

**CITY OF ARVIN
AGRICULTURAL LEASE AGREEMENT**

This Agricultural Lease Agreement (“Lease” or “Agreement”) is made and entered into effective _____, 2021 (“Effective Date”), by and between the City of Arvin, a municipal corporation (hereinafter referred to as “City”) and _____, a California corporation (hereinafter referred to as “Tenant”), with reference to the following facts:

RECITALS

- A. The City owns a wastewater treatment plant (WWTP) that produces treated effluent in the current amount of approximately 1.3 million gallons per day or 475 million gallons per year (1,456 acre feet) that must be used and retained on City property associated with the WWTP, and which water also serves to recharge the aquifer; and
- B. The City owns certain unimproved real property consisting of approximately 247 acres, located in the vicinity of North Rancho Drive, Millux Road and Burkett Blvd, Arvin, CA., presently identified as Assessor's Parcel Number 350-230-03 (collectively, “the Property”) that accepts the treated effluent from the WWTP; and
- C. The City has sought proposals from qualified farming operators to tenant farm the Property and to accept 100% of the annual effluent at an agronomic rate to be taken up by the crop(s) being grown on the Property each and every year; and
- D. Crops produced on the Property may not be used for human consumption; and
- E. Operations on the property must be in compliance with Waste Discharge Requirement (WDR) Order 5-00-093 as may be amended; and
- F. All aspects of farming of the Property must be in a legal and responsible manner each and every calendar day per year so as to accept as 100% of the annual treated effluent generated by the City’s wastewater treatment facility; and
- G. Tenant and City desire that Tenant farm the Property in accordance with this Lease.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Lease of Premises. City hereby leases to Tenant, and Tenant leases from City , on the terms and conditions set forth in this Lease, the Property, as described above and as generally depicted on the diagram attached as **Exhibit "A"**.

2. Term and Effective Date. The term of this Lease begins on the Effective Date, and terminates July 31, 2030, unless earlier terminated pursuant to Section 20 (the "Lease Term"). The Lease Term may be extended by up two (2) additional five-year periods, upon mutual written assent of the parties.

3. Use of Property.

A. The Property is leased to Tenant for the planting, growing, and harvesting of annual legally marketable crops and soil preparation as needed (the "Permitted Use"). Tenant shall not use, or permit to be used, any part of the Property for any purpose other than the Permitted Use. All operations directly or indirectly related to the Permitted Use shall be performed in accordance with all then applicable laws and the best course of farming practiced in the vicinity. If Tenant fails to so perform or uses the Property for a use other than the Permitted Use, City may provide Tenant with a 10-days' written notice of such failure. If Tenant does not take satisfactory remedial measures within that 10-day-period, then City may take necessary remedial measures, at the expense of Tenant, for which Tenant agrees to reimburse City on demand.

B. Tenant will not permit any noxious weeds to go to seed on the Property, and all seed planted thereon shall be free from morning glory and other noxious weed seeds. City reserves the right to go onto the Property, at any time, for the purpose of inspecting same and treating any morning glory or other noxious weeds which may be growing thereon. Whenever Tenant removes crops from the Property, Tenant agrees to plow, disk, or otherwise cultivate the land where such crops have been removed so that no weeds grow thereon.

C. Tenant shall, at Tenant's sole cost and expense, properly comply with any and all laws, ordinances, rules, regulations, requirements, and orders, present or future, of the federal, State of California, County of Kern, or City's government which may in any way apply to the Permitted Use, maintenance of, occupation of, or operations on the Property, the production of crops thereon, or the sale or other disposition of such crops.

D. Tenant shall not release, discharge, dispose of, or spill any toxic or hazardous substance, waste, or materials on the Property, except that Tenant may apply pesticides, herbicides, and fungicides as usually used in farming operations in accordance with industry standards and any and all regulations pertaining to the use thereof; provided, however, that Tenant agrees not to use pesticides, herbicides, or fungicides that will have residual effect beyond the Lease Term, without the prior written consent of City.

E. Tenant agrees to defend, indemnify and hold harmless City, and each of its officers, directors, employees, agents and attorneys (collectively, the "Indemnitees") from and against any and all obligations (including removal and remedial actions), losses, claims (including third party claims), suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including attorneys' fees and expenses) of whatever kind or

nature whatsoever that may at any time be incurred by, imposed on, or asserted against the Indemnitees directly or indirectly based on, or arising or resulting from (i) the actual or alleged presence of Hazardous Substances or Materials at, on or beneath the Site, or (ii) any environmental claim relating in any way to the alleged presence of Hazardous Substances or Materials at, on or beneath the Site; provided, that this indemnification shall only apply to Hazardous Substances or Materials resulting from Tenant's actions or omissions. For the purpose of this Agreement, "Hazardous Materials" or "Hazardous Substances" shall include, but not be limited to, substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code, as "infectious waste" in Section 25117.5 of the California Health and Safety Code, or as "hazardous substances" in Section 25316 of the California Health and Safety Code or "hazardous materials" as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

F. The parties acknowledge the Property receives treated water from the City's waste water treatment facilities ("Treated Water"). Tenant acknowledges and is aware that a material aspect of the Lease Agreement is the usage of 100% of this Treated Water for the growth of crops, such as alfalfa, and shall accept and use for irrigation 100% of the Treated Water. Such crops may not be grown for human consumption. Tenant shall comply with Waste Discharge Requirement (WDR) Order 5-00-093 as may be amended. Tenant's failure to grow crops on the Property, to allow Treated Water to leave the Property, or fail to utilize 100% of the Treated Water or comply with WDR Order 5-00-093, or any combination thereof, would constitute a material breach of this Agreement.

G. City shall provide Tenant with Treated Water for Permitted Uses as such Treated Water is available.

4. Taxes. Tenant acknowledges that although the City is a municipal entity exempt from real property taxes, Tenant's possessory interest under this Lease may be subject to real property taxation. Tenant shall be solely liable for the payment of taxes, if any. Tenant shall pay, when due, any other taxes and general and special assessments of every description which, during the term of this Lease, may be levied upon or assessed against the Property and all interest therein (possessory or otherwise). Tenant shall also pay all licenses or permit fees necessary or required by law for the conduct of Tenant's operation.

5. Rent.

A. Tenant agrees to pay _____ DOLLARS (\$) per acre, per year to City as rent for the use and occupancy of the Property ("Rent"). Rent shall not be prorated. The Rent is due in advance for each year on January 1st and shall be provided to the City at 200 Campus Drive, Arvin, CA 93203 while this Lease is in effect. If the Rent is not paid when due,

and City elects not to terminate the Lease, Tenant agrees to pay interest on the amount of unpaid rent at the rate of 7% per annum from the due date until paid.

B. If Tenant continues to occupy the Property after the effective date of the notice of termination described in Paragraph 20, then Rent shall immediately be equal to two hundred percent (200%) of the otherwise normally applicable Rent. Nothing in this Paragraph shall preclude the City from any of its remedies including ejecting Tenant for holding over or terminating the Lease for failure by the Tenant to timely Rent.

6. Entry by City. Tenant shall allow City, and City's agents and assigns, at all reasonable times, to enter the Property for the purposes of inspection, ascertaining compliance with the terms of this Lease, exercise of City's rights under this Lease, to survey and complete studies associated with City's future use of the Property, and for all other lawful purposes. City shall use reasonable caution in entering the Property for such purposes in order to avoid causing damage to Tenant's crops.

7. Condition of Property. By execution of this Lease, Tenant accepts the Property in its present condition, and agrees, on the last day of the term or on sooner termination of this Lease, to surrender the Property to City in the same condition as when received, reasonable use and wear caused beyond the Tenants control excepted, and to promptly remove all of Tenant's property from the Property except for additional improvements or alternations which have been approved by City and installed by Tenant or that are attached to the Property. If the City wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, the City must reserve such right in its notice of approval of the improvements. If Tenant is required to remove any improvements from the Property upon termination of this Lease, Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Property caused by such removal. Tenant shall at all times, and at Tenant's sole cost and expense, keep, maintain and repair the Property (including the irrigation system) in good order, condition, and repair.

8. Disclaimer of Warranty - Soil Suitability and Treated Water. City makes no warranty of the soil's suitability for growing the crops Tenant is authorized to grow under this Lease. Tenant represents Tenant has made an independent inspection of the Property and is not relying upon any representation or warranty from City as to such condition. City will provide Treated Water to Tenant for use on the Property at a rate and amount mutually agreeable to the parties. City makes no representation as to water quality and quantity of the Treated Water. Tenant acknowledges there may be sales restrictions, regulations, or other requirements governing crops grown with Treated Water, and agrees Tenant is solely responsible for determining what regulations apply and what crops may be appropriate for irrigation with Treated Water. Tenant waives all claims against City regarding the use, quality and quantity of Treated Water.

9. Operating Costs. All costs incurred by Tenant directly or indirectly connected to the Permitted Use, including, but not limited to, costs of tools, labor, materials, water, electricity, and other utilities shall be the sole responsibility and borne and paid by Tenant.

10. Release and Hold Harmless.

A. Tenant, as a material part of the consideration of this Lease, hereby waives all claims against the Indemnitees for damages arising out of, in whole or in part, from Lessor's operations upon, of and/or concerning the Property. Tenant also agrees to indemnify, defend and hold harmless the Indemnitees from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorney's fees and court costs) ("Damages") arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Property, or otherwise in connection with this Lease; provided, that Tenant's obligation to indemnify and hold harmless shall only be to the extent Tenant was, or is alleged to have been, a direct or indirect cause of the Damages. Tenant shall be responsible for any loss of or damage to pumps, fencing, access roads, storage ponds, irrigation head ditch, turnouts, tailwater ditch, tailwater pond, supplemental irrigation ditch and ground water monitoring wells and protective features.

B. Tenant agrees to keep City free from all liability and claim for damages arising from any injury from any cause to any person, including Lessee, or to property of any kind belonging to anyone, including Tenant, arising from Tenant's operations while in, upon, or in any way connected with the Property, including the flooding of public roads or neighboring lands because of improper or inadequate drainage or escaping irrigation waters, during the term or any occupancy under this Agreement.

11. Insurance.

A. Liability Insurance: Tenant shall maintain in good standing liability insurance at least as broad as Insurance Services Offices Commercial General Liability Coverage (occurrence form CG 0001), to protect against loss from liability imposed by law for damages on account of, but not limited to, (1) bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Tenant on the Property, or in connection with the operations thereof, resulting directly or indirectly from any acts or activities of Tenant, or any person acting for Tenant, or under Tenant's control or direction, and also to protect against loss from liability imposed by law for (2) damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Tenant, or any person acting for Tenant, or under Tenant's control or direction. Such property damage and bodily injury insurance shall also provide for and protect City against incurring any legal cost in defending claims for alleged loss. Such Commercial General Liability insurance shall be maintained in full force and effect during the term of this Lease in the following amount: Commercial General Liability insurance with limits not less than \$1,000,000 for each occurrence, combined Single limit for bodily injury and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. Any deductible or self-insured retention must be declared to and approved by the City, and the City shall be named as an additional insured. At City's option, City may require Tenant to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, elected and appointed officials, employees and volunteers, or City may require Tenant to provide a financial guaranty satisfactory to City, guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

B. Workers' Compensation Insurance: Tenant shall maintain in good standing workers' Compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now or hereafter in force in California or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Tenant in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Tenant. Notwithstanding the foregoing, Tenant may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Tenant shall deliver to City evidence that such self-insurance has been approved by the appropriate State authorities.

C. General Requirements: All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Tenant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing at least thirty (30) days prior written notice to City, or at least ten (10) days prior written notice to City in the case of cancellation for nonpayment. In the event any of said policies of insurance are cancelled, the Tenant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 11 to the City.

No occupation, work, or services under this Agreement shall commence until Tenant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

Tenant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Tenant may be held responsible for the payment of damages to any persons or property resulting from the Tenant's activities or the activities of any person or persons for which the Tenant is otherwise responsible nor shall it limit the Tenant's indemnification liabilities or obligations as provided in this Agreement.

12. Lease Subject to Existing Rights of Others. This Lease is subject to all existing

easements, servitudes, licenses, and rights of way for canals, ditches, levees, roads, highways, telephone, telegraph, and electric power lines, railroads, pipelines, and other purposes, whether or not of record.

13. Quiet Enjoyment. City hereby covenants and agrees if Tenant pays Rent as herein provided and faithfully performs the terms and conditions on Tenant's part to be kept, observed, and performed, Tenant shall have the quiet enjoyment of the Property during the term hereof, without hindrance or interference from City.

14. Waste. Tenant shall not commit, or permit others to commit, any waste or nuisance upon the Property, or commit or allow any other act thereon that could disturb the quiet enjoyment of City, any other tenant of City, or other persons lawfully upon the Property or upon adjacent or nearby property. Unless otherwise agreed by the Parties, waste shall include removing or damaging otherwise viable long-term crops such as trees, vines and perennials upon expiration or termination of this Lease, damaging or rendering the irrigation system inoperable, etc.

15. Assignment or Subletting. Neither this Lease nor any interest therein shall be assigned, either voluntarily or involuntarily, by Tenant, or by operation of law or otherwise, nor shall the Property, or any part thereof, be subleased by Tenant without the prior written consent of City. Any assignment or subletting without such prior written consent of City shall be void.

16. Liens. Tenant shall nor permit or suffer any liens of any kind to be recorded or filed Against the Property for any reason whatsoever and Tenant shall diligently take all steps necessary and proper to immediately remove and discharge any liens which are filed.

17. Time of Essence. Time is of the essence of this Lease and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Lease.

18. Governing Law and Venue. This Lease will be construed, interpreted, and enforced pursuant to California law. Venue regarding any matter arising out of this Lease between the parties shall be the County of Kern, Kern Superior Court.

19. Attorneys' Fees; Limitations of Legal Acts. In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to all costs incurred and to reasonable attorneys' fees. Except as provided by the preceding sentence, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Lease, it being expressly understood and agreed Tenant's sole legal remedy for breach or violation of this Lease by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Lease.

20. Relocation Waiver and Compensation for Early Termination by City.

A. Tenant hereby waives any and all compensation that may be due under Title 25, Division I, Chapter 6, Subchapter 1, of the California Code of Regulations relating to relocation assistance.

B. Tenant may terminate this Lease by giving notice to City at least 180 days prior to January 1st of the next year. City may terminate the Lease as follows:

- i. Abandonment by Tenant. Should Tenant breach this Lease and abandon all or any part of the Property prior to the scheduled expiration of the term of this Lease, City may continue this Lease in effect by not terminating Tenant's right to possession of the Property, in which event City shall be entitled to enforce all City's rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.
- ii. Termination for breach by Tenant. All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within 30 days after written notice thereof is served on Tenant, then City may terminate this Lease immediately, and in the event of such termination, Tenant shall have no further rights hereunder and Tenant shall thereupon forthwith remove from the Property and shall have no further right or claim thereto and City shall immediately thereupon have the right to re-enter and take possession of the Property, subject only to appropriate legal process.
- iii. Termination for failure to pay Rent. If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the Tenant, then City shall have the option to immediately terminate this Lease; and in the event of such termination, Tenant shall have no further right or claim thereto and City shall immediately thereupon have the right to re-enter and take possession of the Property, subject only to appropriate legal process.

21. General. If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, then the remainder of this Lease and any other application of such terms or provisions shall not be affected thereby. The captions of this Lease are for convenience of reference only and shall not define or limit any of its terms or provisions. All of the covenants of Tenant hereunder are deemed and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate instance. The relationship created by this lease is one of Landlord/Tenant. This Lease is not intended to create a joint venture relationship or any relationship other than that of Landlord/Tenant.

22. Notices. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Lease from one Party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile ("fax") transmission, email, overnight courier, or

deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Paragraph. Notices shall be sent as follows:

If to City:

City of Arvin
Attn: City Manager
200 Campus Drive
Arvin, CA 93203

If to Tenant:

Each such Notice shall be deemed delivered to the party to whom it is addressed (i) if personally served or delivered, upon delivery, (ii) if given by email, upon the sender's receipt of an appropriate answerback or other written acknowledgement (iii) if given by fax, upon the sender's receipt of an appropriate answerback or other written acknowledgement, (iv) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (v) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (vi) if given by any other means, upon delivery at the address specified in this Paragraph.

23. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than twenty (20) days prior notice from the City, execute, acknowledge and deliver to the City a statement in writing certifying that this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge that the City is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as the City may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by the City or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If the City desires to refinance or transfer the Property, Tenant agrees to deliver to the City or any lender or transferee designated by the City such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by the City in confidence.

24. Discrimination and Conflicts of Interest. With regard to farming operations involving the Property, Tenant agrees it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin. Tenant also warrants Tenant has not entered and will not enter into any arrangement to pay financial consideration to, and has not made and will not make any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 et seq.).

24. Recordation. Tenant shall cause a notice of this Lease agreement to be recorded with the Kern County Recorder within 30 days of approval by the parties, and Tenant shall provide all signatures or take any other actions to allow the City to accomplish the same. Upon termination or expiration of the Lease, Tenant shall promptly cooperate with City to effectuate removal of the notice of the Lease recorded with the Kern County Recorder.

25. Representation by Counsel/Understanding. The parties acknowledge that they have been, or had the opportunity, to be represented by counsel of their choice and have had the opportunity to receive independent legal advice from such counsel with respect to the negotiation and advisability of entering into this Lease. Each of the parties acknowledges that it has fully read and understood this Lease, and is executing this Lease freely, voluntarily, with full knowledge of its significance, and without duress, undue influence or coercion.

26. Non Applicability of Rule of Construction/Enforceability. Prior to the execution of this Lease, each party reviewed this Lease, made any desired changes, and signed this Lease to indicate the agreement of the parties, and had the opportunity for legal counsel to approve this Lease as to form. The rule of construction that any ambiguities are to be construed against the drafting party shall not be employed in interpreting this Lease. To the extent any provision or term of this Lease is held unenforceable, the remaining terms and provisions shall remain in full force and effect, and enforceable.

27. Entire Agreement. This Lease (together with the exhibits and schedules, if any, referenced herein and appended hereto) constitutes the entire agreement between the City and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the City and Tenant.

28. Counterparts. This Lease may be executed in several counterparts which, when taken together, shall constitute the entire Lease.

29. No Third Party Beneficiaries. The terms of this Lease are for the sole and exclusive protection and use of the Tenant and City. No third-party beneficiary is created by this Lease, and no provision of this Lease shall operate or inure to the use and benefit of any such third party.

30. Authority to Execute Agreement. Each party warrants and represents to each other that the person(s) whose signature appears below their respective name is duly authorized and has full authority to execute this Lease on behalf of the entity appearing above such signatures.

IN WITNESS WHEREOF, City and Tenant have entered into this Lease on the day and year first above written.

CITY

By: _____
Jerry Breckinridge, City Manager

TENANT

By: _____*

ATTEST:

By: _____
Cecilia Vela, City Clerk

APPROVED AS TO FORM:

By: _____
Shannon Chaffin, City Attorney

APPROVED AS TO FORM:

By: _____
Attorney for Tenant

Attachments:
Exhibit "A" Map of Property

**Provide notarial acknowledgement for signature*