RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Department of Public Utilities
5607 W. Jensen Avenue
Fresno, CA 93706
Attention: Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Lease and Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By: [_____]
Name: [_____]
Title: [_____]

LEASE AND AGREEMENT

Between

CITY OF FRESNO, CALIFORNIA, a municipal corporation

And

Quist Dairy, a General Partnership

Regarding

Regional Wastewater Reclamation Facility Properties and Effluent

APN 327-030-38, 327-030-41
APN 327-030-22s
APN 327-040-11, 327-040-26

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THIS LEASE AGREEMENT ("Agreement" or "Lease") is made and effective as of the First day of January 2010, (Effective Date) by and between the City of Fresno, California, a municipal corporation, hereinafter referred to as "Lessor" and Quist Dairy, a General Partnership hereinafter referred to as "Lessee."

WITNESSETH

WHEREAS, Lessor owns the Regional Wastewater Reclamation Facility, a publicly owned treatment works, ("Facility") including certain appurtenant properties acquired by Lessor for the future expansion of percolation and/or infiltration ponds around the Facility which are the subject of this Lease and more specifically described below (collectively the "Leased Premises"); and

WHEREAS, the Facility generates recycled undisinfected secondary effluent ("Effluent"); and

WHEREAS, Lessee desires to lease the Leased Premises and irrigate portions thereof with Effluent for Lessee's cultivation of feed, fiber, and food crops/products thereof to be used solely for non-human consumption; and

WHEREAS, in pursuit of the public interest Lessor desires to lease the Leased Premises to Lessee and dispose of Effluent upon the terms and conditions herein; and

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for such other good and valuable consideration hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

GRANT AND DESCRIPTION OF LEASED PREMISES

A. GRANT AND DESCRIPTION OF LEASED PREMISES

Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor in "as is" condition, the following properties including any appurtenances/improvements thereon, more specifically identified and described on Exhibit A attached hereto and made a part hereof, said property hereinafter collectively referred to as the "Leased Premises":

- APN 327-030-38 and APN 327-030-41 containing 119.5 acres,
- APN 327-030-22s containing 127.7 acres, and
- APN 327-040-11 and 327-040-26 containing 198 acres

B. AUTHORIZED USE OF LEASED PREMISES AND EFFLUENT

1. Authorized Uses of the Leased Premises and Effluent: The Leased Premises and Effluent may be used only for cultivating and harvesting fiber, feed, and seed crops for non-human consumption. Except to any extent expressly provided for in this Agreement, Lessee shall bear all costs incurred by it in pursuit of this Agreement.

2. Required Use of Effluent: Lessee shall be required to use recycled undisinfected secondary Effluent made available by Lessor at no cost to Lessee. If there is a need to use other source(s) of irrigation water Lessee may do so at Lessee's own cost upon Lessor's prior written consent. Lessee shall pay all other water charges, electrical charges or taxes in connection with the delivery of well and/or Fresno Irrigation District water. Consistent with this Agreement Lessee shall have the right to use agricultural pumps/wells subject to City approval located in the Leased Premises at Lessee's expense.

3. Good Farming Practices: Lessee shall at all times act in a good farmer like manner and in accordance with the best practices in the area and shall use its best efforts and skills in this regard. Without limiting the foregoing and unless otherwise expressly provided in this Agreement Lessee shall (i) keep down and control the growth of noxious weeds and grasses on the Leased Premises including non-farmable areas, fence lines, and road rights of way, if any, provided that Lessor shall cooperate to keep down and control the growth of noxious weeds and grasses on non-farmable portions of the Leasehold consistent with the parties' prior course of conduct, and (ii) Lessee shall comply with the reclamation requirements of the Facility, the requirements of the California Regional Water Quality Control Board, and the requirements of the California Code of Regulations (CCR) Title 22, summarized in Exhibit B, attached hereto and incorporated herein, as such are amended from time to time. In addition to all rights and remedies available to Lessor in law and equity, Lessee shall reimburse Lessor for any fines or penalties imposed by regulatory agencies, and any costs associated with said action, resulting from Lessee's violation of any such requirements contained herein.

4. Reporting of Applications to Soil: In addition to any other reports required by law Lessee shall submit to Lessor by no later than January 10th of each year hereunder as well as the year subsequent to the end of the Lease term, and at other times upon the Lessor's written request, (i) an estimated accounting of all nitrogen supplements used on the Leased Premises, together with a listing of all fertilizers, herbicides, soil amendments, the types of crops and the amount of acreage for each during the term of this Lease, and (ii) any information necessary to comply with the reporting requirements of California Regional Water Quality Control Board ("CRWQCB") Order No. 5-01-254 Waste Discharge Requirements for the City of Fresno and Clovis Wastewater Treatment Plant, and any subsequent order(s) issued by the CRWCQB pertaining to recycled water[1]. This provision shall survive expiration or termination of this Lease.

(1) A copy of CRWQCB Order No. 5-01-254 Water Discharge Requirement for the City of Fresno and Clovis Wastewater treatment Plant is available from Lessor.

5. Limitations on Use of Leased Premises and Effluent:

a. Lessee shall neither use, suffer, nor permit the use of the Leased Premises and Effluent for any improper, immoral, unlawful, or unauthorized purpose(s).

b. Lessee shall neither use, suffer, nor permit the use of the Leased Premises and Effluent for any purpose nor allow any activity therein which would create a nuisance.

c. Except to the extent required by good farming practices, Lessee shall not construct improvements upon the Leased Premises or alter, improve, remove trees from or add to the Leased Premises or any existing structure on such Premises.

d. Lessee shall not plant or cultivate food crops for human consumption.

C. CONFLICT BETWEEN "AUTHORIZED" AND "UNAUTHORIZED" USES

With respect to any use of the Leased Premises and Effluent which may be contemplated or undertaken under authority of this Lease, if any such use may, in any way whatsoever, reasonably be deemed to involve a conflict between "Authorized" and "Unauthorized" uses as set forth herein, the prohibitions, restrictions and limitations set forth within this Lease shall, in any and all such cases, prevail, and no "unauthorized" use of the Leased Premises, in whole or in part, shall be undertaken by Lessee or Lessee's successor' or assigns, employees, agents, representatives unless and until such use is limited to the degree/extent necessary to eliminate any element/portion thereof giving rise to any such conflict.

D. MORTGAGE OF CROPS AND AGRICULTURAL LIENS

As further consideration for, and in order to secure rights and benefits granted to Lessee hereunder, Lessee agrees to execute agricultural lien and/or financing statement documents upon the reasonable request of Lessor.

It is anticipated that Lessee may finance some or all of the growing of crops on the Leased Premises by crop loan. Lessor agrees to subordinate any security interest or lien it may hold with respect to any crops grown on the Leased Premises to third party crop financing.

ARTICLE II

RENTAL FEES AND OTHER CHARGES

A. ANNUAL RENTAL FEE AND DUE DATE

Commencing on the Effective Date of this Lease and then continuing thereafter during the term of this Lease, as additional consideration to the public purposes and uses underlying this Lease including disposition and recycling of Effluent, Lessee shall pay to Lessor an annual rental fee for the Leased Premises according to the following schedule, subject to non-renewal/earlier termination as provided in this Lease:

APN 327-030-38 and APN 327-030-41

- Year 2010 $40,032.50
- Year 2011 $40,032.50
- Year 2012 $40,032.50
- Year 2013 $40,032.50
- Year 2014 $40,032.50
- Year 2015 $40,032.50 Option 1 Extension
- Year 2016 $40,032.50 Option 2 Extension

APN 327-030-22s

- Year 2010 $42,779.50
- Year 2011 $42,779.50
- Year 2012 $42,779.50
- Year 2013 $42,779.50
- Year 2014 $42,779.50
- Year 2015 $42,779.50 Option 1 Extension
- Year 2016 $42,779.50 Option 2 Extension

APN 327-040-11 and 327-040-26

- Year 2010 $65,340.00
- Year 2011 $65,340.00
- Year 2012 $65,340.00
- Year 2013 $65,340.00
- Year 2014 $65,340.00
- Year 2015 $65,340.00 Option 1 Extension
- Year 2016 $65,340.00 Option 2 Extension

Total annual rental fee in each year hereunder shall be due and payable in advance in two equal installments due and payable on each January 15th and July 15th hereunder. The annual rental fees due hereunder for any period less than a full calendar year shall be prorated.

B. **PLACE OF PAYMENT**

All fees/charges due to be paid to Lessor by Lessee hereunder shall be paid to Lessor (make check payable to City of Fresno) at the address shown below or at such other address to which Lessor, by service of written notice upon Lessee, may direct the payment thereof from time to time during the term hereof:

City of Fresno - Regional Wastewater Reclamation Facility
Attn: Management Analyst
5607 West Jensen Avenue
Fresno, CA 93706

C. **LATE PAYMENT CHARGE**

Should any installment of rental fees accruing to Lessor under the provisions of this Lease not be received by Lessor within ten (10) calendar days after such shall be due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount shall be added thereto and constituting a part thereof shall be assessed by Lessor as rent each and every day until the entire delinquent amount is received by Lessor.

D. **TAXES**

Lessee agrees to pay, before delinquency, as and when due, any and all lawful taxes, assessments or charges which, during the life hereof, may be levied by the State, County, City, and/or other tax-levying body on any part or all of the personal property of Lessee and/or upon the possessory interest, if any, of Lessee in the Leased Premises under this Lease (See the following "Note.")

Note:

Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Lessee under this Lease, Lessee, by its signature hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Lease, Lessee either took a copy of this Lease to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Lessee's full and complete satisfaction, how much Lessee will be taxed, if at all.

ARTICLE III

TERM OF LEASE

A. TERM

The initial term of this Lease shall commence on the Effective Date and end December 31, 2014, whereupon and provided Lessee is not then in default hereunder, this Lease shall automatically renew for up to two (2) one year option terms upon Lessee's written notice of renewal served on Lessor not later than ninety (90) days prior to expiration of the then current initial or option term, subject to earlier termination as provided in this Lease.

B. DEFINITION

The phrase, "the life of this Agreement", and any and all readily identifiable variations thereof, when used herein, means the full term of this Agreement, as specified within Section A. of this Article, above, unless this Agreement shall be terminated earlier as herein provided, in which event, said phrase and said variations thereof, shall mean the lesser period during which this Agreement shall be in full force and effect.

C. TERMINATION

This Agreement shall terminate upon the earlier of: Lessor's written notice following Lessee's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Lessee; Lessor's written notice of termination following Lessor's determination that the Leased Premises/portion thereof are required for a public or governmental purpose; a party's written notice as provided for in this Agreement; or expiration. Any such termination shall not relieve a party of obligations due and owing at the time of termination. Immediately upon any such termination, Lessee shall make re-delivery of the Leased Premises as provided in this Article III. Upon any termination of this Lease, Lessor shall (i) at Lessor's option, either pay Lessee the reasonable fair market value of growing crops planted and cultivated by Lessee, or allow Lessee to hold over (in the manner provided for in this Lease Agreement) in order to complete the next occurring harvest of said crops at Lessee's sole cost and expense, and (ii) refund to Lessee any unearned rental fees.

D. RE-DELIVERY

Upon any termination of this Lease, subject to Section C. of this Article III, Lessee shall have no right(s), title or interest in or to the Leased Premises and Lessee shall peaceably and quietly discontinue use of the Leased Premises and quit and deliver up such to Lessor. At Lessor's option and to the extent allowed by law, the Leased Premises may be left in the condition which exists at the time of the termination of this Lease, or Lessor may reasonably require Lessee to return the Leased Premises to the condition as when received, ordinary wear and tear excepted. In the event Lessee fails, upon Lessor's request, to so return the Leased Premises to Lessor in the condition as when received, Lessor shall, upon giving written notice to Lessee, have the right to make all necessary restoration and invoice Lessee for all related costs incurred. Lessee

agrees to pay, upon demand, such reasonable charges billed by Lessor pursuant to this subsection. The provisions of this Section shall survive termination of this Lease.

E. **HOLDING OVER**

1. In the event Lessee shall remain in possession of the Leased Premises or any part thereof, after the expiration of this Lease, and thus hold over the term hereof, with or without the written consent of Lessor, such holding over occupancy shall be a tenancy from month to month only, terminable by either party hereto upon service of a minimum of thirty (30) days advance written notice upon the other party.

2. During any such holding over period, Lessee agrees to pay and shall pay to Lessor monthly rental, fees, and charges for the Leased Premises, at the rate in effect at the time of the commencement of the hold over.

3. Except as otherwise specifically provided within this Article, any such holding over shall be subject to all the terms, covenants, conditions, restrictions, reservations, prohibitions, warranties, agreements, and provisions of this Agreement applicable to a month to month tenancy.

ARTICLE IV
OBLIGATIONS OF LESSEE

A. **ALTERATIONS/ADDITIONS/ MODIFICATIONS/ IMPROVEMENTS**

Lessee shall not make any alterations, additions, modifications, or improvements in/on/to any part of the Leased Premises, at any time during the term hereof, for any purpose whatsoever, unless consented to in advance by Lessor.

B. **INSPECTION/ACCEPTANCE OF LEASED PREMISES**

Lessee expressly warrants, stipulates, acknowledges, agrees, and/or represents to Lessor as set forth within the following sub-paragraphs of this paragraph.

1. Inspection and examination of Leased Premises by Lessee: Prior to Lessee's affixing its signature(s) hereto, Lessee inspected and examined the Leased Premises and any improvements located in and/or on same and the facilities appurtenant thereto and determined and/or was assured, by means independent of Lessor or any employee, agent, or representative of Lessor, to Lessee's full and complete satisfaction, the condition thereof, and Lessee also determined or was assured, to Lessee's full and complete satisfaction, by means independent of Lessor or any employee, agent, or representative of Lessor, of the truth of all facts material to this Lease, and this Lease is/was executed by Lessee as a result of Lessee's inspection and investigation and not as a result of any representations made by Lessor or any employee, agent, or representative of Lessor.

2. Acceptance of Leased Premises by Lessee in "as is" condition: Lessee warrants to Lessor that prior to Lessee's execution hereof, Lessee, by means independent

of Lessor or any employee, agent or representative of Lessor, determined, to Lessee's full and complete satisfaction, the acceptability of the Leased Premises to Lessee for such uses as are authorized herein, and that Lessee accepts said Premises in an "as is" condition.

C. **LIABILITY FOR DAMAGE**

Lessee shall be liable for and shall promptly repair any damage to the Leased Premises where such damage shall be attributable to any act or omission on the part of Lessee, Lessee's employees, contractors, subcontractors, agents, representatives, associates, guests, and/or invitees. Should Lessee fail or be unable to promptly affect any such repairs, Lessor shall have the right to make such repairs, and Lessee agrees to reimburse Lessor for all reasonable costs of such repairs, including reasonable administrative costs.

D. **MAINTENANCE/REPAIR**

1. Maintenance and Repair Costs. Lessee shall keep the Leased Premises and all its fixtures, equipment and personal property in a clean and orderly condition and appearance. Lessee shall undertake at its sole cost and expense such maintenance and repairs, in a reasonably and timely manner consistent with the circumstances, as shall be required in order to maintain any pumps, pipelines, stand pipes and ditches on the Leased Premises (the "Premises Improvements") in a good operating condition, *provided* that such obligation shall not extend to Major Repair Events and Major Repair Costs as defined below and except that Lessee shall not be responsible for normal wear and tear. Lessee shall be responsible for any damage to the Premises Improvements resulting from Lessee's negligence or willful misconduct.

2. Major Repair Events and Costs. For the purpose of this Agreement, a "Major Repair Event" shall consist of any of the following in connection with the Premises Improvements, but not the Effluent Improvements:

   - Overhaul of any pump and/or motor is needed;
   - Replacement of the pump bowls is needed;
   - The stand pipes or pipelines crack; or
   - The stand pipe gates and/or valves need repairing or replacement.

"Major Repair Costs" shall mean all expenses arising from a Major Repair Event. Lessor shall undertake in a reasonably and timely manner consistent with the circumstances, repairs and replacements due to a Major Repair Event, unless the parties negotiate otherwise. No party to this Agreement shall be in any way obligated to enter into, continue, or conclude any such negotiations. Upon a Major Repair Event, unless Lessee and Lessor negotiate and agree upon the repair work to be done and the manner in which the costs thereof will be allocated, Lessor shall undertake repairs or replacements due to a Major Repair Event. Lessee may agree or not agree to share in the Major Repair Costs in its sole and absolute discretion. Lessor shall be responsible for any

damage to the Premises Improvements resulting from Lessor's negligence or willful misconduct.

Lessor at its sole cost and expense shall be responsible for replacement or reconditioning of pumps and related improvements used for the distribution of Effluent, the "Effluent Improvements".

E. LESSOR'S RIGHT TO ENTER AND TO EMERGENCY EFFLUENT DISCHARGE

Lessor's representatives shall have the right to enter upon all or any part of the Leased Premises at any and all reasonable hours on any day of the week for any lawful purpose(s) including: (i) the purpose of determining whether or not Lessee is complying with the provisions hereof and fulfilling its obligations hereunder; (ii) the purpose of inspecting same; (iii) the purpose of making any required repairs of an emergency nature to which Lessee cannot adequately respond; and (iv) to perform soil sampling and testing. Lessee understands that Lessee may be billed by Lessor for the full cost of performing such repairs.

Lessee acknowledges and agrees that in the event of an emergency Lessor shall have the absolute right to discharge treated Effluent onto the Leased Premises, at any time and in any amount, provided that Lessor shall reimburse Lessee for any actual damages incurred by Lessee resulting directly and proximately from said emergency discharge and further provided that Lessor shall abate and refund rental fees on the affected acreage for the period such acreage is rendered unusable for Lessee's purposes hereunder. Lessor shall have no other or further liability, responsibility or obligation to Lessee as of result of such emergency discharge of Effluent. In this regard Lessee understands and voluntarily agrees to assume the risk inherent in farming in an area subject to discharge of Effluent.

F. UTILITIES

During the term of this Lease and except to any extent otherwise expressly provided by this Agreement, Lessee shall pay all utility charges arising in pursuit of this Lease, except for utility charges arising from operation of Effluent lift pumps. Lessee shall pay such utility charges before delinquency and Lessor and the Leased Premises shall be protected and held harmless by Lessee therefrom.

G. DISPOSABLE WASTE

Lessee shall make proper arrangement for the disposal of any and all solid or liquid waste which may result from or be incidental to Lessee's use of the Leased Premises.

H. CONTROL OF HAZARDS AND NUISANCES

In its pursuit of this Agreement and unless otherwise expressly provided in this Agreement, Lessee shall keep the Leased Premises and each and every part thereof in a neat, clean and orderly condition, and shall prevent the accumulation of, and shall maintain said Premises free from any refuse or waste materials which might be or constitute a potential health, environmental, or fire hazard or public or private nuisance. Lessee in its pursuit hereof shall not cause or knowingly permit to occur any violation of

any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the Leased Premises, or arising from Lessee's use(s) or occupancy(ies) thereof, including, but not limited to, soil and ground water conditions.

ARTICLE V

DEFAULT

A. DEFAULT BY LESSOR

Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor under this Lease within a reasonable period of time, but in no event later than thirty (30) days after written notice is served upon Lessor by Lessee specifying wherein Lessor has failed to perform any such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days may reasonably be deemed to be required for performance, then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

B. DEFAULT BY LESSEE

1. Defaults: The occurrence of any of the following events shall constitute a material default and breach of this Lease by Lessee:

   a. The vacating or abandonment of the Leased Premises by Lessee.

   b. The failure by Lessee to use the Leased Premises for lawful purposes only and/or failure by Lessee to comply with or observe any statute, law, ordinance, rule, regulation, standard or requirement of any federal, state, or local government entity with respect to Lessee's occupancy(ies) and/or use(s) of any part or all of the Leased Premises, as such statutes, laws, ordinances, rules, regulations, standards or requirements exist(ed) on the commencement date of the term hereof or as such may exist at any time and from time to time during the life hereof, where any such failure shall be evidenced by either a finding or judgment of any court of competent jurisdiction or where any such shall be admitted by Lessee in any proceeding brought against Lessee by any government entity.

   c. The inability of and/or failure by Lessee to obtain, pay for, and maintain in full force and effect at all times during the life of this Lease, without any lapse in coverage, such insurance and surety as shall be required of Lessee hereunder.

   d. The occurrence of any of the following:

      (1) Lessee's becoming insolvent, or failing in business, or the making by Lessee of any general arrangement or an assignment for the benefit of creditors;

(2) The filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty [60] days);

(3) the appointment of a receiver to take possession of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or

(4) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Lease, where such seizure in not discharged within thirty (30) days.

e. Any attempted/purported hypothecation, encumbrance, sale, assignment, or transfer of this Lease, in whole or in part, and/or any of Lessee's rights, title and interests in or to any part or all of the Leased Premises and Effluent and/or in or to any part or all of the improvements and appurtenances thereto which exist(ed) therein or thereon at the commencement of the term hereof or which may at any time and from time to time be constructed/installed therein or thereon during the life of this Lease, or any attempted/purported sub-letting/renting of any part or all of the Leased Premises and Effluent by Lessee to any other person or entity whomsoever, or Lessee's following any occupancy/use of the Leased Premises, in whole or in part, by any person/entity, other than Lessee, without Lessor's prior written consent pursuant to and in conformity with the provisions of this Lease.

f. The failure by Lessee to make any payment of rent or any other required payment, as and when due hereunder, where such failure shall continue for a period of ten (10) days following service of notice thereof upon Lessee by Lessor.

g. The failure by Lessee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Lease to be kept, observed, undertaken, fulfilled, and/or performed by Lessee, other than those hereinabove within sub-paragraphs 1a through 1f of this section of this Article expressly set forth and provided for, where such failure shall continue for a period of thirty (30) days following service of notice thereof upon Lessee by Lessor; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default and breach of this Lease if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible following service of such notice upon Lessee by Lessor.

2. Lessor's Remedies:

a. Abandonment: If Lessee abandons the Leased Premises, this Lease shall continue in effect. Lessor shall not be deemed to terminate this Lease as a result of such material default and breach other than by written notice of termination served upon Lessee by Lessor, and Lessor shall have all of the remedies available to Lessor under Section 1951.4 of the Civil Code of the State of California so long as Lessor does not terminate Lessee's right to possession of the Leased Premises, and Lessor may enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due under the Lease. After abandonment of the Leased Premises by Lessee, Lessor may, at any time thereafter, give notice of termination.

b. Termination: Upon the occurrence of any material default and breach of this Lease by Lessee as set forth within sub-section 1 of this Section B. of this Article V, above, Lessor may then immediately, or at any time thereafter, terminate this Lease by service of a minimum of ten (10) days advance written notice to such effect upon Lessee, in which event this Lease shall terminate at 11:59:59 p.m., on the termination date specified within such notice.

(1) Such notice shall, as a minimum, set forth the following:

(a) The default and breach which resulted in such termination by Lessor; and

(b) a demand for possession, which, in the event only ten (10) days advance notice shall be given by Lessor, shall be effective at 12:00:01 a.m., on the eleventh (11th) calendar day following the date on which the notice in which such demand is contained shall be sufficiently served upon Lessee by Lessor in conformity with the provisions of Article IX, Section L, "Notices," of this Lease; or, if more than the minimum number of days advance notice shall be given, at 12:00:01 a.m., on the next day following the date specified within such notice as being the date of termination hereof.

(2) Such notice may contain any other notice which Lessor may, at its option, desire or be required to give (e.g., "Demand For Payment" of any and all monies due and owing).

c. Possession: Following termination of this Lease by Lessor pursuant to any of the provisions of this Section B. of this Article V, without prejudice to other remedies Lessor may have by reason of Lessee's default and breach and/or by reason of such termination, Lessor may:

(1) peaceably re-enter the Leased Premises upon voluntary surrender thereof by Lessee; or

(2) remove Lessee and/or any other persons and/or entities occupying the Leased Premises therefrom, and remove all personal property therefrom and store all such property not belonging to Lessor in a public warehouse or elsewhere at the cost of and for the account of Lessee, using such legal proceedings as may be available to Lessor under the laws or judicial decisions of the State of California; or

(3) repossess the Leased Premises or relet the Leased Premises or any part thereof for such term (which may be for a term extending beyond the term of this Lease) at such rental and upon such other terms and conditions as shall be determined solely by Lessor, with the right to make reasonable alterations and repairs to the Leased Premises.

d. Recovery: Following termination of this Lease by Lessor pursuant to any of the provisions of this Section B. of this Article V, Lessor shall have all the rights and remedies available to Lessor under Section 1951.2 of the Civil Code of the State of California. The amount of damages Lessor may recover following such termination of this Lease shall include:

(1) the worth at the time of award of the unpaid rent which had been earned at the time of termination of this Lease;

(2) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Lease until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period Lessee proves could be reasonably avoided; and

(4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

e. Additional Remedies: Following the occurrence of any material default and breach of this Lease by Lessee as set forth within paragraph 1 of this Section B. of this Article V, above, in addition to the foregoing remedies, Lessor may maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Leased Premises and, so long as this Lease is not terminated by Lessor or by a decree of a court of competent jurisdiction, Lessor shall be entitled to enforce all of Lessor's rights and remedies hereunder, including the right to recover the rent as it becomes due under this Lease, and, during any such period, Lessor shall have the right to remedy any default of Lessee, to maintain or improve the Leased Premises without terminating this Lease, to incur expenses on behalf of

Lessee in seeking a new sub-tenant, to cause a receiver to be appointed to administer the Leased Premises and any new or existing sub-leases and to add to the rent payable hereunder all of Lessor's reasonable costs in so doing, with interest at the maximum reasonable rate then permitted by law from the date of such expenditure until the same is repaid.

f. Other: In the event Lessee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Lease, Lessor shall be entitled to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

g. Cumulative Remedies: Each right and remedy of Lessor provided for in this Section B. of this Article V or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Lessor from exercising any other rights or from pursuing any other remedies provided for in this Lease or now or hereafter available to Lessor under the laws or judicial decisions of the State of California.

h. Indemnification: Nothing contained within this Section B. 2 of this Article V affects the right of Lessor to indemnification by Lessee, as herein elsewhere provided, for liability arising from personal injuries or property damage prior to the termination of this Lease.

ARTICLE VI

DESTRUCTION OF IMPROVEMENTS

A. GENERAL

Other than as provided for in Section D. of Article IV, in the event that any or all of the improvements located in or on the Leased Premises, or any part thereof, shall be partially or totally destroyed at any time during the life hereof, the respective rights and obligations of the parties hereto with respect to the reconstruction, restoration, and/or repair of such improvements, and with respect to the matter of the continuance or termination of this Lease following any such destruction, shall be controlled by the provisions of this Article VI.

B. DEFINITIONS

For the purposes of this Lease, the following definitions shall apply:

1. "Partial Destruction": The term, "Partial Destruction," as used herein, shall be deemed to mean a destruction of any improvements to such an extent that the then currently estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction shall not exceed fifty percent (50%) of the then currently estimated total replacement cost of the destroyed improvements (excluding land and personal properties.)

2. "Total Destruction": The term, "Total Destruction," as used herein, shall be deemed to mean a destruction of any improvements to such an extent that the then currently estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction shall exceed fifty percent (50%) of the then currently estimated total replacement cost of the destroyed improvements (excluding land and personal properties.)

C. **NOTICE BY LESSEE**

Lessee shall notify the Lessor of any instance of damage to or destruction of the Leased Premises immediately upon Lessee's becoming aware of any such an occurrence.

D. **PARTIAL AND/OR TOTAL DESTRUCTION AS THE RESULT OF A NEGLIGENT OR WILLFUL ACT BY LESSEE**

In the event any or all of the improvements located in or on any part or all of the Leased Premises shall, at any time during the life hereof, suffer either partial or total destruction, if such destruction shall be the result of any negligent or willful act by Lessee, this Lease shall continue in full force and effect, without any abatement of rental, and Lessee shall, at Lessee's expense, promptly commence the reconstruction, restoration, replacement, and/or repair of such improvements and shall diligently prosecute and complete said reconstruction, restoration, replacement, and/or repair, within a reasonable period of time, so as to restore said improvements to as good or better condition of habitability and/or usability (for those certain uses as herein authorized) as existed immediately prior to the occurrence of any such destruction.

E. **PARTIAL AND/OR TOTAL DESTRUCTION NOT THE RESULT OF A NEGLIGENT OR WILLFUL ACT BY LESSEE**

1. Partial Destruction Not Substantially Interfering with Lessee's Occupancy and Use of Premises:

   a. In the event the Leased Premises shall be partially destroyed and such destruction shall have been caused by other than a negligent or willful act by Lessee and Lessee shall determine that such destruction does not substantially interfere with Lessee's occupancy and use of the Leased Premises or Lessee's operations therein and thereon, Lessee shall, within ten (10) days following the occurrence of any such destruction, serve Lessor with written notice of such determination along with Lessee's request that Lessor restore such partially destroyed improvements. Upon service of any such notice and request by Lessee, Lessor, within thirty (30) days after the date of any such destruction, shall, at Lessor's option, either:

      (1) serve Lessee with written notice of Lessor's intent to restore said premises, at Lessor's expense, to substantially the same condition as existed just prior to the occurrence of such destruction (except for Lessee's fixtures, equipment and/or Lessee-installed

improvements which Lessor shall not be obligated to replace, repair, and/or restore), in which event, subject to the provisions of Section F. of this Article VI, below, this Lease shall continue in full force and effect; or

(2) if Lessor determines that restoration is not fiscally prudent, Lessor shall serve Lessee with a minimum of thirty (30) days but not more than sixty (60) days advance written notice of cancellation and termination of this Lease, in which event, subject to the provisions of subparagraph c. of this paragraph 1 of this Section E. of this Article VI, below, this Lease shall be canceled and terminated as of the date specified within such notice.

b. If for any reason Lessor shall fail to provide Lessee with notice pursuant to the provisions of either subparagraph a(1) or a(2) of this subsection 1, above, within the period of time allowed therefore, or in the event Lessor shall serve Lessee with notice pursuant to the provisions of subparagraph a(1) of this subsection 1, above and shall either fail to commence such repair and restoration within sixty (60) days following the date of any such destruction, or, if commenced during such period, shall fail to fully repair, reconstruct and/or restore the Leased Premises within one hundred twenty (120) days following the date of such destruction, then, in either such event, at any time prior to completion of the repairs, reconstruction, and/or restoration by Lessor, Lessee shall have the right to cancel and terminate this Lease by service of a minimum of thirty (30) days advance written notice upon Lessor to this effect, in which event, notwithstanding Lessor's commencement or completion of the required work following service of such notice by Lessee, this Lease shall be canceled and terminated as of the date specified within Lessee's notice to Lessor.

c. In the event Lessor serves Lessee with notice of Lease cancellation and termination as provided for in subparagraph a(2) of this paragraph 1, above, Lessee shall have the right, within thirty (30) days following service of such notice upon Lessee, to serve written notice upon Lessor of Lessee's intention to repair such destruction at Lessee's cost and expense, without any reimbursement from Lessor, in which event, subject to the provisions of Section F. of this Article VI, below, this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as are required to restore the Leased Premises, as soon as reasonably possible, to substantially the same condition as existed just prior to the occurrence of such destruction. If Lessee does not serve such notice within said thirty (30) day period, this Lease shall then be canceled and terminated, as of the date specified in Lessor's notice to Lessee.

2. Partial Destruction Substantially Interfering with Lessee's Occupancy and Use of Premises: At any time during the life hereof, if the Leased Premises are partially destroyed and such destruction shall have been caused by other than a negligent or willful act by Lessee and if such destruction may reasonably be deemed by Lessee to substantially interfere with Lessee's occupancy and use of the Leased Premises or Lessee's operations therein or thereon, Lessee shall have the right

to cancel and terminate this Lease, as of the date of such destruction, provided such right shall be exercised by service of written notice upon Lessor to this effect within thirty (30) days following the date of such destruction. In the event Lessee shall fail to make such determination and serve such notice during such period, Lessor may then proceed pursuant to either of the options provided Lessor within subparagraphs a(1) or a(2) of paragraph 1 of this Section of this Article VI, above, and the provisions of paragraphs b and c of subsection 1 of this Section of this Article VI, above, shall then become and be applicable and the actions of the parties hereto with respect to such destruction shall then be governed thereby.

3. Partial Destruction near End of Term: Notwithstanding the foregoing provisions of this Section E. of this Article VI, in the event the Leased Premises shall be partially destroyed during the last 120 days of the then current initial or renewal term of this Lease, and such destruction shall have been caused by other than a negligent or willful act by Lessee, either party hereto may cancel and terminate this Lease, at any time during the remainder of the then existing term (or option period, if any) by service of a minimum of thirty (30) days advance written notice to such effect upon the other party, in which event this Lease shall be canceled and terminated as of the date specified within such notice.

4. Total Destruction: If the Leased Premises are totally destroyed, at any time during the life hereof, as a result of any casualty not caused by a negligent or willful act of Lessee, this Lease shall be automatically canceled and terminated as of the date of such total destruction.

F. ABATEMENT OF RENT

In the event the Leased Premises shall be partially destroyed and such destruction shall be caused by other than a negligent or willful act by Lessee, if Lessor or Lessee repairs or restores the Leased Premises pursuant to the provisions of either sub-paragraph 1a (1), paragraph 1c, or subsection 2 of Section E. of this Article VI, above, the rent payable by Lessee to Lessor hereunder, for the period during which such repairs, reconstruction, and/or restoration continues, shall be abated in proportion to the degree to which Lessee's use of the Leased Premises is impaired and Lessor shall re-compute the rental to be paid by Lessee during any such period(s) so as to require Lessee to pay rental, at the rate(s) then applicable pursuant to the provisions of Section A. of Article II, hereof, only on that/those portion(s) of the Leased Premises then still reasonably remaining available to Lessee for its beneficial occupancy and use during any such period(s). Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such destruction, repair, and/or restoration.

G. RELIEF FROM OBLIGATIONS AND EQUITABLE ADJUSTMENT OF RENTAL UPON TERMINATION

Unless otherwise expressly provided in this Lease, in the event this Lease shall be terminated pursuant to any of the foregoing provisions of this Article, the parties hereto shall be relieved of all further obligations, one to the other, hereunder, not accrued to the date of cancellation and termination hereof, except that Lessee shall not be relieved of its obligations to vacate and surrender possession of the Leased Premises and to pay, if, as and when applicable and appropriate, prorated rental for any and all portions of the

Leased Premises occupied and/or used by Lessee following the date of occurrence of the destruction which results in the termination of this Lease through the date of such termination, and except that Lessor shall repay to Lessee any unearned rent theretofore paid or on deposit with Lessor under this Lease not needed for crediting by Lessor toward payment of any unpaid amount(s) due to be paid to Lessor by Lessee pursuant to the provisions of this Lease.

H. **WAIVER BY LESSEE**

Lessee waives the provisions of California Civil Code Sections 1932(2) and 1933(4) which relate to termination of leases when the thing leased is destroyed and agrees that such event shall be governed by the provisions of this Article VI of this Lease.

ARTICLE VII

NATIONAL EMERGENCY AND CONDEMNATION/EMINENT DOMAIN

A. **TOTAL TAKING/CONDEMNATION OF LEASED PREMISES**

1. In the event that the Government of the United States takes over the operation of the Leased Premises or any part thereof, by requisition or other unilateral action as the result of a national emergency or otherwise, this Lease shall terminate as of the effective date of any such taking; or, if all of the Leased Premises shall be taken by public authority pursuant to condemnation action(s) under the laws of eminent domain, this Lease shall terminate as of the date of title vesting in such proceeding.

2. Unless otherwise expressly provided in this Lease, upon termination of this Lease as a result of either of the events described within paragraph 1 of Section A. of this Article, the parties hereto shall be relieved of any and all obligations hereunder, one to the other, which obligations are not in default as of the date of such termination and Lessor shall promptly return, on a pro rata basis, any then unearned rent theretofore paid by Lessee hereunder.

3. Lessor shall not be liable to Lessee for any injury to Lessee's business or loss of income or any other injury or loss suffered by Lessee as a result of any such taking and/or termination.

B. **PARTIAL TAKING/CONDEMNATION OF LEASED PREMISES**

In the event that only a part of the Leased Premises shall be taken as a result of any of those actions described in paragraph 1 of Section A. of this Article, if such partial taking shall not otherwise preclude Lessee's continued beneficial occupancy and use of those portion(s) of the Leased Premises not so taken, as reasonably determined by Lessee, this Lease shall continue in full force and effect and those certain parcel(s) of land so taken shall be automatically deleted from the Premises leased by Lessor to Lessee hereunder, as of the date of such taking and/or title vesting, and the rent then being paid to Lessor by Lessee shall then be adjusted by taking the total rental then being paid by Lessee pursuant to the provisions hereof on the date immediately preceding the date of

such taking and/or title vesting, and subtracting that certain portion of rent then being paid for the portion(s) of the Leased Premises deleted from this Lease.

C. **AWARDS**

In the event that all or part of the Leased Premises shall be taken as a result of any of those actions described in paragraph 1 of Section A. of this Article, the rights of the parties hereto with respect to such award(s) as shall be paid for such taking shall be as follows:

1. Subject to paragraph 2 below, Lessor shall be entitled to the entire amount of any and all compensation awarded by reason of the taking of the Leased Premises and any and all Lessor-owned improvements then located therein or thereon, and Lessee waives any right or claim to any part of said amount from Lessor or the condemning authority.

2. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of:

   a. the taking of or injury to any Lessee-owned improvements then located on the Leased Premises, including the value of the then existing leasehold interest and to the extent of Lessee's interest therein, based on the value of the then remaining unexpired portion of the term of this Lease, as said value shall be determined in the proceedings for the taking of such operations and awarding such compensation; and

   b. any and all cost or loss (including loss of business) which may be incurred by Lessee as a result of Lessee's having to remove Lessee's improvements and personal property (including, but not limited to, improvements, trade fixtures and equipment) to a new location.

D. **NOTICE AND EXECUTION**

Upon service of process upon Lessor in connection with either any taking over of Leased Premises or portion thereof by the United States Government or any condemnation or potential condemnation, Lessor shall immediately give Lessee notice thereof in writing. Lessee shall immediately execute and deliver to Lessor any and all instruments which may be required to fully effectuate any and all of the provisions of this Article VII of this Lease if, as and when any such instruments shall be required of Lessee.

ARTICLE VIII

INSURANCE, INDEMNIFICATION, AND EXEMPTION OF LESSOR

A. **INSURANCE**

Throughout the life of this Lease, Lessee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(s) either (i) admitted by the California Insurance Commissioner to do business in the State of

California and rated not less than "A-VII" in Bests Insurance Rating Guide; or (ii) authorized by Lessor's Risk Manager. The following policies of insurance are required:

1. Commercial General Liability: Insurance which shall include contractual, owner, landlord and tenants fire legal liability, bodily injury and property damage liability insurance with combined single limits of not less than $1,000,000 per occurrence.

2. Commercial Automobile Liability: Insurance endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 per occurrence.

3. Worker's Compensation: Insurance as required under the California Labor Code, with a ten (10) day written Notice of Cancellation and a waiver of subrogation clause in favor of the City of Fresno.

The above described policies of insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of Lessor, in the event of cancellation of policy, or change, or reduction of coverage, except for the Workers' Compensation policy which shall provide a 10-day written notice of such cancellation, change, or reduction in coverage. In the event any policy is due to expire during the term of this Lease, Lessee shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Lessee shall file with Lessor a certified copy of the new or renewal policy and certificates for such policy.

The liability insurance policies shall be written on an occurrence form and shall name Lessor, its officials, officers, agents, employees and volunteers as an additional insured. Such policies of insurance shall be endorsed so Lessee's insurance shall be primary without rights of subrogation and no contribution shall be required of Lessor. Lessee shall furnish Lessor with the certificate and applicable endorsements for all required insurance prior to Lessor's execution of the Lease. Lessee shall furnish Lessor with copies of the actual policy upon the request of Lessor's Risk Manager at any time during the life of the Lease, or thereafter upon request of Risk Manager.

If at any time hereunder Lessee fails to maintain the required insurance in full force and effect, Lessee shall immediately discontinue use of the Leased Premises until certificates and/or endorsements are provided to Lessor demonstrating 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 Lessor.

B. INDEMNIFICATION

Lessee shall hold Lessor completely harmless and indemnify, protect and defend Lessor and Lessor's officials, officers, employees, volunteers and agents against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses (including all reasonable costs and expenses for investigation and defense thereof [including, but not limited to attorney fees, court costs and expert fees]), or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly, out of, as a result of, or incident to, or in any way connected with this Lease or: (1) Lessee's occupancy(ies) and/or use(s) of any part or all

of the Leased Premises and Effluent; (2)Lessee's exercise of any one, more or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease; and/or (4) any act(s) or omission(s) on the part of Lessee and/or any officer(s), agent(s), employee(s), contractor(s), sub-contractor(s), servant(s), or representative(s) of Lessee during the term hereof, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the active negligence or by the willful misconduct of Lessor or any of its officials, officers, agents, volunteers or employees acting within the scope of their duties for Lessor. Lessor shall give to Lessee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or termination of this Lease.

C. **EXEMPTION OF LESSOR**

Except to any extent expressly provided in this Agreement, Lessee hereby specifically warrants, covenants and agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the personal property of Lessee located in or upon the Leased Premises under authority hereof, whether belonging to Lessee, or Lessee's employees, customers, agents, contractors, sub-contractors, tenant, sub-lessee of Lessee, or any other person whomsoever; nor shall Lessor be liable for any injury to the person of Lessee or Lessee's employees, agents, contractors, sub-contractors, tenants, sub-lessees, customers, or invitees, whether or not the said damage or injury results from conditions arising in or on any part or all of the Leased Premises or in or on any of the improvements/facilities appurtenant thereto or located thereon, or from other sources or places. Lessee also covenants and agrees that Lessor shall not be liable for any damages arising from any act or neglect on the part of any third parties.

ARTICLE IX

GENERAL PROVISIONS

A. **FSA MATTERS**

Lessor and Lessee acknowledge that the Farm Service Agency of the United States Department of Agriculture ("FSA") has established contract acres (formerly known as crop acreage bases) and farm program yields for certain crops grown on the Leased Premises. Solely for FSA purposes, the Leased Premises may be combined into another FSA farm unit as other farmland owned or leased by Lessee or any entity in which Lessee holds a beneficial interest. In the event that Lessee elects to participate in one or more of the farm programs administered by FSA, Lessor agrees to execute such documents as shall be reasonably requested by Lessee in order to participate in such programs, consistent with constitutional and local law requirements and this Agreement. Lessee shall comply with all applicable FSA program requirements at Lessee's expense. Lessee also agrees to comply with all applicable FSA rules and regulations regarding the control of weeds and erosion on all farmed and non-farmed acres, except to any extent otherwise expressly provided in this Agreement, and Lessee shall annually certify crops with FSA. Lessee agrees to defend, indemnify and hold the Lessor harmless from any and all losses, liability, claims and damages arising under this Section A of Article IX.

B. **NON-TRANSFERABILITY**

Lessee shall not at any time sell, transfer, or assign or sublet this Lease and the Leased Premises, (or any specific rights hereunder), in whole or in part, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, provided that solely to comply with FSA requirements Lessor's Director of Public Utilities/designee(s) thereof and each of them may consent in writing/execute related documents in any case of assignment or sublease, upon the terms and conditions herein, to an immediate family member of Lessee and each of them or to an entity in which an immediate family member of Lessee and each of them owns in the aggregate an interest in excess of fifty percent (50%.)

C. **NON-DISCRIMINATION**

Lessee shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, sexual orientation, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the entire term and performance of this Lease, Lessee agrees as follows:

1. Lessee will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Lease.

2. Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Lessee shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

3. Lessee will, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.

4. Lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Lessee's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. **LIENS AND CLAIMS**

Except to any extent expressly provided for in this Lease, Lessee shall not suffer or permit to be enforced against Lessor's title to the Leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of Lessor), and Lessee shall pay all such liens, claims and demands before any action is brought to enforce same against said Premises; and Lessee agrees to hold Lessor and said Premises free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith. Lessor shall have the right at any time to post and maintain on said Premises such notices as may be necessary to protect Lessor against liability for all such liens, claims and demands. This paragraph shall survive expiration or termination of this Lease.

E. **INDEPENDENT CONTRACTOR**

Lessee is and throughout this Lease shall be an independent contractor and not an employee, partner or agent of the Lessor. Neither party shall have any right to control, supervise or direct the manner or method or choice by which the other party or its contractors shall perform its or their work or function. However, each party shall retain the right to verify that the other is performing its respective obligations in accordance with the terms hereof.

Neither Lessee, nor any of its officers, associates, agents or employees shall be deemed an employee of the Lessor for any purpose. Lessee shall not be entitled to nor shall it receive any benefit normally provided to employees of the Lessor such as, but not limited to, vacation payment, retirement, health care or sick pay. The Lessor shall not be responsible for withholding income or other taxes from the payments made to Lessee. Lessee shall be solely responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Lessee pursuant to this Lease.

F. **INABILITY OF LESSOR TO PERFORM**

This Lease and the obligations of Lessee hereunder shall not be affected or impaired because Lessor is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Lessor.

G. **PARTNERSHIP/JOINT VENTURE**

This Lease does not evidence a partnership or joint venture between Lessee and Lessor. Except to the extent expressly provided for in this Lease, (i) the Lessor does not grant, convey, or delegate to Lessee any tangible or intangible property interest or

express or implied agency, license, right or authority; (ii) Lessee shall have no authority to bind the Lessor absent Lessor's express written consent; (iii) either Party shall be free from obligations or liabilities under contracts entered by the other; and (iv) each Party shall bear its own costs/expenses in pursuit hereof.

H. **REVIEW/EXAMINATION OF LEASE**

Submission of this instrument by Lessor for review, examination and/or execution by or on behalf of Lessee does not constitute a reservation of or option to obtain a Lease and this instrument is not effective as a Lease or otherwise, unless and until authorized and executed and delivered by both Lessor and Lessee.

I. **INTERPRETATION OF PROVISIONS**

Nothing herein contained shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by Lessor in and to the Leased Premises, or in any manner waiving or limiting Lessor's control over the operation, maintenance, etc., of the Leased Premises or in derogation of such governmental rights as Lessor possesses, except as is specifically set forth herein.

J. **INVALID PROVISIONS**

In the event any term, covenant, condition or provision of this Lease, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Lease.

K. **CAPTIONS AND PARAGRAPH NUMBERS**

The captions, paragraph and sub-paragraph numbers and/or alphabetical identifiers appearing in this Lease are inserted solely for the purpose of convenience in reference and in no way define, limit, construe, or describe the scope or intent of such sections, paragraphs or subparagraphs of this Lease nor in any way whatsoever affect this Lease.

L. **NOTICES**

Any notice required or intended to be given to either party under the terms of this Lease shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Lease or at such other address as the parties may from time to time designate by written notice.

M. **PERSONAL SERVICE**

Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

N. **AMENDMENT**

This Lease may not be changed, amended, or otherwise modified in any way whatsoever, except in writing, authorized by Lessor and signed by both Lessor and Lessee.

O. **ACKNOWLEDGMENT BY LESSEE**

By its signature(s) hereunto affixed, Lessee expressly acknowledges that Lessee clearly understands that neither this Lease, itself, nor the issuance of this Lease by Lessor to Lessee nor acceptance of this Lease by Lessee constitutes, in any way whatsoever, any agreement by or on behalf of Lessor to enter into any further/other agreement, permit, lease, or other arrangement of any type whatsoever, beyond the term of or in addition to this Lease.

P. **INTERPRETATION**

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

Q. **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 Lease 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 in addition to any other relief to which such party may be entitled.

R. **EXHIBITS**

Each exhibit and attachment referenced in this Lease is, by the reference, incorporated into and made a part of this Lease.

S. **PRECEDENCE OF DOCUMENTS**

In the event of any conflict between the body of this Lease and any exhibit or Attachment hereto, the terms and conditions of the body of this Lease 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 Lease, and shall be null and void.

T. **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.

U. **NON-SOLICITATION**

Lessee represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Lease or any rights/benefits hereunder.

V. **WAIVER**

The waiver by either party of a breach by the other of any provision of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Lease.

No provisions of this Lease may be waived unless in writing and signed by the party chargeable with the waiver.

W. **ASSIGNS/SUCCESSORS**

Subject to section B of this Article IX, this Lease and all rights, benefits, duties, liabilities and obligations hereunder shall inure to the benefit of, and be binding upon the parties, signatories, and their respective principals, successors, transferees, agents, servants, representatives and assigns.

X. **GOVERNING LAW AND VENUE**

This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Lease and any rights and duties hereunder shall be Fresno County, California.

Y. **OBSERVATION OF GOVERNMENTAL REGULATIONS**

Lessee agrees that, at all times hereunder, Lessee shall comply with and conform to all current and future federal, state and local laws, regulations, ordinances and rules applicable to this Lease, and to all orders of any governmental agency which shall be applicable to the Leased Premises, treated secondary Effluent usage or Lessee's activities thereon. Nothing herein shall be construed to be a limitation upon Lessor's police power.

Z. **FINAL AGREEMENT**

Each party acknowledges that they have read and fully understand the contents of this Lease. This Lease and any documents, instruments and materials referenced and incorporated herein 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 Lease may be modified only by written instrument duly authorized and executed by both Lessor and Lessee.

AA. **COUNTERPARTS**

This Lease may be executed in any number of counterparts and any party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will be deemed to be but one and the same instrument. The execution of this Lease by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

Attachments:

EXHIBIT A PLATS AND DESCRIPTIONS OF LEASED PREMISES
EXHIBIT B RECLAMATION SPECIFICATION

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed by its duly authorized officers, and Lessee has caused the same to be executed by its duly authorized partner(s) with signature(s) notarized, all as of the day and year first above written.

CITY OF FRESNO, CALIFORNIA,
a municipal corporation

By: _____
Renk A. Ramirez, Director

Quist Dairy, a California General partnership

By: _____
Name: James Quist

Title: PARTNER

Address for Notice:

City of Fresno - Regional Wastewater
Reclamation Facility
Attn: Mr. Mohammad Moaddab
5607 W. Jensen Avenue
Fresno, CA 93706

Address for Notice
Quist Dairy
Attn: Mr. James Quist:
5500 W. Jensen Avenue
Fresno, CA 93706

ATTEST
REBECCA A. KLISCH
CITY CLERK

By: _____

APPROVED AS TO FORM
JAMES C. SANCHEZ
CITY ATTORNEY

By: _____ 11/30/09
(Deputy) S. Melikian

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Acknowledgment

State of California)
)
County of Fresno)

On November 24, 2009, before me, Laurie Bedford, a Notary Public, personally appeared James Quist, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature Laurie Bedford

LAURIE BEDFORD
Commission # 1670396
Notary Public - California
Fresno County
My Comm. Expires Jun 23, 2010

EXHIBIT B

Part of Wastewater Discharge Requirement Related to Recycled Water

Reclamation Specifications

The following specifications apply to reclamation areas under the control of the Discharger (Wastewater Treatment Facility) within its property boundary. Other reclamation sites are covered by separate waste reclamation requirements.

1. Recycled water (i.e., effluent) shall remain within the Discharger's on-site reclamation areas. Recycled water provided off-site shall only be provided to users that hold CWRQCB adopted water reclamation requirements.

2. Use of recycled water shall be limited to flood irrigation of fodder, fiber, seed crops, and of crops such as wine grapes that undergo extensive commercial, physical, or chemical processing before human consumption, and shall comply with the provisions of CCR Title 22.

3. The Discharger shall maintain the following setback distances from areas irrigated with recycled water:

Setback Distance (feet)	To
25	Property Line
30	Public Roads
50	Drainage courses
100	Irrigation wells
150	Domestic wells

4. No physical connection shall exist between recycled water piping and any domestic water supply or domestic well, or between recycled water piping and any irrigation well that does not have an air gap or reduced pressure principle device.

5. The perimeter of reclamation areas shall be graded to prevent ponding along public roads or other public areas.
6. Areas irrigated with recycled water shall be managed to prevent breeding of mosquitoes. More specifically:

   a. All applied irrigation water must infiltrate completely within a 48-hour period.

   b. Ditches not serving as wildlife habitat should be maintained free of emergent, marginal, and floating vegetation.

   c. Low-pressure and unpressurized pipelines and ditches accessible to mosquitoes shall not be used to store recycled water.

7. Recycled water shall be managed to minimize runoff onto adjacent properties not owned or controlled by the Discharger.

8. Recycled water shall be managed to minimize contact with workers.

9. If recycled water is used for construction purposes, it shall comply with the most current edition of CCR, Title 22 "*Guidelines for Use of Reclaimed Water for Construction Purposes*". Other uses of recycled water not specifically authorized herein shall be subject to the approval of the Executive Officer and shall comply with CCR Title 22.

10. Public contact with recycled water shall be precluded through such means as fences or acceptable alternatives. Signs with proper wording (shown below) of a size no less than four inches high by eight inches wide shall be placed at all areas of public access and around the perimeter of all areas used for effluent disposal or conveyance to alert the public of the use of recycled water. All signs shall display an international symbol similar to that shown below by following the wording in English and Spanish

"RECYCLED WATER—DO NOT DRINK"

"AGUA DE DESPERDICIO RECLAMADA—POR FAVOR NO TOME"

11. Reclamation of WWTF effluent shall be at reasonable agronomic rates considering the crop, soil, climate, and irrigation management plan. The annual nutrient loading of reclamation areas, including the nutritive value of organic and chemical fertilizers and of the recycled water shall not exceed the crop demand.

City of FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1B
COUNCIL MEETING	12/10/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

December 10, 2009

FROM: RENE A. RAMIREZ, Director
Department of Public Utilities

BY: STEPHEN A. HOGG, Assistant Director
Department of Public Utilities, Wastewater Management

SUBJECT: APPROVE AN AGRICULTURAL LEASE AGREEMENT WITH QUIST DAIRY IN THE AMOUNT OF $740,760 FOR LEASE OF 445.2 ACRES OF CITY-OWNED LAND AT THE FRESNO-CLOVIS REGIONAL WASTEWATER RECLAMATION FACILITY (RWRF) (COUNCIL DISTRICT 3)

Presented to City Council
Date 12-10-09
Disposition rec. approved

RECOMMENDATION

Staff recommends the approval of the Lease Agreement with Quist Dairy, a general partnership at the lease rate of $148,152 per year for 445.2 acres of City-owned land a the Fresno-Clovis Regional Wastewater Reclamation Facility (RWRF), and that the Council authorize the Director of Public Utilities or his designee to execute the Lease Agreement and subsequent extensions on behalf of the City.

EXECUTIVE SUMMARY

The Wastewater Management Division (WMD) has completed an advertising and competitive proposal process for leasing 445.2 acres of land at the RWRF for APN 327-030-38, APN 327-030-41, APN 327-030-22s, APN 327-040-11, and APN 327-040-26. Among two respondents, Quist Dairy was selected to lease these parcels. The agreement provides for a five year lease term (January 1, 2010 through December 31, 2014) with an option for two additional one-year extensions. Approval of the agreement will result in lease revenue to the Wastewater fund of between $740,760 and $1,037,064 depending whether the optional two one-year extension terms are exercised.

BACKGROUND

WMD leases several tracts of land at the RWRF. Treated water is provided to the leased tracts as a means of recycling water from the plant. Although food crops for direct human consumption cannot be grown on these parcels, it is suitable for cotton, alfalfa, forage, and similar crops.

The lease of these parcels of land (APN 327-050-38, APN 327-030-41 located on the southwest corner of South Cornelia and West Jensen Avenue, APN 327-030-22s, located on the southwest corner of South Cornelia and West Annadale Avenue, APN 327-040-11, and APN 327-040-26 located on the southwest corner of South Hayes and West Central Avenue) expires on December 31, 2009. Prior to the expiration of this lease contract, the property was advertised for lease in the classified section of a local newspaper. Information forms were sent to area farmers and the parties responding to the advertisement. Lease proposals were received from potential respondents. Staff determined Quist Dairy will provide the best value for the City of Fresno.

The yearly total payment will be $148,152 per year for January 1, 2010 through December 31, 2014 and the same rate per year for each of the extensions if the option is exercised.

James Quist, on behalf of Quist Dairy, has signed a new lease contract at the above mentioned rate payable in semiannual installment with the term ending 2014 with two one year optional extension. The Lease Agreement has been reviewed by the City Attorney's Office and has been approved as to form. The Categorical Exemption Environmental Assessment No.EA-09-058 dated November 10, 2009, under California Environmental Quality Act (CEQA) has been issued under Section 15301/Class 1 of the CEQA Guidelines.

FISCAL IMPACT

Anticipated gross lease revenue is $148,152 per year, with a total of $740,760 for the basic term of this Lease Agreement with a total of $1,037,064 if the two one-year extension periods are exercised.

Attachments:
Lease Agreement
Environmental Assessment