

MEMO

**Discussion / Action
Item #: 6**



Meeting Date: May 19, 2023

To: Board of Directors
From: Director of Engineering and Compliance, Guy R. Petraborg
Approved by: General Manager, Felipe Melchor

Subject: Approve New Limited Lease of Land for Farming Operation with Neponset Ag of Monterey County, CA

Recommendation

That the Board approve the new limited lease of land for farming operation with Neponset Ag of Monterey County, CA.

Background

The District owns property in the lowlands area along the Salinas River, portions of which flooded during the 2022/23 wet weather season. A portion of said property is an area of approximately 21 acres (+/-) that has been used for farming during the past three decades or longer. The Tenant, Neponset Ag (Bernard (Benny) Jefferson), under a recent and prior lease agreements dating back to at least 2001, has previously reclaimed and improved said 21 acres to render it suitable for farming. Neponset Ag has managed the farm area, installed irrigation pipes and made other improvements that have conferred a benefit to the property for the tenant's limited farming use under the lease agreement. In recent years the farm area has been used for artichoke production. The District receives the benefits of the tenant's activities in the form of a relief of the on-going maintenance of said property.

Discussion

The District has leased the said property for farming purposes since at least the 1990's. The proposed new lease is an update of the prior lease and allows continued lease by Neponset Ag for farming purposes on a limited term basis. The District and Neponset met several times to edit the prior lease. The two parties are in mutual agreement of the terms and conditions presented in the new lease which is attached to this Board Report. The following is a summary of the main changes presented in the new lease accomplished by editing the recent lease.

- Changed terms of termination such that District may give advance notice of termination to Tenant without "cause" required
- Changed terms of 'optional' extension of lease such that the District must approve the lease extension term should the Tenant request said lease extension term
- Changed compensation by Tenant to District from \$0/month to \$100/month
- Tenant to directly pay for water supply from Monterey County Water Resources Agency (e.g., maintains the requirement that the District is not financially responsible for water supply)
- Tenant not responsible for District water well on eastern perimeter

Physical Address

14201 Del Monte Blvd.
Salinas, CA 93908

Mailing Address

P.O. Box 1670
Marina, CA 93933

Phone / Fax

831-384-5313 PHONE
831-384-3567 FAX

Web / Social

ReGenMonterey.org
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Let's not waste this.



- Tenant may use “organic farming” practices. Prior lease requirement for “organic farming” practices was modified verbally between a prior District General Manager and Tenant to release Tenant’s mandatory requirement for “organic farming” more than 10 years ago

Financial Impact

The financial impact to the District of the Board’s approval of the new limited lease of land for farming by Neponset Ag is i) avoidance of more than an estimated \$100,000 per year of maintenance costs and ii) the increase of \$1,200 per year of lease revenues.

Conclusion

Staff recommends that the Board approve the new limited lease of land for farming operation with Neponset Ag of Monterey County, CA.

Attachments:

Approve New Limited Lease of Land for Farming Operation with Neponset Ag (dated May 19, 2023)

LEASE AGREEMENT

LIMITED LEASE OF LAND FOR FARMING OPERATION

This Limited Lease Agreement (hereinafter, "Lease") is made and entered into this 19th day of May 2023, by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT, a public entity duly organized pursuant to the provisions of California Health and Safety Code, Sections 4170 *et seq.*, hereinafter "District," and Neponset Ag, a California general partnership, hereinafter "Tenant," as follows:

RECITALS

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

1. District owns and operates a landfill on property just east of Salinas, south of the Castroville community and north of the City of Marina, California, near the Salinas River, commonly known as the "Monterey Peninsula Landfill." There is on said property an area of approximately 21 acres not presently being used for the District's activity.
2. Tenant, under a recent and prior lease agreements dating to 2001, has previously reclaimed and improved said 21 acres to render it suitable for farming. The Tenant has installed irrigation pipes and made other improvements that have conferred a benefit to the property for the tenant's limited use under this lease agreement.
3. District and Tenant desire that the parties hereto enter into this Lease to allow Tenant to continue to farm the acreage for a number of years until such time that the District requires the use of the land for its activities or the tenant no longer chooses to farm the lease area land.
4. It is mutually agreed that this Lease is based upon and subject to the following terms, covenants, conditions and provisions and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

ARTICLE 1 - DESCRIPTION OF PROPERTY

1.01 Description of Leased Property

District hereby leases to Tenant, and Tenant hereby leases from District the following real property (hereinafter, "Premises"), consisting of approximately 21 acres, located on District's Monterey Peninsula Landfill property in Parcel #175-061-008-000 C Subparcel 2, as identified and shown on Exhibit A, attached hereto and incorporated herein by this reference. District, by and through its General Manager, reserves the right during the term of this Lease to redesignate or change the specific boundaries of the Premises upon at least sixty (60) days' written notice to Tenant. Such redesignation or change may include a modification to the total number of acres leased to Tenant hereunder.

ARTICLE 2 - TERM

2.01 Lease Term

The term of this Lease shall be for a period of about five (5) years, commencing on May 19, 2023, and ending on June 30, 2028, unless earlier terminated under the provisions of this Lease.

2.02 Option to Extend the Term of this Lease

If at the end of the initial term of this Lease Tenant is not then in default, Tenant shall have the opportunity to renew this Lease for five (5) additional years on the same terms and conditions contained herein contingent upon the District's written concurrence. Tenant shall give District notice of Tenant's election to exercise this option no fewer than one hundred and twenty (120) days prior to the expiration of the initial term on June 30, 2028.

ARTICLE 3 - RENTAL PAYMENTS

3.01 Initial Term Rent

Tenant agrees to and will pay District the sum of One Hundred Dollars (\$100) per month for the agreed upon 21-acre +/- lease area for farming purposes. The parties hereto agree and acknowledge that this nominal rent is fair and equitable based on the following: (a) As noted in the recitals, Tenant previously has reclaimed and improved the Premises, bringing it to a farmable state, and to that end has installed irrigation pipes and made other improvements; (b) the only water source on the Premises, a small well, is inadequate to provide irrigation water sufficient for Tenant's purposes; (c) Tenant will be required to transport a significant amount of irrigation from off the Premises for use on the Premises; (d) Tenant has in the past, and will continue as a condition of this Lease, provided to District security surveillance on the Premises and surrounding property owned by District.

The annual rent established for each year of the initial term shall be paid, in advance, in equal semi-annual installments on November 1st and May 1st of each year of the initial term. Rent shall be delivered to District by personal delivery at District Offices, 14201 Del Monte Boulevard, Monterey County (Salinas), California, 93908, or private delivery service at District Offices, (or United States Mail Service to Post Office Box 1670, Marina, California, 93933-1670).

Initial term rent shall increase at the beginning of each of the second, third, fourth and fifth years of the initial term. The increases shall be the lesser of (a) the rate of increase in the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Region, for the prior year period, or (b) five (5%) percent.

If Tenant defaults or is late in the payment of any semi-annual rent installment during the initial term, such installment shall bear interest, from the day it is due until actually paid, at the maximum rate then authorized under California Law for interest payable on trial court judgments.

3.02 Option Period Rent

In the event the Tenant and the District exercises the option to extend the Lease, Tenant agrees to and will pay District the then fair rental value for similar quality farming land as may be agreed upon by the parties. If the parties cannot agree on a fair rental value, said value shall be determined by arbitration using a single qualified and experienced real estate appraiser. Such

arbitration and selection of arbitrator shall be as provided in Part III, Title 9 of the California Code of Civil Procedure.

ARTICLE 4 - USE OF PREMISES

4.01 Principal Use

This Lease is made for the purpose of allowing Tenant use of the Premises during its term solely for the purpose of farming of crops. District warrants that this use conforms to applicable land use regulations currently in effect and that the lease area is subject to flooding given its proximity to the Salinas River.

ARTICLE 5 - OBLIGATIONS OF TENANT

5.01 Payment of Taxes

During both the initial and option terms, Tenant shall be responsible for payment of all its expenses in connection with the use of the Premises and the rights and privileges herein granted, including all taxes, general and special assessments and other charges of every description, including any possessory interest tax created by this Lease, and any permit and license fees. It is understood by Tenant by this Article that, although the Premises are held in public ownership, Tenant's interest therein will be taxable as a possessory interest, for which, as provided immediately above, Tenant is solely responsible.

Tenant shall not be responsible or liable for any permanent improvement bonds or assessments not based upon or not related to the use made of the Premises by Tenant hereunder.

Unless otherwise directed by District's General Manager, all sums payable by Tenant under this Article (e.g., taxes) shall be paid by Tenant to District on November 1st and April 1st of each year of the Lease.

5.02 Payment of Utilities

Tenant shall pay all charges for water, electricity, telephone service, rubbish removal, portable toilet service, and any and all other utility services of any kind and nature whatsoever, supplied to and used on the Premises, throughout the term of this Lease. Tenant shall procure all electricity for the use of or operation on the leased Premises, including electrical power for the pumping plants and pumps used in draining the Premises. All water irrigation lines shall be installed by the Tenant at Tenant's expense, with District's prior written approval.

5.03 Duty to Farm

At its sole cost and expense, Tenant will occupy, till and in all respects cultivate farmable acres of the Premises for the term hereof in a farmer-like manner and according to the usual course of farming practices in the county, and will not commit any waste or damage, nor suffer any to be done, on the Premises. Tenant shall periodically report in writing to the District the type, amount, and date of application of the use of any synthetically compounded fertilizers, pesticides, herbicides, hormones or other artificial additives.

At all times during the term of this Lease, including any option periods, Tenants farming activities shall strictly adhere to farming best management practices. If it is appropriate, organic farming practices may be used by the Tenant. For general information purposes, organic farming is a system of farm design and management practices that seek to create

ecosystems, rotate crops, develop sustainable soil conditions with high biomass levels, provide natural weed and pest control, achieve sustainable productivity and create a mix of mutually dependent life forms. Organic food production practices prohibit the use of synthetically compounded fertilizers, pesticides, herbicides, hormones or other artificial additives.

At its sole cost and expense, Tenant will furnish all farming implements, tools, work stock, tractors, trucks, seed, labor and all else necessary for use in leveling, checking, tilling, farming and seeding the Premises, and harvesting the crops grown thereof, without recourse to District for any items whatsoever.

Tenant, at its sole cost and expense, will endeavor, consistent with good farming practice and in accordance with law, to eliminate squirrels, rodents and other animals inimical to Tenant's farming operation in the lease land area. Further, Tenant shall follow the usual practice of farmers in the county in keeping down and eliminating noxious weeds and grasses.

Tenant shall faithfully observe all quarantine or governmental regulations regarding the growing of crops on the Premises.

5.04 Maintenance

During the term of this Lease, Tenant shall, at its sole cost and expense, maintain the Premises and all improvements, if any, thereon and facilities appurtenant thereto in good, sanitary and neat order, condition and repair, and District shall have no responsibility whatsoever to maintain the leased property or make any repairs thereto. Tenant shall arrange and pay for adequate waste and trash removal as required.

Specifically, without limitation, Tenant shall keep and maintain all water pipes, ditches, pipelines or culverts now on the Premises in good order, condition and repair, damage by the elements excepted, wear and tear excepted. Tenant shall police the Premises as frequently as necessary to prevent litter from blowing off the Premises.

Tenant specifically waives the provisions of Sections 1941 and 1942 of the California Civil Code with respect to the District's obligations for the tenantability of the Premises and Tenant's right to make repairs and deduct the expense of such repairs against rent.

5.05 Drainage

Drainage from the Premises shall be engineered by Tenant so that District's remaining property is not adversely affected. Tenant shall exercise a reasonable degree of care to prevent irrigation water from escaping from the Premises and from the ditches and conduits of Tenant, and from flooding or interfering with the use of District's adjoining property, roads or lanes.

Tenant shall clear and clean out all foreign growth from the drainage and irrigation ditches on the Premises whenever it is necessary or advisable that they be so cleared and cleaned.

5.06 Water

Tenant shall be responsible for compensating the District for water used from the recycled water distribution system (aka "purple pipe" network) and billed to the District by Monterey County Water Resources Agency (MCWRA). The Tenant and District agree that the Tenant shall no longer be required to maintain the small irrigation well on the District's eastern property boundary, and shall no longer bear the cost of any analytical and qualitative testing required of this well water supply. District makes no warranties and assumes no responsibility

regarding the quality and quantity of the irrigation water available from MCWRA or other water obtained by the Tenant.

5.07 Compliance with Laws, Governmental Authorities

Tenant's activities shall be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations and all other requirements of all governmental authorities, local, state and federal, in force at the time of execution of this Lease or at any time during the term hereof, affecting or governing the Premises or the District's landfill operations.

5.08 Liens and Claims

During the term hereof, Tenant shall keep the Premises and every part thereof free and clear of all liens and claims of lien upon or against the Premises, including without limitation mechanics' liens and other liens for any work or labor done, services performed, or materials and appliances used or furnished for or in connection with any operation of Tenant, any construction, repair, alteration or addition Tenant makes or causes to make, or any work permitted by Tenant on or about the Premises. Tenant shall at all times promptly and fully pay any and all claims on which such liens may or could be based, and shall indemnify District against all such liens, claims of liens, and suits or other procedures pertaining thereto. Tenant shall provide to District a notice of any improvement, repair, alteration or addition to the Premises estimated to cost more than \$5,000.00, at least five (5) days prior to commencement of such improvement, repair, alteration or addition, so that District, if it chooses, may post appropriate notice of non-responsibility. Tenant acknowledges that said property is owned by a public entity and subject to the California Public Resources Code provisions and compliance with applicable "public works" requirements.

Should Tenant fail or refuse to pay any such lien, claim or demand, or any other claim, charge or demand under the terms of this Lease, District may, at its option, pay any such lien, claim, demand or charge, or settle or discharge any action therefor or judgment thereon, and all costs, expenses and other sums incurred or paid by District in connection therewith shall be repaid to District upon written demand, together with interest at ten (10%) percent per annum from date of payment by District until repaid, and any default in repayment shall constitute a breach of this Lease.

5.09 Non-Discrimination

Tenant, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that no person, on the grounds of race, color, creed, sex or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in Tenant's use of the Premises.

ARTICLE 6 - RIGHTS OF DISTRICT

6.01 Improvements

All or any buried pipelines, alterations, additions or improvements to or on the Premises performed by Tenant shall constitute development work and shall belong to and be the property of District at the termination of the Lease, and Tenant shall have no right or entitlement whatsoever to remove same from the Premises.

6.02 Access to Premises

District, its agents, representatives and employees have the right to enter the Premises at any time for the purpose of inspecting the same, for the purpose of posting notices of non-responsibility under subarticle 5.08 of this Lease, for the purpose of determining whether Tenant is properly caring for improvements and is properly clearing and cleaning drainage and irrigation ditches as required by this Lease, for the purpose of determining whether Tenant is complying with the terms of this Lease, and for the purpose of doing other lawful acts that may be necessary to protect District's interest in the Premises. Exercise of this right to enter shall not require any rent rebate, and Tenant hereby waives any liability for any loss of occupation or quiet enjoyment of the Premises occasioned by exercise of this right to enter.

ARTICLE 7 - INDEMNITY

7.01 Indemnity

Tenant and District agree that District, its Board and officers, employees, agents and volunteers, should to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorney's fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the performance of this Lease, including without limitation flooding of District or County roads or neighboring lands because of improper or inadequate or escaping irrigation waters. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the District. Tenant acknowledges that District would not enter into this agreement in the absence of the commitment from Tenant to indemnify and protect District as set forth here.

To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless District, its Board, officers, employees, agents and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by District, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Lease. All obligations under this provision are to be paid by Tenant as they are incurred by the District.

Without affecting the rights of the District under any provision of this agreement or this section, Tenant shall not be required to indemnify and hold harmless District as set forth above for liability attributable to the sole fault of District, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the District is shown to have been solely at fault and not in instances where Tenant is solely or partially at fault or in instances where District's fault account for only a percentage of the liability involved. In those instances, the obligation of District will be all-inclusive and District will be indemnified for all liability incurred, even though a percentage of the liability is attributable to the conduct of the District.

The obligations of Tenant under this or any other provision of this Lease will not be limited by the provision of any workers' compensation act or similar act. Lessee expressly waives its statutory immunity under such statutes or laws as to District, its Board, officers, employees, agents and volunteers.

Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Article from any assignee, subcontractor or any other person or entity involved by, for, with or on behalf of Tenant in the performance or subject matter of this Lease. In the event Tenant fails to obtain such indemnity obligations from others as required here, Tenant agrees to be fully responsible according to the terms of this section.

Failure of the District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend District as set forth herein is binding on the successors, assigns or heirs of Tenant and shall survive the termination of this Lease or this Article.

ARTICLE 8 - INSURANCE

8.01 Comprehensive Liability Insurance

Continuously during the term of this Lease, Tenant shall, at its own expense, maintain in full force a policy or policies of comprehensive or commercial liability insurance, including property damage coverage, written by one or more responsible insurance companies licensed to do business in California, that will insure Tenant and will also name District, its board, officers and employees (and such other persons, firms or corporations as are designated in writing by District as additional insureds) against liability for injury to persons and property and for death of any person or persons occurring in or about the Premises. Each such policy shall be subject to approval by District and District's attorney as to form and as to insurance company. The liability under such insurance shall not be less than \$1,000,000.00 for any one (1) person injured or killed, not less than \$2,000,000.00 for any one (1) accident, and not less than \$500,000.00 for property damage.

Tenant shall provide District with copies or certificates of all policies, signed by the insurer and not by a broker, including in each instance an endorsement providing that such insurance shall not be cancelled or materially changed in coverage except upon thirty days' prior written notice to District. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to District or any employee or agent of District.

8.02 Worker's Compensation/Employer's Liability

Tenant shall provide worker's compensation statutory benefits as required by law. Tenant's liability limits shall be no less than \$1,000,000.00 per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the District, its Board, officers, employees or agents.

ARTICLE 9 - DEFAULT AND REMEDIES

9.01 Default

Tenant shall be deemed in default under this Lease:

- a) Upon breach of any of the covenants and conditions of this Lease with respect to discrimination; with respect to the sale, assignment, transfer, encumbrance or subletting of the Premises; with respect to the bankruptcy or insolvency of Tenant.
- b) Upon failure to pay any rent or any other consideration, fees or payments required under

this Lease to be paid by Tenant to District within ten (10) days following the date those obligations are due, or upon failure to provide evidence of insurance when due, within ten (10) days after being given notice thereof by District.

- c) Upon the breach of any of Tenant's other duties, obligations, covenants or conditions under this Lease, which breach can be cured, if such breach is not cured within sixty (60) days after being given written notice thereof by District.

9.02 Remedies on Default

- a) *District's Right to Terminate Lease.* The District and Tenant agree that the District shall retain the right to terminate this Lease without cause provided that the tenant is given a minimum 9-month advance notice of the termination in writing from the District. Upon Tenant's default of this Lease, District shall have the right, without further notice, to terminate this Lease as well as Tenant's rights in and to the Premises, to enter upon and retake possession of the Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of rent to be paid by Tenant under this Lease for the balance of the Lease term over the then reasonable rental value of the Premises for the same period. For the purposes of this section, District and Tenant agree that the "reasonable rental value" shall be the amount of rent which District can obtain as rent for the balance of the Lease term.
- b) *Other Remedies.* All rights, options and remedies of District contained in this Lease shall be construed and held to be cumulative and not one of them shall be exclusive of the other, and District shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

9.03 Waiver of Default

Any waiver by District of a default of this Lease arising out of the breach of any of the covenants, conditions or restrictions of this Lease shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition or restriction of this Lease.

ARTICLE 10 - GENERAL PROVISIONS

10.01 Conditions and Covenants

All provisions of this Lease shall be deemed as running with the land, and construed to be conditions as well as covenants as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

10.02 No Waiver of Breach

No failure by either District or Tenant to insist upon the strict performance by the other of any covenant, agreement, term or condition or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver or any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

10.03 Independent Status

Tenant is an independent entity. Tenant is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease shall be construed as creating a partnership or joint venture between District and Tenant.

10.04 No Warranty of Suitability

Tenant understands, acknowledges and agrees that no representation, statement, or warranty, express or implied, has been made on or on behalf of District as to the condition of the Premises or the suitability of the Premises for its intended use. On entering the Premises, Tenant agrees to accept the Premises in its present condition and “as is,” with respect to all conditions which may now exist on or under the Premises.

10.05 Dispute Resolution

The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

10.06 Confidentiality

To the extent allowed by law, District shall not disclose Tenant’s financial condition or other confidential financial information. Tenant acknowledges that the District is a public agency and has limited powers to withhold information from the public.

10.07 Time of Essence

Time is of the essence of this Lease and of each provision hereof.

10.08 Subleasing and Assigning

Tenant shall not encumber, assign or otherwise transfer this Lease or any right or interest in this Lease, or any right or interest in the Premises, without the express written consent of District first had and obtained. Neither shall Tenant sublet the Premises or any part thereof or allow any other persons, other than Tenant's agents, employees and customers to occupy or use the Premises or any part thereof without the prior written consent of District. A consent by District to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any encumbrance, assignment, transfer or subletting without the prior written consent of District, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the District, terminate this Lease.

10.09 Bankruptcy and Insolvency

If Tenant shall, at any time during the term of this Lease, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Tenant, or if Tenant shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant shall be appointed in any suit or proceeding brought by or against Tenant, or if Tenant shall make any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder shall immediately cease, terminate and be forfeited and cancelled; provided, however, that if Tenant shall, within six (6) days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commence proper proceedings to dismiss or deny the petition or vacate the receivership and shall expeditiously pursue and diligently exhaust all proper remedies toward that end, the bankruptcy or receivership shall not constitute a default until the entry of a final determination adverse to Tenant.

10.10 Attorney's Fees and Costs

Should any dispute between the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms or conditions of this Lease by means of court action or administrative enforcement, the laws of the State of California shall be used for the interpretation of the covenants and conditions of this Lease, and any such action shall be brought in a court of proper jurisdiction in Monterey County. The prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

10.11 Binding on Heirs and Successors

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by District to any assignment of this Lease or any interest therein by Tenant except as otherwise provided herein.

10.12 Rights of Landlord and Tenant upon Termination of Lease

It is agreed that at any time upon the expiration of this Lease at the end of the term or otherwise:

- a) Removal of Pumps. Without limiting any of District's rights herein elsewhere set forth, Tenant shall have the right to remove any motors, pumps and pump equipment which may be placed and/or installed on the Premises by Tenant.
- b) Removal of Temporary Structures. In the event Tenant places any cabins or other removable structures on the Premises with the prior written consent of District, said cabins or other structures may be removed by Tenant.
- c) Surrender of Possession. Tenant agrees to surrender possession of the Premises to District, or to District's agents or assigns, in as good order and condition as reasonable use for agricultural purposes and wear permit, damage by the elements and other causes and events beyond the control of Tenant excepted, and, in the event of any holding over, Tenant hereby expressly waives all rights and privileges conferred by Section 789 of the Civil Code and Section 1161 of the Code of Civil Procedure of the State of California.
- d) Removal of Growing Crops. Anything in the foregoing notwithstanding, it is expressly agreed that if at the expiration of this Lease, or any extension thereof, there are growing crops on the Premises, or any portion thereof, Tenant shall have the right to occupy for an additional period of sixty-five (65) days, rent free, that portion of the Premises on which said growing crop or crops are situated and the surrounding land necessary to harvest the same, and Tenant shall in no manner be prevented from removing said crop or crops during the said sixty-five (65) day period. In the event Tenant, prior to the expiration of the term hereof, had already removed its crop from the leased Premises, District, or its agents and assigns, may enter upon the Premises to do necessary soil preparation work so long as the same does not interfere with Tenant's use of the Premises.

10.13 Acts Beyond Control of Parties

It is further understood and agreed that District shall not be responsible for damages because of, or due to, any other conditions, natural disasters (including, without limitation, flooding, damage caused by earthquake, and the like) or accidents beyond the reasonable control of District; provided, however, that if any such event renders the property reasonably unsuitable for further farming, then at the option of Tenant, this Lease may be rescinded and cancelled and annulled as a whole, to be effective at the option of Tenant at either the termination of the period for which the current rental has been paid, or as of the date an event occurred which rendered the property reasonably unsuitable for further farming, in which event the rent shall be prorated from the date on which the option to rescind becomes effective, and the portion of prepaid rent, if any, to which Tenant is entitled shall be refunded to Tenant. In the event that said option to rescind is exercised by Tenant, Tenant shall have the right to remove from the demised Premises any growing crops within the period of sixty-five (65) days following the effective date of such rescission.

10.14 Eminent Domain

In the event of a total or partial taking of the Premises or any interest therein by a public authority under the power of eminent domain, including but not limited to any taking of Tenant's leasehold estate by District under District's power of eminent domain, then the rights of the Tenant with respect to the term, rent and the just compensation awarded in such eminent domain proceeding shall be in accordance with the law in effect when such taking occurs.

10.15 Notices and Demands

- a) Delivery of Notices. All notices, demands or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the end of the second full day following the date of mailing.
- b) Notices to District. All notices, demands or requests from Tenant to District shall be given to District at the District offices at 1420 Del Monte Boulevard, Monterey County (Salinas), California, 93908, or at Post Office Box 1670, Marina, California, 93933.
- c) Notices to Tenant. All notices, demands or requests from District to Tenant shall be given to Tenant at 299 Neponset Road, Salinas, California, 93908, or Post Office Box 56, Castroville, California, 95012.

10.16 Additional Documents

The parties hereto each mutually agree to execute any additional documents necessary for effecting the purpose of this instrument and incidental to the recordation thereof.

10.17 Amendment or Modification

This Lease may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

10.18 Interpretation

This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.

10.19 Captions

Titles or captions of articles and sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Lease or the intent of any provision of it.

10.20 Severability

If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and shall not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either part in entering into this Lease.

10.21 Counterparts

This Lease, consisting of thirteen (13) pages has been executed by the parties hereto in two counterparts, each of which shall be deemed to be an original copy.

10.22 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless made in a writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

10.23 Effect of Holding Over

Any holding over after the expiration of the initial or any extended term of this Lease, with the Consent of District, shall be construed to be a tenancy from month-to-month at the monthly rental to be paid by Tenant to District pursuant to the terms of this Lease immediately prior to the expiration of such initial or extended term and shall otherwise be subject to the covenants and conditions herein provided by this Lease, insofar as applicable.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Lease in duplicate on the date first herein above stated at the District's office in Monterey County, California.

DISTRICT:

MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT

By _____
Jason Campbell, Chair

TENANT:

Neponset Ag
A California General Partnership

By _____

Print Name/Title: _____

By _____
Felipe Melchor, General Manager