

Resolution No. 2014-08-12-1205

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING A LEASE WITH ROY YATES FOR PROPERTY LOCATED ON THE DELTA WATER SUPPLY PROJECT SITE LOCATED AT 11373 LOWER SACRAMENTO ROAD, STOCKTON, CALIFORNIA

On November 8, 2005, the City Council adopted Resolution No. 05-0493, approving the Delta Water Supply Project (DWSP) and associated environmental documents; and

The DWSP environment documents state that any unused portion of land, not required for present or future expansions, shall remain available for farming operations for as long as is economically and environmentally feasible; and

The DWSP site contains approximately 67.12 acres of unused excess land; and

The Municipal Utilities Department (MUD) requested that the City's Asset Management Division begin the process of leasing the unused excess land located on the DWSP site; and

The Asset Management Division prepared a leasing plan and advertised the availability of the unused excess land and received two (2) lease proposals; and

Staff from the City's Asset Management Division and MUD reviewed the submitted proposals and determined that the proposal submitted by Roy Yates was most appropriate, in light of the requirements listed in the DWSP environmental documents as well as the restrictions placed on the property by MUD, and staff negotiated a proposed lease with Roy Yates; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized and directed to execute a Lease on behalf of the City of Stockton, as Lessor, with Roy Yates, as Lessee, for 67.12 acres of unused excess land located at 11373 Lower Sacramento Road, Stockton, California, pursuant to the terms in the Lease Agreement attached hereto as Exhibit 1 and incorporated by this reference.

2. The notice of intention to lease property owned by the City of Stockton was duly published in accordance with the provisions of Article V, Section 510 of the Charter of the City of Stockton.

3. The City Manager is authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED August 12, 2014



ANTHONY SILVA, Mayor
of the City of Stockton

ATTEST:



BONNIE PAIGE

City Clerk of the City of Stockton



2014-08-12-1205 NP

LEASE

THIS LEASE, made this 6th day of OCTOBER 2014, by and between CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter referred to as "CITY," and ROY YATES, hereinafter referred to as "LESSEE."

WITNESSETH:

1. DESCRIPTION OF PREMISES. CITY hereby leases to LESSEE, and LESSEE leases from CITY that certain real property situated in the City of Stockton, County of San Joaquin, State of California, hereinafter referred to as "Premises," more particularly described in Exhibit "A" attached hereto and incorporated by this reference.
2. USE. These premises are leased for the purpose of cattle grazing with a maximum number of 30 head of cattle. LESSEE agrees to construct a fence over the area rented to include 2 gates located along the service road between both parcels. Conditions specific to the use of the property for cattle grazing are listed in Exhibit "B" attached hereto and incorporated by this reference. LESSEE agrees to restrict the use of the premises to such purposes, and not to use or permit the use of the premises for any other purpose without first obtaining the consent in writing of the City Manager.
3. TERM. The term of this lease shall be for a period of two (2) years commencing on September 1, 2014 and terminating on August 31, 2016.
4. OPTION TO RENEW. LESSEE shall have the option to renew under the same terms and conditions for an additional period of one (1) year upon written request by LESSEE to CITY sixty (60) days in advance of termination of lease period, subject, however, to the approval of the City Manager.
5. LEASE AMOUNT. Lease of said premises described in Exhibit A, shall be at the rate of TWO THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$2,560) per year payable no later than September 1 of each year that the lease remains in effect. Water provided by the Lessor will be available at the fire hydrant along the south access road for stock watering only for a fee to be paid by LESSEE. Billing for water will be at the current rate for Hydrant Meter Rental and subsequent increases on a monthly basis. The current rate is \$50.00 for installation of meter, \$93.15 per month for meter rental and \$3.22 per 100 cubic feet consumed.
6. POSSESSORY INTEREST TAX. LESSEE recognizes and understands that this lease may create a possessory interest subject to taxation and that the LESSEE may be subject to the payment of property taxes levied on such interest.

7. **RIGHT OF ENTRY.** During the term of this lease CITY shall have the right to and may at all reasonable times enter upon and inspect the Premises.

8. **MAINTENANCE.** LESSEE agrees that in no event shall CITY perform any maintenance on or make improvements, repairs or alterations to the Premises of any nature whatsoever or to pay or reimburse LESSEE for any part of the cost thereof. LESSEE agrees to keep the Premises in good order and condition at LESSEE's sole cost and expense.

9. **COMPLIANCE WITH LAWS.** LESSEE shall, at LESSEE's sole cost and expense, comply with all requirements of any and all local, state and federal authorities now in force, or which may hereafter be in force pertaining to the Premises and use of the Premises as provided in this lease.

10. **CONDITION OF PREMISES.** LESSEE accepts the Premises as being in good order, condition and repair, and agrees that on the last day of the term, or sooner if the lease is terminated prior to the last day of the term, to surrender up to CITY the Premises with any appurtenances or improvements therein, in the same condition as when received, reasonable use and wear thereof and damage by act of God, or by the elements excepted.

LESSEE has visited and inspected and accepts the condition of said Premises.

11. **ASSIGNMENT.** LESSEE shall not assign this lease nor sublet the Premises or any part thereof, without the prior written consent of the City Manager.

12. **ATTORNEY'S FEES.** If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all reasonable costs incurred in connection with such action, including reasonable attorney's fees.

13. **HOLD HARMLESS.** This lease is made upon the express condition that CITY be held free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, its agents, employees, guests, invitees and contractors, or property of any kind whatsoever and to whomsoever belonging, including to LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with Premises during the term of this lease or any occupancy hereunder, except those arising out of the sole negligence of CITY. LESSEE agrees to defend, indemnify and hold harmless, CITY from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring. LESSEE further agrees to provide necessary Workers Compensation Insurance, as specified in Section 14, for all employees of LESSEE upon said Premises at LESSEE's sole cost and expense.

14. **INSURANCE.** LESSEE., its agents, employees, and contractors shall not commence any work before obtaining, and shall maintain in force at all times during the

duration and performance of this agreement the policies of insurance specified in Exhibit "C", which is attached to this agreement and incorporated by this reference.

LESSEE, its agents, employees, and contractors shall defend, indemnify, and hold harmless City, its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of LESSEE, its agents, employees, and contractors, any sub-contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, or willful misconduct of the City.

The CITY and all officers and employees thereof connected with the lease shall not be answerable or accountable in any manner, for any loss, claim, liability or damage that may happen to any person or property or any part thereof, for any loss or damage to any of the materials or other things used or employed, for injury to or death of any person, either workers, guests, invitees, or others, or the public, or for damage to person or property from any cause.

15. NON-DISCRIMINATION. LESSEE agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, age or physical handicap.

16. LOSS. CITY will not be responsible for loss or damage to personal property, equipment or materials of LESSEE and all losses shall be reported to CITY immediately upon discovery.

17. ALTERATIONS/REPAIRS. LESSEE shall make no repairs, changes and/or alterations to the leased Premises without the prior written consent of the City Manager.

18. SURRENDER OF PREMISES. Upon the termination of this lease for any cause, LESSEE shall remove any and all equipment and improvements including fencing installed by LESSEE and restore the entire Premises to its condition prior to the execution of the lease and as provided in Section 10. CITY may approve, in writing, any deviation from this requirement.

19. TERMINATION ON DEFAULT. If LESSEE defaults in any of the terms hereof, then this lease shall terminate upon failure of LESSEE to correct the default with fifteen (15) days of receiving written notice thereof from the City Manager. Upon any termination hereof, LESSEE agrees to quit and surrender possession peaceably, as specified in Section 18, and CITY shall have the right to remove LESSEE and all others occupying through or under said LESSEE.

Notwithstanding other provisions contained in this lease, the City Manager is granted the right to immediately terminate this lease upon failure on the part of LESSEE to keep

in full force and effect during the entire term of this lease the insurance requirements set out in Section 14.

20. DEBT LIABILITY DISCLAIMER. CITY will not be liable for any debts or claims that arise from the operation of this lease.

21. BANKRUPTCY OR INSOLVENCY BY LESSEE. It is hereby mutually agreed between the parties that in the event that the LESSEE seeks the protection of the Bankruptcy Code or any similar state law provisions governing creditors and debtors relation, either by voluntary or involuntary proceedings, or should become insolvent, this lease may immediately, at the option of CITY, be terminated, and CITY shall have the right immediately to re-enter the Premises. In no event shall this lease be treated as an asset of LESSEE.

22. NOTICES. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

CITY's address: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attn: City Manager

LESSEE 's address: Roy Yates
P.O. Box 692526
Stockton, CA 95269-2526

23. TERMINATION. The parties hereto agree that either party may terminate this lease at any time during the term hereof by giving notice to the other party in writing ninety (90) days prior to the date when such termination shall become effective. In the event of any such termination, in whole or in part, CITY shall not reimburse LESSEE for the unearned portion of any prepaid rent.

24. RESTRICTED ACTIVITIES. The following activities are prohibited on the Premises:

A. Use or storage of any "hazardous substance" or "hazardous chemical waste" as those terms are used in CERCLA (42 USC 9601.14), SARA (42 USC 11021(e)) or RCRA (42 USC 6901) or any similar federal or state law, or any pesticide, oil, petroleum products or fuel; except only material packaged and purchased for consumer use in containers not to exceed 1 gallon, or fuel in a vehicle fuel tank. Use of pesticides should be minimized, and will be applied only by authorized personnel and in accordance with all applicable laws, regulations, and label instructions.

B. The installation or use of any above ground or below ground storage tanks is prohibited.

C. Accumulation, storage, treatment, release or disposal of any hazardous substance or waste material.

D. Manufacturing, maintenance of equipment or vehicles; or use, installation or construction of vessels, tanks (stationary or mobile), dikes, sumps, or ponds; or any activity for which a license or permit is required from any government agency for (1) transportation, storage, treatment, or disposal of any waste, (2) discharge of any pollutant including but not limited to discharge to air, water, or a sewer system.

E. Any spill or release of a hazardous substance to the air, soil, surface water, or groundwater will be immediately reported to CITY as well as to appropriate government agencies, and shall be promptly and fully cleaned up and the Premises (including soils, surface water and groundwater) restored to its original condition, at LESSEE's sole cost and expense.

F. Should LESSEE desire to use pesticides at the Premises (either herbicides, rodenticides, or insecticides) all applicable Environmental Protection Agency (EPA) standards and any other government agency requirements that apply must be met as well as approved by the City of Stockton Municipal Utilities Department. No dumping of hazardous materials or wastes (including petroleum) shall be permitted.

25. UTILITIES. LESSEE shall pay all charges for electricity, gas, water, telephone, and other utility service used or furnished upon said premises.

26. WAIVER OF CLAIMS. LESSEE hereby waives any claims against CITY for injury to or death of LESSEE's agents, employees, contractors, permittees or invitees, or any person or property in or about the premises from any cause whatsoever.

27. ENCUMBRANCES: LESSEE shall not encumber the leased premises in any manner whatsoever.

28. INTEGRATION; MODIFICATION. This lease represents the entire and integrated agreement between CITY and LESSEE and supersedes all prior negotiations, representations, or agreements, either written or oral. This lease may be amended only by written instrument signed by CITY and LESSEE.

29. HOLDING OVER. Holding Over: If after expiration of the Term, LESSEE remains in possession of the Premises with Landlord's permission (express or implied), LESSEE shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Annual Installments of Base Rent" payable by LESSEE shall be increased to one hundred fifty percent (150%) of the Annual Installments of Base Rent payable in monthly installments by LESSEE. Such monthly rent shall be payable in advance on or before the first day of each month. If

either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination

30. AUTHORIZATION. This lease is subject to final approval of the City Council of the City of Stockton.


31. BINDING. This lease shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

32. AUTHORITY. The undersigned represent and warrant they are duly authorized to execute this lease and to bind the parties.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first hereinabove written.


"LESSEE"

"CITY"



ROY YATES

CITY OF STOCKTON




KURT O. WILSON,
City Manager

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: 

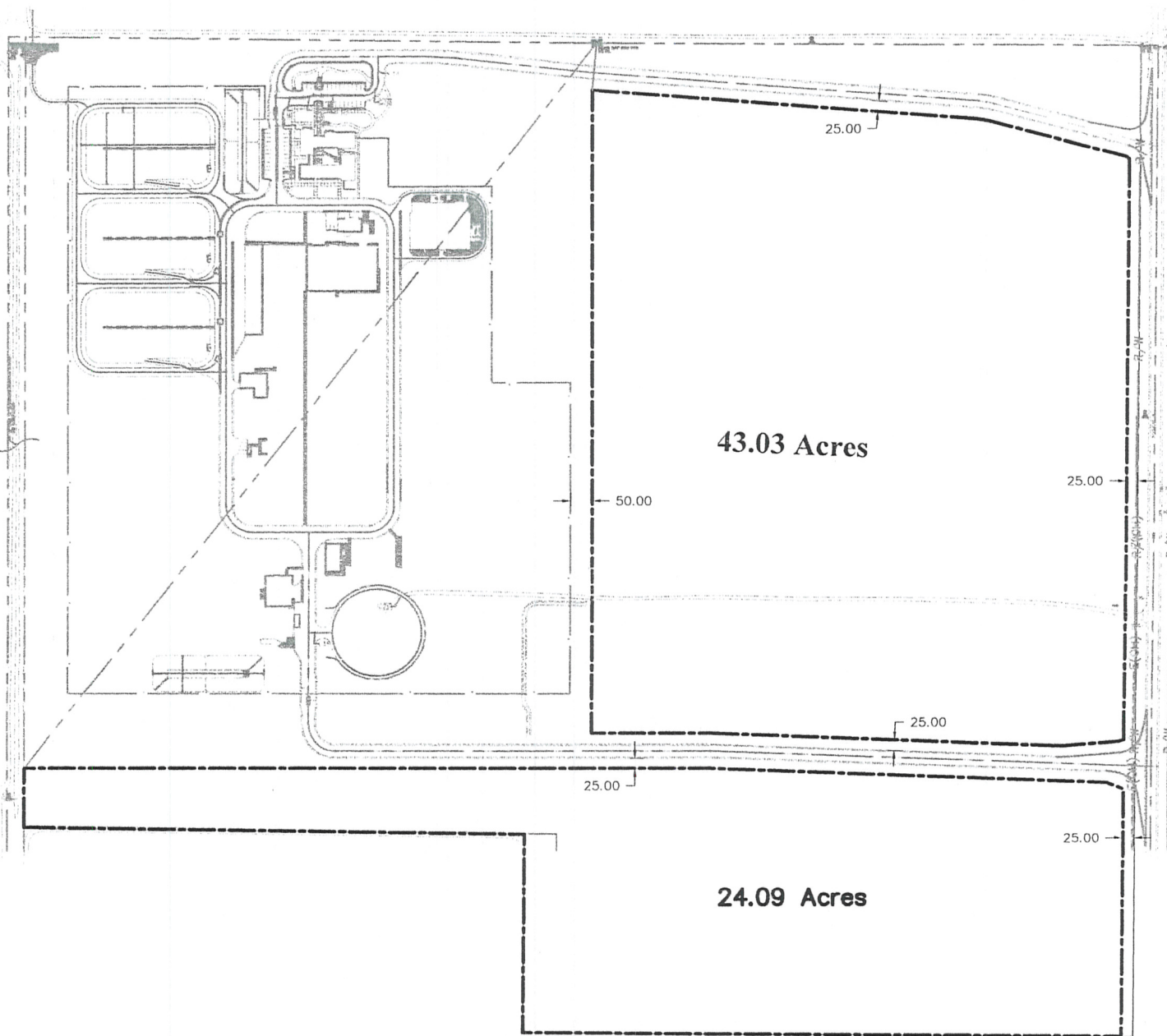
ATTEST:



BONNIE PAIGE
City Clerk



EXHIBIT "A"



SHEET 1 OF 1

REV. NO.	REV. DATE	REV. BY
DIGITIZED		
DWG. BY	SB	SCALE
CK. BY		1" = 375'

DELTA WATER SUPPLY PROJECT
TEMPORARY FARM EASEMENT

CITY OF STOCKTON

APPROVED BY:

CITY ENGINEER

DATE

DRAWING NO.

Conditions for Cattle at the DWSP Property

1. Access from Lower Sacramento Road will be via the south paved access service road to the DWSP Water Treatment Plant. Access from Lower Sacramento Road is limited to right turns in and right turns out only. No left turns in or out will be allowed.
2. LESSEE shall construct dirt/aggregate base access driveways from the paved service road to the farmed area. All vehicles and equipment shall utilize these driveway access points.
3. The service road to the DWSP Water Treatment Plant shall be kept open for access at all times. No staging of vehicles or equipment will be allowed on the paved service road.
4. LESSEE shall respond to any issues arising from the cattle roaming outside of the leased area within two hours of notification from the City.

EXHIBIT C
INSURANCE REQUIREMENTS
LEASE FOR AGRICULTURAL USE

LESSEE shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the LESSEE, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the Lessee shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

- A. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.
- B. **WORKERS' COMPENSATION** insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.
- C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR **ADDITIONAL** REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 Aggregate limit.
- (ii) **ENVIRONMENTAL IMPAIRMENT/POLLUTION LIABILITY** insurance will also be required for land uses where Non-Aerial Pesticide and/or Herbicide spraying is used. Insurance to include non-aerial spraying of pesticides and herbicides, Groundwater contamination, etc. Same minimum limits as Commercial General Liability (\$1,000,000 per occurrence, and \$2,000,000 Aggregate limit), to include Sudden and Accidental and Environmental cleanup.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

- 1 The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.*
- 2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required

herein shall continue in effect for a period of three years following the termination of the lease.

3. For any claims related to products provided under this contract, the Lessee's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Lessee's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the lessee and/or the lessee's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
5. Regardless of these contract minimum insurance requirements, the Lessee and its insurer shall agree to commit the Lessee's full policy limits and these minimum requirements shall not restrict the Lessee's liability or coverage limit obligations.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Lease Agreement.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
425 N. El Dorado Street
Stockton, CA 95202
9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Lessee shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8617. Our fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the Lessee fails to maintain the required insurance in full force and effect, all work under the Lease shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Lessee should sublease or subcontract any work under this lease, the Lessee shall cover the sub-lessee or sub-contractor, and/or require each sub-lessee or sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-lessee's or sub-contractor's insurance shall have the same impact as described above.