

Merced Community College District Los Banos Farm Lease

Merced Community College District (Landlord), hereby leases (Tenant), ninety (90) acres of the real property, "Leased Premises," in the County of Merced, State of California, described as follows:

A specific portion of property identified on Parcel map 03-057 filed for record December 30, 2003 in Book 95 of Parcel Maps, Pages 23-24, Merced County Records and being a portion of Section 17, Township 20 South, Range JO East M. D. B. & M. Also shown as Assessor Parcels #PH95-24: B, C and D on Exhibit 3.

The respective location of the Leased Premises is defined in Exhibit I of this agreement. Exhibit 2 shall act to define the geographical location for the Exhibit I reference. The Leased Premises is further defined as that portion of Parcel B, Parcel C and Parcel D (approx. 90 acres in total) which excludes a 100 foot easement along the eastern portion of the Leased Premises, and the eventual (commencing 60-days prior to the college opening for admission) 30 foot buffer along the entire southern side of Parcel B, beginning at the northernmost point of Parcel A. During the entire term of this Lease, the Tenant shall retain access to water via the existing ditch that runs along the south of Parcel A to allow the uninterrupted supply of water. Tenant shall not be held responsible or liable for damage to either ditch that is not caused directly or indirectly by his actions or control.

This Lease is subject to the following terms and conditions.

Term of Lease

1. The term of this Lease shall be for a period of three (3) years commencing on January 9, 2018 and ending on January 1, 2021 (Initial Term) with two additional one-year options at a mutually negotiated price acceptable to both parties herein. Landlord and Tenant shall work cooperatively at the expiration of each Lease term to mutually determine their needs and intentions for the following year. The final option shall expire on January 1, 2023.

2. (a) As rental for the Leased Premises, Tenant agrees to pay Landlord \$250.00 per acre, per year in advance, through the Initial Term of this Lease in the following manner: February 1, (1/2 year) = six months and August 1, (1/2 year) = six months payable by certified check, money order, without deduction or offset. Payment shall be made payable to Merced Community College District and delivered to Merced College, Accounts Receivable, 3600 M Street, Merced CA, 95348; or any other place(s) that may be designated by Landlord on a written notice to Tenant given in the manner prescribed in Paragraph 22 of this Lease.

(b) In times of severe drought affecting the agriculture in the State of California and the Landlord's recognition of the Tenant's ability to farm the Leased Premises due to such water shortages, the Tenant may request to negotiate with the Landlord for reducing the Lease rate per acre for that year. Any reduction in the agreed upon Lease rate shall be enforced for one year only and revert back to the original agreement rate of \$250 per acre for the following year. In consideration that the Tenant should receive federal subsidies due to California's drought for the year the rate was reduced, the Landlord and Tenant shall meet to negotiate any partial or full reinstatement of the original per acre rate. The Tenant agrees to provide all necessary financial information pertaining to the cost of farming the Leased Premises for the purposes of determining the correct amount of the rent. In the event the Tenant fails to provide the requested information, the rent will revert back to the original \$250.00 per acre annually.

(c) This agreement shall be subject to renegotiation and may be rescinded after 60 days' written notice to the Tenant if the District Governing Board determines that the property is needed for academic activities.

Use of Leased Premises

3. The Leased Premises are demised to Tenant for the following purposes and for, no other purpose except with the prior written consent of Landlord:

(a) The planting, growing, and harvesting of agricultural crops. More specifically, it is expressly agreed and understood by the Parties to this Lease that the Tenant will primarily cultivate alfalfa on the Leased Premises during the majority of the Lease Term and on the Leased Premises.

Operations on Leased Premises

4. (a) Tenant shall carry on all of the activities specified under Paragraph 3 in accordance with good husbandry and the best practices of the farming community in which the Leased Premises are situated. If Tenant fails to take any required action or conduct any operation in accordance with the best course of husbandry practiced in the farming community surrounding the Leased Premises, Landlord may, after giving Tenant thirty (30) day's written notice of the failure in the manner prescribed in paragraph 22 of this Lease, do either of the following, at the sole discretion of the Landlord: (a) enter the Leased Premises and take any reasonable action Landlord may deem necessary to protect Landlord's interest in this Lease and the Leased Premises; Tenant agrees to reimburse Landlord on demand for the cost of any reasonable actions taken by Landlord in accordance with the provision of this paragraph; or (b) declare the Tenant in default under this Lease and proceed under Paragraph 16 of this Lease.

(b) Tenant shall, at Tenant's cost and expense, comply with any and all laws, ordinances, rules, regulations, requirements, and orders (both present and future) of any federal, state, county, or municipal governments, which may in any way apply to the Tenant's use or occupancy of the Lease Premises, including without limitation, the use, maintenance, operation, or production of crops on the Leased Premises, or the sale or disposition of those crops.

(c) Tenant agrees not to apply pesticides, insecticides, fungicides, herbicides or other chemical treatments that will have a residual effect beyond the term of this Lease, except with the prior written consent of Landlord, which may be granted, denied, limited or conditioned at the sole and exclusive discretion of the Landlord. Notwithstanding Tenant's vacation of the Leased Premises, whether by expiration of the Term, termination of this Lease or otherwise, Tenant shall remain liable for the abatement, clean-up and remediation of the Leased Premises, which arise out of the Tenant's use or occupancy thereof.

Operating Costs

5. Tenant shall pay all costs in connection with Tenant's operations on the Leased Premises, including but not limited to costs of preparing the Leased Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities, and any tax or assessment imposed on the Leased Premises by Central California Irrigation District for the provision of water required by Tenant. Tenant is responsible for their own water.

Taxes and Assessments

6. Tenant shall pay, before delinquency, all personal property taxes or assessments levied on Tenant's personal property situated in or about the Leased Premises during the term of this Lease. On demand, Tenant shall provide to Landlord satisfactory evidence of payment of taxes. Landlord shall be responsible for the payment of real property taxes or assessments levied on the Leased Premises.

Insurance

7. Tenant shall, at all times during the term of this Lease, maintain and keep in force the following insurance coverage's with insurers' approved by Landlord. Tenant shall obtain a Commercial General Liability Insurance Policy with minimum coverage amounts of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. The Commercial General Liability Insurance Policy shall include coverage for product liability, personal injury, motor vehicle operations and other coverage's typically provided under a commercial general liability insurance policy. Tenant shall obtain and maintain a policy of insurance covering casualties to the Tenant's property in on, or about the

Leased Premises; such policy shall be on a full replacement value basis. Tenant shall obtain and maintain a policy of Workers Compensation insurance in minimum coverage amounts as required by law. The Landlord shall be an additional named insured to the Tenant's property casualty insurance policy and general liability insurance policy. Each policy of insurance shall include provisions providing for at least thirty (30) days advance written notice from the insurer to Landlord before material terms are modified or coverage is cancelled.

Maintenance

8. Tenant shall, at Tenant's own expense, keep and maintain the Leased Premises, all improvements on the Leased Premises, and all facilities appurtenant to the Leased Premises, including the Landlord's irrigation waterways (excluding waterways on Highway 152 and those damaged by District contractors during construction off Highway 152. Tenant agrees to notify Landlord immediately upon the discovery of any such damage not caused by Tenant) in good order and repair and in as safe and clean a condition as they were when received from Landlord at the commencement of the Term, reasonable wear and tear accepted.

Waste or Nuisance

9. Tenant shall not commit, or permit others to commit, any waste on the Leased Premises. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code Section 3479 on the Leased Premises. Tenant shall not use or permit the use of the Leased Premises for any unlawful purpose.

Alterations and Mechanics' Liens

10. (a) Tenant shall not make or permit any alterations or improvements to the Leased Premises without the prior written consent of Landlord, which may be granted, denied, limited or conditioned at the sole discretion of the Landlord. On termination or expiration of this Lease, all improvements and alterations other than trade fixtures shall be the property of Landlord, and no reimbursement to Tenant shall be required. Tenant shall remove all trade fixtures placed by Tenant on the Leased Premises on or before the expiration date of this Lease.

(b) Tenant shall keep the Leased Premises free and clear of any and all liens arising out of any work performed or material furnished at the request of Tenant, or obligations incurred by Tenant.

Inspection by Landlord

11. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Leased Premises at all reasonable times to determine whether Tenant is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect the Landlord's interest in the Leased Premises. So long as its entry and its activities upon entry to the Leased Premises do not materially interfere with the Tenant's use and occupancy of the Leased Premises, the Landlord may enter upon the Leased Premises at any time during the Term without advance notice to the Tenant or advance consent of the Tenant.

Acceptance by Tenant

12. Tenant accepts the Leased Premises, as well as the improvements on the Leased Premises and facilities appurtenant to the Leased Premises, in their "as is" present condition. Tenant agrees with, and represents to Landlord, that the Leased Premises have been inspected by Tenant and that Tenant has relied solely on the results of its own inspection and that Tenant's decision to enter into this Lease is a result of such Tenant inspection and not as a result of any representations made by Landlord or Landlord's agents or representatives. Tenant acknowledges and agrees that neither Landlord nor any agent or representative of the Landlord have made any representation or warranty to the Tenant or any agent or representative of the Tenant regarding the Leased Premises or the suitability of the Leased Premises for

the conduct of Tenant's business thereon or the Tenant's anticipated use or occupancy thereof. Tenant's taking possession of the Leased Premises shall be deemed conclusive evidence of the foregoing.

Indemnification of Landlord

13. Tenant shall indemnify and hold the Indemnified Parties harmless from all damages, injuries, or claims arising in or about the Leased Premises or arising out of this Lease or from Tenant's use or occupancy of the Leased Premises. The Indemnified Parties are: Merced Community College District; the Board of Trustees of the Merced Community College District; all officers, employees, agents and representatives of the Merced Community College District. Tenant's obligations hereunder shall survive termination of this Lease or expiration of the Term.

Assignment and Subleasing

14. Tenant shall not assign, transfer, or encumber this Lease or any interest in this Lease without the prior written consent of Landlord, which may be denied, granted, limited or conditioned at the sole discretion of the Landlord. Tenant shall not sublease all or any part of the Leased Premises or allow any persons other than Tenant's agents, family, or employees to occupy or use all or any part of the Leased Premises without the prior written consent of Landlord, which may be denied, granted, limited or conditioned in the sole discretion of the Landlord. Landlord's consent to one assignment, sublease, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, sublease, occupation, or use by any other person. Any assignment or subleasing without the prior written consent of Landlord shall be void. Notwithstanding consent of the Landlord to assignment of this Lease or sublet of the Leased Premises, Tenant shall remain liable to the Landlord for the performance of the Tenant's obligations herein.

Default by Tenant

15. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(a) Any failure by Tenant to pay the rent or to make any other payment required to be made by Tenant under this Lease (when that failure continues for ten (10) days after written notice of the failure is given by Landlord to Tenant);

(b) The abandonment or vacation of the Leased Premises by Tenant;

(c) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when that failure continues for thirty (30) days after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the nature of that default is such that it cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if Tenant commences that cure within that thirty (30) day period and thereafter diligently prosecutes it to completion; or

(d) The making by Tenant of any general assignment for the benefit of creditor; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, when possession is not restored to Tenant within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, when that seizure is not discharged with 30 days.

The notices provided for in subsections (a) through (d) of this paragraph are intended to replace, any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161, et seq.

Recovery of Damages on Tenant's Default

16. In the event of any default by Tenant under this Lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease, by giving written notice of the termination. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the Lease. In the event Landlord elects to terminate this Lease, Landlord may recover from Tenant all of the following:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of the Lease's termination;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after the Lease's termination, until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease.

Landlord's Right to Continue Lease in Effect after Breach

17. If Tenant breaches this Lease and abandons the Leased Premises before expiration of the Term, Landlord may continue this Lease in effect by not terminating Tenant's right to possession of the Leased Premises, in which event Landlord shall be entitled to enforce all its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

Condemnation

18. If all or any part of the Leased Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease,

(a) Either Landlord or Tenant may terminate this Lease by giving the other thirty (30) days written notice of termination; provided, however, that Tenant cannot terminate this Lease unless the portion of the Leased Premises taken by eminent domain is so extensive as to render the remainder of the Leased Premises useless for the uses permitted by this Lease; and

(b) If only a portion of the Leased Premises is taken by eminent domain and neither Landlord nor Tenant terminates this Lease, the rent thereafter payable under this Lease shall be reduced by the same percentage that the total acres of the portion taken by eminent domain bears to the total acreage of the Leased Premises.

(c) Any and all damages and compensation awarded or paid because of taking of the Leased Premises shall belong to Landlord, and Tenant shall have no claim against Landlord or the entity exercising eminent domain power for the value of the unexpired term of this Lease or any other right arising from this Lease.

Oil, Gas, and Mineral Rights

19. All rights in any and all minerals, oils, gas, and other hydrocarbons located on or under the Leased Premises are reserved to Landlord and are particularly exempt from the property covered by the terms of this Lease. Tenant hereby grants to Landlord, Landlord's agents and licensees, and Tenants of these rights, a right of entry and right of way for access to the Leased Premises for the exploration, drilling, and mining of minerals, gas, oil, and other hydrocarbons on or under

the Leased Premises. Landlord, however, shall reimburse Tenant for any interference with the quiet enjoyment or agricultural operations on the Leased Premises arising from such exploration, drilling, or mining operations performed by Landlord, Landlord's agent and licensees, and Tenants of these rights.

Hunting Rights

20. All of the hunting rights and privileges on Leased Premise are reserved to Landlord. Tenant agrees that he/she will not permit any hunting on the Leased Premises without the prior written consent of Landlord.

Attorney's Fees

21. If any litigation is commenced between the parties to this Lease concerning the Leased Premises, this Lease, or the rights and duties of either in relation to the Leased Premises or to this Lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys' fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

Notices

22. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to [any member of or the designated agent of] the party to whom they are directed, or in lieu of personal service when deposited in the United States mail, certified mail (return receipt requested), first-class postage prepaid, addressed to Tenant at:

Kenneth Sadler
P.O. Box 2156
Los Banos, CA 93635

Or Landlord at:

Merced Community College District
Attn: Vice President of Administrative Services
3600 M Street
Merced, California 95348-2898

Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

Surrender of Leased Premises

23. On the last day of the Initial Term or any subsequent renewal term, or on sooner termination of this Lease, Tenant shall surrender to the Landlord the Leased Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear expected, free and clear of all liens, claims and encumbrances. Said condition shall be similar to that existing as of the date of commencement of this Lease, excepting normal ordinary wear and tear. Tenant shall remove from the Leased Premises all of Tenant's personal property, trade fixtures, and any improvements made by Tenant which Tenant and Landlord agreed would be removed by Tenant. All property not so removed shall be deemed abandoned by Tenant. If the Leased Premises are not so surrendered at the termination or expiration of this Lease, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Premises including, without limitation, any claims made by any succeeding Tenant or losses to Landlord due to lost opportunities to lease to succeeding Tenants.

Binding on Heirs and Successors

24. This Lease and each of its provisions shall be binding on and shall endure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this Lease. Nothing contained in this paragraph shall be construed as consent by Landlord to any assignment of this Lease or any interest in this Lease by Tenant except as provided in Paragraph 14 of this Lease.

Time of Essence

25. Time is of the essence of this Lease and each provision contained within, and each provision is made and declared to be a material, necessary, and essential part of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this amendment, through their respective officers or representatives, duly authorized, as of the day and year shown below.

ACCEPTED AND AGREED on the date indicated below:

Executed on _____, 2017, in the City of Merced, Merced County, California

Landlord

Tenant

Chris Vitelli
Superintendent/President

Kenneth Sadler