

INDUSTRIAL SEWER SERVICES AND USE AGREEMENT

This Agreement is made and entered into this 22 day of October, 2025, by and between the **CITY OF MANTECA**, a public body, corporate and politic ("City") and Eckert Cold Storage Company ("Eckert").

RECITALS

A. Eckert Cold Storage ("Eckert") is a food processor in the City of Manteca, and discharges its industrial wastewater to a dedicated collection and disposal system, known as the Industrial Sewer System. The Industrial Sewer System conveys Eckert's industrial wastewater around the City's sanitary sewer collection system and the City's Wastewater Quality Control Facility ("WQCF") into a lined pond to be aerated then discharged to City-owned farmland adjacent to the WQCF.

B. In 2009, the City Council adopted Ordinance No. 1439, establishing the industrial sewer service charges for Eckert to cover the costs of the dedicated pipeline and aeration. This ordinance has been updated annually since 2009, and the existing ordinance O2025-04 is set to expire on December 31, 2025.

C. On January 27, 2025, Eckert submitted a letter to the City providing a summary of prior production seasons and an estimated "phase out of production" plan, which the City replied to on April 7, 2025. Eckert then submitted an additional letter on May 8, 2025, to which the City responded to on May 12, 2025. The last communication to date is an email from Eckert on May 16, 2025.

D. This Agreement establishes the terms and conditions for the above services and use, in compliance with City ordinances, state law, and federal law, for Eckert's operations.

NOW THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

AGREEMENT

1. Scope. City shall provide the services and use described in **Exhibit A** attached and incorporated by this reference. City shall provide these services and use at the time, place, and in the manner specified in **Exhibit A**.

2. Term. The services and use specified in this Agreement will commence upon execution of this Agreement, and the start of the 2026 cabbage processing season. The proposed start date shall be approved by the City and shall be completed in accordance with the Schedule of Activities, attached hereto as **Exhibit B**. Failure to comply with the Schedule of Activities may result in the termination of this Agreement.

Eckert's operations shall end no later than December 31, 2028, and the term of this Agreement shall end on December 31, 2028, unless otherwise extended in writing by mutual agreement of the parties.

3. Compensation. For 2026, the annual fixed cost for the services and use specified in this Agreement is TWO HUNDRED THREE THOUSAND THREE HUNDRED AND SEVENTY-EIGHT DOLLARS (\$203,378). The annual fixed cost shall increase per year throughout the term of this Agreement, using the three-year average of the Engineering News Record (ENR) Twenty Cities Cost Index.

The variable costs are the sum of the following: (1) the actual electrical costs for the Moffat Boulevard pump station, the pond pump station, and the pond aerator system; (2) the actual wastewater laboratory testing costs for the industrial sewer system; and (3) fifty percent of the rental costs associated with treatment option investigation in one year.

4. Method of Payment. Eckert shall make the annual fixed cost payment to the City in six equal installments on the first business day of each month, beginning in June and ending in November of each year. Variable costs are payable each month and shall be billed monthly from the previous month's actual costs.

5. Additional Services. As used herein, the term "additional services" means any services or uses determined by City to be beyond the scope of this Agreement. Additional Services are not a part of this Agreement and would require a contract amendment.

6. Termination. This Agreement may be terminated by the City immediately for cause, or by either party without cause upon 60 days' prior written notice of termination. In the event the City wishes to terminate this Agreement without cause at a time when Eckert has already begun operations for the upcoming processing season, the Agreement may only be terminated at the end of that processing season. Upon termination, City shall be entitled to compensation for services performed up to the effective date of termination. Notwithstanding any provisions of this Agreement, Eckert shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Eckert.

7. Compliance with Laws. Eckert shall use the customary standard of care and comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations.

8. Indemnity. To the fullest extent permitted by law, Eckert shall indemnify, defend and hold harmless the City, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, to the extent arising from Eckert's negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this Agreement except such loss or damage caused solely by the active negligence, sole negligence, or willful misconduct of the City. The provisions of this paragraph shall survive termination or suspension of this Agreement.

9. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed

to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca
1001 W. Center Street
Manteca, CA 95337
Attention: George Montross

If to Eckert: Eckert Frozen Foods
905 Clough Road
Escalon, CA 95320
Attention: Eric Schwartz

10. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Eckert. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

11. Amendments. This Agreement may be amended only by a written document executed by both Eckert and City and approved as to form by the City Attorney.

12. Assignability. Eckert shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City.

13. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

14. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

15. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California, and any legal action relating to this Agreement shall take place in the Superior Court, County of San Joaquin.

16. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

17. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected

by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

18. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

19. Authority to Enter Agreement. Eckert warrants that it has all requisite power and authority to perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

20. Precedence. In case of conflict between Eckert and City regarding the Agreement's attachments, the City's Agreement and City's attachments shall take precedence.

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TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

CITY OF MANTECA:

Eckert Cold Storage:

Gary Singh, Mayor

(Type name of Consultant/form of organization)*

ATTEST:

By: _____

(Signature)

Cassandra Candini-Tilton,
Director of Legislative Services

Eckert Cold Storage CEO
(Type name and title)

COUNTERSIGNED:

By: _____

(Signature)

Matthew Boring
Interim Director of Finance

(Type name and title)

COUNTERSIGNED:

Address: _____

905 Clough Rd

Stephanie Van Steyn,
Director of Human Resources

Telephone: _____

Eckert Cold Storage CA 95720

209-838-4040

APPROVED AS TO FORM:

Riana Daniel, Interim Assistant City Attorney

By: _____

Riana Daniel, Interim Assistant City Attorney

EXHIBIT A**SCOPE OF SERVICES AND USE**

The City shall provide the administration, operation and maintenance of the Industrial Sewer System, including the Moffat Boulevard Pump Station, the force main pipeline, treatment pond and all associated appurtenances per the season schedule below. Seasons run from approximately June to October.

2026 Season - Cabbage leaves and diced cabbage requiring approximately 2.2 million gallons of wastewater. Cabbage season should end by July, 2026. Peppers may run up to 4.5 million pounds in September thru October, 2026 generating 3.0 million gallons of wastewater.

2027 Season - Cabbage, leaves and diced cabbage requiring approximately 2.2 million gallons of wastewater. Cabbage season should end by July, 2026. Peppers may run up to 1.5 million pounds in September thru October, 2026, generating 1.0 to 1.5 million gallons of wastewater.

2028 Season - Cabbage only, no peppers. Cabbage processing activities are estimated to generate 2.2 million gallons of wastewater.

Eckert shall communicate with City staff to provide advanced notice of each season's operation, any deviations from expected flows or any other deviations from this Agreement.

In the event Eckert's flow exceeds the storage capacity of the industrial pond system or the monthly flow exceeds the NPDES permit limits, the City will make all reasonable efforts to accommodate the excess flow. The City may allow Eckert to discharge the excess flow to the domestic sanitary sewer system, subject to approval from the director of Public Works. All industrial wastewater discharged to the domestic sanitary sewer system will incur charges at the industrial sanitary sewer rate per the Municipal Code.

In any calendar year in which Eckert does not discharge industrial wastewater to the industrial sewer system or the modified industrial sewer system due to acts of God, acts of government, fires, floods, epidemics, quarantine restrictions, strikes, earthquakes, explosion or any similar catastrophic event or occurrences beyond the control of Eckert, the City shall determine the fixed charge per the following formula:

Fixed charge in calendar year of catastrophe equals the fixed charge times the actual days of discharge in calendar year of catastrophe divided by the average total days discharge in immediately preceding three consecutive calendar years.

EXHIBIT B**SCHEDULE OF ACTIVITIES**

2026 Season - Cabbage leaves and diced cabbage requiring approximately 2.2 million gallons of wastewater. Cabbage season should end by July, 2026. Peppers may run up to 4.5 million pounds in September thru October, 2026 generating 3.0 million gallons of wastewater.

2027 Season - Cabbage leaves and diced cabbage requiring approximately 2.2 million gallons of wastewater. Cabbage season should end by July, 2026. Peppers may run up to 1.5 million pounds in September thru October, 2026, generating 1.0 to 1.5 million gallons of wastewater.

2028 Season - Cabbage only, no peppers. Cabbage processing activities are estimated to generate 2.2 million gallons of wastewater.

****City services shall end on December 31, 2028.**