

WATER LEASE AGREEMENT

Brigham Young University, a Utah nonprofit corporation and institution of higher education ("Owner") and Salem City Corporation, a Utah municipal corporation ("Tenant") hereby make the following agreement of lease of water rights ("Lease").

The names of the PARTIES and addresses for notice are as follows:

Owner Addresses:

Rent Payments:

Brigham Young University
College of Life Sciences
Attn: Russell Nielson
5005 LSB
Provo, Utah 84602
(801) 422-6788

Email: Russell_Nielson@byu.edu

Notice/Property Manager:

Brigham Young University
BYU Investment Properties
Attn: Douglas Belliston
B-355 ASB
Provo, Utah 84602

Email: Doug_Belliston@byu.edu

Tenant address:

Salem City Corporation
Attn: Bruce Ward, Salem City Engineering Director
30 West 100 South
Salem, Utah 84653
(801) 423-2770 Ext. 207

Email: brucew@salemcity.org

"Water Assets" means Utah State Water Right Nos. 51-1392, 51-1422, 51-1573, 51-1597, 51-7553 which rights are on, under, or appurtenant to the property known as the Spanish Fork Farm, located at approximately 8845 South 800 East, Spanish Fork, UT ("Premises"). Tenant desires to lease the foregoing Water Rights from Owner upon the terms and conditions hereinafter specified ("Lease"). In consideration of the promises contained herein, the parties agree as follows:

1. TERM. This Lease shall commence on November 1, 2018 ("Effective Date") and shall terminate October 31, 2019 ("Term").
2. RENT. The lease rate for the Term shall be \$46.08 ("Rate") per acre-foot of water purchased from the Owner.

3. PAYMENTS. Lessee shall pay the Rent in two installments, on or before April 30th for 50% of the estimated annual irrigation use multiplied by the Rate, and October 31st for the remaining actual annual use multiplied by the Rate. Rental payments shall be made to the Owner address listed above. Lease payments received more than fifteen (15) days after the date due shall be subject to a 2.5% surcharge. In addition, Lease payments received more than fifteen (15) days after the date due shall be subject to interest on the amount of the overdue Lease payment at the rate of 12% per annum until paid. Tenant shall pay rent in full with no offsets. Tenant does not have the right under this Lease to withhold the rent to pay assessments or charges owed by Owner to third parties. All inquiries relative to payment of the Lease should be directed to Owner's Representative.
4. USE. Tenant agrees to purchase a minimum of 300 acre-feet during the Term. If Tenant desires to purchase more than the 300 acre-feet minimum, Tenant agrees to pay the same rate as the initial 300 acre-feet. Tenant agrees to not use more than 632 acre-feet without obtaining written approval from the Owner. Tenant shall declare to the Owner by April 1st, an estimate of how much water they will receive during the balance of the irrigation season. Tenant agrees to use the Water Rights for the sole purpose of secondary irrigation within the service areas of Salem City and the Salem Irrigation & Canal Company and for no other purpose without the prior written consent of Owner.

Tenant agrees to coordinate exchange of the water as follows: The Water Rights authorize the diversion of water from certain wells, one of which is the larger irrigation well located on the Premises. The water will be pumped from the larger irrigation well into the Salem Canal system operated by Salem Irrigation Canal Company ("Canal Company") and the Canal Company will exchange the water ("Exchange Water") into the Strawberry Highline Canal Company. Strawberry Highline Canal Company will then divert the Exchange Water from the Strawberry Highline Canal into a Salem City irrigation storage pond. Tenant agrees to coordinate the exchange with the Canal Company and the Strawberry Highline Canal Company and to coordinate delivery of the Exchange Water into the irrigation storage pond as needed during the irrigation season.

Tenant agrees to coordinate with Jud Harward, d/b/a Harward Farms ("Harward") regarding the use of the well such that each has capability to receive water at the appropriate times and such that the conveyance pipes and ditches are not filled beyond their capacity. Tenant also agrees to coordinate with Harward so that pumping in any given calendar year shall not exceed 932 acre-feet pumped between the two Tenants from Water Assets. The total quantity of water that is available shall be subject to the final ruling of the Utah Division of Water Rights for the approved "Application for Temporary Change of Water" ("Application") in any given year. Owner shall be responsible for the preparation and filing of the Application for the Term. The total quantity of water that is available to the Tenant shall be subject to the final ruling of the Utah Division of Water Rights for the approval.

5. WATER AND TRANSPORTATION FACILITIES. Tenant shall be solely responsible for the payment of all costs related to Tenant's use of the Water Rights, including any exchange with the Canal Company and Strawberry Highline Canal Company for delivery of the water into an irrigation storage pond. Tenant shall pay for all fees, licenses, occupation or privilege taxes levied or assessed upon or the maintenance, transfer or use of the Exchange Water. Tenant shall pay for the transfer of water from the point of diversion to other conveyance facilities. Tenant will hold the Owner harmless from any obligation or responsibility to provide transportation facilities or permitting for transportation of the water.
 - a. Delivery System. Owner has provided and installed all piping, valves and other required equipment to deliver the water to the existing Salem Canal. If mechanical or other failure occurs, Owner agrees to make all necessary repairs in as short of time as reasonably

possible. In the event that Owner is unable to repair the well for an extended period of time, Owner agrees to charge only for water delivered, regardless of amount.

- b. Easements. Owner makes no commitment to supply easements for access to the source or point of diversion of any water right or for transportation facilities for the said water right other than as set forth herein. Tenant agrees to provide all easements for access and for ditches or other transportation facilities other than those provided by Owner.
 - c. Required Changes. A permit to change the place of use of all or any part of the Water Rights is required to permit Tenant to use the Water Rights under this Lease. Owner shall bear the cost and obligation to apply for such permission from the appropriate government authority and shall proceed until the necessary permits have been granted. Tenant shall cooperate with the Owner and provide all necessary information to the Owner that may be required to prepare, submit, and seek approval of the "Application" from the Utah Division of Water Rights. Owner shall furnish Tenant with copies of all information it submits to the State Engineer or any other judicial or administrative body with respect to the Water Rights prior to filing them.
6. BENEFICIAL USE. Owner desires to assure itself that the Water Rights will be beneficially used. It is a condition hereof that Tenant shall make beneficial use of the Water Rights and keep the Water Rights in effect. Tenant agrees that they will apply the water used each year to irrigation, and report in writing to Owner at the end of the calendar year on the amount of water used within the Salem City and Salem Irrigation and Canal Company service areas, in accordance with the temporary change order approved by the Utah State Engineer, Owner may inspect the facilities Tenant uses to divert and deliver the Water Rights upon reasonable notice.
 7. OPERATION. Owner shall pay all operating expenses other than those expressly assumed by Tenant in this Lease. Tenant shall be responsible for annual inspection of the electrical motor of the larger irrigation well pump. Tenant and Owner shall comply with all Federal, State and Municipal laws, rules, regulations and ordinances with regard to the use and condition of the Water Rights. If Tenant requires assistance relative to the operation of the leased rights, he should contact Owner's Representative. Tenant shall notify Owner if anything needs to be repaired and Owner will be responsible, in its sole discretion, to make such repairs.
 8. TAXES AND UTILITIES. Owner shall pay all general property taxes and special assessments on the facilities associated with the Water Rights – all water assessments, electrical, and pumping costs associated with operating the well. Tenant shall be solely responsible for the payment of all other costs related to Tenant's use or exchange of the Water Rights and any and all fees, licenses, occupation or privilege taxes levied or assessed upon or with respect to the use of the Water Rights.
 9. INDEMNITY. Any loss, damage, injury, or other casualty to property or to any person, animal, fish, plant or geological or meteorological feature ("Loss"), including Loss to Tenant, arising out of or resulting from Tenant's use or possession of water arising from this Agreement, or Tenant's activities on the Premises associated with this Agreement or from defects in the Water Rights, whether apparent or hidden shall be the full responsibility of Tenant. Neither Owner, nor its agents or employees shall be liable for any Loss. Tenant for itself, its successors and assigns, hereby agrees to indemnify Owner, and its agents or employees and hold Owner and its agents or employees harmless from and against all claims, demands, liabilities, suits or actions arising from any Loss, including all reasonable expenses and attorneys' fees incurred by or imposed on Owner and its agents and employees in connection therewith, for such Loss. Tenant further agrees to pay all reasonable expenses and

attorneys' fees incurred by Owner and its agents and employees in the event that Tenant defaults under the provisions of this Paragraph.

10. EMINENT DOMAIN. If the whole or any part of the Premises associated with the Water Rights or the Water Rights shall be taken by right of eminent domain or by a conveyance in lieu thereof, this Lease shall, as to the part so taken, terminate as of the date the Condemnor takes actual possession thereof, or as of the date title shall vest in the Condemnor, whichever date occurs earlier, and, in the event of a partial taking, Tenant shall continue to pay a prorated rental on that portion of the Water Rights not taken by right of eminent domain, and Tenant shall also continue to pay all other charges herein required to be paid by Tenant. If, in the judgment of either party, the Water Rights remaining after such partial taking shall not be suitable for Tenant's purposes described above, that party shall be entitled to cancel this Lease by giving the other party 10 days written notice of its intention to cancel said Lease, and if said Lease is so cancelled, all liability of both parties hereunder shall terminate as of the date of cancellation. Owner shall be entitled to the proceeds of an award of just compensation received as a result of any taking by right of eminent domain or by a conveyance in lieu thereof, provided, however, that Tenant does not waive any award for damages to it or its leasehold interest caused by such taking which are in addition to the condemnation award for the value of the fee simple interest or easement interest taken by the Condemnor, appraised without regard to the encumbrance of this Lease. Owner shall have the right to convey the subject Water Rights and associated Premises in lieu of condemnation free and clear of the obligation of this Lease, upon 15 days written notice to Tenant.
11. DEFAULT – REMEDIES OF OWNER. It is expressly understood and agreed between the Owner and Tenant that all covenants and agreements contained in this Lease are conditions to this Lease and to the term hereby demised to Tenant, and if any default is made by Tenant in the payment of rent or in the performance of any other covenants or agreements hereof, such default shall be considered a breach of this Lease by Tenant, and should Tenant fail to cure such default and remedy such breach within 30 days of the receipt by Tenant from Owner of written notice thereof, then Owner at its option, may: (a) Immediately terminate this Lease and reenter and regain possession of the Water Rights, and Owner shall be entitled to recover from Tenant any damages and expenses incurred by Owner due to such breach, or (b) Reenter the Water Rights as the agent of Tenant and without terminating this Lease, relet the Water Rights on behalf of Tenant for the remainder of the unexpired term of this Lease, applying the rent first to the payment of all expenses to which Owner may have been put in reentering, repossessing, and reletting the Water Rights, and the balance to the payment of the rent owed to Owner by Tenant. Should such rental obtained from said reletting be insufficient to cover the above referenced costs plus the rental agreed to be paid by Tenant herein, Tenant agrees to pay this deficiency to Owner. Should such rental from said reletting be greater than that required to be paid by Tenant and should an excess remain following payment of Owner's expenses and payment of Tenant's rental, then Owner shall remit such excess to Tenant.
12. ATTORNEY FEES. In the event of any action between Owner and Tenant to enforce any of the provisions or rights hereunder, the court may award costs and reasonable attorney fees to the prevailing party.
13. NOTICE. The parties shall give notice under this Lease in writing, delivered personally or mailed by certified mail, return receipt requested, in a postpaid envelope, addressed to Tenant, and to Owner at the addresses given at the beginning of this Lease or such other addresses as the parties shall direct in writing. Notice shall be effective upon receipt or three days after mailing.
14. SUCCESSORS. All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

15. WAIVERS. The waiver of any breach of any covenant, condition or stipulation contained herein shall not be taken to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation. Any failure of Owner to enforce rights or seek remedies upon any default of Tenant with respect to the obligations of Tenant, or any of them, will not prejudice or affect the rights or remedies of the Owner in the event of any subsequent default of Tenant

16. ASSIGNMENTS, SUBLETTING, AND ENCUMBRANCES. Tenant shall not assign this Lease, or mortgage, encumber or sublet the Water Rights or any part thereof, and shall not allow any lien or encumbrance to be placed upon the leasehold interest hereby created or any part thereof, without the prior written consent of Owner, which Owner may grant or withhold in its sole discretion.

17. OWNER'S PERFORMANCE OF TENANT'S OBLIGATIONS. In the event Tenant shall fail to perform after demand by Owner, Owner shall be authorized but not required to perform any of the obligations of Tenant under this Lease. In the event Owner shall perform any such covenants or shall make any expenditure for which Tenant is responsible, then the amount thereof, together with interest at 12% per annum and costs, may, at Owner's election, be added to and be deemed part of the installment of rent next falling due.

18. INTEGRATION. This Lease states the entire agreement between Owner and Tenant concerning the leased Water Rights; and no agreement, either oral or written, other than herein provided, and no change of this Lease shall be binding upon Owner or Tenant unless reduced to writing and signed by them.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written by their signatures, to take effect on the Effective Date defined in Paragraph 1 "Term."

University:

Tenant:

Brigham Young University,
a Utah nonprofit corporation

Corporation of Salem City
a Utah municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Its: CFO/Administrative Vice President

Its: _____

Date: _____

Date: _____