47
464-020-30	8.80	9.47
464-020-31	8.80	9.47
464-020-34	4.36	4.69
464-020-35	1.62	1.74
464-020-36	9.15	9.85
464-020-37	4.37	4.70
464-060-15	16.00	18.27
464-060-17	67.00	67.47
464-070-10	9.00	9.06
464-070-11	9.00	9.06
464-101-23	13.00	13.00
477-021-09	16.31	20.89
477-021-11	9.12	10.00
477-021-18	1.13	1.24
477-021-19	15.25	18.41
477-021-20	31.09	34.11
477-021-25	6.60	7.24
TOTAL	**324.49**	**349.70**

Exhibit B – City Standards

Subject to Section 27 (Precedence of Documents) of the main body of the Mission Ranch Municipal Well Agreement (the "Agreement"), this Exhibit B shall apply to the Municipal Well and Municipal Well Site.

1. The Municipal Well Site shall be a separate legal parcel owned by the City with a minimum area of 14,000 square feet to accommodate: (1) setback requirements; (2) perimeter site development requirements (i.e. perimeter walls, access gates, landscaping, lighting, sidewalks, and similar); (3) treatment facility and chemical dosing station requirements; (4) standby power generation equipment; (5) vehicle access and maneuvering for carbon and other chemical deliveries; and (6) heavy equipment and vehicle access for well inspection, maintenance, and repair activities.

2. The Municipal Well Site must abut, and be directly accessible from, a paved public roadway (i.e. California Avenue, Hughes Avenue, Marks Avenue or Church Avenue), and the public roadway must be suitable to accommodate large, specialized commercial and industrial equipment and vehicles for carbon deliveries, chemical deliveries, and specialized well inspection, maintenance, and repair purposes.

3. The Municipal Well site cannot be located within one-half mile of another City public water supply well.

4. Applicant shall fully develop the Municipal Well Site in accordance with the Agreement and, to the extent not inconsistent with the Agreement, development policies, procedures, and standards defined in the Fresno Municipal Code.

5. Upon transfer of the Municipal Well to the City, Applicant, at Applicant's sole and exclusive expense, shall:

    a. Install a 16-inch diameter water main in the abutting paved public roadway, for the full extent of the frontage of Applicant's property. The 16-inch water main shall receive water from the Municipal Well at the time of transfer.

    b. Install a 12-inch diameter sanitary sewer main, and all associated manholes, in the abutting paved public roadway, for the full extent of the frontage of Applicant's property. The 12-inch diameter sewer shall receive wastewater flows from the Municipal Well at the time of transfer.

    c. Install a storm drain, sized in accordance with Fresno Metropolitan Flood Control District (FMFCD) standards, in the abutting paved public roadway, for the full extent of the frontage of Applicant's property. The storm drain shall receive stormwater runoff from the Municipal Well site for discharge to a designated FMFCD stormwater basin at the time of transfer.

    d. Applicant shall not be reimbursed, or receive any fee-credits, for any costs associated with the offsite improvements described in this section.

6. Prior to ordering all the necessary mechanical, electrical, and instrumentation equipment required to construct the Municipal Well, Applicant shall submit a bill of materials to the Director for review and comment.

   a. The Director's review and comments on the bill of materials shall be to ensure that the quality, workmanship, and materials of construction of all components of the Municipal Well are consistent with the City's other public water supply assets, and shall provide reliable, long-term service to the City at the lowest life-cycle cost.

   b. The Director shall complete the review of Applicant's Municipal Well bill of materials, within five (5) days of receipt, and submit written comments to Applicant regarding changes and corrections required, if any.

   c. Upon Applicant's resubmittal of the corrected Municipal Well bill of materials, with the required changes and corrections incorporated, the Director shall authorize Applicant to order all the necessary mechanical, electrical, and instrumentation equipment required to construct the Municipal Well.

7. At the end of the Interim Period, the minimum acceptable capacity for the Municipal Well shall be 1,000 gallons per minute (GPM) in order for the Municipal Well to be utilized for in-lieu credit related to development within the Mission Ranch Project Area, as set forth in Section 9 of this Agreement.

8. Upon the final inspection of the City as set forth in Section 5 of the main body of this Agreement, the drawdown on the Municipal Well shall not exceed 40 feet after the Municipal Well has been in operation at maximum production for 24-continuous hours; provided that, for purposes of operating the Municipal Well at maximum production for 24-continuous hours during the final inspection, the Municipal Well's variable-frequency drive will be set at a level that Applicant intends to regularly operate the Municipal Well, not at the Municipal Well's maximum level.

9. The well casing shall be a minimum of 20-inches in diameter; stainless steel construction meeting the State's standards; and depth dependent on e-log results.

10. The Municipal Well site shall be provided with three-phase electrical power.

11. The Municipal Well shall be provided with a variable-frequency drive.

12. The Municipal Well shall be equipped with a flow meter that can record and monitor groundwater extraction rates on a continuous basis, and report the data in real-time to the City's supervisor control and data acquisition (SCADA) system.

Exhibit C – Exclusive License

EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement ("License" or "Agreement"), made on _____ ("Effective Date"), by and between the CITY OF FRESNO, a municipal corporation ("Licensor") and [_____], a California limited liability company with its principal place of business as 1306 W. Herndon Avenue, Suite 101, Fresno, CA 93711 ("Licensee"). Licensor and Licensee are sometimes collectively referred to herein as the "Parties" and singularly as a "Party."

RECITALS

A. Licensor is the owner in fee of that certain real property consisting of approximately _____ ± gross square feet located in Fresno County, California as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the Premises).

B. Licensee desires to obtain Licensor's permission to enter onto the Premises and develop it as a municipal well site in accordance with that certain Mission Ranch Municipal Well Agreement dated _____ (the Well Agreement).

C. The Parties wish to enter into this License whereby City will allow Licensee to enter the Premises, for the purpose of developing and operating a Municipal Well Site during the Interim Period as more particularly described in the Well Agreement attached hereto as Exhibit "B" and incorporated herein by reference.

THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Premises. Licensor is the owner of the Premises. All improvements made to or upon the Premises, including without limitation the Municipal Well (as defined in the Well Agreement) shall be part of the Premises.

2. License. Subject to the terms and conditions stated in this Agreement, Licensor grants Licensee, Licensee's agents, employees, invitees, and representatives, an exclusive license to enter the Premises and construct a well consistent with the Well Agreement.

3. Term. The Term of this License shall commence on the Effective Date and shall expire as provided in the Well Agreement.

4. End of Term. Upon expiration, revocation, or other termination of the Term, Licensee, its agents, employees, invitees, and representatives shall vacate the Premises, leaving it in good order and condition consistent with the Well Agreement.

5. Liens. Licensee shall not permit to be placed against the Premises, or any part thereof, any design professionals', mechanics, materialmen's, contractors' or subcontractors' liens with regard to Licensee's actions upon the Premises. Licensee agrees to hold Licensor harmless for any loss or expense, including reasonable attorney's fees and costs arising from any such liens, which might be filed against the Premises.

6. Indemnity and Insurance. Licensee agrees to the Indemnification provisions attached hereto as Exhibit "C" and to the Insurance provisions attached here to as Exhibit D and incorporated herein.

7. Compliance with Laws/Permits. Licensee shall in all activities undertaken pursuant to this License, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statues, orders, ordinances, rules, regulations, plans policies and decrees applicable to the Premises and use thereof. Without limiting the generality of the foregoing, Licensee at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation, or ordinance for any activities Licensee desires to conduct or have conducted pursuant to this License.

8. Inspection. Licensor and its representatives, employees, agents or independent contractors may enter and inspect the Premises or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Licensee's compliance with the terms and conditions of this License. Except in cases of emergency, City shall provide at least five days' written notice to Licensee prior to entry and Licensee's representatives shall have a right to attend any such inspection.

9. Not Real Property Interest. It is expressly understood that this License does not in any way whatsoever grant or convey any permanent easement, lease, fee, or other interest in the Premises to Licensee.

10. Attorney's Fees. In the event of a dispute between the parties with respect to the terms or conditions of this License, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

11. Termination. The license granted herein may be terminated by Licensor in accordance with the terms of this License and the Well Agreement.

12. Continuing Liability. No termination of this License shall release Licensee from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this License and restoration of the Premises to its prior condition.

13. Assignment. Applicant may assign its rights and/or obligations under this Agreement to the same extent permitted under Section 34 of the Well Agreement.

14. Service of Notice. Except as otherwise provided in this Agreement, any notice required or permitted to be given hereunder shall be given in accordance with the Well Agreement.

15. Laws, Venues, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Fresno, State of California. All such fees shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not such action is prosecuted to judgment.

16. Entire Agreement. Each of the Exhibits referred to in this Agreement is incorporated into and made a part of this Agreement. This Agreement constitutes the entire agreement between City and Licensee relating to the License. Any prior agreements, promises, negotiations, or representations not expressly set forth herein are of no force and effect. Any amendment shall be of no force and effect unless it is in writing and signed by Licensor and Licensee.

17. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability, of any provision in this Agreement will not affect the other provisions.

18. Counterparts. This License Agreement may be executed in counterparts, each of which shall be deemed an original.

19. Right to Cure. Except as otherwise expressly provided herein, Applicant shall have a right to cure any default under this Agreement as follows: (a) if Applicant defaults in the performance of any of its covenants, obligations, liabilities or undertakings under this Agreement, and such default continues unremedied for a period of 30 days after written notice is given to Applicant by City, and (b) (i) such default could not reasonably be expected to be cured by Applicant within such 30 day period, and (ii) Applicant commences curing such default within such 30 day period and thereafter diligently proceeds to cure such default, then such 30 day period will be automatically extended for so long as reasonably required by Applicant to cure such default, up to a maximum of 90 days after receipt of the notice to Applicant of the default; provided that such 90 day period shall continue to be automatically extended to the extent City is not materially prejudiced as a result of Applicant having additional time to cure such default.

IN WITNESS WHEREOF, the parties have executed this License Agreement to be effective as of the date first above written.

Licensor:

City of Fresno, a municipal corporation,

By: _____

Name: Wilma Quan-Schecter, City Manager

Licensee:

C&A Farms, LLC, a California limited liability company,

By:_____
Farid Assemi, Member

Exhibit A – Premises
Exhibit B –Well Agreement
Exhibit C – Indemnification
Exhibit D – Insurance

Exhibit A
Premises

Exhibit B
Mission Ranch Municipal Well Agreement

Exhibit C
Indemnification

Licensee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless Licensor and their officials, officers, representatives, agents, employees, volunteers, transferees, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with Licensee's activities, or the entry on, occupancy or use of, the Premises by Licensee or Licensee's representatives, or the exercise by Licensee of Licensee's rights hereunder, or the performance of, or failure to perform, Licensee's duties under this License, including, but not limited to, Claims arising out of: (i) injury to or death of persons, including but not limited to employees of Licensor or Licensee (and including, but not limited to, injury due to exposure to Hazardous Substances (as defined below) in, on or about the Premises); (ii) injury to property or other interest of Licensor, Licensee or any third party; (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances any liability imposed by law or regulation without regard to fault.

Licensee acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance occurring as a result of Licensee or in connection with Licensee's use or occupancy of the Premises, Licensee's activities or the activities of any of Licensee's representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any applicable law relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

Licensee's use and occupancy of the Premises shall be at Licensee's sole risk and expense. Licensee accepts all risk relating to Licensee's occupancy and use of the Premises. Licensor shall not be liable to Licensee for, and Licensee hereby waives and releases Licensor and the other Indemnitees from, any and all liability, whether in contract, tort, strict liability or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Premises.

Licensee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Licensee, or any of Licensee's consultants, contractors or subcontractors, to comply with the insurance requirements set forth in this Agreement.

"Hazardous Substances" means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any environmental law. Licensor specifically acknowledges that various petroleum products,

fuel, gasoline and chemicals, including fertilizers, herbicides and pesticides, customarily used in farming, some of which may, as of the date hereof, be considered to be Hazardous Substances, have been and, for so long as Licensee farms the property adjacent to the Premises, shall be used, stored, mixed and applied to such property in the course of the farming activities conducted thereon.

Notwithstanding the foregoing, the indemnities provided here shall be limited to the extent all or any portion of the Claims (including Claims that the Premises has declined in value) (1) result from the negligence of Licensor or its representatives or (2) arise out of, result from or are incurred in connection with (x) the discovery, presence or release of any Hazardous Substances existing on the Premises before entry by Licensee (except to the extent any such release is exacerbated by Licensee), or (y) Licensee's discovery of any pre-existing Hazardous Substance.

The provisions of this Section shall survive the expiration or termination of this License.

Exhibit D
Insurance
INSURANCE REQUIREMENTS

(a) Throughout the life of this License, LICENSEE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by LICENSOR'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to LICENSOR, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the License or any extension, LICENSEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this License shall be discontinued immediately, and all payments due or that become due to LICENSEE shall be withheld until notice is received by LICENSOR that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to LICENSOR. Any failure to maintain the required insurance shall be sufficient cause for LICENSOR to terminate this License (subject to Section 19 of the License). No action taken by LICENSOR pursuant to this section shall in any way relieve LICENSEE of its responsibilities under this License. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by LICENSOR that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by LICENSEE shall not be deemed to release or diminish the liability of LICENSEE, including, without limitation, liability under the indemnity provisions of this License. The duty to indemnify LICENSOR shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LICENSEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of LICENSEE, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the

License) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the LICENSOR, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Premises Pollution Liability for environmental liability coverage for operators and/or Contractors Pollution Liability for any contractors for any pollution events.

MINIMUM LIMITS OF INSURANCE

LICENSEE shall procure and maintain for the duration of the License insurance with limits of liability not less than those set forth below. However, insurance limits available to LICENSOR, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

   (i) $2,000,000 per occurrence for bodily injury and property damage;
   (ii) $2,000,000 per occurrence for personal and advertising injury;
   (iii) $4,000,000 aggregate for products and completed operations; and,
   (iv) $4,000,000 general aggregate applying separately to the work performed under the License.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

   (i) $1,000,000 each accident for bodily injury;

(ii) $1,000,000 disease each employee; and,
(iii) $1,000,000 disease policy limit.

4. **PREMISES POLLUTION LEGAL LIABILITY** including coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

(i) $2,000,000 per occurrence or claim; and,
(ii) $4,000,000 general aggregate per annual policy period.

(a) In the event this License involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by LICENSEE pursuant to the License.

UMBRELLA OR EXCESS INSURANCE

In the event LICENSEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the LICENSOR, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

LICENSEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and LICENSEE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the LICENSOR'S Risk Manager or his/her designee. At the option of the LICENSOR'S Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects LICENSOR, its officers, officials, employees, agents and volunteers; or

(ii) LICENSEE shall provide a financial guarantee, satisfactory to LICENSOR'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall LICENSOR be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to LICENSOR, except ten (10) days for nonpayment of premium. LICENSEE is also responsible for providing written notice to the LICENSOR under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, LICENSEE shall furnish LICENSOR with a new certificate and applicable endorsements for such policy(ies). In the event any LICENSEE policy is due to expire during the work to be performed for LICENSOR, LICENSEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form. The Premises Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.

(iii) The Commercial General, Automobile and Premises Pollution Liability insurance policies shall be endorsed to name LICENSOR, its officers, officials, agents, employees and volunteers as an additional insured. LICENSEE shall establish additional insured status for the LICENSOR and for all ongoing and completed operations under both Commercial General and Premises Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the LICENSEES' insurance shall be primary and no contribution shall be required of LICENSOR. The coverage shall contain no special limitations on the scope of protection afforded to LICENSOR, its officers, officials, employees, agents and volunteers. If LICENSEE maintains higher limits of liability than the minimums shown above, LICENSOR requires and shall be entitled to coverage for the higher limits of liability maintained by LICENSEE.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

(vi) For any claims related to this License, LICENSEE'S insurance coverage shall be primary insurance with respect to the LICENSOR, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained

by the LICENSOR, its officers, officials, agents, employees and volunteers shall be excess of the LICENSEE'S insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to LICENSOR, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - LICENSEE shall furnish LICENSOR with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received and approved by the LICENSOR'S Risk Manager or his/her designee prior to LICENSOR'S execution of the License and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of LICENSOR, LICENSEE shall immediately furnish LICENSOR with a complete copy of any insurance policy required under this License, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this License. All subcontractors working under the direction of LICENSEE shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

(i) The retroactive date must be shown, and must be before the effective date of the License or the commencement of work by LICENSEE.

(ii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the License, or work commencement date, LICENSEE must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the License, whichever first occurs.

(iii) A copy of the claims reporting requirements must be submitted to LICENSOR for review.

(iv) These requirements shall survive expiration or termination of the License.