

**THE STATE OF TEXAS**

**LEASE OF CITY PROPERTY FOR**

**COUNTY OF HAYS**

**AGRICULTURAL USE**

KNOW ALL PERSONS BY THESE PRESENTS:

This lease pertains to the agriculture use of certain lands, located at the City of San Marcos Surface Water Treatment Plant, situated in Hays County, Texas. The lease is made and entered into by and between the City of San Marcos, a Texas municipal corporation, ("Lessor") and Michael A. Lehman, ("Lessee").

### **1. DESCRIPTION OF LEASED PROPERTY**

The leased property consists of approximately 289.06 acres, more or less, of lands (the "Leased Premises") which are denoted by the accompanying map attached as Exhibit "A-1" and incorporated in this Lease and made a part for all purposes. Lessor leases the Leased Premises to the Lessee in accordance with this Lease.

### **2. TERM OF THE LEASE**

This lease shall commence on March 4, 2025 and continue until March 4, 2030, a term of five (5) years. This Lease may be extended for one (1) additional five (5) year period, provided all terms and conditions remain in full force and effect except for the lease period being extended. This option, if exercised, is to be executed in the form of a letter of lease, to be issued no sooner than ninety (90) days prior to expiration of the Lease, nor later than (30) days of the end of the lease period. This option to renew requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend shall cause this Lease to expire on the original or mutually agreed upon date. The total period of this Lease, including all extensions as a result of exercising this option, shall not exceed a maximum combined period of ten (10) years.

### **3. CONDITION OF LEASED PREMISES**

The Lessee acknowledges that 1) the Lessor makes no representations or warranty regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; 3) the Lessee has inspected and performed all tests and investigations of the Leased Premises that the Lessee considers necessary to satisfy itself as to the suitability of the Leased Premises for its intended purposes; and 4) the

Lessee is accepting the Leased Premises as-is in its present condition, and the Lessee agrees to perform all preparation, repairs, remediation and other activities necessary to use the Lease Premises for the Lessee's intended purposes.

#### **4. RENT**

The total annual lease fee of Six Thousand One Hundred Five and 00/100 Dollars (\$6,105.00) for the first year of this lease is due and payable upon the execution of this Lease. Subsequent total yearly payments will be made on the anniversary date of each subsequent year. The lease fee shall increase by three (3%) percent per year over the previous year's lease fee.

#### **5. SUB-LEASE OR LEASE TRANSFER**

It is expressly understood and agreed that the Lessee may not sub-lease any part of the Leased Premises nor may the Lessee transfer the Lease to another party without the prior written consent of the Lessor. Consent to such sub-lease or transfer may be given by Lessor only if the third party agrees, in writing, to accept and abide by all of the provisions of this Lease.

#### **6. DEFAULT, EARLY TERMINATION AND/OR RECAPTURE**

- A. In the event either party should violate any term or provision of this Lease, the party not in default shall give the defaulting party notice, and if such default complained of shall, in fact, constitute default, and unless the same is not corrected within fifteen (15) days after the date of receipt of such written notice, then the party not in default shall have the option to terminate this Lease, and in the event of such termination, Lessee shall return the Leased Premises to Lessor in as good a condition as it was at the beginning of this Lease except for any changes brought about by weather conditions, harvesting of crops and other conditions beyond Lessee's control.
- B. In the event Lessor terminates this Lease under the provisions of this Section 6, Lessor shall account to Lessee for the fair market value, as determined by the Lessor, of any agricultural products growing at the time of such termination less any damages or expenses incurred by Lessor in tending, harvesting and marketing same, such accounting to occur at the time any such crops are marketed, and Lessor agrees to market crops as promptly as it can reasonably be done. Lessor shall have, and is given and granted, a first and superior lien upon all agricultural crops raised and produced on the Leased Premises, to secure the payment and performance of all obligations to be paid and/or performed by Lessee.

- C. It is further understood and agreed that Lessor may, with sixty (60) days notice in writing to Lessee, terminate this Lease in respect to any part of the Leased Premises to be devoted to higher valued, non-agricultural uses. Upon termination of this Lease as to any part of the Leased Premises for any reason other than default by Lessee, Lessee shall be reimbursed for that portion of the annual rent paid which corresponds to the percentage of the annual period for which the Lease was terminated multiplied by the product of the number of acres as to which the Lease was terminated and the proportional annual cash rent (as determined by Section 4 of this Lease). Lessee shall also be reimbursed for any loss suffered, such as loss of standing crops other than grasses, or loss of fences or other improvements, from such a termination of the Lease by Lessor.

## **7. INSURANCE**

- A. Lessee shall maintain at its own cost and expense public liability insurance on an occurrence basis with minimum limits of liability in an amount of \$100,000.00 for bodily injury, personal injury or death to any one person and up to \$300,000.00 for all injuries arising out of each such occurrence, and \$100,000.00 for damage to property. Such insurance policy shall contain the endorsement that insurance may not be cancelled or amended with respect to Lessee without thirty (30) days written notice by registered mail to Lessor by the insurance company, and that Lessor shall not be required to pay any premiums for insurance. Any insurance policy required and procured by Lessee shall contain an express waiver of any rights of subrogation by the insurance company against the Lessor. A copy of insurance policy or a certificate of insurance shall be delivered by Lessee to Lessor within ten (10) days of the execution of this Lease, and annually thereafter.
- B. The minimum limits of any insurance coverage required shall not limit Lessee's liability under Section 8 of this Lease.

## **8. INDEMNIFICATION**

Lessee agrees to indemnify, defend and hold harmless Lessor, its officers and employees, from all damages, claims, losses, demands, suits, judgments, and costs, including reasonable attorney's fees, and expenses arising out of or resulting from the use of the Leased Premises for agricultural purposes by Lessee, regardless of whether it is caused in part by Lessor or its officers or employees.

## **9. CONSERVATION PRACTICES**

- A. Lessee agrees to operate all of the lands described by this Lease in such a manner as to preserve, maintain and improve the structure and fertility of the soil by using only farming practices recommended by the Soil Conservation Service of the United States Department of Agriculture or some other governmental agency of equal stature.
- B. Fields will be kept clean at the end of the normal growing season and no crop shall be left in the field so as to lead to the infestation of birds, parasites, vermin, pests, insects, or to conditions deemed by regulatory authorities to create a public health hazard or render the Premises unsuitable for agricultural use. Lessee shall be solely responsible for curing any such conditions at Lessee's expense, both during the term of the lease and after termination of the lease.

## **10. ENVIRONMENTAL HAZARDS**

- A. Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors or invitees, without first obtaining Lessor's written consent. If Hazardous Substances are used, stored, generated or disposed of on or in the Leased Premises except as permitted above, or the Leased Premises become contaminated in any manner for which Lessee is legally liable, Lessee shall indemnify and hold harmless Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses including, without limitation, a decrease in value of the Leased Premises, damages due to loss or restriction of rentable of usable land, or any damages due to adverse impact on marketing of the land, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees, arising during or after the Lease Term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary action to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall first obtain Lessor's approval for any such remedial action.
- B. As used herein, "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive, and which is regulated by any local government, the State of Texas, or the United States Government. "Hazardous Substance" includes any and all materials or substances which are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance," pursuant to state, federal or local governmental law.

## **11. USE PLAN**

Lessee shall, upon execution of this Lease, and by December 1st of each subsequent year, present to Lessor, for review, a Use Plan detailing how Lessee proposes to utilize the Leased Premises for the ensuing year. The Use Plan shall include at a minimum the types of crops and the proposed dates of cutting and plowing of each crop.

## **12. NON-DISCRIMINATION**

The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration, does covenant and agrees as a covenant running with the land, that:

- A. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises;
- B. that in the construction of any improvements on, over, or under such land, and the furnishing of services, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and,
- C. that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 Code of Federal Regulations Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as these regulations may be amended.

## **13. OTHER TERMS AND CONDITIONS**

- A. The Lessee is responsible for all taxes and assessments due, including any late fees and penalties, on the Leased Premises and shall pay such taxes and assessments when due. Although Lessor will endeavor to forward any tax bills to Lessee, Lessee is solely responsible for annually verifying with the county tax assessor collector the amount of taxes due for the applicable year and Lessor shall timely pay such amount due and will promptly provide copies to the Lessor of Lessee's receipt for payment.
- B. This document constitutes the entire lease between the parties and any modifications of this Lease shall be in writing and signed by the parties to this Lease.

- C. Lessor reserves the right to begin any and all improvements Lessor deems necessary for the storage of water on the Lease Premises. If possible, the Lessor will endeavor to coordinate the construction of any improvements with the Lessee at the time the Lessee submits a Use Plan as described in Section 11 above. The land area for these improvements will be subtracted from the original area of the Leased Premises with no reimbursement for crop losses to the Lessee.
- D. Lessor reserves the right to enter upon the land covered by this Lease to make inspections concerning Lessee's compliance with the terms of this Lease or to make repairs or improvements deemed by the Lessor or the United States Government to be necessary.
- E. This lease shall be governed by the laws of the State of Texas. Exclusive venue for any legal dispute arising under this lease shall be in Hays County, Texas. The City's execution of and performance under this lease will not act as a waiver of any immunity of the City to suit or liability under applicable law
- F. In the event any subsection, paragraph, sentence, phrase or word is held invalid for any reason, the balance of this Lease will remain in effect and will be read as if the parties intended at all times not to include the invalid section, subsection, paragraph, sentence, phrase or word.

Executed this the \_\_\_\_ day of \_\_\_\_\_, 2025.

LESSOR: City of San Marcos

\_\_\_\_\_  
Stephanie Reyes, City Manager

LESSEE:

  
\_\_\_\_\_  
Michael A. Lehman

**EXHIBIT "A-1"**  
**Description of Leased Property**  
***(next page)***



CITY OF SAN MARCOS,  
PARCEL ID # 28010  
SAN MARCOS HIGHWAY  
SAN MARCOS, TX 78666

Area of Exclusion: 3.08 Acres

