

ORIGINAL

FIRST AMENDMENT TO CITY OF SAN DIEGO FLAT RATE LEASE

THIS FIRST AMENDMENT (Amendment) to the City of San Diego Flat Rate Lease dated December 2, 1991, on file as document No. 279082 (Lease), is made and entered into by and between the CITY OF SAN DIEGO, a California municipal corporation (CITY), and GIUMARRA OF ESCONDIDO, a California Corporation, (LESSEE), to be effective as of the date the Amendment is approved by the San Diego City Council (Effective Date).

RECITALS

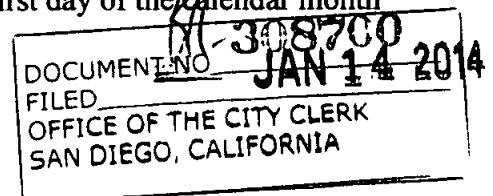
- A. The parties entered into the Lease wherein CITY leased to LESSEE real property situated in the San Pasqual Valley Agricultural Preserve consisting of an approximate four (4) acre parcel and a packing facility and office (Premises).
- B. The Lease is in full force and effect, and neither CITY nor LESSEE has actual knowledge of any default or breach by the other under the Lease.
- C. The parties now desire to amend the Lease to add an additional five (5) years to the Lease term, which is currently scheduled to terminate on December 31, 2016.
- D. An additional five (5) year period is needed to amortize the cost of needed improvements to the packing facility which are required to meet the specialized demand of avocado and citrus processing in the San Pasqual Valley Agricultural Preserve. If approved, the new extended term will terminate on December 31, 2021.
- E. The new extended term will benefit the citizens of the City of San Diego and local businesses because the LESSEE will be able to extend business commitments which will support local avocado and citrus growers in the San Pasqual Valley Agricultural Preserve.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, LESSEE and CITY hereby agree to the following modifications to existing Lease provisions, and to the inclusion of a new Lease provision, as follows:

AMENDMENT TO SECTION 2.1: Commencement

Section 2.1 of the Lease is hereby deleted in its entirety and replaced with the following:

2.1 Commencement. The term of this lease shall be thirty (30) years commencing on the first day of the calendar month following execution by the City Council. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month



following execution of this lease by the City Council. Unless terminated earlier, this lease shall terminate on December 31, 2021.

AMENDMENT TO SECTION 5.1: Indemnity

Section 5.1 of the Lease is hereby deleted in its entirety and replaced with the following:

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, or sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

AMENDMENT TO SECTION 5.2: Insurance

Section 5.2 of the Lease is hereby deleted in its entirety and replaced with the following:

5.2 Insurance

1. **Commercial General Liability Insurance**, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an aggregate of at least Two Million Dollars (\$2,000,000).
2. **Fire, extended coverage, and vandalism insurance** on all CITY-owned insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. LESSEE shall submit to the CITY recommendations and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
3. **Automobile Liability Insurance**, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the leased Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.

4. Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
5. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected official, officers, employees, representative, and agents" shall be named as "Additional Insured" in all policies.
6. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the term and extended use.
7. Qualified Insurer(s). All insurance required by the terms of this lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Rating Guide, and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
8. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed to CITY at the time evidence of insurance is required to be provided to CITY and it must be acceptable to CITY.
9. Continuity of Coverage. All policies shall be in effect on or before the day of the term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this lease.
10. Modification. To assure protection from and against the kind and extent of risk existing on the premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to LESSEE'S use of the premises.
11. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

12. Causes of Loss-Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss – Special Form Property Insurance on all of LESSEE'S insurable property on the premises, excepting wells, irrigation piping and plant material, in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

AMENDMENT TO SECTION 7: General Provisions

A new Section 7.11 is hereby added to the Lease:

7.11 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308 which require lessees of City-owned to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this lease.

This Amendment represents the desires of LESSEE and CITY to modify certain terms of the Lease and to add new term to the Lease. All other terms and conditions of the Lease that have not been modified and/or deleted pursuant to this Amendment shall remain in full force and effect.

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IN WITNESS WHEREOF, this Amendment is executed by CITY, acting by and through its Mayor, or his designee, and by LESSEE, acting by and through its lawfully authorized officers.

Date: 4/14/14

THE CITY OF SAN DIEGO, a California
Municipal Corporation

BY: K. Geitz

Name: Kristin Geitz

Title: Interim Director Real Estate Assets

Date: 9/23/13

GUIMARRA OF ESCONDIDO, a California
Municipal Corporation

BY: B. E. Dowhan

Name: BRUCE E. DOWHAN

Title: GENERAL MANAGER

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: March 24, 2014

BY: N. A. McGinnis

Name: NICOLE A. MCGINNIS

Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY

This 15th day of April, 2011.

JAN I. GOLDSMITH, City Attorney

By: Debra J. Bevier
Debra J. Bevier, Deputy City Attorney

8 - 308700

Jan 14th 2014

RESOLUTION NUMBER R- 308700

DATE OF FINAL PASSAGE JAN 30 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE COUNCIL PRESIDENT TO ENTER INTO A FIRST AMENDMENT TO CITY OF SAN DIEGO FLAT RATE LEASE, BETWEEN THE CITY OF SAN DIEGO AND GIUMARRA OF ESCONDIDO, TO EXTEND THE EXISTING LEASE TERM FOR AN ADDITIONAL FIVE (5) YEARS AND TO UPDATE EXISTING LEASE PROVISIONS.

WHEREAS, the City of San Diego (City) currently leases four (4) acres of City-owned property in the San Pasqual Valley Agricultural Preserve to Giumarra of Escondido (Giumarra) under a 25 year flat rate lease that commenced on January 1, 1992, and that expires on December 31, 2021 (Lease); and

WHEREAS, Giumarra operates a citrus and avocado packing facility on the leasehold property; the packing facility building is approximately 40,000 square feet and is used for packing operations and cool storage; and

WHEREAS, Giumarra has a maximum of 70 employees, depending on the season, and distributes locally grown citrus and avocados to regional and national accounts throughout the United States, including specialty grocery companies such as Whole Foods, Trader Joes, Sprouts, and Northgate Markets, as well as to local purveyors and restaurants; and

WHEREAS, Giumarra desires to amend the Lease to add an additional five (5) years to the Lease term in order to amortize approximately \$960,000.00 of capital improvements to the packing facility. The capital improvements will increase the value and useful life of the existing leasehold improvements by an amount more than can be reasonably amortized over the

remaining Lease term; the proposed capital improvements are non-recurring in nature and are 41% of the value of the existing improvements, which are valued at \$2,350,000.00; and

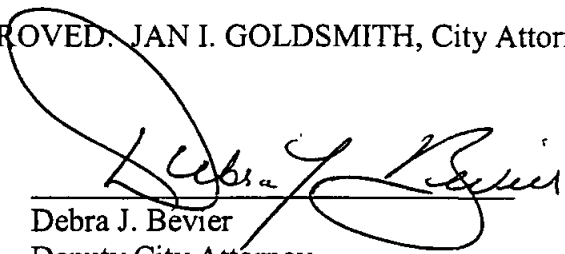
WHEREAS, the current annual rent under the Lease is \$70,787.00, which is deposited into the Public Utilities' Water Division Fund 700011. Pursuant to the terms of the Lease, a market rate adjustment was conducted in April 2007 and a CPI adjustment was conducted in January 2013. Qualified City staff has determined that the current annual rent under the Lease is a reasonable estimate of fair market rent for the leasehold property; and

WHEREAS, if the proposed five (5) year Lease term extension is approved, the new expiration date for the Lease will be December 31, 2021; NOW, THEREFORE,

BE IT RESOLVED, that the Council President in his capacity under Charter section 265(i), or his designee, is authorized and directed to enter execute that certain First Amendment to City of San Diego Flat Rate Lease with Giumarra of Escondido, a California corporation, for the purposes of extending the term of the existing lease for five (5) years, and to update the Lease to include current City language regarding indemnity, insurance and other general provisions, all as more fully set forth in Document No. RR- 308700 on file with the City Clerk.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mm

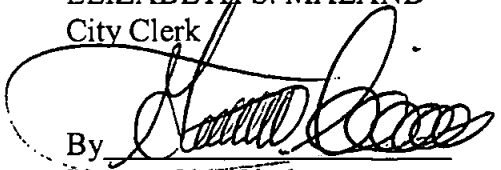
12/11/2013

Or.Dept: Real Estate Assets Dept.

Doc. No.:689307

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 14 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on JAN 14 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Kevin Faulconer	☒	☐	☐	☐
Todd Gloria	☐	☐	☒	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage JAN 30 2014

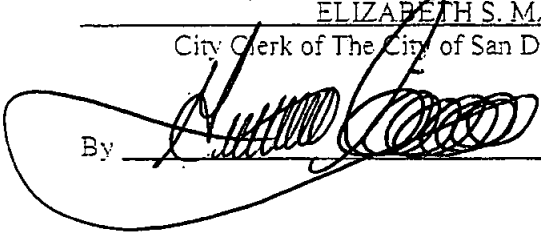
(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By  Depury

Office of the City Clerk, San Diego, California

Resolution Number R- 308700

Passed by the Council of The City of San Diego on January 14, 2014 by the following vote:

YEAS: **LIGHTNER, FACULCONER, COLE, KERSEY, ZAPF,
SHERMAN, ALVAREZ, EMERALD.**

NAYS: **NONE.**

NOT PRESENT: **GLORIA.**

VACANT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as Interim Mayor of The City of San Diego, California

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-308700 approved by the Council of the City of San Diego, California on
January 14, 2014, and approved pursuant to Charter section 265 (i) on January 30, 2014.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy