

**PARTIAL LEASE OF MONTEREY BRANCH RAIL LINE**

**SALINAS, CALIFORNIA**

**LANDLORD**

**TRANSPORTATION LANDLORD FOR MONTEREY COUNTY**

**55-B PLAZA CIRCLE**

**SALINAS, CALIFORNIA 93901**

**TENANT**

**EAGLE CREEK PACIFIC LLC**

**1920 Tienda Drive, Suite 204**

**Lodi, CA 95242**

**May 1, 2017 through April 30, 2022**

## **LEASE**

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between the Transportation Agency for Monterey County ("Landlord") and Eagle Creek Pacific LLC ("Tenant"). Landlord and Tenant are collectively referred to hereinafter as the "Parties."

1. **LEASED PROPERTY.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, on the provisions, conditions, and covenants hereinafter set forth, that certain property described as Monterey Branch Rail Line Leased Property that is adjacent to property Tenant owns as of May 1, 2017, and further identified by red in Exhibit A of this Lease.

2. **RENT.** Tenant shall pay \$21,306.00 per year in rent as set forth in Exhibit B of this Lease, without deduction, set off, prior notice or demand. Tenant shall pay the rent in two payments of \$10,653.00 semiannually, commencing May 1, 2017. Tenant shall pay the rent to Landlord at 55 B Plaza Circle, Salinas, CA 93901, or at such other place as may be designated in writing by Landlord to Tenant.

3. **REIMBURSEMENT.** If Tenant fails to make any payment or take any action required of Tenant in this Lease, Tenant agrees to reimburse Landlord upon demand for all expenditures made by Landlord for the account of or benefit of Tenant, together with interest thereon at the maximum rate allowed by law, from the date of such expenditure until repaid.

4. **UTILITIES.** Tenant shall pay before delinquency all charges made for gas, electricity, sewer, telephone, garbage and any other utilities supplied to the leased property. Tenant shall arrange for frequent garbage and trash pick up and disposal to avoid any unsightly accumulations and as required by state and local laws. In addition to Tenant's independent obligation to keep the property free from trash and debris, Tenant shall make arrangements to clean up the property within five (5) business days' notice from Landlord.

5. **TERM.** The term of this Lease shall be five (5) years commencing on May 1, 2017, and ending on April 30, 2022, unless terminated earlier pursuant to Section 6.

6. **OPTION TO TERMINATE.**

6.1 Tenant understands and agrees that the landlord has future plans for the property. Namely, Landlord anticipates use of the railroad Right of Way to facilitate the restoration of rail/transit service to the Monterey Peninsula, and possibly as a bicycle trail or other transportation uses. Thus, Tenant agrees to vacate the property during the term of the Lease, without liability to the Landlord, upon receipt of twelve (12) months written notice.

6.2 Landlord may also terminate this Lease for cause if there is a default by Tenant as provided in Section 21 after giving Tenant notice of default and failure by Tenant to cure the default within thirty (30) days.

6.3 In the event any unharvested crops remain on the property upon the termination of the Lease, Tenant shall have the right to harvest any crop remaining on the property upon the crops' maturity, provided Tenant pays on a month by month basis in advance the prorated rent of \$1,775.50 per month for the entire leased property for the time estimated as necessary to fully harvest any remaining crops. No new crops will be planted during the notice period provided for in Section 6.1, except for those that may be harvested prior to termination without the express written consent of Landlord. Tenant will also be liable for the prorated share of any taxes that might be due during this period. When Tenant actually vacates the property, the rent will be further prorated between Landlord and Tenant to cover the actual period of

occupancy under this hold over provision, which in no event will exceed the time necessary for Tenant to harvest crops in the ground prior to the Lease termination.

7. **CONDITION OF THE LEASED PROPERTY.** Tenant accepts the leased property in its present condition, as is, and Tenant acknowledges that Landlord shall have no obligation or liability whatsoever to make any improvements, alterations or repairs or to pay or reimburse Tenant for any part of the cost thereof, except as otherwise expressly provided in this Lease. Tenant further acknowledges that Landlord makes no warranties of any kind concerning the physical condition or soil of the leased property. Tenant agrees to keep the leased property in a neat and tidy condition and to remove any trash and debris that might accumulate on the property as required by state and local laws, and as provided in Section 4.

8. **ENCUMBRANCES, AGREEMENTS, RESERVATIONS, EXCEPTIONS AND EASEMENTS.** This Lease is subject and subordinate to the following items, effective without any further act of Tenant. Tenant shall from time to time, on request from Landlord, execute and deliver any documents or instruments that may be required to effectuate any subordination:

8.1 Any encumbrances now of record or recorded after the date of this Lease affecting the property.

8.2 The rights of the Union Pacific Railroad Company of the mineral estate underlying the leased property.

8.3 The rights of any Tenant under existing or future oil, gas and mineral leases affecting any part, or all, of the leased property.

8.4 All existing reservations, exceptions, easements, servitudes, licenses and rights of way, of record or in use, or as to which notice is given by possession, use or occupancy. Landlord reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the property or any part thereof, and to enter the property for any and all such purposes. Landlord also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the property. No right reserved by Landlord in this paragraph shall be so exercised as to interfere unreasonably with Tenant's operations hereunder. Landlord agrees that rights granted to third parties by reason of this paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. Landlord further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the property by Tenant, the rent shall be reduced in proportion to the interference with Tenant's use of the property.

9. **OIL, GAS AND MINERAL RIGHTS RESERVATION.** There is reserved to Landlord (and to Union Pacific Railroad Company of the mineral estate underlying the leased property only) the right to conduct seismic and other geophysical surveys and exploratory operations and otherwise to prospect for, drill, extract, mine, produce, remove, inject and/or store oil, gas or other hydrocarbon substances and minerals upon, from and through the leased property or any portion thereof. Said reservation shall include the right to construct, install, operate, maintain and remove whatever facilities, machinery, equipment, tanks, structures, buildings and appurtenances as may be reasonably necessary or convenient to the use and enjoyment of the aforesaid reservation, together with the reasonable right of ingress and egress to, from and upon said property for such purposes without interruption to Tenant's operations and providing for

10. **PURPOSE OF LEASE.** The express purpose of this Lease is for the growing of various row crops (hereinafter called "Crops") on the leased property. Tenant shall not grow any other crops nor use any

portion of the leased property for any other purpose whatsoever without Landlord's prior written consent.

11. **USE AND CARE OF PROPERTY.** Tenant agrees to use the leased property for the purpose of farming according to the highest standards of farm husbandry practices in the vicinity and for no other purpose without first obtaining Landlord's written consent. Tenant shall care for the soil in a first-class farmer-like manner, replenishing the nutrients and minerals as required. Tenant shall keep the soil free from noxious weeds and shrubs of all types, and shall take reasonable precautions to exterminate ground squirrels and rodents.

12. **WELLS AND PUMPS.** The leased property does not have any irrigation wells or pumping plants.

13. **IMPROVEMENTS AND INSTALLATION.** Tenant shall maintain and repair any roads or other improvements subject to this Lease in good order and condition. Landlord will have no responsibility for repair, maintenance or replacement of any such improvements.

14. **ENTRY BY LANDLORD.** Landlord and its authorized employees or agents shall have the right, at all reasonable times, to enter upon the leased property or any part thereof for any lawful purpose including to conduct studies or testing related to transportation projects and uses. The Tenant shall provide to the employees and agents of the Landlord, and on the request of the Landlord, to the occupants of adjacent lands, reasonable opportunities for ingress to and egress from the said adjacent lands

15. **TRANSFERABILITY OF LEASE.** Tenant shall not be entitled to assign or sublet the leased property without the written consent of Landlord. This Lease shall become null and void without any further action required by any party upon any transfer or attempted transfer of this Lease by Tenant. Tenant shall pay all of Landlord's costs and fees (legal or otherwise) in connection with any transfer or attempted transfer of this Lease.

16. **COMPLIANCE WITH LAW.** The Tenant, at its own risk and expense, shall observe and comply with all laws of the United States and the State of California, and with all rules and regulations of any department, commission, bureau, board or officers thereof, and with all ordinances of the County of Monterey, and with all rules and regulations of any department, commission, bureau, board or officer of the County of Monterey, relating to the use and occupation of the said farming land during the term of this Lease.

17. **INSURANCE COVERAGE REQUIREMENTS.**

17.1 Insurance. Insurance Coverage Requirements, without limiting Tenant's duty to indemnify, Tenant (at his cost) shall maintain in effect throughout the term of this Lease a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance including but not limited to premises, personal injuries, products, operations and completed operations, to protect against loss from liability imposed by law for damages occurring on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Landlord or Tenant, its subTenants or any person acting for Landlord or Tenant or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Landlord or Tenant, or its subTenants, or any person acting for Landlord or Tenant, or under its control or direction. Such insurance shall also provide for and protect Landlord against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in the

aggregate. Coverage shall be at least as broad as ISO Commercial General Liability Occurrence Form CG0001.

**Workers' Compensation Insurance.** If Tenant employs others in the performance of this contract, Tenant shall procure and maintain during the entire term of this Lease a Workers' Compensation Insurance Policy in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability.

**Other Insurance Requirements.** All insurance required by this Lease must be written by an insurance company admitted to do business in California or an insurance company authorized to transact insurance business in California and which holds a current A.M. Best's rating of no less than A: VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

All insurance required by this Lease shall be written on an occurrence basis, or, if the policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of five years following termination of Tenant's tenancy under this Lease.

Each insurance policy required by this Lease shall be endorsed to state that Landlord shall be given notice in writing at least thirty days in advance of any change, cancellation or non-renewal thereof.

Tenant's commercial general liability, automobile liability and All Risk property policies shall provide an endorsement naming the Landlord, its officers, agents, and employees as Additional Insureds with respect to liability arising out of ownership, possession, maintenance or use of the premises covered by this Lease; and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the Landlord and that the insurance of the Additional Insureds. Any insurance or self-insurance maintained by Landlord, its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not be called upon to contribute to a loss covered by Tenant's insurance.

The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the Landlord for liability arising out of ownership, possession, maintenance or use of the premises covered by this Lease.

Prior to the effective date of this Lease, Tenant shall submit certificates of insurance and amendatory endorsements affecting coverage required by this clause to Landlord evidencing that Tenant has in effect the full insurance coverage required by this Lease. Within ninety (90) days of execution of this Lease, Tenant shall provide Landlord with a full and correct copy of all policies required by this Lease. Tenant shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate(s) then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Lease, which shall continue in full force and effect.

Tenant agrees that if the operation under this Lease results in an increased or decreased risk in the reasonable opinion of Landlord, then the minimum limits hereinabove designated shall be changed accordingly by Tenant upon request by Landlord. Tenant agrees to increase the limits of liability when, in the opinion of the Landlord, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. Tenant agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances. Any disagreement concerning the amount and nature of the coverage required shall be determined by Landlord.

Tenant agrees that the provisions of this section as to insurance shall not be construed as limiting in any way the extent to which the Tenant may be held responsible for the payment of damages to persons or property resulting from Tenant's activities, the activities of its subTenants or the activities of any person or persons for which Tenant is otherwise responsible.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by Landlord. At the option of the Landlord either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Landlord, its officers, officials, employees and volunteers; or Tenant shall provide a financial guarantee satisfactory to Landlord guaranteeing payment of losses and related investigations, claim administration and defense expenses.

18. **INDEMNIFICATION.** In consideration for use of the property, Tenant agrees to indemnify, defend, and save harmless Landlord and its directors, officers, agents, and employees, from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to Tenant's use of the property under this Lease, including but not limited to claims for property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the Landlord in connection with such claims. "Tenant's use" includes Tenant's action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to Tenant's customers. The obligation of Tenant to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the Landlord or Landlord's directors, officers, agents, or employees.

19. **SURRENDER; CLEAN-UP; REMOVAL OF PROPERTY.**

19.1 Tenant agrees, on the last day of the term or sooner termination of this Lease, to surrender the leased property and all appurtenances thereto to Landlord in the same or better condition as when received, except for reasonable use, wear, act of God and the elements, and shall leave the leased property, including the banks of the ditches and pipes and other conduits, on or in the said property, clean and free from weeds and other growths, and otherwise in good order and condition. Tenant agrees to remove all of Tenant's personal property and trade fixtures from the property upon any termination of this Lease; provided, however, any underground pipelines, drain lines, pump motors or well improvements shall belong to Landlord upon termination of the Lease.

19.2 If Tenant fails to remove its property and restore the leased property under the conditions and within the time limits set, Landlord may: (a) do such removal and restoration at risk of Tenant and all costs and expenses thereof, together with interest thereon, shall be paid to Landlord by Tenant upon demand, or (b) claim all of such property, other than movable equipment, as its own, and Tenant shall execute and deliver to Landlord, within fifteen (15) days after written demand therefore, a bill of sale conveying all of Tenant's interest therein to Landlord, or (c) claim all movable equipment as its own, if Tenant fails to remove such equipment within fifteen (15) days of the delivery to Tenant of Landlord's written demand to do so, and Tenant shall execute and deliver to Landlord, within fifteen (15) days of the delivery of Landlord's written demand therefore, a bill of sale conveying all of Tenant's interest therein to Landlord, or (d) do any or all of the above.

19.3 Upon the expiration or earlier termination of this Lease, and if so requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord, a recordable quitclaim deed in form satisfactory to Landlord, conveying to Landlord or its nominee all rights of Tenant in the leased property.

20. **WAIVER.** Any failure or neglect of the Landlord to take advantage of any cause for the termination of this Lease, or for the forfeiture of the estate hereby created, shall not be a waiver of any other cause for such termination or forfeiture then existing, or a waiver of any cause for such termination or forfeiture subsequently arising, and the receipt by the Landlord of any of said rent shall not be deemed to be a

waiver of any cause otherwise then existing for the termination of this Lease, or for the forfeiture of the estate hereby created.

21. **DEFAULT.** Tenant shall be in default for any breach of this Lease, including but not limited to (i) Tenant's failure to pay Landlord any rental installment; (ii) Tenant's failure to pay Landlord any other sum in the amounts, manner, and at the time required; (iii) Tenant's breach of any nonmonetary obligation under this Lease; (iv) Tenant's making of an assignment for the benefit of creditors; (v) appointment of a receiver for Tenant's property; or (vi) appointment of a trustee for Tenant under the Bankruptcy Act (except a debtor in possession) or any trustee, assignee or receiver for creditors. Upon the termination of this Lease for any cause, Landlord may at once enter the leased property without notice or demand to Tenant and remove all persons and all of Tenant's property therefrom.

22. **POSSESSORY INTEREST AND PROPERTY TAXES.** Pursuant to California Revenue and Taxation Code Section 107.6, notice is hereby given that Tenant is responsible for any possessory interest, utility or personal property taxes that may be imposed as a result of, or related to, this Lease.

23. **NOTICES.** Any notice, demand or request required or permitted to be given to or made upon the Tenant by the Landlord under the provisions of this Lease, or otherwise by the law may be given to or made upon the Tenant, and either personally delivered to the Tenant or mailed by certified mail with the postage and fees thereon fully prepaid, to the Tenant at

Eagle Creek Pacific LLC  
1920 Tienda Drive Suite 204  
Lodi, CA 95242

and such notice, demand or request, when so mailed, shall have the same force and effect as if the same had been given or made upon the Tenant personally, and shall be deemed given three days after such deposit in the United States mail. Any notice, demand or request required or permitted to be given or made upon the Landlord by the Tenant may be given to or made upon the Landlord by letter addressed to it and either personally delivered to it or mailed by Certified mail, with the postage and fees thereon fully prepaid to the Landlord at its address set forth in Section 2, with a copy to:

Transportation Agency for Monterey County  
55-B Plaza Circle  
Salinas, California 93901  
**Attn: DAVID DELFINO** [dave@tamcmonterey.org](mailto:dave@tamcmonterey.org) (831) 775-0903

and such notice, demand or request, when so mailed, shall have the same force and effect as if the same had been given to or made upon it personally, and shall be deemed given three days after such deposit in the United States mail.

24. **CONDEMNATION.**

24.1 **Take.** If the whole of the leased property shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then this Lease shall automatically terminate as of the date the title shall be taken. If any part of the leased property shall be so taken as to render the leased property unusable for the purposes for which the same was leased by Tenant, then either Landlord or Tenant may terminate this Lease on thirty (30) days written notice to the other party. In the event that this Lease shall terminate or be terminated pursuant to this paragraph 24.1, any prepaid rental shall be prorated to the terminated date.

24.2 **Rental Adjustment.** If any part of the leased property shall be taken for any public or quasi public use under any statute or by right of eminent domain, and this Lease shall not terminate under the provisions of Section 6, then the rental paid by Tenant shall be equitably adjusted according to the part so taken or rendered unusable.

24.3 **Award.** Any and all awards made for the taking of all or part of the leased property shall be the property of the Landlord, provided that any award made for the taking of any item of Tenant's crops or personal property, or on account of relocation or moving expenses of Tenant, or on account of prepaid rent, shall be the property of Tenant.

25. **TENANT'S LIENS AND ENCUMBRANCES.** Tenant shall not suffer or permit any lien or encumbrance of whatever kind or nature to be placed upon, levied upon or assessed against the leased property, or the real property of which the same are a part, by reason or as a result of any act of omission or commission of the Tenant.

26. **ABANDONMENT.** Tenant shall not vacate or abandon the property at any time during the term. If Tenant does abandon, vacate or surrender the property, or is dispossessed by process of law, or otherwise, this Lease shall terminate and any personal property belonging to Tenant shall be removed by Tenant if Landlord shall so request.

27. **HOLDING OVER.** Any holding over after expiration of the term of this Lease or any extension hereof, shall with Landlord's consent be treated as a tenancy from month to month, at a monthly rental of One Hundred Twenty-Five percent (125%) times the base rent per acre per month. Landlord may, by thirty (30) days written notice, change the rental and terms of such month-to-month tenancy.

28. **MISCELLANEOUS.**

28.1 **Covenants.** All covenants of Tenant contained in this Lease are expressly made conditions precedent to Landlord's continued duty to perform hereunder.

28.2 **Time.** Time is of the essence hereof.

28.3 **Entire Agreement.** The terms of this Lease are intended by Landlord and Tenant as a final expression of their agreement with respect to such terms as are included in this Lease and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties intend that this Lease constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Lease.

28.4 **Interpretation.** This lease shall be interpreted according to the laws of the State of California.

28.5 **Good Faith.** The covenant of good faith and fair dealing implied in all contracts is made express herein.

28.6 **Gender and Tense.** Nouns and pronouns used herein shall include the masculine, feminine and neuter genders; words used in the singular shall include the plural; and tenses shall include the past, present and future; all to be construed as the context requires.

28.7 **Binding on Successors.** The covenants and conditions herein contained shall, subject to the provisions concerning assignment, apply to and bind the heirs, successors, personal representatives and assigns of all the parties hereto.

28.8 **Captions.** The captions and any table of contents to this Lease shall have no effect concerning its interpretation.



28.9 **Estoppel Certificate.** Each party, within fifteen (15) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate indicating that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications. The certificate shall also state the amount of rent, the date to which the rent has been paid in advance, if applicable, and the amount of any security deposit.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year written below.

LANDLORD:

TRANSPORTATION LANDLORD FOR MONTEREY COUNTY

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Debra L. Hale, Executive Director

TENANT:

EAGLE CREEK PACIFIC LLC

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
TAMC Counsel

DATE: \_\_\_\_\_

## **EXHIBIT B**

### **RENT**

Tenant shall pay to Landlord rent for a period Five (5) years commencing May 1, 2017, and ending April 30, 2022 as follows:

A. Semiannual Installments:

<u><b>RATE</b></u>	<u><b>TOTAL</b></u>	<u><b>DUE</b></u>
<b>\$1,907.43 per acre (X) 11.17 acres</b>	<b>\$21,306. (\$10,653.00 Semi-Annually)</b>	<b>5/1/17, 11/1/17, 5/1/18, 11/1/18, 5/1/19, 11/1/19, 5/1/20, 11/1/20 and 5/1/21, 11/1/21.</b>

B. Tenant agrees to pay each installment of rent to the Landlord pursuant to Section 2 of the Lease.