

**LEASE AGREEMENT BETWEEN THE CITY OF ARCATA
AND ROBERT L. FIGAS FOR A PORTION OF 4700 WEST END ROAD PROPERTY**

This Lease Agreement, effective _____, is entered into by the City of Arcata, (referred to as “City”), and Robert L. Figas, (referred to as “Lessee”) for a portion of the property located at 4700 West End Road in Arcata, CA.

RECITALS

WHEREAS, the City owns approximately 3.53 acres of industrial real property located at 4700 West End Road in the City of Arcata, County of Humboldt, California, identified by Assessor’s Parcel Numbers 507-121-013 and 507-081-043 (“Property”); and

WHEREAS, Lessee owns parcels situated southeast of the Property and the City is not presently utilizing an area situated on the southern portion of the Property, approximately 10,107 square feet in size; and

WHEREAS, Lessee desires to lease the southern portion of the Property for the purposes of storing equipment and ingress/egress between the City’s right-of-way and Lessee’s parcels, and the City desires to Lease said portion of the Property to Lessee for such purposes; and

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Lease Area.** The City leases to Lessee those certain lands owned by the City situated in the City of Arcata, County of Humboldt, State of California, more particularly described and delineated in that certain map attached hereto and incorporated herein as **Exhibit “A”** (“Lease Area”). Lessee shall have exclusive use of the Lease Area, subject to City’s right to enter as set out in Section 7 of this Agreement.
2. **Term.** The Agreement shall commence on the date written above (the “Commencement Date”) and shall continue on a month-to-month basis until terminated in accordance with Section 12 of this Agreement. Rent for the last month shall be prorated if termination occurs on a day other than the last day of a calendar month.
3. **Permitted Use.** Lessee shall use the Property for parking/storing equipment and ingress/egress to the adjacent property to the east, owned by Lessee. Lessee shall conduct all activities on the Lease Area in a manner that utilizes best management practices to minimize adverse storm water run-off during the wet season. The operation of tools and equipment and access to the Property, shall be limited to the hours of 7:00 a.m. to 7:00 p.m. daily. If the City adopts a noise ordinance in the future, applicable provisions of said ordinance shall replace this condition.
4. **Unpermitted Uses.** . Lessee may not store hazardous materials or any equipment on the Lease Area that may leak fuels or other liquids on the Property. No use of heavy equipment or construction related activities are permitted on the Property, except that which is needed to transport storage items on or off the Property.
5. **Rental Payments.**
 - A. *Monthly Payments.* The rent for the Lease Area shall be **\$300.00 per month**, payable in advance on or before the first day of each month at: City of Arcata, Finance Department, 736 “F” Street, Arcata, California 95521.

- B. *Security Deposit.* Lessee shall make a deposit in the sum of **\$1,000.00**, which shall be held by the City, without interest, as security for any damages on the Lease Area. It shall be expressly understood and agreed that said deposit amount is not a measure of damages, and Lessee shall pay to the City on demand any additional amount that may be owed for damage in existence at the termination of the Lease. Any remaining balance of the deposit shall be promptly returned to Lessee at the time after termination of this Lease after which all of Lessee's obligations under this lease have been fulfilled.
- C. *CPI Adjustment.* Annually, on July 1, the rent shall be adjusted by the Consumer Price Index (CPI). The CPI used for such increases is the All Urban Consumers U.S. City Average, All Items, 1982-1984 = 100 annual CPI from the prior calendar year.
6. **Alterations.** Lessee shall not construct any alterations, improvements, or additions or otherwise alter the Lease Area, including, but not limited to such alterations as performing grading, installing drainage features, roads, or storage tanks (collectively, "Alterations") without the City's prior written consent.
7. **Entry.** City reserves the right to enter the Lease Area at all reasonable times and upon advance notice to Lessee. Lessee must keep gates to the Property closed and locked at all times the gates are not in use. No access by the general public is allowed.
8. **Insurance.** Lessee shall maintain insurance throughout the duration of this Lease, and provide Certificates of Insurance, as specified below. All insurance carriers shall be admitted in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.
- A. *Commercial General Liability.* Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Coverage for additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$2,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.
- B. *Business Automobile Insurance:* ISO Business Auto Coverage Form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$2,000,000 per accident. If Lessee will use personal autos on the Premises, Lessee shall provide evidence of personal auto liability coverage for each such person.
- C. *Workers Compensation Insurance:* covering all employees and volunteers as required by the state of California on a state-approved policy form.
- D. *Property Insurance:* insuring all improvements on the property against fire for the full replacement cost of the improvements, with deductibles and the form and endorsements of coverage as approved by the City.
- E. *Excess or Umbrella Liability Insurance (Over Primary):* if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include a drop down provision providing coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. The policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to Lessee. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein.

F. *General Conditions Pertaining to Insurance:*

- 1) Lessee shall have its insurer endorse the third party general liability coverage to include as additional insureds the City, its officials, employees, volunteers and agents, using standard ISO endorsement CG 20 10.
- 2) The parties acknowledge that all insurance coverage required to be provided by Lessee is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.
- 3) Certificates shall contain a statement that the policy will not be cancelled except after thirty (30) days prior written notice to the City.
- 4) All endorsements must have an original authorized signature. Facsimile or electronic copies are insufficient.
- 5) Lessee agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
- 6) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Lessee's general liability policy, shall be delivered to the City at or prior to the execution of the Agreement.
- 7) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Lessee shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Lessee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Lessee, the City will negotiate additional compensation proportional to the increased benefit to the City.

9. **Indemnity.** To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to City, defend, indemnify, and hold harmless City and City's officers, officials, employees and agents from and against all claims (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including Lessee and expert fees, court costs and attorney's fees) from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including without limitation:
- A. The use or occupancy, or manner of use or occupancy, of the Property;
 - B. Any act, error, omission, or negligence of Lessee or of any of Lessee employee, contractor, invitee or guest in, on or about the Property; or
 - C. Any breach or default in performance of any obligation on Lessee's part to be performed under this Lease, whether before or during the Lease Term or after its expiration or earlier termination.

This indemnification extends to and includes, without limitation, claims for injury or death to persons, loss of, injury or damage to, or destruction of property, and all economic losses and consequential or resulting damage. Lessee's indemnification obligation hereunder shall survive the expiration or earlier termination of this Lease until all claims against the City involving any of the indemnified matters are

fully, finally, and absolutely barred by the applicable statute of limitation.

10. **Default.** Each of the following shall constitute an event of default under this Agreement (each an “Event of Default”)

- A. Failure to pay rent when due.
- B. Failure to obtain and/or maintain insurance as required in this Agreement;
- C. Failure to practice good management so as not to cause erosion or other damage to the Property;
- D. Failure to perform any of the covenants, conditions, or provisions of this Agreement to be performed by Lessee;
- E. The vacation or abandonment of the Lease Area for a period of two (2) months or longer.

11. **Remedies.** Upon the occurrence of an Event of Default, the City, in addition to any other rights or remedies available to the City at law or in equity, shall have the right to do any one or all of the following:

- A. Immediately terminate this Agreement and all rights of Lessee by giving Lessee written notice that this Agreement is terminated;
- B. Enter the Lease Area and remove all property from the Lease Area. The City may cause such removed property to be stored at the expense or for the account of the Lessee; and/or
- C. Cure the breach underlying the Event of Default for the account and at the expense of Lessee; provided that the City shall first allow Lessee a reasonable opportunity to cure, except in cases of emergency, where the City may proceed without prior notice to Lessee. Lessee shall, upon demand, immediately reimburse the City for all costs, including costs of settlements, defense, court costs, and attorney’s fees, that the City may incur in the course of any cure. The parties expressly agree that the City is not required to provide Lessee an opportunity to cure prior to exercising another legal remedy or right, including termination of the Agreement.

Except as inconsistent with or contrary to any provisions of this Agreement, no right or remedy conferred upon or reserved to the City is intended to be exclusive of any other right or remedy given now or later or existing at law or equity or by statute. No waiver by the City of any violation or nonperformance by Lessee of any obligations, subsequent violation or nonperformance of Lessee of any obligations, agreements or covenants shall be deemed a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by the City to exercise a remedy for any violation or nonperformance by Lessee be deemed a waiver by the City of rights or remedies with respect to that violation or nonperformance.

12. **Termination.** Either party may terminate this Agreement upon 30 days’ advance written notice. Upon termination, Lessee shall return the Lease Area to its original condition subject to inspection and approval by the City’s Environmental Services Director or designee. At a minimum, Lessee shall remove all temporary structures installed by Lessee. Lessee shall be responsible for any and all damages.

13. **Possessory Interest.** The property interest conveyed by this lease may create a possessory interest subject to property taxation for which Lessee may be subject to the payment of such taxes. (Revenue and Tax Section 107.6.)

14. **Assignment.** This Agreement shall not, either voluntarily or otherwise, be assigned by Lessee nor shall the Lease Area or any part thereof be sublet by Lessee.
15. **Notice.** Any written notice required under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, addressed to the respective parties at the addresses set forth below the parties' signatures, or to such other address as either of the parties may designate for delivery of such notice.
16. **Nondiscrimination.** Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.
17. **Attorney Fees.** If any legal action is taken to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs and expenses incurred in connection with that legal action.
18. **Governing Law.** This Agreement is governed by the laws of the State of California. In any action or proceeding that may be brought from or connected in any way to this Lease, the laws of the State of California shall be applicable and shall govern to the exclusion of the law any other forum. Venue shall be fixed in Humboldt County.
19. **Authorization.** Each party signing below represents and warrants that he is duly authorized to sign on behalf of his principal and to bind the principal to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the date set forth above.

CITY OF ARCATA

By: _____

Title: Merritt Perry,
City Manager

Date: _____

736 F Street
Arcata, CA 95521

Insurance approval:

Danielle Allred,
Contracts & Special Projects Manager

LESSEE

BY: _____

Printed Name: Robert L. Figas

Date: _____

Address: 115 Redmond Road
Eureka, CA 95503

