

REQUEST FOR PROPOSAL

FOR

Hays Road Farmland Lease City of Manteca

Public Works Department
Water Quality Control Facility Division (WQCF)

RFP Issue Date: October 28, 2024

PROPOSALS DUE:

3:30 PM, Tuesday, December 3, 2024

City of Manteca Public Works Department - WQCF
2450 W. Yosemite Avenue
Manteca, CA. 95337
<https://www.manteca.gov/departments/public-works>

City of Manteca
Request for Proposal
Hays Road Farmland Lease
City of Manteca
for
Public Works Department, WQCF

TABLE OF CONTENTS

Background	3
Scope of Work	3
Farmland Tour.....	3
Preferred Bidder.....	4
Project Inquiries.....	4
RFP Deadline.....	5
Sequence of Events.....	5
List of Exhibits	4

EXHIBITS

A. Site Walk Directions	6
B. Hays Road Field Map	7
C. Insurance Requirements for Lessees	8
D. Addendum Receipt	10
E. Proposal Pricing Form	11
F. Farmland Lease Agreement	12

**CITY OF MANTECA
PUBLIC WORKS DEPARTMENT
REQUEST FOR PROPOSAL (RFP)
HAYS ROAD FARMLAND LEASE**

BACKGROUND

1. The City owns approximately 417 acres of farmland (Property) of which 330 acres are considered farmable. The Property is located at 23000 Hays Rd, Manteca adjacent to the San Joaquin River. In the past, the City has leased this land to farmers who have grown agricultural food and fodder crops.
2. The Property, situated in San Joaquin County, is segmented into various fields as shown on Exhibit A.
3. All irrigation water is drawn from the San Joaquin River from an existing river pump. The irrigation system consists of underground concrete pipes, distribution junction boxes, field checks and tailwater pumps.
4. The Property shall only be used for agricultural purposes for growing, cultivating and harvesting food or fodder crops such as wheat, silage, corn, alfalfa, tomatoes, dry beans, or sweet corn.

SCOPE OF WORK

1. Provide all labor, equipment and materials necessary to grow and harvest food or fodder crops on 417 acres of City-owned farmland in accordance with agricultural best management practices.
2. Provide and maintain earthen levees and ditches around the fields as necessary to facilitate irrigation and to contain all excess irrigation water and stormwater runoff on the fields.
3. Repair damage to field levees caused by gophers or other pests, and provide weed abatement on the fields and on all roads through and around all fields.
4. Submit all necessary reports to irrigation districts, reclamation districts, county, or state regarding nutrient management, water usage, or herbicide and pesticide application and usage.

FARMLAND TOUR

The City will make the Property available for prospective bidders to tour. At this time access to the property will be discussed. Interested bidders can meet at 2450 W Yosemite Ave on

November 6, 2024 at 10:00AM. We will proceed to the property for a tour. Contact Heather Grove, Water Resources Regulation Manager, at (209) 456-8470 to sign up for the tour.

PREFERRED BIDDER

The bidder submitting the highest annual rent will be considered the preferred bidder by staff. Following review of submittal, insurance, and signing contract, staff will recommend Manteca City Council approve a Farmland Lease Agreement with the preferred bidder. In the event staff is unable to finalize a contract with the highest bidder, the city may negotiate a contract with the next highest bidder or issue a new RFP.

This RFP does not commit the City to award a contract, or pay any costs incurred in the preparation of a response to this request. The City reserves the right to reject any or all proposals received if it is in the best interest of the City to do so.

FARMLAND LEASE AGREEMENT

The preferred bidder, as described above, shall enter into a Farmland Lease Agreement with the City for a term of four years commencing from January 1, 2025 to December 31, 2028 with 3 possible one year extensions. The Farmland Lease Agreement is attached to this RFP as Exhibit C. The Manteca City Council is scheduled to consider approving the Farmland Lease Agreement at their meeting on December 17, 2024.

QUESTIONS

Potential Proposers may submit questions in writing to the City, prior to the proposal submittal. All responses to written questions will be posted on the City's webpage on or before November 14, 2024. Include the e-mail address for the individual appointed to receive responses to the questions. The identity of the organization submitting the question(s) will not be revealed.

Deadline to submit written questions is November 11, 2024 by 3:30 p.m. Please direct your questions to:

City of Manteca
Public Works Department
Attn. Heather Grove
Water Resources Regulation Manager
2450 W Yosemite Ave
Manteca, CA 95337
email: hgrove@manteca.gov

INSURANCE

During the duration of the Agreement, the Lessee shall carry insurance in accordance with the requirements specified in the Farmland Lease Agreement. If the required insurance can not be acquired in the first year due to insurance deadline restrictions, the Lessee will be exempt from this requirement for the first year but must carry the required insurance for the remainder of the agreement including all extensions.

RFP DEADLINE

Please submit hardcopy RFP by 3:30 pm on December 3, 2024 to:

Heather Grove
Water Resources Regulation Manager
2450 W Yosemite Ave
Manteca, CA 95337
hgrove@ci.manteca.ca.us
209-456-8470
209-923-8990 (FAX)

Submissions will be accepted by carrier, or walk-in.

SEQUENCE OF EVENTS

- | | |
|---|---------------------------------------|
| 1. Distribution of RFP Document | October 28, 2024 |
| 2. Site Walk | November 6, 2024 -10 a.m. |
| 3. Deadline to submit written questions | November 11, 2024 - 3:30 p.m. |
| 4. Issue response to questions | November 14, 2024 – close of business |
| 5. Proposal Deadline to submit | December 3, 2024 – 3:30 p.m. |
| 6. Notice of Intent to Award Contract | December 5, 2024 |
| 7. Staff Recommendation to Council | December 17, 2024 *tentatively |
| 8. Contract Work to Begin | January 2025 |

LIST OF EXHIBITS

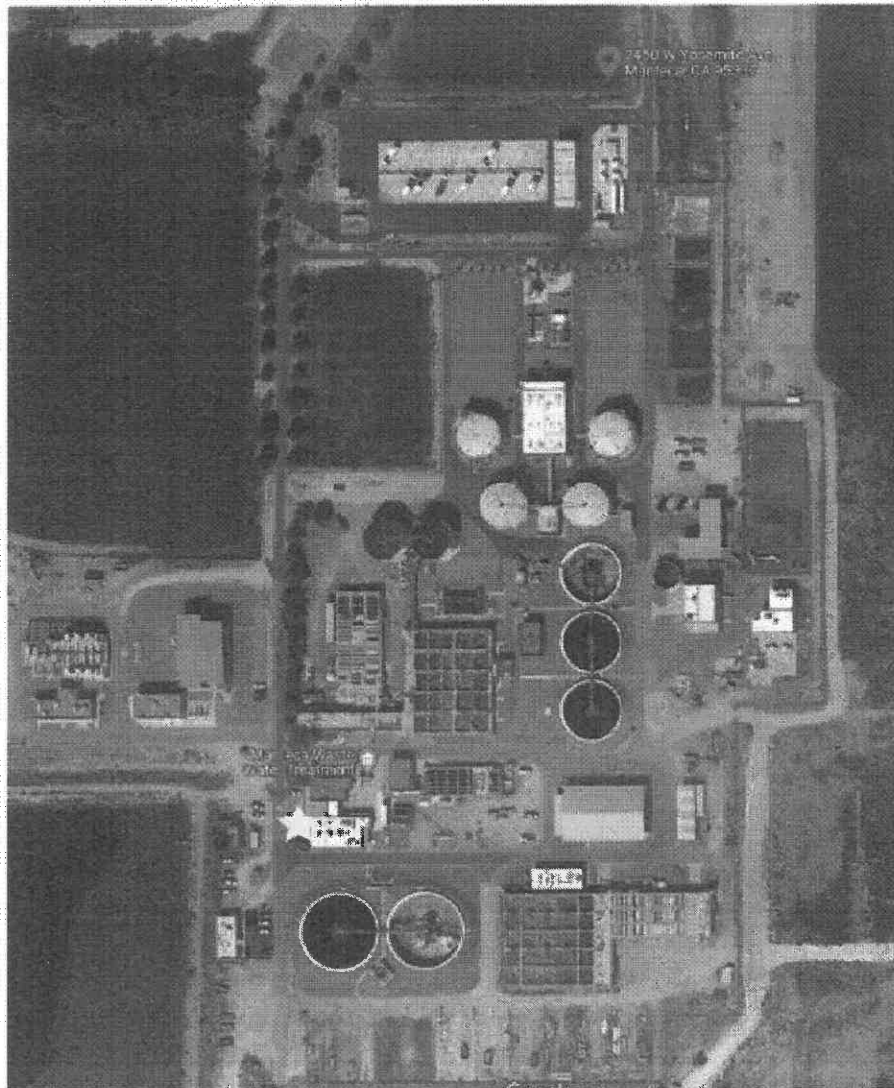
- A. Hays Road Fields Map
- B. Insurance Requirements for Lessees
- C. Addendum Receipt
- D. Proposal Pricing Form
- E. Farmland Lease Agreement

Exhibit A

Site Walk Directions

→ Follow: Yosemite to the Administration Building

★ Meet in the Administration Building and Sign in **before** the walk through



Hays Road Field Map

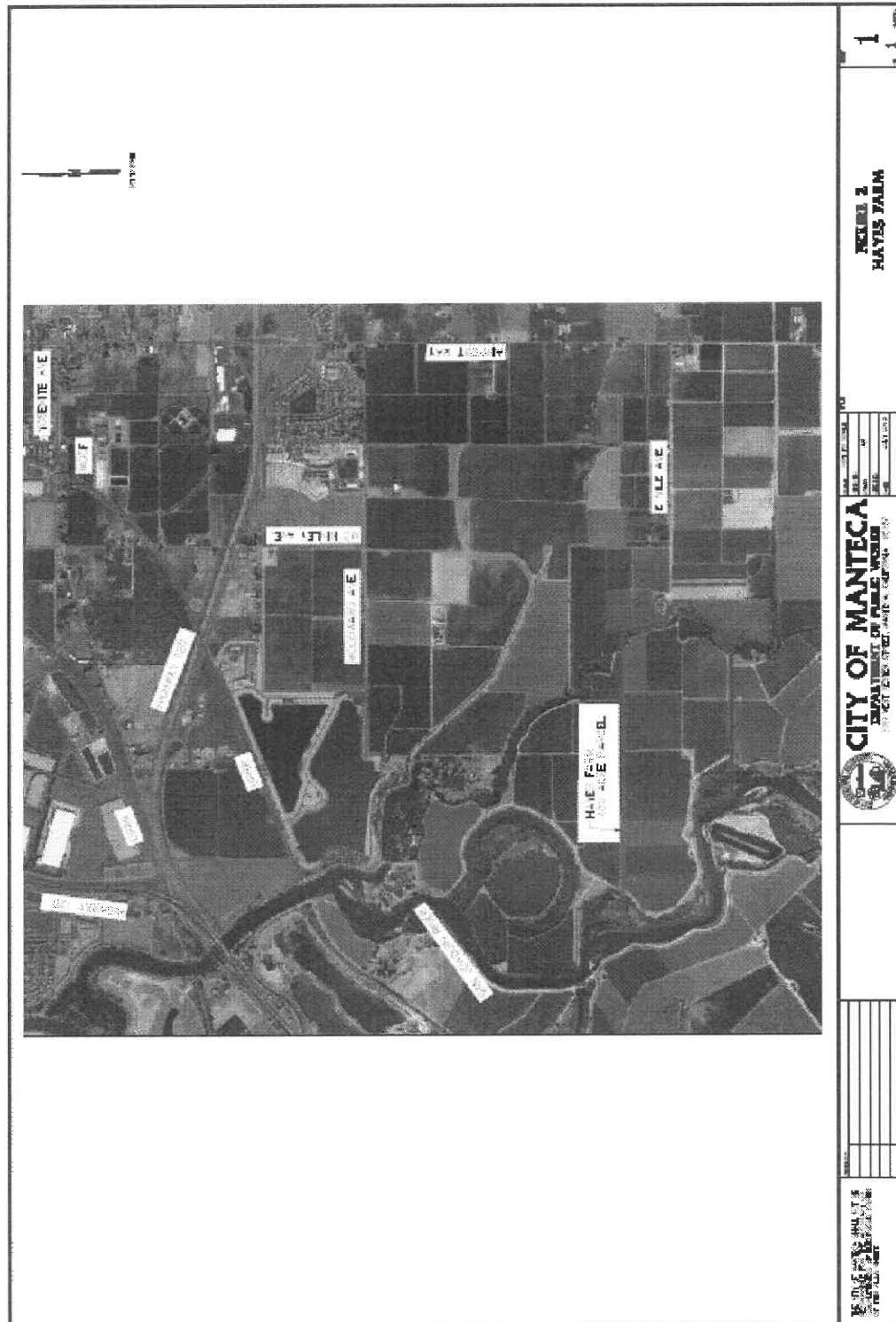


Exhibit C - Insurance Requirements

Insurance Requirements for Lessees

(Not for Daily or Short Term Rentals)

INSURANCE REQUIREMENTS

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope and Limits of Insurance: Coverage shall be at least as broad as:

Commercial General Liability

- Commercial General Liability Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence.
- If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Commercial General Liability Additional Insured Endorsement naming the following as insured **on 2001 or earlier issued endorsement forms:**
"City of Manteca, its officers, officials, employees, agents, and volunteers".

Worker's Compensation

As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Property Insurance

Against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Farm Insurance

Farm insurance with limits no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Manteca, its officers, officials, employees, agents and volunteers are to be covered as insured's as respect to: liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as CG 20 10 and CG 20 37 if completed operations coverage is required.
2. For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers, shall be excess of the Lessee's insurance and shall not contribute with it.
3. The applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be

suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Manteca.

5. Lessee shall, at its sole cost and expense, comply with all requirements, pertaining to the Property, or any insurance organization or company, necessary for the maintenance of reasonable public liability insurance covering the Property.
6. Lessee agrees to carry crop insurance covering events which would impact Land, Farmable Acres, and loss of crops or revenue expected from said crops, including, but not limited to: damage from flood, seepage, drought, disease, fire and/or pests. Lessee's obligation to pay rent for the Property shall not be abated due to any event which is covered by said insurance.
7. Lessee shall carry insurance covering groundwater contamination related to use of fertilizers and pesticides, with indemnity to Lessor for claims brought against Lessor related to any contamination from Lessee's use of fertilizers and/or pesticides.
8. Lessee shall, at their own cost and expense, procure and maintain the insurance coverages described herein for the duration of the Lease.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Manteca reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Manteca

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Manteca. At the option of the City of Manteca, either: the Lessee shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects the City of Manteca, its officers, officials, employees, agents and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City of Manteca guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Waiver of Subrogation

Contractor hereby grants to The City of Manteca a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

SPECIAL RISKS OR CIRCUMSTANCES

The City of Manteca reserves the right to modify these requirements based on the nature of the risk, prior events, insurance coverage, or other special circumstances.

Exhibit D

Addendum Receipt

ADDENDUM RECEIPT

MIZUNO FARMS, INC. (PROPOSER) acknowledges it has received and read all of the following Addenda:

Public Works Water Resources, WQCF Division: RFP 2024-PW111

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Signature _____ Date 12/02/2024

Title _____ Company Name MIZUNO FARMS, INC.

Exhibit E

Proposal Pricing Sheet

PROPOSAL

We, the undersigned, declare that we have carefully examined the City of Manteca, Public Works Department's Request for Proposal and the Hays Rd Farmland Lease Agreement attached thereto. In return for the use of the City's 330 farmable acres of farmland from January 1, 2025 to December 31, 2028, we the undersigned, propose to pay rent to the City in amount of:

Per Acre Annual Rent: \$ 325.00 (total annual rent divided by 330)

Total Annual Rent: \$ 107,250.00

Proposal submitted by:

MIZUNO FARMS, INC.
Company Name

29050 S. AHERN ROAD TRACY, CA 95304
Address

(209) 835-5154 CELL (209) 483-2500
Telephone No.

clarkmizuno@me.com
email

CLARK J. MIZUNO
Print Name

Clark J. Mizuno 12/2/2024
Signature Date

Exhibit F

Sample Lease Agreement

**CITY OF MANTECA
23000 SOUTH HAYS ROAD
FARMLAND LEASE AGREEMENT**

THIS LAND LEASE AGREEMENT ("Lease") entered into this ____ day of _____, 202__, by and between CITY OF MANTECA, a Municipal Corporation, hereinafter referred to as "Lessor," and _____ hereinafter referred to as "Lessee."

1. AGREEMENT TO LEASE. Lessor hereby leases to Lessee and Lessee leases from Lessor, on the terms and conditions hereinafter set forth, certain parcels of real property situated in San Joaquin County, State of California, being approximately 417 acres ("Property"), as shown on Exhibit A.

2. TERMS. The terms of this Lease shall be from [Date], 2024 to [Date], 202__, unless sooner terminated pursuant to Paragraph 36 to the terms of this Lease. This Lease may be extended with an additional two (2) one-year options upon agreement of both Lessor and Lessee.

2.1 EXERCISING OPTIONS. Lessee shall notify Lessor no less than six (6) months prior to the expiration of the operative Lease Term of Lessee's intent to exercise the option to extend. This notice shall be made in writing, stating that Lessee intends to exercise the one-year option, signed by Lessee's lawful representative, and delivered via hand delivery, U.S. Mail, FedEx, USPS, or any other lawful mail or parcel carrier to Lessor. Lessor has the right to refuse Lessee's notice of option to extend if (1) Lessee is in default of any term of this Lease; and/or (2) Lessee paid rent late, in excess of fifteen (15) days, during any term of this Lease.

3. RENT. Rent to be paid by Lessee to Lessor for the use of the Property shall be \$ _____ per farmable acre and is due by November 30th of each year of this Lease and any extensions.

3.1 LATE PAYMENTS. Any amount due from Lessee to Lessor which is not paid on or before November 30th of the present year, shall incur a ten percent (10%) late fee. Payment is deemed late when it is not received by Lessor on the due date. Late fees will be imposed on the first day following the due date.

3.2 ANNUAL RENT INCREASES. Rent shall be adjusted pursuant to the Consumer Price Index for all Urban Consumers (CPI-U), in the San Francisco, California area during the Lease Term period on the anniversary date each year [DATE]. Rent increases shall be calculated and notice to Lessee shall be delivered no less than thirty (30) days prior to the date the increase shall be imposed.

4. USE OF PROPERTY. The Property shall only be used for agricultural purposes for growing, cultivating, and harvesting of food or fodder crops, which include but are not limited to, wheat, corn, silage, alfalfa, tomatoes, dry beans, or sweet corn.

4.1 USES PROHIBITED. Lessee shall not use, or permit the Property, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the Property are hereby leased as stated in paragraph 4, above, and no use shall be made or permitted to be made of the Property, nor acts which will increase the existing rate of insurance upon the Property to cause a cancellation of any insurance, nor shall Lessee sell, or permit to be kept, used or sold, in or about the Property any article which may be prohibited by the standard form of fire insurance policies. Lessee shall not dump, store, or place any type of housing or structure intended for habitation on the Property. Lessee shall, at its sole cost and expense, comply with any and all requirements, pertaining to the Property, or any insurance organization or company, necessary for the maintenance of reasonable public liability insurance, covering the Property.

4.1.1 NO VIOLATIONS OF APPLICABLE LAW. Lessee will not use or permit any person to use the Property for any use or purpose in violation of any governmental law, statute, ordinance, rule, or regulation, or the requirements of any authority or permit applicable to the Property now in force or which may hereafter be in force (collectively, "Applicable Laws").

4.1.2 COMPLIANCE WITH APPLICABLE LAWS. Lessee, at Lessee's sole cost and expense, promptly shall comply with all Applicable Laws and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to the Property condition, use or occupancy. Such compliance specifically shall include but is not limited to each of the following:

i. All applicable requirements of the Regional and State Water Quality Control Boards having jurisdiction over the Property, including, but not limited to, the San Joaquin County Delta Water Quality Coalition and CV-SALTS Nitrate Control Program.

ii. All Applicable Laws pertaining to air and water quality, hazardous materials, possession, use, and storage, waste disposal, air emissions, and other environmental matters including, but not limited to, California Health and Safety Code Division 20, Chapter 10.4 (commencing with Section 25915) and the Safe Drinking Water and Toxic Enforcement Response, Compensation and Liability Act, and all zoning and other land use ordinances.

iii. All Applicable Laws pertaining to labor, specifically including, but not limited to, all rules and regulations related to wages, hours, and benefits, safe workplace conditions, farm labor contracting, immigration, and temporary visa status.

5. FARMABLE PROPERTY. For purposes of this Lease, the "Farmable Acre" shall mean each acre of the Property capable of being used for farming purposes. Farmable Acreage of the 417 acres is considered to be 330 acres. Lessor and Lessee understand that any portion of the Property may be subject to flooding or seepage, which may reduce the Farmable Acres. Lessee agrees to carry crop insurance covering events which would impact the land, Farmable Acres, and loss of crops or revenue expected from said crops, including, but not limited to: damage from flood, seepage, drought, disease, fire, and/or pests. See Insurance requirements in Exhibit 1. Lessee's obligation to pay rent for the Property shall not be abated due to any event which is covered by said insurance.

6. SUITABILITY. Lessee, by accepting this Lease, acknowledges that Lessee has read it carefully, and understands it fully. Lessee accepts this Lease with, after such inspections as Lessee deems proper, full knowledge of the Property's condition, other land uses adjacent to and in the Property's vicinity, fences, roads, water well, pumps, and motors, and all other improvements located on the Property.

6.1 NO WARRANTY OF CONDITION. Lessor makes no warranty or representation of any kind concerning the Property's condition, the soil's fertility, the water supply or the Property's fitness for Lessee's intended use; nor has Lessor agreed to undertake any modification, alteration or improvement to the Property except as provided in this Lease.

6.1.1 Lessee acknowledges Lessee has had the opportunity to inspect and has thoroughly inspected the Property, and therefore accepts the Property **AS IS**.

6.1.2 Lessor shall have no duty or obligation to maintain the Property, or any other improvements thereon, except as otherwise specifically provided in this Lease.

6.1.3 Lessee hereby expressly waives the benefits of California Civil Code sections 1932(2), 1933(4), 1941, and 1942, and any and all other statutes or laws inconsistent with the terms hereof, permitting a tenant to make repairs at the landlord's expense or to terminate a lease due to the subject premises' condition.

6.1.4 By taking possession of the Property, Lessee shall conclusively establish that the Property was at such time in satisfactory condition.

7. REPAIRS AND MAINTENANCE: Lessee shall, at its sole cost, keep and maintain the Property, including levees, ditches, fences, and all access roads, and every part thereof weed and pest-free, and in good and sanitary order, condition and repair, including damage caused by gophers or other pests. Lessee shall execute any repairs within the timeframe established by Lessor. By entry hereunder, Lessee accepts the Property as being in good and sanitary order, condition and repair, and agrees on the last day of said term, or sooner termination of this Lease, to surrender it to Lessor all and singularly said Property with said appurtenances in the same condition as when received, and to remove all of Lessee's signs, equipment and materials from said Property.

Lessor shall allow Lessee a credit against the rent payments due for any repairs Lessee makes to the river water pumps and underground irrigation conveyance pipelines in excess of fifteen thousand dollars (\$15,000.00) cumulative in each calendar year of this Lease. In order for the credit to be allowed the following conditions shall be met: (a) Lessor must have determined with the Lessee that the credited repairs were limited to only those necessary to maintain the system suitable for its intended use, and (b) all expenditures shall be approved by Lessor prior to repairs. Pump failures requiring replacement, rather than repair, will be the responsibility of the Lessor.

8. ALTERATIONS AND ADDITIONS. Lessee shall not make any alterations or additions to the Property without Lessor's prior written consent, which consent shall not be unreasonably

withheld. All alterations, additions, and improvements made by Lessee to or upon the Property, except removable trade fixtures, shall at once when made or installed be deemed to have attached to the freehold and to have become Lessor's property. Provided that, if prior to Lease termination, or within fifteen (15) days thereafter, Lessor so directs by written notice to Lessee, Lessee promptly shall remove the additions, improvements, fixtures, trade fixtures, and installations which were placed in the Property by or for Lessee and which are designated in said notice, and Lessee shall repair any damage occasioned by such removal and in default thereof, Lessor may effect said removal and repairs at Lessee's expense.

9. UTILITIES. Lessee shall pay for all water, gas, heat, light, power, telephone service, trash collection, and all other services supplied to the Property.

10. FERTILIZERS AND PESTICIDES: Lessee shall only use fertilizers and pesticides registered with San Joaquin County for the specific crops grown. Lessee shall use best management practices when applying fertilizers and pesticides to the Property. Lessee shall carry insurance covering groundwater contamination related to use of fertilizers and pesticides, with indemnity to Lessor for claims brought against Lessor related to any contamination from Lessee's use of fertilizers and/or pesticides. See Insurance requirements in Exhibit 1.

11. OPERATIONS.

11.1 BEST PRACTICES. Lessee shall carry on all activities permitted under this Lease in accordance with Applicable Laws, and the best practices of the farming community in which the Property is situated. If Lessee fails to take any action required by Applicable Laws or the best course practices in the farming community surrounding the Property, or if Lessee fails to conduct any operation undertaken by Lessee on the Property in accordance with Applicable Laws and the best course of practices in the farming community surrounding the Property, Lessor may, after giving Lessee five (5) days' written notice of the failure in the manner prescribed in Paragraph 25, below, enter the Property and take any reasonable action Lessor may deem necessary to protect Lessor's interest in this Lease and the Property. Lessee agrees to reimburse Lessor on demand for the costs of any reasonable actions taken by Lessor pursuant to Paragraphs 25 and/or 30.

11.2 CHEMICAL HANDLING. Lessee agrees not to apply pesticides, insecticides, fungicides, herbicides, or other chemical treatments that:

i. have not been approved by the Food and Drug Administration, the Environmental Protection Agency, or any other federal, state, county or local government agency authorized to control such items;

ii. do not comply with or are not otherwise authorized for use in accordance with the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.A. § 136 et seq., the Clean Water Act of 1977, as amended by the Water Quality Act of 1987, 33 U.S.C.A. § 1255 et seq., or any other Applicable Laws now or hereafter enacted during the Lease Term; or

iii. will have a residual effect beyond the Lease Term, except in accordance with Sections 11.2(i) and (ii), above.

11.2.1 Provided further, Lessee shall comply with all Applicable Laws pertaining to pesticides, herbicides, fertilizer or chemical licensing, recordkeeping and reporting, specifically including, but not limited to, Worker Protection Standard for Agricultural Pesticides issued by the United States Environmental Protection Agency.

11.2.2 Lessee shall apply pesticides, fertilizers, and all other chemicals in strict compliance with federal, state, and locally permitted concentrations and shall follow all manufacturers' label instructions, agricultural use requirements, precautionary statements, and warnings. Lessee shall use the utmost care in the handling and application of any pesticides, fertilizers, and all other chemicals to protect all persons upon the Property and the environment and will dispose of all pesticides, fertilizers, and chemical containers only in a lawful manner and will not dump, bury or burn said containers, or any other debris, trash or waste upon the Property.

12. ANNUAL REPORTING REQUIREMENTS. Lessee is required to submit to Lessor an annual report on crops planted and harvested; and quantities of fertilizers applied, due by November 30th of each year. Lessee is required to submit all necessary reports to irrigation districts, reclamation districts, county, or state regarding nutrient management, water usage, or herbicide and pesticide application and usage.

13. INSURANCE. Exhibit 1 to this Lease contains insurance requirements for Lessee. Lessee, at Lessee's own cost and expense, shall procure and maintain, for the duration of this Lease, insurance coverage as specified in Exhibit 1.

14. TAXES: Except as specifically provided elsewhere in this Lease, Lessee shall pay all taxes assessed upon personal property of Lessee. Notice is hereby given that pursuant to Revenue and Taxation Code section 107.6 that the property interest created herein may be subject to property taxation. Lessee may be subject to the payment of property taxes levied in the interest.

15. PROPERTY-RELATED ASSESSMENTS. Lessor is responsible to pay assessments levied by Reclamation District 2094 for river levee maintenance and assessments levied by the San Joaquin County Delta Water Quality Coalition for water quality monitoring.

16. ABANDONMENT. Lessee shall not vacate or abandon the Property at any time during the term or extension(s) and, if Lessee shall abandon, vacate or surrender said Property or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Property shall be deemed to be abandoned. In the event of abandonment, Lessee shall be liable for all damages, direct and consequential, suffered by Lessor.

17. FREE FROM LIENS. Lessee shall keep the leased Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee, including, but not limited to, labor liens, mechanics' and materialmen liens, or other cloud encumbrances. Lessee agrees to indemnify Lessor in the event any lien is placed on the Property.

18. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Lessee shall, at its sole cost and expense, comply with all requirements of all municipal, county, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the said Property. Lessee shall faithfully observe in the use of the premises all municipal and County ordinances and state and federal statutes now in force and which may hereafter be in force and shall do no act which would result in a violation.

19. INSOLVENCY OR BANKRUPTCY. Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under an insolvency or bankruptcy act shall constitute a breach of this Lease by Lessee. Upon the happening of any such event, this Lease shall terminate ten (10) days after written notice of termination from Lessor to Lessee.

20. SURRENDER OF PROPERTY. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub tenancies, or may, at the option of the Lessor, operate as an assignment to them of any or all such subleases or subtenancies. In the event of surrender, Lessee shall be liable for all damages, direct and consequential, suffered by Lessor. Lessee agrees into indemnify and defend Lessor in any action brought by a sublessee in the event of surrender.

20.1 SURRENDER OF PROPERTY AT LEASE TERMINATION. Lessee agrees and acknowledges that the Property shall be returned to Lessor in the same or better condition than it was in when Lessee took possession of the Property.

21. INDEMNITY. From and after execution of this Lease, Lessee assumes all risks of its own operations, Lessee agrees to defend, indemnify, and hold harmless Lessor, its officers, officials, agents, employees, and volunteers from and against any and all claims, actions, damages, demands, liability, costs, fines, judgments, liens, losses and expenses (including without limitation court costs and reasonable attorneys' fees) (collectively, "Claims"), direct or indirect (including any and all costs and expenses in connection therein), arising out of and to the extent caused by Lessee's negligent acts, errors, or omissions in the performance of this Lease or its failure to comply with any of its obligations contained in this Lease, except for any such claim arising out of the sole negligence or misconduct of Lessor, its officers, officials, agents, employee, or volunteers.

22. POSSESSION. If Lessor, for any reason whatsoever, cannot deliver possession of said Property to Lessee at the commencement of said term, as herein specified, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting therefrom, but in that event there shall be a proportionate deduction of rent covering the period between the commencement of said term and the time when Lessor can deliver possession.

23. EMINENT DOMAIN.

23.1 TOTAL CONDEMNATION. If the whole of the Property is acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Lease Term shall cease and terminate of the date title vests in such proceeding, all rent shall be paid up to that date, and Lessee shall have no claims against Lessor for the value of any unexpired Term.

23.2 PARTIAL CONDEMNATION. If any part of the Property is acquired or condemned by eminent domain for any public or quasi-public purpose, and if such partial taking or condemnation renders the Property unsuitable for agricultural operations, then the Term shall terminate as of the date title vests in the acquiring or condemning authority, and Lessee shall have no claim against Lessor for the value of the unexpired Term. If the partial taking or condemnation is not extensive enough to render the Property unsuitable for agricultural operations, then Lessor shall, within a reasonable time after the acquisition of condemnation of the Property by the acquiring or condemning authority, restore the Property to a condition comparable to the condition at the time of such event less the portion lost in the taking or condemnation, and this Lease shall continue in full force and effect.

23.3 LESSOR'S DAMAGES. Upon any taking or condemnation, whether whole or partial, Lessee shall not be entitled to any part of the award or damages or otherwise for such taking or condemnation, except as set forth in Section 23.4, below, and Lessor shall receive the full amount of such award, Lessee hereby expressly waives any right or claim to any part thereof.

23.4 LESSEE'S DAMAGES. Lessee's right to receive condemnation damages, relocation costs or any other compensation for Lessee's crops or fixtures, personal property, or improvements provided by Lessee, or for lost profits from the taking or condemning authority, shall not be affected in any manner hereby.

24. RELATIONSHIP BETWEEN PARTIES. By virtue of this Lease, there is being created only the relationship of landlord and tenant, and under no circumstances shall Lessor be deemed to be a partner of Lessee or joint adventurer with Lessee in the operation of the Property. All costs and expenses necessary for Lessee's farming operation shall be paid for by Lessee, and Lessor shall not be responsible for any costs and expenses.

25. DEFAULT. In the event of any breach of this Lease by Lessee, then Lessor, in addition to other rights or remedies it may have, shall, after five (5) days' written notice, have the immediate right of re-entry and remove all persons and property from the Property; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease or it may from time to time without terminating this Lease, re-let said Property or any part thereof for such a term or terms (which may be for a term extending beyond the term of this Lease), and at such rental rate and upon such other terms and conditions as Lessor in its sole discretion may deem advisable with the right to make alterations and repairs to said Property, upon each such re-letting (a) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such alterations and repairs, incurred by Lessor, and the amount, if any, by which the rent reserved in this Lease for a period of such re-letting; or (b) at the option of Lessor rents received by such

Lessor from such re-letting shall be applied, first, to the payment of any indebtedness, other than rent due hereunder for Lessee to Lessor; second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. If Lessee has been credited with any rent to be received by such re-letting under option (a), and such rent shall not be promptly paid to Lessor by the new tenant, or if such rentals, received from such re-letting under option (b) during any month be less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Property by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction.

25.1 Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee any damages it may incur by reason of such breach, including the cost of recovering the Property, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Property for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

26. CHOICE OF LAW. This Lease shall be governed by California law and the City of Manteca Municipal Code.

27. VENUE. Any action brought to enforce the terms of this Lease shall be brought in San Joaquin County Superior Court.

28. PARAGRAPH CAPTIONS. The paragraph captions of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

29. WAIVER. No waiver of any provision of this Lease shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision hereof. The subsequent ACCEPTANCE OF RENT HEREUNDER BY Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No waiver shall be effective unless in writing and signed by an authorized representative of Lessor.

30. ENTRY BY LESSOR. Lessee shall permit Lessor and its agents to enter into and upon the Property at all times for the purpose of inspecting the same, or for the purpose of monitoring, installing monitoring facilities, making repairs, or alterations, or for the purpose of posting notices of responsibility for alterations, additions, or repairs, without any rebate or rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Property thereby occasioned; and shall permit Lessor and its agents, at any time within thirty (30) days

prior to the expiration of this Lease, to place upon the Property any usual or ordinary "to Lease" signs and exhibit the Property to prospective tenants at reasonable hours.

31. WASTE AND ALTERATIONS. Lessee shall not commit, or suffer to be committed, any waste upon said Property, or any nuisance, and Lessee will use all reasonable means to keep the Property free from all noxious weeds, squirrels, gophers, and other pests. Lessee shall not make, or suffer to be made, any alterations on the Property, or any part thereof, without the written consent of Lessor first had and obtained, and any additions of, or alterations of the Property, shall become at once a part of realty and belong to Lessor.

32. ASSIGNMENT AND SUBLETTING: Lessee shall not assign this Lease, or any interest therein and shall not sublet the Property or any part thereof or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the Property or any portion thereof, without a written consent of Lessor first had and obtained, and a consent to one assignment, subletting, occupation or use by any other person, shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Lessor, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of Lessor.

33. ATTORNEYS' FEES. Any action which shall be brought by Lessor for the recovery of any rent due under the terms of this Lease or by either the Lessor or Lessee for the breach or enforcement of any of the conditions, covenants, or agreements herein set forth on the part of Lessor or Lessee to be kept and performed, or for the recovery of the Property, the party losing the action agrees to pay to the prevailing party, on demand, reasonable attorneys' fees, and further agrees that the said attorneys' fees shall become a part of the judgement of the prevailing party in such action.

34. SUCCESSORS. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

35. NOTICE. All notices to be given to either party shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, and address to the other party at the following addresses:

Lessor: City of Manteca
Public Works Dept.
1001 W Center Street
Manteca, CA 95337

Lessee: MIZUNO FARMS, INC.
29050 S. AHERN ROAD
TRACY, CA 95304

Notices will be deemed to have been received within twenty-four (24) hours after deposit of the aforesaid mail in the United States Post Office.

36. TERMINATION OF LEASE.

36.1 BY LESSEE.

Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Department of Health Services, prohibit the growing of any crop on the Property. In the event Lessee terminates this Lease as provided above, rent shall be prorated to the date of termination. Lessee shall also be permitted to terminate this Lease for any reason whatever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this Lease. Lessee shall be responsible for all rents due for the entire calendar year in which such notice is given.

36.2 BY LESSOR.

Lessor may terminate this Lease if it determines, in its sole discretion, that the Property or portion thereof is necessary for any City function or purpose approved by City Council. In such cases, Lessor shall give to Lessee three (3) months' written notice thereof, and rent shall be prorated.

37. TIME OF THE ESSENCE. Time is of the essence for each and every provision of this Lease. Notwithstanding the foregoing, any delay in the performance of a Lessee obligation hereunder resulting from the actions or failure to act by Lessor or any governmental entity, will result in an equitable tolling of such obligation.

38. SEVERABILITY. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.

39. COUNTERPARTS. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

40. ENTIRE AGREEMENT. This Lease is the complete and exclusive statement of the mutual understanding of the Parties which supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Lease.

LESSOR: CITY OF MANTECA

LESSEE:

BY: _____

BY: _____

Gary Singh, Mayor

ATTEST: _____
Cassandra Candini-Tilton, City Clerk

BY: MILYND FARMS, INC.

APPROVED AS TO FORM:

ADDRESS: 29050 S. AHERN ROAD

L. David Nefouse, City Attorney

TRACY, CA 95304

Phone No: (209) 835-5154