

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

DEPT: Chief Executive Office

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE May 7, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Amended and Restated Farm Lease Agreement with Melvin T. Wheeler & Sons, LP for Approximately 1,112 Acres of County-Owned Property at the Crows Landing Air Facility Located on the West Side of Stanislaus County

STAFF RECOMMENDATIONS:

1. Approve the Amended and Restated Farm Lease Agreement with Melvin T. Wheeler & Sons, LP for approximately 1,112 acres of county-owned property at the Crows Landing Air Facility, which extends the term for an additional two years beginning November 10, 2013.
2. Authorize the Chief Executive Officer to sign the agreement with Melvin T. Wheeler & Sons.

FISCAL IMPACT:

On November 9, 2010, the Board of Supervisors awarded a three-year farm lease to Melvin T. Wheeler & Sons (Wheeler) with the option to extend the lease for two additional one-year periods. Lease rent for the first year was \$100.00 per acre or \$111,200 annually, with a 2% increase each of the following two years. Wheeler received a fifty percent reduction on the first year rent for reclamation clean up and receives a credit of \$8,000 annually for providing weed abatement at its own expense. Net proceeds during the initial three-year term are projected to be \$260,716.48. The three-year term expires on November 9, 2013.

(Continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2013-213

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None


1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of the Amended and Restated Farm Lease Agreement with Melvin T. Wheeler & Sons, LP for Approximately 1,112 Acres of County-Owned Property at the Crows Landing Air Facility Located on the West Side of Stanislaus County

FISCAL IMPACT: (Continued)

The Amended and Restated Farm Lease Agreement (Agreement) provides for a two-year initial term with the option to renew for two additional one-year terms. Lease rent for the first year beginning November 10, 2013 will be \$158 per acre, with a 2% increase the second year. Wheeler will remain obligated to provide weed abatement at its own expense, and will receive a credit of \$8,000 annually for such work. Net rental proceeds during the additional two-year term are \$338,905.92.

DISCUSSION:

Since acquiring the 1,528-acre former Crows Landing Air Facility from the Federal government in 2004, the County has held three farm lease agreements. Through the end of 2005, the County managed a pre-existing lease with Michelena Farms. From 2006 to 2009, the County held a lease with Pride of San Juan, based in Hollister, CA. In September 2010, the General Services Agency Purchasing Division (GSA) issued a Request for Proposal (RFP) to solicit proposals to lease the Crows Landing Air Facility. One proposal was received. The farm lease for approximately 1,112 acres (Leased Premises) was awarded on November 9, 2010 to Melvin T. Wheeler & Sons, LP (Wheeler) for a three-year term with the option to extend the lease for two additional one-year periods.

At the commencement of the lease, the property was in need of a significant investment of time and resources before Wheeler could begin farming, including the removal of a considerable amount of drip tape installed by a previous tenant farmer. In consideration of this work performed at Wheeler's expense, the County offered a "Reclamation Credit" equal to fifty-percent of the first year's annual rent. Wheeler completed all required Reclamation work, and also refurbished and repaired three wells on the property.

In addition to the reclamation work, Wheeler is also obligated under the farm lease to 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 at its own expense, for which they receive a weed abatement credit of \$8,000 annually. Wheeler has performed this obligation as required under the terms of the farm lease. Additionally, Wheeler has removed weeds from the intersection of Marshall Road and Highway 33 at its own expense in order to ensure public safety at the intersection.

With the end of the initial three-year farm lease term nearing and the current rental rate being below fair market value, GSA began to evaluate options for the Leased Premises. Given the long-standing, positive relationship with Wheeler and estimated four months necessary to conduct a new RFP process, GSA opted to first begin negotiating with Wheeler. Negotiations were successful, and Wheeler has signed the attached Agreement. The Agreement provides a two-year initial term, with the option to renew for two additional one-year terms. Beginning November 10, 2013 lease rent will be \$158 per acre, with a 2% increase the second year. Wheeler will remain obligated to provide weed abatement at its own expense, and will receive a credit of \$8,000 annually for such work.

Approval of the Amended and Restated Farm Lease Agreement with Melvin T. Wheeler & Sons, LP for Approximately 1,112 Acres of County-Owned Property at the Crows Landing Air Facility Located on the West Side of Stanislaus County

Staff recommends approval of the Agreement that will continue to offset costs associated with on-going security, planning, development analysis, and land-owner associated environmental issues such as well closures.

POLICY ISSUE:

This action supports the Boards' priorities of A Strong Local Economy and Effective Partnerships by maintaining a farm lease relationship that generates revenue to maintain the County-owned Crows Landing Air Facility property.

STAFFING IMPACT:

Existing General Services Agency staff will administer the Agreement.

CONTACT:

Keith D. Boggs, Assistant Executive Officer

Telephone: (209) 652-1514

Attachment: Amended and Restated Farm Lease Agreement

COUNTY OF STANISLAUS & MELVIN T. WHEELER & SONS, L.P.
MAY 7, 2013
AMENDED AND RESTATED
FARM LEASE AGREEMENT

LEASE SUMMARY:

Landlord:	Stanislaus County General Services Agency Purchasing Agent 1010 10th Street, Suite 5400 Modesto, California
Tenant:	Melvin T. Wheeler & Sons, L.P. 5301 Woodland Avenue Modesto, CA 95356
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.
Base Rent:	Base Rent is \$107,692.48 through balance of initial term (November 9, 2013); Base Rent for renewal term is \$167,696.00.
Term:	Approximately 2.5 years with option to renew for 2 additional 1-year terms. Total of approximately 4.5 years.
Commencement date	May 7, 2013 at 12:01 a.m.
Termination date	November 9, 2015 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"

**AMENDED AND RESTATED
FARM LEASE AGREEMENT**

AGREEMENT:

WHEREAS, the parties mutually acknowledge and agree that:

1. On November 10, 2010 the parties entered into a Farm Lease Agreement which expires November 9, 2013.
2. The parties to the previously executed Farm Lease Agreement desire to renew the Farm Lease Agreement for an additional two-year term at the end of the initial term, with the option for two one-year additional renewal terms.

THEREFORE, in consideration of the mutual covenants of the parties, the parties hereby agree that the aforementioned Farm Lease Agreement effective this date. This Amended and Restated Farm Lease Agreement (hereinafter referred to as the Lease), shall be binding upon the parties, their successors, assigns and personal representatives. The parties agree as follows:

This Amended and Restated Farm Lease Agreement (the "Lease") is entered into in the City of Modesto, State of California, as of May 7, 2013 (the Effective Date) between the COUNTY OF STANISLAUS, a political subdivision of the State of California ("Landlord"), and Melvin T. Wheeler & Sons, L.P., ("Tenant") a California limited partnership, in consideration of the premises, and the agreements, terms and conditions set forth, below.

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.
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 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.
 - 3.2 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.

3.3 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 as follows:

Period :	\$ per acre:	Gross Rent:	Less Weed Abatement Credit:	Net Rent:
5/1/2013 – 11/9/2013	\$104.04	\$115,692.48	\$8,000.00	\$107,692.48
11/10/2013 – 11/9/2014	\$158.00	\$175,696.00	\$8,000.00	\$167,696.00
11/10/2014 – 11/9/2015	\$161.16	\$179,209.92	\$8,000.00	\$171,209.92

4.2 Annual rent shall be paid in four (4) equal installments (US dollars) due on November 10, February 10, May 10 and August 10 of each year. 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 rent at the rate of ten percent (10%) per annum from the payment due date until payment of the 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 approximately two and one-half (2-1/2) years, commencing on May 7, 2013 at 12:00 a.m., and terminating on November 9, 2015 at 11:59 p.m.

6. **OPTION TO RENEW:** This Lease will not automatically renew but may be renewed for two additional one-year terms (each a "Renewal Term") at a rate to be negotiated by the parties. Such renewal shall be in the form of an amendment to the Lease to be executed at least thirty (30) days prior to the expiration of the then current term.
7. **TERMINATION:**
 - 7.1 **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.
 - 7.2 **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.
 - 7.3 **Breach of Law.** Tenant's willful violation of any law or regulation as described in Section 10 ("Water") below shall constitute grounds for termination of the lease without compensation upon fifteen (15) days prior written notice.
 - 7.4 **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.
8. **UTILITIES:** Tenant shall pay for all water, sewer, gas, electricity, telephone, and all other services supplied to the Leased Premises.
9. **TENANT'S DUTIES AND OBLIGATIONS:**
 - 9.1 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.
 - 9.2 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.
 - 9.3 Tenant shall use its best efforts to hire employees, contractors, suppliers, custom operators and agents who are located in Stanislaus County.
 - 9.4 **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.

- 9.5 **Weed Abatement.** Tenant shall manage weeds (a) 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 9.4 below. For Weed Abatement Credit, please see section 4 above.
- 9.6 **Fence Maintenance.** Tenant shall maintain all existing fences within or surrounding the Leased Premises.
- 9.7 **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.
- 9.8 **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.
- 9.9 **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.
- 9.10 **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.
- 9.11 **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 agricultural activities.
- 9.12 **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 firebrake of bare disked soil shall surround all flammable materials.

- 9.13 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.
- 9.14 Debris Removal. Tenant, at its own expense, shall dispose of all debris and empty containers generated on the Leased Premises. Landlord, however, shall pay for the disposal of the drip tape to be removed by Tenant.
- 9.15 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.
- 9.16 Harvest Crop Storage. Tenant may store harvested crops only in areas approved by the Landlord.

10. WATER:

- 10.1 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 shall comply with all rules and regulations of the Del Puerto Water District.
- 10.2 Well Covenant. Attached as Exhibit 3 is a covenant governing the use of well water (the "Water Covenant"). Tenant shall use well water on the Leased Premises only in accordance with the Water Covenant.
- 10.3 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.

11. IRRIGATION AND DRAINAGE CONTROL:

- 11.1 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.
- 11.2 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.

- 11.3 **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.
- 11.4 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.
- 11.5 **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.
- 11.6 **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.
- 11.7 **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.
- 11.8 **Wetlands.** Tenant acknowledges that the Leased Premises contains approximately 34.5 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.

12. **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.
13. **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 contractors 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.
14. **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.
15. **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 7.3 above.
16. **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.
17. **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.

18. INSURANCE:

18.1. Tenant agrees to maintain during the life of this Lease insurance policies with coverage at least as broad as follows:

- i. Commercial general liability insurance policy with a limit of not less than One Million Dollars (\$1,000,000.00) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Tenant under this Lease or the general aggregate limit shall be twice the required occurrence limit.
- ii. If Tenant or Tenant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Lease, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and Leased Premises damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.
- iii. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, Tenant certifies under Section 1861 of the Labor Code that Tenant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that Tenant will comply with such provisions before commencing the performance of the work of this Lease.
- iv. Pollution/environmental liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Tenant shall maintain claims made coverage for a minimum of three (3) years after the expiration of this Agreement.

18.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by Landlord. At the option of Landlord, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Tenant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to Landlord guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. Landlord, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, Tenant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Tenant's defense and indemnification obligations as set forth in this Lease.

18.3 Tenant's insurance coverage shall be primary insurance regarding the Landlord and Landlord's officers, officials and employees. Any insurance or self-insurance maintained by Landlord or Landlord's officers, officials and employees shall be excess of Tenant's insurance and shall not contribute with Tenant's insurance.

- 18.4 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Landlord or its officers, officials and employees.
- 18.5 Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 18.6 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.
- 18.7 Tenant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
- 18.8 Tenant shall furnish Landlord with certificates of insurance showing coverage required by this Lease, including, without limitation, those that verify coverage for subcontractors of Tenant. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates shall be received and, in Landlord's sole and absolute discretion, approved by Landlord. Landlord reserves the right to require complete copies of all required insurance policies at any time.
- 18.9 The limits of insurance described herein shall not limit the liability of Tenant and Tenant's officers, employees, agents, representatives or subcontractors.

19. DEFENSE AND INDEMNIFICATION:

- 19.1 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.
- 19.2 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.
- 19.3 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.
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.
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 7.2 above; 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
Modesto, CA 95354

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

To Tenant : Melvin T. Wheeler & Sons, L.P.
5301 Woodland Avenue
Modesto, CA 95356

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:
Keith D. Boggs, Assistant Executive Officer,
GSA Director/Purchasing Agent
Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354
(209) 652-1514
boggsk@stancounty.com

For Contractor:
Dave Wheeler, Ranch Foreman, VP
5301 Woodland Avenue
Modesto, CA 95356
(209) 321-3007

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

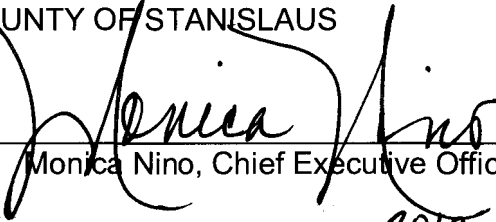
or materials or equipment furnished therefor, and if the same shall not be promptly discharged, the Landlord may cause such lien or claim to be discharged at the expense of Tenant.

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.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

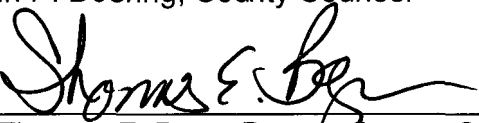
IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Lease as of the date first above written.

LANDLORD:
COUNTY OF STANISLAUS

By: 
Monica Nino, Chief Executive Officer

Approved: BOS Resolution # 2013-213
Dated: May 7, _____, 2013

APPROVED AS TO FORM
John P. Doering, County Counsel

By: 
Thomas E. Boze, Deputy County Counsel

TENANT:
MELVIN T. WHEELER & SONS, L.P.

By:  V.P.
Dave Wheeler, Ranch Foreman/Vice President