

AGRICULTURAL LEASE AGREEMENT

THIS SURPLUS PROPERTY LEASE AGREEMENT (“LEASE”) is entered into as of _____, 2019, between the COUNTY OF TULARE, a Political Subdivision of the State of California (“COUNTY”) and FAR WESTERN FARMING COMPANY, INC., a California Corporation (“TENANT”). COUNTY and TENANT, who are each a “Party” and together are the “Parties” to this Lease, agree as follows:

1. **LEASE.** COUNTY leases to TENANT, and TENANT leases from COUNTY, 14.23 farmable acres in the City of Visalia, County of Tulare, State of California, known as Assessor’s Parcel Number (APN) 126-240-039, hereinafter referred to as the “Premises” and more particularly depicted in Exhibit A, attached hereto and incorporated by reference, and described as Parcel No. 1 of Parcel Map No. 535, in the City of Visalia, County of Tulare, State of California, as per Map recorded in Book 6, Page 35 of Parcel Maps, Tulare County Records.

2. **TERM/OPTION TO RENEW.** The term of this Lease shall commence on July 30, 2019, hereinafter referred to as the “Effective Date,” and shall continue for five (5) years through July 29, 2024 (the “Initial Lease Term”). TENANT shall have the option to extend and renew the Initial Lease Term for two (2) additional, five (5) year periods each under the same terms and conditions (each an “Extended Lease Term”), subject to reductions in acreage and increases in the rental amount as specified below, by serving a written Notice of Exercise of the option to renew (“Notice of Exercise of Option”) to COUNTY not less than ninety (90) days prior to the end of the then-current term of the Lease. Any option to renew is subject to COUNTY’S written approval, with COUNTY’S written approval or denial due to TENANT within forty-five (45) days of COUNTY’S receipt of TENANT’S Notice of Exercise of Option.

3. **REDUCTION IN ACREAGE.** Effective on any annual anniversary of the Effective Date during the Initial Lease Term or any Extended Lease Term, COUNTY may reduce the leased acreage by any amount deemed by COUNTY to be necessary for governmental purposes by giving TENANT written notice thereof at least ninety (90) days prior to the anniversary of the Effective Date. Any such reduction in acreage shall be accompanied by an equitable adjustment in the rent effective as of the anniversary of the Effective Date. Upon receiving notice of such reduction in acreage, TENANT may elect to terminate this Lease on the anniversary of the Effective Date by delivering a Notice of Intent to Terminate Lease to COUNTY, no less than thirty (30) days prior to the anniversary of the Effective Date.

4. **RENT.** The annual rental amount for the Premises shall be THREE THOUSAND THREE HUNDRED AND SIXTY-TWO DOLLARS (\$3,362), payable in advance, with the first year’s rent payable to COUNTY in accordance with the advertised terms of bidding. Rent for the second and following years, including any Extended Lease Term, shall be paid to the COUNTY on each anniversary of the Effective Date.

Upon TENANT exercising an option to extend and renew this Lease, and COUNTY'S approval thereof, if any, the rent shall be increased by Twenty-five Dollars (\$25.00) per acre per year, beginning on the date that the option goes into effect and the Lease is extended.

5. **ACCEPTANCE.** TENANT'S taking possession of the Premises shall constitute TENANT'S acknowledgment that the Premises are accepted in "as is" condition.

6. **WATER:** TENANT acknowledges that there is no operating well on the Premises. TENANT may provide water to the Premises for irrigation or other purposes from a source outside the Premises, and TENANT may, with the prior written approval of the COUNTY, and after meeting all statutory and regulatory requirements therefor, improve the Premises with a well and pumping plant subject to approval of all necessary permits as required by the City of Visalia. The acquisition and development of water for the Premises shall be at the sole cost and expense of the TENANT. TENANT shall take any and all reasonable measures to confine such water to the Premises and prevent it from flowing onto adjacent property not owned or controlled by TENANT. Any pumps, pipes or other irrigation equipment shall be removed by TENANT from the Premises immediately before the expiration or termination of this Lease, or within ten (10) days thereafter. Should TENANT choose to not to remove any pumps, pipes or other irrigation equipment, then it will be deemed forfeited to COUNTY provided that any well developed by TENANT shall be left in useable condition. Upon TENANT'S removal of said equipment, TENANT shall cap the well and the remainder of the Premises shall be left in substantially the same condition as existed at the commencement of the Lease.

TENANT acknowledges that use of the Premises is subject to the Sustainable Groundwater Management Act (SGMA) and shall comply with all related statutes, ordinances, and the applicable Groundwater Sustainability Plan (GSP) as published by the governing Groundwater Sustainability Agency (GSA).

7. **USE.** TENANT shall use the Premises for growing crops and shall not commit or permit waste, nuisance, or damage to the Premises. TENANT shall not create or maintain any nuisance and shall not cause damage or injury to other premises or to the person or property of others in the course of farming the Premises. TENANT understands the property is within the jurisdiction of the City of Visalia and shall comply with all municipal codes, including but not limited to, those requiring weed abatement.

8. **APPLICATION OF AGRICULTURAL CHEMICALS; CONTAMINATION.** TENANT shall comply with all laws, statutes, ordinances, rules, regulations, or orders of federal, state, and local governments in the use and occupancy of the Premises, particularly with respect to the storage, use, or toxic substance spills of fertilizers, herbicides, pesticides, economic poisons, or other agricultural chemicals or toxic substances. TENANT shall promptly notify COUNTY of any pollution or contamination on the Premises caused by toxic substance spills, by dumping of

toxics or any other cause, including accidents occurring during normal application of toxic materials in the course of farming the Premises. TENANT shall, at TENANT'S sole expense, abate all such spills or dumping caused or permitted by TENANT or agents of TENANT.

9. UTILITIES. TENANT shall make arrangements for, and provide at its own cost and expense, any and all utilities used by the Premises, including, but not limited to, water, sewer, gas, electrical, and trash.

10. TAXES, CHARGES, AND ASSESSMENTS. TENANT shall pay all taxes, charges, or assessments levied against the Premises, or for the acquisition or use of water, by any governmental or private agency. TENANT understands that this Lease may create a possessory interest subject to property taxation and that the TENANT will be liable for the payment of any property taxes levied on such interest. TENANT shall comply with and pay all costs associated with the California Regional Water Quality Control Board, Central Valley Region, Waste Discharge Requirements General Order No. R5-2013-0120.

11. COUNTY'S EXISTING WELL, MONITORING WELLS. COUNTY may enter the Premises for the purpose of abandoning the existing unused well, and may install and use groundwater-monitoring wells on the Premises. COUNTY will conduct any such activities so as to cause a minimum of interference with TENANT'S farming operations.

12. TENANT'S IMPROVEMENTS. TENANT shall not construct any buildings or structures on the Premises without the prior written consent of COUNTY. Any buildings or structures installed by TENANT must comply with all zoning, building, fire, and American with Disabilities Acts (ADA) regulations and codes. Any buildings or structures installed by TENANT shall be promptly removed upon the expiration of this Lease, leaving the Premises in the same condition as exists at the execution of this Lease.

13. ACCESS ROADWAYS. TENANT shall be responsible for maintaining any access roads on the Premises.

14. LIENS. TENANT will not cause or permit any lien to be imposed upon the Premise.

15. INDEMNITY. TENANT agrees to hold harmless, defend and indemnify COUNTY, its officers, agents and employees, from liability, claims, actions, costs, damages, penalties or losses, including administrative enforcement actions, for property damage or injury, including death, or for violations of laws or regulations applicable to the Premises, arising out of TENANT'S activities upon the Premises or TENANT'S use, operation, maintenance or sub-letting thereof during the full term hereof and any renewal period or period of holding over. This obligation will continue beyond the term of this Lease as to any act or omission that occurred during this Lease or during any extension thereof or period of holding over.

16. INSURANCE. TENANT shall provide and maintain insurance for the duration of the this Lease against claims for injuries to persons and damage to property which may arise from, or in

connection with performance under the Lease by the TENANT, its agents, representatives, employees, or contractors. Prior to approval of this Lease by COUNTY, TENANT shall provide evidence of the required insurance as set forth in Exhibit B, attached hereto and incorporated by reference.

17. QUIET ENJOYMENT. Upon payment of the rent to be paid and the performance of all covenants by the TENANT as provided herein, TENANT shall peaceably and quietly hold and enjoy the Premises during the term of this Lease and any extension thereof, except as otherwise provided herein.

18. ASSIGNMENT, SUBLETTING. TENANT shall not assign, mortgage, sublet, encumber, or otherwise transfer any interest in the Premises, including hunting or fishing privileges, to any person firm, corporation or government agency during the term of this Lease, or any extension thereof, without the prior written consent of COUNTY. Assignment of this Lease shall not excuse any delay or default in the performance of TENANT'S obligations under this Lease, and TENANT shall remain liable for the timely performance of all of TENANT'S obligations under this Lease.

19. DEFAULT. The occurrence of any of the following shall constitute a default by TENANT:

- a. Abandonment and vacation of the Premises;
- b. Failure to perform any other provision of this Lease if the failure to perform is not cured within a reasonable time after notice has been given of same to TENANT.

Notices given under this section shall specify the alleged default and the applicable provisions of this Lease, and shall demand that TENANT perform the provisions within the applicable period of time, or quit the Premises. If TENANT fails to remedy the default within ten (10) calendar days after receiving written notice from COUNTY the COUNTY may terminate this Lease, enter upon the Premises and retake possession thereof, including any crops thereon. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

In the event of a default, the Parties shall have the remedies now or later allowed by law.

20. SIGNS. TENANT may not install, or permit any other person to install, any sign, awning, canopy, marquee, or other advertising on the Premises without COUNTY'S prior written consent. Upon expiration or termination of this Lease, COUNTY may remove and destroy any such items that COUNTY permitted to be installed in accordance with the terms of this section.

21. COUNTY'S ENTRY ON PREMISES. COUNTY and its authorized representatives shall have the right to enter the Premises at all times for any of the following purposes:

- a. To determine whether the Premises are in good condition and whether TENANT is

complying with its obligations under this Lease;

b. To do any necessary maintenance and to make any restoration to the Premises or other improvements in which the Premises are located that COUNTY has the right or obligation to perform;

c. To serve, post, or keep posted any notices required or permitted under this Lease.

22. SURRENDER. Prior to the termination of this Lease TENANT will remove all crops, trees, vines, or plantings of any kind from the Property. Further, TENANT shall properly disc the Property after the removal of said plantings.

23. TERMINATION. The right to terminate this Lease under this provision may be exercised without prejudice to any other right or remedy to which the terminating Party may be entitled at law or under this Lease.

a. With Cause: This Lease may be terminated by COUNTY should TENANT:

(1) be adjudged a bankrupt, or

(2) become insolvent or have a receiver appointed, or

(3) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Lease, or

(4) materially breach this Lease.

For any of the occurrences except item (4), termination may be effected upon written notice by the COUNTY specifying the date of the termination. Upon a material breach, the Lease may be terminated following the failure of the TENANT to remedy the breach to the satisfaction of the COUNTY within ten (10) days of written notice specifying the breach. If the breach is not remedied within that ten (10) day period, the COUNTY may terminate the Lease on further written notice specifying the date of termination.

If the nature of the breach is such that it cannot be cured within a ten (10) day period, the TENANT may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the COUNTY consents to that proposal in writing, which consent shall not be unreasonably withheld, the TENANT shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the COUNTY may terminate upon written notice specifying the date of termination.

b. Without Cause: Either Party shall have the right to terminate the tenancy during the Initial Lease Term or any Extended Lease Term on the anniversary of the Effective Date with ninety (90) days prior written notice of same to the other Party.

24. HOLDOVER. If TENANT holds over with the written consent of the COUNTY after expiration of the Initial Lease Term or any Extended Lease Term, said holding over shall be from year-to-year, provided that TENANT pays the then-current annual rent due on or before the first day of each year of holding over. All other terms and conditions of this Lease shall apply to any such holding over period.

25. SUCCESSORS. This Lease shall be binding on, and inure to, the benefit of the Parties, their successors and permitted assigns, except as otherwise limited by this Lease.

26. NOTICE. Any notice, demand, request, consent, approval, or other communication required or permitted under this Lease shall be in writing and either served personally or sent by prepaid, first class mail, certified return receipt requested, and addressed to the other Party at the address indicated below:

COUNTY: Board of Supervisors
County of Tulare Administration Building
2800 W. Burrel Ave.
Visalia, CA 93291

COPY TO: County of Tulare
General Services Agency – Property Management
2637 W. Burrel Ave., Suite 200
Visalia, CA 93291

TENANT: Far Western Farming Company, Inc.
309 S. Mariposa Ave.
Visalia, CA 93292

COPY TO: Ruddell, Stanton, Bixler, Mauritsen & Evans, LLP
Attn: Matthew W. Bixler
1102 N. Chinoweth St.
Visalia, CA 93291

Notice shall be deemed communicated five (5) days from the time of mailing as provided in this section.

27. WAIVER. COUNTY'S consent to or approval of any act by TENANT shall not be deemed

to waive or render unnecessary COUNTY'S consent to or approval of any other or subsequent act by TENANT.

28. INTEGRATION. This instrument contains all the agreements of the Parties relating to the Premises and cannot be modified or amended except by a subsequent agreement in writing.

29. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Lease shall not render the other provisions of the Lease unenforceable, invalid, or illegal.

30. GOVERNING LAW. This Lease shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The Parties agree that this Lease is made and shall be performed in Tulare County, California.

31. NON-DISCRIMINATION. TENANT shall not discriminate in employment, or in the provision of services hereunder, on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

32. NO THIRD-PARTY BENEFICIARIES INTENDED. Unless specifically set forth in this Lease, the Parties to this Lease do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy hereunder.

33. CONSTRUCTION. This Lease reflects the contributions of all undersigned Parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

34. EXHIBITS. The exhibits to this Lease are fully incorporated into and are integral parts of this Lease.

35. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

36. DISPUTES AND DISPUTE RESOLUTION. If a dispute occurs between the Parties arising out of or relating to this Lease, or the breach thereof, then the Parties shall continue to fulfill their obligations hereunder while they engage in the dispute resolution process set forth in this section. If said dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The mediator shall be mutually selected by the Parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each Party. All costs and fees required by the mediator shall be split equally by the Parties; otherwise, each Party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, or such other time period as the

Parties may agree upon in writing, then either Party may pursue litigation to resolve the dispute.

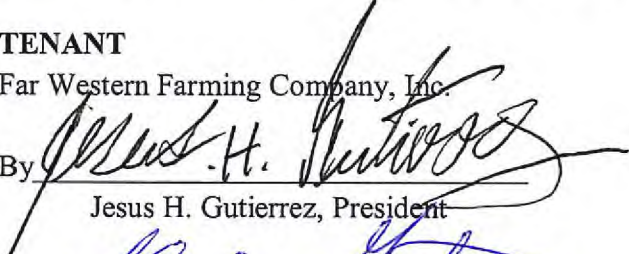
IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first written.

TENANT

Far Western Farming Company, Inc.

Date: _____

By


Jesus H. Gutierrez, President

Date: _____

By


Yolanda Gutierrez, Secretary

[Note: Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract.]

COUNTY

County of Tulare

Date: _____

By _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By _____
Deputy

Approved as to form:
County Counsel

By _____
Deputy
Matter ID: 2018872

Exhibit A
APN 126-240-039

“The Premises”



Exhibit B

LEASES WITH COUNTY AS LESSOR

INSURANCE REQUIREMENTS

TENANT shall procure and maintain insurance for the duration of this Lease against claims for injuries to persons and damage to property that may arise from, or in connection with, performance under the Lease by the TENANT, its agents, representatives, employees, and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single limit per occurrence (occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury and personal& advertising injury. If an annual aggregate limit shall apply separately to this location or the general aggregate shall be \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Property Insurance against all risks of loss on all real property being leased, that the COUNTY owns including improvements and betterment. Limits of full replacement cost with no coinsurance penalty provision.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims-made form, the retroactive date must be before the date of the Lease and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Lease term.
2. The General Liability and Property Insurance policies must be endorsed and endorsements must be provided to COUNTY reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the TENANT including materials, parts, or equipment furnished in connection with such work or operations in the form of an endorsement to the TENANT'S policy at lease as broad as ISO CG 20 10.*

- b. For claims related to this Lease, the TENANT'S insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers and shall be at least as broad as ISO CG 20 01 04 13. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees, or volunteers shall be excess of the TENANT'S insurance and shall not contribute with it.*
 - c. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.*
 - d. TENANT hereby grants to COUNTY a waiver of any right to subrogation, which any insurer of the TENANT may acquire against the COUNTY by virtue of the payment of any loss under such insurance. TENANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*
- 3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the TENANT, its employees, agents and subcontractors. TENANT waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Lease by the COUNTY, the TENANT shall file with the Tulare County Board of Supervisors, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.