

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: General Services Agency

BOARD AGENDA:6.B.13
AGENDA DATE: November 24, 2020

SUBJECT:

Approval of the Crows Landing Airfield Agricultural Lease Agreement with T&M Farms

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2020-0622

On motion of Supervisor DeMartini , Seconded by Supervisor Chiesa
and approved by the following vote,
Ayes: Supervisors: Chiesa, DeMartini, and Chairwoman Olsen
Noes: Supervisors: None
Excused or Absent: Supervisors: District Four vacant
Abstaining: Supervisor: Withrow

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

This Item was removed from the consent calendar for discussion and consideration.

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: General Services Agency

BOARD AGENDA:6.B.13
AGENDA DATE: November 24, 2020

CONSENT:

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval of the Crows Landing Airfield Agricultural Lease Agreement with T&M Farms

STAFF RECOMMENDATION:

1. Award a five-year agricultural lease to T&M Farms for approximately 1,112 acres of County-owned property at the Crows Landing Air Facility located east of Interstate 5 near Fink Road on the west side of Stanislaus County with an option to extend the lease for two additional one-year terms.
2. Authorize the Purchasing Agent to sign and execute a five-year lease on behalf of the County.

DISCUSSION:

Stanislaus County acquired the former Crows Landing Air Facility (Property) in 2004 and has since executed a series of agricultural farm lease agreements as the best, temporary, use of the former air facility. The previous Lessee, Melvin T. Wheeler & Sons, LP (Wheeler), was awarded the agricultural farm lease to farm 1,112 acres through a Request for Proposal (RFP) process. Wheeler began farming the property November 10, 2010. The 2010 lease had an initial three-year term, and in 2013, the Board of Supervisors approved the Amended and Restated Lease to replace the original terms. On October 27, 2015, the Board approved Amendment No. 1 extending the term to November 9, 2017. In November 2017, the Board of Supervisors approved the Amended and Restated Lease again to replace Amendment No. 1 for an initial three-year term. The final three-year lease payment terms are outlined in the chart below:

Period:	\$ Per Acre:	Annual Base Rent:
11/10/2017 – 11/09/2018	\$170.00	\$189,040.00
11/10/2018 – 11/09/2019	\$175.10	\$194,711.20
11/10/2019 – 11/09/2020	\$180.35	\$200,552.54

On July 5, 2018, Wheeler notified the County of its intent to exercise its right without cause to terminate the lease upon thirty day written notification. The lease was terminated on November 9, 2018. Since that time, the General Services Agency Purchasing Division (GSA Purchasing) issued six (6) Invitations to Bid for the Crows Landing Agricultural Lease with no response until the summer of 2020.

On July 27, 2020, GSA Purchasing issued Invitation to Bid 20-30-AH Crows Landing Agricultural Lease. The County established a minimum annual lease of \$52.00 per acre, and the basis of the award shall be made to the responsive and most responsible Bidder who bids the highest price above this minimum base rate. Bid No. 20-30-AH closed on August 24, 2020, and T&M Farms was the sole responsive and responsible Bidder. Since that time, GSA Purchasing negotiated the following major provisions of the farm lease:

- The Tenant will be required to pay all costs and expenses relating to farming the leased premises, including all operation and maintenance costs, water and utilities, taxes, labor and equipment costs, fertilizer and pesticide costs, harvesting costs, etc.;
- Tenant will be required to perform conservations and maintenance work on the leased premises, including weed abatement;
- The Lease will contain an early termination clause where the County may elect to terminate the Lease on portions of the leased premises, subject to reimbursement of actual costs plus 15% of such costs on those portion of the leased premises which were subject to termination for the crop year in which the termination occurred;
- The Tenant will be responsible for paying all water charges and fees as assessed on the property by the Del Puerto Water District; and
- All well infrastructure shall be the Tenant's responsibility.

County Ordinance and State Government Code permit competitively solicited leases of County property for terms of up to 10 years before a new competitive process is required. In accordance with these regulations, GSA successfully negotiated pricing terms with T&M Farms for a (5) five-year term with an option to extend the lease for (2) two additional (1) one-year terms until November 30, 2027.

GSA Purchasing recommends approval of the Lease, which will continue to offset costs associated with on-going security, planning, development analysis, and land-owner associated environmental issues such as well closures. The agricultural farm lease revenue is a component to the progressive and on-going planning of the Crows Landing development project.

POLICY ISSUE:

County Ordinances 4.24.010 and 4.24.020, and the State of California Government Code Sections referenced within the County Ordinances, require Board of Supervisors approval for leases of County property.

FISCAL IMPACT:

The new agreement includes rent for the first year at \$52 per acre for 1,112 acres or \$57,824 annually, with a 3% increase in the years two through five, or through year seven, if applicable. Contractual net proceeds during the initial five (5) year-term are projected to be \$307,012.08, with the option to extend two additional one-year terms projected to be \$136,097.68, for a total estimated lease of \$443,109.76 for the seven (7) year-term. The terms of the lease are outlined in the chart below:

	Period:	\$ Per Acre:	Annual Base Rent:
Year 1	12/01/2020 – 11/30/2021	\$52.00 x 1,112 acres	\$57,824.00
Year 2	12/01/2021 – 11/30/2022	\$53.56 x 1,112 acres	\$59,558.72
Year 3	12/01/2022 – 11/30/2023	\$55.17 x 1,112 acres	\$61,349.04
Year 4	12/01/2023 – 11/30/2024	\$56.83 x 1,112 acres	\$63,194.96
Year 5	12/01/2024 – 11/30/2025	\$58.53 x 1,112 acres	\$65,085.36
Year 6	12/01/2025 – 11/30/2026	\$60.29 x 1,112 acres	\$67,042.48
Year 7	12/01/2026 – 11/30/2027	\$62.10 x 1,112 acres	\$69,055.20
		Total:	\$443,109.76

BOARD OF SUPERVISORS' PRIORITY:

Approval of these recommended actions is consistent with the Board's priority of *Providing Efficient Public Services and Community Infrastructure* by ensuring a Strong Local Economy and Effective Partnerships.

STAFFING IMPACT:

Existing staff from the General Services Agency will administer the Agricultural Lease.

CONTACT PERSON:

Cathy Blair, Purchasing Manager
Dan Wirtz, GSA Director/Purchasing Agent

Telephone: (209) 525-6319
Telephone: (209) 525-6319

ATTACHMENT(S):

1. Crows Landing Agricultural Lease Agreement

**COUNTY OF STANISLAUS & T & M FARMS
AGRICULTURAL LEASE AGREEMENT**

LEASE SUMMARY:

Landlord:	Stanislaus County General Services Agency Purchasing Agent 1010 10th Street, Suite 5400 Modesto, California
Tenant:	T & M Farms P.O. Box 1007 Westley, CA 95387
Leased Premises:	Approximately 1,112 acres of real estate, in the County of Stanislaus, State of California (APN #027-001-057 and 027-003-074) exclusive of a two-acre portion used for access from Bell Road to the runway immediately south of Parcel C as shown on Exhibit 1.
Permitted Use:	Exclusive use of Leased Premises for the purposes of planting, growing and harvesting of row crops (tree crops prohibited) and for no other purposes. Hunting is specifically prohibited on the Leased Premises at any time.
Annual Base Rent:	Annual Base Rent is as follows: Yr. 1: \$57,824.00 for the period of December 1, 2020 – November 30, 2021; Yr. 2: \$59,558.72 for the period of December 1, 2021 – November 30, 2022; Yr. 3: \$61,349.04 for the period of December 1, 2022 – November 30, 2023; Yr. 4: \$63,194.96 for the period of December 1, 2023 – November 30, 2024; Yr. 5: \$65,085.36 for the period of December 1, 2024 – November 30, 2025; Yr. 6: \$67,042.48 for the period of December 1, 2025 – November 30, 2026; Yr. 7: \$69,055.20 for the period of December 1, 2026 – November 30, 2027.
Escalator:	A 3% escalator has been added into the Annual Base Rent directly above starting years 2 through 5 (or through year 7, if applicable)
Term:	Five-year initial term; may be renewed once for TWO (2) additional years, for a maximum total of SEVEN (7) years.
Commencement	December 1, 2020 at 12:00 a.m.
Termination	November 30, 2025 at 11:59 p.m., subject to earlier termination or extension as provided herein.
Exhibits:	Exhibit 1 "Map of the Premises" Exhibit 2 "Notice Re: Crows Landing Munitions" Exhibit 3 "Water Covenant" Exhibit 4 "Well Information" Exhibit 5 "Flood Zones" Exhibit 6 "Wetland and Wildlife Habitat" Exhibit 7 "Avigation Easements shown on Record of Survey" Exhibit 8 "Tenant's Response to RFP"

AGRICULTURAL LEASE AGREEMENT

This Agricultural Lease Agreement (the "Agreement") is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California ("Landlord"), and T & M Farms, ("Tenant") a California limited PARTNERSHIP, etc., on _____, 2020.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained here, the parties hereby agree as follows:

1. **PREMISES:** Landlord hereby leases to Tenant approximately 1,112 acres of real estate (the "Leased Premises"), in the County of Stanislaus, State of California as shown on Exhibit 1 ("Map of the Leased Premises") attached hereto. Specifically excluded from the Leased Premises is a two-acre portion of the Leased Premises for access from Bell Road to the runway immediately south of Parcel C as shown on Exhibit 1.

Lessee agrees that Landlord may, without compensation to Lessee, grant licenses for use of the paved tarmac areas and the airspace over the Leased Premises to others. Lessee is not obligated to maintain the paved tarmac areas beyond the weed abatement responsibilities stated within Paragraph 8.5.

2. **RESERVATION OF RIGHTS:** This Lease is subject to all outstanding easements and rights of way over, across and upon the Premises. The Landlord may grant additional easements or rights of way over, across, in and upon the Leased Premises as necessitated be in the public interest. The Landlord reserves all mineral rights in the Leased Premises together with any mineral deposits thereunder. The Landlord also reserves the right to use or authorize the use of the runways for any purpose it deems appropriate.

3. **CONDITION OF LEASED PREMISES:**

- 3.1 The parties acknowledge that the Lease Premises may be in need of significant investment of time and resources before Tenant can begin farming activities (collectively, "Reclamation"). Tenant agrees to complete all such Reclamation at its own expense, without any reimbursement from Landlord. Reclamation shall be completed in accordance with Landlord's written approval, which approval shall not be reasonably withheld.

- 3.1 Tenant acknowledges that Leased Premises is a former military base, portions of which are the subject of ongoing remediation of existing hazardous soil and groundwater contaminants. Tenant shall allow all federal, state and local officials access to the Leased Premises for purposes relating to such ongoing remediation. Tenant shall not enter any remediation areas and shall fully cooperate with ongoing remediation operations.

- 3.3 Tenant further acknowledges that portions of the Leased Premises may contain munitions or exploded or unexploded ordnance. Tenant shall follow the Munitions Safety Procedures attached hereto as Exhibit 2 ("Notice Re: Crows Landing Munitions") and any additional safety procedures recommended and approved by the Landlord at any time during this term of this Lease.

- 3.4 Tenant hereby accepts the Leased Premises (a) in the condition existing as of the Effective Date, and (b) subject to all applicable zoning, county and state laws, ordinances and regulations governing and regulating the use of the Leased Premises and any covenants or restrictions of record. Tenant has independently evaluated the condition of the Leased Premises and has determined that it is acceptable for Tenant's use. Tenant acknowledges that neither Landlord nor any agent or employee of Landlord has made any representations or warranties with respect

to (a) the Leased Premises; (b); the condition of the Leased Premises; (c) the improvements on the Leased Premises; (d) the availability of utilities or sanitary sewer systems; (e) the condition of the soil or the crops on the Leased Premises; (f) the productivity of the land; (g) the cost of production; (h) the number of acres in production; (i) the availability or suitability of federal, state or ground water for Tenant's use; (j) or the suitability or fitness of the Leased Premises for the conduct of Tenant's business.

4. PAYMENT:

4.1 Tenant agrees to pay to Landlord and Landlord agrees to accept as payment for the use and possession of the Leased Premises during the third renewal term as follows:

Contract Period:	\$ Per Acre:	Annual Base Rent (Price per Acre x 1,112 Acres):
12/01/2020 – 11/30/2021	\$52.00	\$57,824.00
12/01/2021 – 11/30/2022	\$53.56	\$59,558.72
12/01/2022 – 11/30/2023	\$55.17	\$61,349.04
12/01/2023 – 11/30/2024	\$56.83	\$63,194.96
12/01/2024 – 11/30/2025	\$58.53	\$65,085.36
12/01/2025 – 11/30/2026	\$60.29	\$67,042.48
12/01/2026 – 11/30/2027	\$62.10	\$69,055.20

4.2 Annual Base Rent shall be paid in four (4) equal installments (US dollars) due on December 1st, March 1st, June 1st and September 1st of each lease year, commencing December 1, 2020. All payments shall be payable to Stanislaus County and delivered to:

Stanislaus County Auditor-Controller
1010 Tenth Street, Suite 5100
PO Box 770
Modesto, California 95353

4.3 If payment is received more than five (5) business days after the due date Tenant agrees to pay a late charge on the amount of unpaid Annual Base Rent at the rate of ten percent (10%) per annum from the payment due date until payment of the Annual Base Rent is received. County's acceptance of the payment of the late charge does not constitute a waiver of any rights or remedies granted herein.

5. TERM: The term of this lease shall be for a period of FIVE (5) years, commencing on December 1, 2020 at 12:00 a.m., and terminating on November 30, 2025 at 11:59 p.m., unless terminated earlier as provided for herein. This lease may be extended once for TWO (2) additional years, for a total potential term of SEVEN (7) years. An extension of the term of this contract will be affected through written amendment to the contract. If the extension of the contract necessitates additional funding beyond that which was included in the original contract, the increase in the County's maximum liability will also be affected through an amendment to the contract and shall be based upon rates provided in the original contract and bid proposal.

6. TERMINATION:

6.1 For Convenience. Landlord may terminate this Lease without cause and for convenience with

respect to all or part of the Leased Premises upon thirty (30) days prior written notice to Tenant. Upon such termination the Landlord shall reimburse Tenant all actual costs paid by Tenant for planting and harvesting the relevant portion of the Leased Premises subject to termination, plus fifteen percent (15%) of said costs, for the crop year in which termination occurs, if termination occurs pre-harvest.

- 6.2 Default. Should Tenant default in the performance of its obligations under this Lease or materially breach any of provisions hereof Landlord may, at its option, terminate this Lease by giving written notification to Tenant.
 - 6.3 Breach of Law. Tenant's willful violation of any law or regulation as described in Section(s) 9 ("Water") and 14 ("Compensation") below shall constitute grounds for termination of the lease without compensation upon fifteen (15) days prior written notice.
 - 6.4 Other. This Lease shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of Tenant; (b) sale of Tenant's business, (c) cancellation of insurance required under this Lease, or (d) if, for any reason, Tenant ceases to be licensed or otherwise authorized to do business in the State of California, and the Tenant fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.
7. UTILITIES: Tenant shall pay for all water, sewer, gas, electricity, telephone, and all other services supplied to the Leased Premises.
8. TENANT'S DUTIES AND OBLIGATIONS:
- 8.1 The Leased Premises is leased to Tenant exclusively for the purposes of planting, growing and harvesting of row crops (tree crops prohibited) as set forth herein and as set forth in Tenant's Response to RFP attached hereto as Exhibit 8, and for no other purposes. Hunting is specifically prohibited on the Leased Premises at any time.
 - 8.2 Tenant shall pay all costs associated with farming the Leased Premises including but not limited to installation of necessary pumps, irrigation facilities, and related improvements; the cost of labor, utilities, water, power, machinery, equipment, fertilizer, insecticides, insurance, and applicable taxes which are necessary and/or appropriate to operate and manage the Leased Premises.
 - 8.3 Tenant shall use its best efforts to hire employees, contractors, suppliers, custom operators and agents who are located in Stanislaus County.
 - 8.4 Agricultural Practices. Tenant shall follow agricultural practices generally recommended for, best adapted to and most appropriate for the Leased Premises. Tenant shall follow all agricultural and conservation measures and plans approved by the West Stanislaus Resource Conservation District, other local Districts, and/or State agencies.
 - 8.5 Weed Abatement. Tenant shall manage weeds around the perimeter of the Leased Premises and all internal roadways, runways and tarmac areas on and over Leased Premises to prevent reseeding. Tenant shall at its own expense perform weed control at least twice during each lease year – once in the spring prior to the maturation of weed seeds, and once in the fall to control late-growing weeds. Weed growth inhibitors shall be used in accordance with the terms and conditions set forth in Section 8.7 below. Landlord will perform semiannual on-site audits to confirm the effectiveness and completeness of Tenant's weed abatement efforts. Failure of Tenant to provide satisfactory weed abatement shall be considered default of contract by

Tenant and may be grounds for termination as defined in Section 6.2 above.

Should the Landlord allow other entities ("Third Parties") to temporarily use the tarmac and runways for agricultural related uses such as almond drying, the Landlord shall require the Third Party entity to perform additional spraying and cleanup of the area used.

- 8.6 Fence Maintenance. Tenant shall maintain all existing fences within or surrounding the Leased Premises.
- 8.7 Use of Insecticides and Other Chemicals. Tenant shall store, use and dispose of pesticides, fertilizers and other chemicals, in accordance with applicable state and federal laws and regulations. Tenant shall maintain and furnish to Landlord at Landlord's request, a field-by-field record of the amount, kind and dates of applications of fertilizers and pesticides as well as a material safety data sheet (MSDS) for each and every pesticide, fertilizer and other chemical used. Tenant shall maintain such records for a minimum of four (4) years from the date of termination of this Lease. Nutrients and pesticides shall be used with the assistance of a registered pest control advisor, a farm advisor and the Stanislaus County Agricultural Commissioner.
- 8.8 Tenant shall submit a Hazardous Materials Business Plan to the Stanislaus County Department of Environmental Resources. Tenant shall make the Leased Premises and its operations available for inspection regarding the storage of hazardous materials on the Leased Premises.
- 8.9 Minimum Tillage and Dust Control. Tenant shall practice "minimum tillage" where practical and feasible for farming operations. To reduce possible hazard to aircraft, tillage operations shall be scheduled to minimize the time during which soil will be subject to wind erosion and dust production by providing a minimum of seventy-two (72) hour advance notice to County's representative as defined in Section 29 below. Tenant shall control excessive dust through the application of water at its own expense.
- 8.10 Soil Ripping. Tenant shall exercise extreme caution when ripping, chiseling or slip-plowing to avoid damage to improvements, utility lines or pipes existing on the Leased Premises. Tenant shall be liable for any damage to structures, utilities, monuments, and improvements owned by Landlord resultant from Tenant's agricultural activities.
- 8.11 Road Damage Prevention. Tenant shall not operate "track-laying" or "spike wheeled" vehicles on or over paved roads unless road protective measures are taken. Tenant shall be liable for any damage to roads resultant from Tenant's activities.
- 8.12 Fire Prevention. Tenant shall comply with applicable fire control and prevention rules, practices and regulations. All equipment, fuel and oil may be stored in an appropriate storage area. A twenty (20) foot firebreak of bare disked soil shall surround all flammable materials.
- 8.13 Crop Residue. Crop stubble or residue shall be disked into the soil within two (2) weeks after harvest. Grazing and fire shall not be used to eliminate residue.
- 8.14 Debris Removal. Tenant, at its own expense, shall dispose of all debris and empty containers generated on the Leased Premises.
- 8.15 Fallow Land Management. Tenant may, at its own option and sole expense, lay fallow any portion of the Leased Premises. Tenant shall, however, be responsible for weed control during such time as the land remains uncultivated.

- 8.16 Harvest Crop Storage. Tenant may only store harvested crops in areas approved by the Landlord.
- 8.17 Gutter/Drain Clean out: Upon request from the Landlord and at a price agreed upon by Landlord and Tenant, Tenant shall clean out gutter/drainage infrastructure as required by the annual report. Tenant shall invoice the County separately for this service.

9. WATER:

- 9.1 Water District. Water for irrigation is available from the Del Puerto Water District. Tenant shall make its own independent investigation and arrangements for obtaining and paying for all water charges from the Del Puerto Water District. Tenant is responsible for paying the North Valley Regional Recycled Water Program (NVRWP) water charges as assessed on the property by the Del Puerto Water District. Tenant shall comply with all rules and regulations of the Del Puerto Water District.
- 9.2 Well Covenant. Attached as Exhibit 3 is a covenant governing the use of well water /groundwater (the "Water Covenant"). Tenant shall use well water/groundwater on the Leased Premises only in accordance with the Water Covenant.
- 9.3 Wells. Attached as Exhibit 4 ("Well Information") is information concerning wells at the Crows Landing Flight Facility. Tenant shall abide by all applicable laws and regulations relating to well use. Tenant shall not construct any new wells without the express written permission of the Landlord. All well infrastructure shall be Tenant's responsibility.

10. IRRIGATION AND DRAINAGE CONTROL:

- 10.1 Tenant shall provide, install and maintain, at its own expense, all irrigation facilities, pipes, pumps, and related facilities which may be necessary or appropriate for its use of the Leased Premises. Upon termination of this Lease, (a) all temporary irrigation facilities shall remain the property of Tenant, and (b) all facilities existing as of the Effective Date and permanent fixtures installed by Tenant with Landlord' consent shall remain the property of Landlord.
- 10.2 Regional Water Quality Control Board. Tenant shall comply with all laws, rules and regulations of the Central Valley Regional Water Quality Control District including but not limited to all laws and regulations pertaining to irrigated lands and Board Resolution R5-2003-0105 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Central Valley. Tenant shall obtain all necessary permits relating to the discharge of water and pay all related fees and assessments imposed by the Central Valley Regional Water Quality Control District. Tenant shall be responsible for and pay any and all fines and penalties imposed by any state or local agencies, or district for violation of such laws or regulations by Tenant, its employees, officers, agents or contractors.
- 10.3 Drainage Control. Tenant shall, at its own expense, maintain all irrigation and drainage ditches essentially free of weeds, excessive vegetation, silt and debris. Tenant shall maintain all culvert outfall/outlets that discharge water into main or secondary drains or into the silt pond, and shall provide discharge protection as necessary to prevent erosion. All irrigation and drainage ditches shall be constructed at least eight (8) feet from utility poles, survey monuments and manholes. Tenant shall immediately repair all leaking irrigation ditches to prevent soil erosion and provide unimpaired vehicle access between fields. Borders and/or furrows shall be constructed as needed to provide effective and efficient distribution of irrigation water and

collection and return of tail-water. Permanent water control structures shall be maintained and repaired by Tenant at its own expense. Permanent water control structures shall remain the property of Landlord upon the termination of this Lease.

- 10.4 Tenant shall control soil erosion; keep in good repair all terraces, ditches, inlets and outlets of drains; preserve all established watercourses and irrigation systems; and refrain from any practices which will injure such structures or systems. Tenant shall ensure that excess drainage water released does not flood County roads, Highway 33 or downstream land users. Tenant shall comply with all regulations and management plans regarding water run-off and pesticide run-off by the West Stanislaus Conservation District and any other state or local district.
- 10.5 Tailwater System. An irrigation tailwater recovery system exists at the northeast corner of the Leased Premises to conserve and recycle irrigation water and to prevent excessive tailwater from leaving the Leased Premises. All permanent improvements, such as sumps and buried pipelines, are the property of Landlord but shall be used and maintained by Tenant at its own expense. Tenant shall provide, at its own expense, pumping devices for tailwater sump and pay all associated operational costs. Tenant, at its own expense, shall clean the sump of sediment, weedy material and debris and restore the sump to its original capacity and condition. Sediment cleaned from the sump shall be spread evenly on the fields. Tenant shall maintain the system so that sediment settles and the sump can be operated in a functional condition.
- 10.6 Mosquito Abatement. In order to minimize mosquito breeding, Tenant shall not permit tailwater runoff to stand in ditches between operations during the critical mosquito breeding seasons. Tenant shall be responsible for abatement of all mosquitoes.
- 10.7 Floodplains. Tenant acknowledges that a portion of the Leased Premises (located on the western portion of the Leased Premises adjacent to Little Salado Creek) is designated as Flood Zone A which is expected to experience flooding during a 100-year storm. (See Exhibit 5, "Flood Zones"). All activities contemplated for this portion of the Leased Premises by the Tenant are subject to any and all federal, state and local laws, rules and ordinances governing land use in floodplain areas.
- 10.8 Wetlands. Tenant acknowledges that the Leased Premises contains approximately 4.66 acres of wetlands. (See Exhibit 6, "Wetland and Wildlife Habitat"). All activities contemplated for the Leased Premises by the Tenant are subject to any and all federal, state and local laws, rules, and ordinances governing land use in wetland areas. Tenant shall obtain a permit from the US Army Corps of Engineers before filling, excavation, digging, or dredging or performing any other type of work in the wetland areas of the Leased Premises. Tenant's activities shall not cause degradation of the banks along wetland areas.
11. AVIGATION EASEMENTS: Tenant shall not store any equipment, vehicles or materials nor shall construct any temporary or permanent improvements, within the avigation easement areas as shown on Exhibit 7 ("Avigation Easements shown on Record of Survey"), without the express written approval of the Landlord.
12. STATUS OF TENANT: At all times during this Lease Tenant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as an independent contractor and not employees of Landlord. This Lease shall not be deemed nor is it intended to create a partnership relationship between the Landlord and Tenant.
13. MAINTENANCE AND REPAIRS: Tenant shall keep in good order, condition and repair the Leased Premises including all irrigation systems, pumps, fencing, drains, and all other improvements to the

Leased Premises. Tenant shall, at its own expense, keep the Leased Premises in a safe and clean condition. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease due to Landlord's failure to keep the Leased Premises in good order, condition and repair.

14. **COMPLIANCE WITH LAWS AND REGULATIONS:** Tenant shall, at its own expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Del Puerto Water District; the Regional Water Quality Control Board, the San Joaquin Air Pollution Control District, and the West Stanislaus Conservation District) in effect during the term of this Lease regulating the use of the Leased Premises by Tenant. Tenant shall pay all fines and penalties assessed by any local agency, district, or state agency arising from a violation of any statute, ordinance, rule, regulation, order, covenant or restriction of record relating to the use of the Leased Premises by Tenant, its employees, officers, agents or contractors. Tenant's willful violation of any law or regulation shall constitute grounds for termination as set forth in Section 6.3 above.
15. **WASTE OR NUISANCE:** Tenant shall not commit or permit the commission by others of any waste on the Leased Premises; Tenant shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code; and Tenant shall not use or permit the use of the Leased Premises for any unlawful purpose.
16. **TAXES AND OTHER CHARGES:** It is understood that the Leased Premises interest created by this lease may be subject to Leased Premises taxation and that Tenant will be subject to the payment of Leased Premises taxes levied on such interest. Tenant shall pay all taxes, assessments or other charges levied or made as a result of Tenant's possession or use of the Leased Premises without contribution by Landlord.
17. **INSURANCE:**
 - 17.1. Tenant agrees to obtain, and maintain at all times during the life of this Lease Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."
18. **DEFENSE AND INDEMNIFICATION:**
 - 18.1 To the fullest extent permitted by law, Tenant shall indemnify, hold harmless and defend Landlord and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Lease by Tenant or Tenant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible Leased Premises, including the loss of use. Notwithstanding the foregoing, Tenant's obligation to indemnify Landlord and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Tenant in contributing to such claim, damage, loss and expense.
 - 18.2 Tenant's obligation to defend, indemnify and hold Landlord and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Lease for Tenant to procure and maintain a policy of insurance.
 - 18.3 Subject to the limitations in 42 United States Code Section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

- i. Tenant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Tenant or its subcontractors;
 - ii. No provision of this Lease shall be interpreted to permit or obligate Tenant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and
 - iii. At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Tenant.
19. **WITHDRAWAL OF LAND FROM LEASED PREMISES:** Lessor may at its sole discretion and at any time during the term of this Lease, withdraw from the leased premises acreage for the purpose of industrial development. Lessor shall give Lessee thirty (30) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment of Annual Base Rent shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. Upon such acreage withdrawal, the Landlord shall reimburse Tenant all actual costs paid by Tenant for the planting of crops that have not been harvested in the relevant portion of the Leased Premises, plus fifteen percent (15%) of said costs, for the crop year in which withdrawal occurs.
20. **ALTERATIONS:** Tenant shall not make or permit any other person to make any permanent alterations to the Leased Premises or any improvement thereon without the prior written consent of the Landlord. Tenant shall not erect or permit to be erected any permanent structure to the Leased Premises. Tenant shall not remove any trees or structures located on the Leased Premises without the prior written consent of Landlord.
21. **TEMPORARY INSTALLATIONS:** Subject to the prior written approval of the Landlord, Tenant may erect, at its own expense, temporary structures on the Leased Premises as may be necessary or incidental to its use under the lease. All such structures shall remain the Leased Premises of Tenant and shall be removed from the Leased Premises prior to the expiration of the lease term.
22. **DAMAGE:** At the termination of the lease, Tenant shall pay to Landlord reasonable compensation for any damage to the Leased Premises caused by Tenant or its invitees, agents or employees, excepting ordinary wear and tear or depreciation.
23. **ENTRY BY LANDLORD:** Tenant shall permit Landlord, its employees, agents, representatives, invitees, as well as any Federal, State and Local officials responsible for remediation of hazardous conditions on the former military base, to enter the Leased Premises at all reasonable times.
24. **ENTRY BY OTHERS:** Tenant shall have the right to post signs forbidding trespass by persons other than Tenant or his employees upon the Leased Premises, and to deny entry upon the Leased Premises to unauthorized persons.
25. **ASSIGNMENT:** Tenant shall not assign this Lease, nor sublet any portion of the Leased Premises, without the Landlord's prior written approval. In the event of assignment not approved by Landlord, this lease will immediately terminate.
26. **DEFAULT BY TENANT:** All covenants and agreements contained in this Lease are declared to be conditions to this lease. Should Tenant default in the performance of any condition or agreement contained in this lease, Landlord may terminate this Lease as set forth in Section 6.2 above and re-enter and regain possession of the Leased Premises in accordance with the laws of the State of California then in effect.

27. CONVEYANCE OF THE LEASED PREMISES: Upon conveyance or transfer of all or part of the Leased Premises, Landlord shall be released from all obligations hereunder. Thereafter, Landlord's successor in title shall be responsible for performance of Landlord's obligations hereunder.
28. NOTICES: All notices required or permitted by this lease or by law to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail addressed as follows:

To Landlord - Stanislaus County Purchasing Agent
1010 Tenth Street, Suite 5400
Modesto, CA 95354

With a copy to: Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354

To Tenant: T & M Farms
P.O. Box 1007
Westley, CA 95387

29. REPRESENTATIVES. The parties hereby appoint representatives to serve as points of contact during the term of this Agreement. The parties hereby appoint:

For County:

Adam Harris, Staff Services Coordinator
GSA Purchasing Division
1010 10th Street, Suite 5400
Modesto, CA 95354
209.525-7645
harrisad@stancounty.com

For Tenant:

Thomas Maring, General Partner
PO Box 1007
Westley, CA 95387
209.602-0730

30. FAILURE TO VACATE: Tenant shall promptly vacate Leased Premises at the expiration or termination of this Lease, whichever occurs first. If Tenant fails to vacate as herein provided, Tenant agrees that Landlord or its authorized agents may enter upon the Leased Premises and remove all personal property therefrom. In this event, Tenant waives (a) any and all claims for damages against Landlord, its agents or employees; (b) all rights Tenant may have to annual crops planted prior to the termination; and (c) any and all rights Tenant may have under Civil Code of Procedure Section 1161. In the event of Tenant's violation of any of the terms or conditions hereof, nothing herein shall be deemed a waiver of Landlord's rights to demand and obtain possession of the Leased Premises in accordance with law.
31. RESTORATION OF THE PREMISES: Before the expiration or earlier termination of this Lease, the Tenant shall restore the Leased Premises to the condition existing after Landlord's inspection under Section C. In the event of damage or destruction to the Leased Premises or any portion thereof by Tenant, its agents, officers, employees, or invitees, Tenant shall promptly repair or replace such Leased Premises to the satisfaction of the Landlord or compensate the Landlord for the loss or damage to the Leased Premises, as the Landlord shall elect.

32. LIENS: Tenant shall promptly discharge or cause to be discharged any lien, claim or demand of any kind which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished therefor, and if the same shall not be promptly discharged, the Landlord may cause such lien or claim to be discharged at the expense of Tenant.
33. TIME OF ESSENCE: Time is expressly declared to be the essence of this lease.
34. WAIVER: The waiver of any breach of any of the provisions of this lease by Landlord shall not constitute continuing waiver or a waiver of any subsequent breach by Tenant either of the same or of another provision of this lease.
35. SEVERABILITY: If any portion of this Lease or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Lease or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Lease are severable.
36. AMENDMENT: This Lease may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Lease and attached to the original Lease to maintain continuity.
37. ENTIRE AGREEMENT: This Lease supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Lease shall be valid or binding.
38. ADVICE OF ATTORNEY: Each party warrants and represents that in executing this Lease, it has received independent legal advice from its attorneys or the opportunity to seek such advice.
39. CONSTRUCTION: Headings or captions to the provisions of this Lease are solely for the convenience of the parties, are not part of this Lease, and shall not be used to interpret or determine the validity of this Lease. Any ambiguity in this Lease shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Lease.
40. GOVERNING LAW AND VENUE: This Lease shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Lease shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Lease as of the date first above written.


LANDLORD:

COUNTY OF STANISLAUS

By: _____
Dan Wirtz, GSA Director/Purchasing Agent


Appv'd: BOS Res. # _____ Date _____

APPROVED AS TO FORM
Thomas E. Boze, County Counsel

By:  _____
G. Michael Ziman, County Counsel

TENANT:

T & M FARMS

By:  _____
Thomas Maring, General Partner

By:  _____
Matthew Maring, General Partner

By:  _____
Mark Maring, Operations