

## MONTH-TO-MONTH TEMPORARY USE AND RENTAL AGREEMENT

### HANGAR BUILDINGS AT RIALTO MUNICIPAL AIRPORT

This Month-to-Month Temporary Use and Rental Agreement ("Agreement") is made and entered into this 12<sup>th</sup> day of **July, 2016** by and between the **CITY OF RIALTO** ("Landlord"), and **Esteban Garcia and \_\_\_\_\_**, doing business as **Aquatech Food Support Systems, a \_\_\_\_\_** ("Tenant"). City and Tenant are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

#### RECITALS

**A.** The City is the owner certain real property which was formerly the Rialto Municipal Airport ("Airport") and wishes to lease, on a month to month basis, two (2) vacant hangar buildings, as more fully described and depicted in Exhibit A attached hereto and incorporated herein by reference, (the "Premises"), which are part of the Airport.

**B.** Tenant is aware of the City's plans to redevelop the Airport property and the Premises in the near future and has been provided with a *Waiver of All Rights, Including Relocation Assistance and Benefits* ("Waiver"), the execution of which is a condition precedent to the effectiveness of this Agreement. Tenant has executed the Waiver attached hereto as Exhibit B and incorporated herein by reference.

**C.** In exchange for the consideration provided herein, City hereby agrees to lease the Premises to Tenant under the terms, conditions, and provision contained herein.

**NOW THEREFORE**, City hereby enters into this Agreement on a month-to-month basis with Tenant upon the following terms, conditions and covenants:

- 1. PREMISES.** City hereby leases to Tenant, and Tenant hereby leases from City on a month-to-month basis, that certain space designated and described as:

**1455 N. Linden Avenue - 6,600 square foot hangar with offices**

**1449 N. Linden Avenue – 3,200 square foot hangar space**

(the "Premises"), as more particularly described in **Exhibit "A"** attached hereto. Tenant shall have the right to use the Premises for their intended use as described in Section 6.1.

- 2. TERM.** The term of this Agreement shall commence on **July 15, 2016** and continue until such time as the Agreement is terminated by either party by providing written notice to the other party at least sixty (**60**) days prior to the Termination Date.

- 3. RENT / CONSIDERATION.**

**3.1 Definition:** ("Rent") shall mean the obligation of Tenant to provide monetary compensation and/or the provision of goods or services to Landlord under the terms of this Agreement.

**3.2 Monthly Rental - Fair Market Rent.** City has determined and established that fair market rental value for the use and occupancy of the Premises, without deduction, setoff or demand, is equal to \$3,000 per month.

**3.2.1 In-Kind Services In Lieu of Rent.** In exchange for the use of the Premises, Tenant pledges and warrants to provide to City a variety of goods and in-kind services that shall be equal to the fair market value of rent forgone for the Premises. The goods and in-kind services shall include but are not limited to: the production and donation of food produced from the facility, the hiring and training of Rialto residents, Veterans and other displaced workers as employees, providing educational tours of the facility and providing general oversight and security for property in and around the Premises. The Goods and In-Kind Services are more clearly described in Exhibit C.

**3.3      Payment of Rent or In-Kind Services.** Due to the time to install equipment and time to plant and harvest the cask crops, the City shall defer the payment of Rent or in-kind services for a period of 90 days from the effective date of this Agreement.

**3.4      Late Fees; Interest; NSF Checks:** [RESERVED]

**4.      Security Deposit.** Tenant shall pay and Landlord hereby acknowledges that payment of **On-Thousand Five Hundred Dollars (\$1,500)** as a security deposit. The security deposit may be used by Landlord, as reasonably necessary to: (i) cure Tenant's default in payment of Rent or other sums due; (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of tenant; (iii) broom clean the Premises, if necessary, upon termination of tenancy; and (iv) cover any other unfulfilled obligation of Tenant. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT.** If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within 5 days after written notice is delivered to Tenant. Within 30 days after Landlord receives possession of the Premises, Landlord shall: (i) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and (ii) return any remaining portion of security deposit to Tenant. However, if the Landlord's only claim upon the security deposit is for unpaid Rent, then the remaining portion of the security deposit after deduction of unpaid Rent, shall be returned within 14 days after the Landlord receives possession.

**5.      Taxes and Assessments.**

**5.1      Obligation to Pay.** Tenant is responsible for and shall pay all real and personal property taxes (including any tax levied on a possessory interest, as defined in California Revenue and Taxation Code Section 107 or successor statute, if applicable), general and special assessments, and other charges of every description, levied on or assessed against the Premises, personal property located on the land or improvements, the leasehold estate, or any subleasehold estate, falling due during the term of this Agreement. Tenant shall make all such payments directly to the assessing authority, before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

**5.2      Proration of Possessory Interest Taxes or Assessments for Partial Years.** Any imposition of possessory taxes referred to in Section 5.1 above relating to a fiscal period of a taxing authority, a part of which period is included within the term of this Agreement and a part of which is included in a period of time before the Effective Date or after the termination of this Agreement, shall be paid by Tenant in the manner above, but shall be prorated and reimbursed by City. For proration and reimbursement(s), Tenant shall be required to submit formal request for reimbursement to City along with documentation that possessory taxes were paid by Tenant for any period(s) of time prior to or after the term of their tenancy pursuant to this Agreement.

**5.3      Tenant's Right to Contest.** Tenant may contest the legal validity or amount of any taxes, assessments or charges for which Tenant is responsible under this Agreement, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment, or pay under protest, but shall protect City and the Premises from any lien by adequate surety bond or other appropriate security.

**5.4      Proof of Compliance.** Upon the request of City, Tenant shall furnish to City receipts or other appropriate evidence establishing payment or any applicable tax, assessment or charge. Tenant may comply with this requirement by retaining a tax service to notify City whether the taxes have been paid.

**6.      USE OF PREMISES.**

**6.1      Permitted Uses.** The Premises shall be used and occupied by Tenant principally for:

**A Hydroponic/Aquaponic Farming Operation**

(the "Use"). Based upon the Use, Tenant shall be authorized to keep and maintain on the Premises certain equipment, personal property, or other materials, related to the Use, which are owned by the Tenant.

Tenant shall keep the Premises clean and free of debris at all times. Tenant shall not store, use, handle or keep any hazardous substances, materials or other combustible materials on the Premises. Tenant shall be liable for any and all damage to the Premises caused by Tenant's use that is due to Tenant's improper or negligent operation. Tenant shall control the conduct and demeanor of its employees and invitees, and of those doing business within or around the Premises and shall take all steps necessary to remove persons whom City may, for good and sufficient cause, deem objectionable.

**6.2 Prohibited Uses:** No residential uses or activities of any kind whatsoever shall be conducted by Tenant in, from or around the Premises. Tenant shall not be permitted to modify, use or occupy the Premises for any residential purpose whatsoever. **Tenant shall not sub-let or sublease any portion of the Premises.** Tenant shall not be permitted to use the Premises for any unauthorized or illegal purposes or activities, including, but are not limited to, growing or sale of cannabis or any other plant(s) that may contain any substance that may be used to produce any illicit drugs or narcotics. Any Tenant or their employees or invitees found engaging in or conducting any illegal activities or Prohibited Uses in, on or around the Premises shall be grounds for City's termination of this Agreement.

**6.3 Compliance with Laws.** In utilizing the Premises during the term of this Agreement, Tenant shall comply with all applicable statutes, ordinances, rules and regulations established by any federal, state, county or local government agency.

**6.4 Waste Disposal.** Any Tenant operating a commercial enterprise on the Premises shall be responsible for the costs to dispose of all commercial or industrial waste generated by Tenant in accordance with all applicable regulations and laws of those governmental agencies having jurisdiction or authority thereover. Tenant shall ensure that all such waste materials are placed in appropriate covered containers designed for use with the type of waste involved. Landlord shall provide a limited number of common area trash receptacles for the convenience of all Tenants on Airport and are only for the disposal of non-hazardous household waste materials only. Tenant shall not dispose of any waste materials generated off the Airport premise use. Tenant shall cooperate with City to provide for the proper separation of waste to maximize recycling.

**6.5 Waste; Nuisance.** Tenant shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties. Tenant shall not use the Premises for sleeping, washing clothes, cooking or the preparation, manufacture or mixing of anything that might emit any odor or objectionable noises or lights onto adjacent properties. Tenant shall not do anything on the Premises that will cause damage to the Premises.

**7. Hazardous Materials.** Tenant shall not use, store, generate, release, or dispose of any hazardous material on the Premises or the property of which the Premises are part. However, Tenant is permitted to make use of such materials that are required to be used in the normal course of Tenant's business provided that Tenant complies with all applicable Laws related to the hazardous materials. Tenant is responsible for the cost of removal and remediation or any clean up of any contamination caused by Tenant.

Any Hazardous Materials (as hereinafter defined) brought upon, kept or used in or about the Premises or the Airport by Tenant, its agents, employees, contractors or invitees, shall be necessary or useful to Tenant's business and shall be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities applicable to any such Hazardous Materials ("Hazardous Materials Laws").

If Tenant breaches the obligations stated herein, or if the presence of Hazardous Materials on the Premises after the Effective Date results in contamination of the Premises or if Hazardous Materials are otherwise discharged or released from the Premises after the Effective Date, then Tenant shall indemnify, defend and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in value of the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of this Agreement as a result of such breach, contamination, discharge or release. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any

cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in, on or under the Premises.

Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises after the Commencement Date results in any contamination of the Airport, or otherwise results in the release or discharge on, under or from the Premises of Hazardous Materials, Tenant shall promptly take all actions at its sole expense as are necessary to return the Airport to the condition existing prior to the introduction of any such Hazardous Materials to the Airport or to otherwise remove and/or abate the release or discharged Hazardous Materials; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Airport, will not unreasonably interfere with the use and enjoyment of other portions of the Airport, and will be performed in accordance with all Hazardous Materials Laws. Upon the termination of this Agreement, Tenant shall surrender the Premises to City free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws. This indemnification shall survive the termination or expiration of this Agreement.

For the purpose of this Section, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §9601 et seq.), Section 25117 of the California Health & Safety Code, Section 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state or local environmental laws, ordinances, rules or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the Effective Date.

## **8. Entry, Access and Inspection of Premises:**

**8.1 Inspection of Premises.** Tenant shall comply with all reasonable regulations and directives of City regarding access to the Premises. City, its employees or agents acting on behalf of the City, subject to providing a minimum of 24 hour notice, shall have the right to enter onto or into the Premises, at all reasonable times, during the term of the Agreement or any renewal thereof, for the purpose of making inspections, necessary or agreed repairs, alterations, or improvements, or to supply necessary or agreed services or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. City shall have such right of inspection to verify the use of the Premises and/or to inspect the Premises for compliance with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities building codes, determine the condition of the premises and/or the need for necessary repairs, as may be deemed appropriate and necessary for the preservation of the Premises. City may enter the Premises without permission of, or supervision by, Tenant for emergency purposes (i.e. fire, burglary, flooding, criminal activity, or other catastrophe) determined reasonably necessary by City or required by law. City reserves the right to limit Tenant's access to the Airport or the Premises, or both, due to any terrorist threat, civil unrest, any unsafe condition, for the safety and protection of persons and property. City shall not be responsible for Tenant's inability to access the Airport or the Premises due to events or acts beyond the control of City.

**8.2 Locks; Keys; Combinations:** Tenant shall, at its own expense, furnish City with one (1) duplicate set of keys or lock combination for the locks securing the Premises. City shall secure keys and lock combinations from access or exposure by unauthorized individuals and will notify Tenant immediately in the event of any compromise of keys and lock combinations. City shall only be liable to Tenant for damage resulting from gross negligence in accessing Premises.

## **9. MAINTENANCE, ALTERATIONS.**

**9.1 As-Is Condition.** Tenant has examined the Premises and acknowledges that the Premises are clean and in operative condition without exception. Tenant acknowledges that it has had sufficient time to conduct all inspections, reviews and studies of the Premises that Tenant may deem necessary. Tenant hereby expressly assumes the risk that adverse physical conditions and the full extent thereof may not be revealed by Tenant's inspections, reviews and studies of the Premises. Tenant hereby acknowledges that neither City nor anyone acting for

or on behalf of City, has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of the Premises or improvements, the feasibility, desirability or convertibility of the Premises into any particular use, the conditions of the soil, ground water, or surface waters or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Agreement has not relied on any representation, statement or warranty of City, or anyone acting for or on behalf of City, and that all matters concerning the Premises shall be independently verified by Tenant, and that Tenant shall lease the Premises on Tenant's own examination thereof, **AND THAT TENANT IS LEASING THE PREMISES IN "AS IS" PHYSICAL CONDITION AND "AS IS" STATE OF REPAIR.** Tenant hereby waives and City hereby disclaims all warranties of any or kind of description, including, without limitation, those of fitness for particular purpose, tenantability, habitability and use. Tenant hereby expressly waives any and all claims for damages or for rescission or cancellation of the Agreement because of any representations made by City or by any agent of City.

**9.2 Maintenance of Premises.** Throughout the term of this Agreement, Tenant shall, at Tenant's sole cost and expense, maintain the Premises in good serviceable condition and repair, provided; however, that City shall maintain the structural components of the hangar, including doors and door mechanisms. Tenant hereby waives the provisions of California Civil Code Sections 1941 and 1942 with respect to City's obligations for tenant ability of the Premises and Tenant's right to make repairs. Tenant shall maintain the Premises in a clean manner and safe from any hazardous conditions. Tenant shall use appropriate care to prevent and remove any release, spill or leakage of waste oil, grease and other petroleum products and shall be responsible for necessary costs to maintain Premise free of hazardous conditions. If Tenant fails to maintain the Premises in a clean and safe manner, Landlord may contract for or perform such maintenance and charge Tenant for Landlord's cost.

**9.3 Alterations.** Tenant shall not make any alternations to the Premises without City's prior written consent. Any alterations to the Premises shall be done according to Law and with required permits. Tenant shall give Landlord advance notice of the commencement date of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against landlord's interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises. Any alterations made shall remain on and be surrendered at the expiration or sooner termination of the term; provided, however, that City may, at City's sole election, demand the removal from the Premises of all fixtures and improvements or of certain fixtures or improvements or both as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of the Agreement shall be effected by notice given in or concurrently with notice of such termination or within sixty (60) days after such termination. Tenant shall comply with the notice before the expiration date for normal termination, and within thirty (30) days after the notice for other terminations.

**9.4 Utilities.** Tenant shall be responsible for the costs for all utility services to the Premises. Tenant shall be responsible for the costs associated with provision of any additional utility services requested or required for their intended use. City shall not be liable for the failure to provide electrical services if it is prohibited from doing so by events or actions beyond its control.

**10. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or transfer, whether voluntarily, involuntarily or by operation of law, its interest in this Agreement or any part hereof. No such assignment or transfer shall be valid or binding. An attempted assignment or transfer shall be grounds for City's termination of this Agreement. As used in this Article 6, the term "assignment" shall include a "*more than 25% change in ownership of Tenant.*" A "*more than 25% change in ownership of Tenant*" shall mean, if Tenant is a corporation, the transfer of more than 25% of the voting stock of Tenant, or if Tenant is a general partnership, the transfer of the right to share in more than 25% of the profits of such partnership; or, if Tenant is a limited partnership a transfer of more than 25% of the voting rights of the general partner thereof to individuals or entities which were not theretofore general partners of Tenant. In addition, the parking or storage of aircraft or vehicle(s) not owned or under exclusively lease by Tenant in the Premises shall constitute a sublease for purpose of this Article.

**11. CONDEMNATION:** If all or part of the Premises are condemned for public use, either party may terminate the agreement as of the date possession is given to the condemner. In the event of a Condemnation of Premises for public use, Tenant acknowledges that Tenant has forever expressly waived any and all rights to any Relocation benefit, cost, or entitlement.

## **12. INDEMNITY.**

**12.1 Indemnity.** Tenant shall indemnify, hold harmless and defend City, its elected officials, officers and employees, from and against any and all actions, claims, damages, disabilities or expenses including, without limitation, attorneys' fees (including fees for use of in-house counsel by a Party), witness costs and court costs that may be asserted by any person or entity, including Tenant, arising out of or in connection with any of the following circumstances:

**12.1.1 Use of Premises.** Use of the Premises or Airport in any manner by Tenant, its agents, employees, invitees, subtenants, licenses and contractors, and the agents, employees, patrons, contractors and invitees of Tenants and subtenants, including any use of the Premises or the Airport not allowed under this Agreement.

**12.1.2 Breach by Tenant.** Any breach by Tenant of the terms, covenants or conditions herein contained, including but not limited to holdover, failure to surrender the Premises upon termination, or the release of any hazardous substances.

**12.1.3 Other Activities.** Any other activities of Tenant, its agents, employees and subtenants whether or not there is concurrent negligence on the part of City, but excluding liability due to the sole active negligence or sole willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Tenant or its agents under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **13 TERMINATION AND EXPIRATION.**

**13.1 Termination.** This month-to-month tenancy may be terminated by City or Tenant upon sixty (60) days' prior written notice to the non-terminating Party.

**13.2 Termination for Tenant's Default.** If Tenant fails to pay rent or any other sums to be paid by Tenant hereunder, Tenant shall have thirty (30) days after written notice is given Tenant to cure the default. If any default by Tenant shall continue uncured following notice of default as required by this Agreement, City shall have the right to immediately terminate this Agreement in addition to all other rights and remedies provided by law or equity to which City may resort cumulatively or in the alternative.

**13.3 Tenant's Duty to Surrender.** At the expiration or earlier termination of the term of the Agreement, Tenant shall surrender to City in as good condition and repair as of the Effective Date, the possession of the Premises. Upon termination of the Agreement, Tenant shall (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces (iv) deliver Premises to Landlord in the broom clean condition; and (v) give written notice to Landlord of Tenant's forwarding address, and (vi) return keys and gate card(s).

If Tenant fails to surrender the Premises at the expiration or sooner termination of this Agreement, Tenant shall defend, indemnify and hold City harmless against all loss, liability, cost or expense resulting from or arising out of Tenant's failure to surrender the Premises, including, without limitation, any amounts required to be paid to any lessee or prospective lessee who was to have occupied the Premises after said termination or expiration and any related attorneys' fees and brokerage commissions. Notwithstanding the foregoing, no termination of this Agreement shall release Tenant from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or date of surrender if it be later.

**13.4 Holding Over.** If Tenant shall continue to occupy or possess the Premises after the termination of this Agreement without the consent of City, then unless City and Tenant have otherwise agreed in writing, Tenant shall be a "holdover tenant" on a month-to-month basis. All the terms, provision and conditions of this Agreement shall apply to this month-to-month tenancy except that the monthly rent shall be immediately adjusted upward upon the expiration or termination of this Agreement to equal two hundred percent (200%) of the monthly rent for the Premises in effect under this Agreement during the month which includes the day immediately prior to the

date of the expiration or termination of this Agreement, and the City shall no longer accept any in-kind goods or services as previously agreed upon in Section 3.2.1 of this Agreement.

**14. TENANCY STATEMENT (ESTOPPEL CERTIFICATE):** Tenant shall execute and return a tenancy statement (estoppel certificate), delivered to Tenant by Landlord or Landlord's agent, within 3 days after its receipt. The tenancy statement shall acknowledge that this agreement is unmodified and in full force, or in full force as modified, and state the modifications. Failure to comply with this requirement (i) shall be deemed Tenant's acknowledgement that the tenancy statement is true and correct and may be relied upon by a prospective lender or purchaser, and (ii) may be treated by Landlord as a material breach of this agreement. Tenant shall prepare, execute, and deliver to Landlord any financial statement (which will be held in confidence) reasonably requested by a prospective lender or buyer.

**15. NOTICES.** Any notice required or permitted to be given under this Agreement may be served by mail, facsimile, or courier at the following address or location or at any other location subsequently designated. In writing. Delivery of such written notice shall be conclusively taken and sufficiently given after deposit in the United States Mail, addressed as follows:

City:	City Administrator City of Rialto 150 S. Palm Avenue Rialto, CA 92376
Tenant(s):	Esteban Garcia Aquaponics Food Solution Systems

Notice is deemed effective upon the earliest of the following: (i) personal receipt by either party or their agent; (ii) written acknowledge of notice: or (iii) 5 days after mailing notice to such location by first class mail, postage pre-paid.

**16. INSURANCE.** Tenant's personal property, fixtures, equipment, inventory and vehicles are not insured by Landlord against loss or damages due to fire, theft, vandalism, rain, water, and water intrusion, criminal or negligent acts of others, mold or other causes. Tenant is to carry Tenant's own property insurance to protect Tenant from any such loss. In addition, **Tenant shall carry liability insurance in an amount of not less than \$1,000,000. Tenant's liability insurance shall name Landlord and Landlord's agent as additional insured.** Within ten (10) days of the Effective Date of this Agreement, Tenant shall provide City with a copy of Tenant's insurance policies. During the term of this Agreement, Tenant shall provide City with any changes to Tenant's Insurance within ten (10) days of the same.

Landlord shall maintain liability insurance insuring Landlord, but not Tenant, in an amount of at least \$1,000,000 plus property insurance in an amount sufficient to cover the replacement cost of the property. Tenant is advised to carry business interruption insurance in an amount at least sufficient to cover Tenant's complete rental obligation to Landlord. Landlord is advised to obtain a policy of rental loss insurance. Both Landlord and Tenant release each other and waive their respective rights to subrogation against each other, for loss or damage covered by insurance.

**17. JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of the Tenant under this agreement, jointly with every other Tenant, and individually, whether or not in possession.

**18. RELEASE AND WAIVER.** Tenant knowingly and voluntarily agrees that the Waiver represents a full settlement, waiver and release of any additional compensation for the Premises and all interest therein and all liabilities related thereto, including without limitation, relocation assistance or benefits under the Relocation Laws (as defined in the Waiver), re-establishment expenses, goodwill, leasehold bonus value, improvements pertaining to the realty, other personal property, and any claims or damages to trade fixtures, improvements, fixtures, personal

property, whether owned to or suffered by Tenant by or against the City and their elected officials, officers, employees, attorneys and agents. By Tenant's execution of the Waiver and the execution of this Agreement, Tenant acknowledges and agrees that Tenant intends that such Waiver shall serve as a complete release, waiver and discharge of any and all additional compensation and assumption for all legal and financial liabilities or if there are any claims that Tenant may have against City, including their related persons and entities with respect to the Premises and all interest therein, both tangible and intangible, relocation assistance or benefits, including re-establishment expenses as well as for damages to trade fixtures, improvements, fixtures and personal property, arising from or related in any manner to City's disposition of the Premises, and the move or displacement and/or relocation of Tenant from the Premises upon termination of this Agreement. In making the Waiver, Tenant intends to release City and their related entities and agents from any liability of any nature whatsoever for any claim or injury or for any damage or equitable declaratory relief of any kind whether the claim is known or unknown to the party possessing it. Tenant expressly waives all rights under Section 1542 of the Civil Code of the State of California, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

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**Tenant Initials**

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**Landlord Initials**

**19. INFORMED CONSENT.** Tenant agrees, warrants and represents that it has carefully read the contents of this Agreement and the Waiver and that, in executing this Agreement and the Waiver, it does so with full knowledge of any right which it may have, that it has received independent legal advice from its attorneys, or in the alternative, knowingly has determined not to seek legal advice with respect to the matters set forth herein, and that Tenant has freely signed this Agreement and the Waiver without relying on any agreement, promise, statement or representation by or on behalf of either the City, or their officers, agents, employees, attorneys and consultants, except as specifically set forth in this Agreement and the Waiver.

**20. MISCELLANEOUS PROVISIONS.**

**20.1 Joint and Several Obligations.** If Tenant consists of more than one person, the obligation of all such persons is joint and several.

**20.2 Captions.** The captions of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement.

**20.3 Successors.** Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective Parties.

**20.4 Broker's Commissions, Expenses.** Tenant and City mutually covenant that no brokers have been or will be used with respect to this Agreement. In the event any broker or finder perfects a claim for a commission or finder's fee based upon any such contract, dealings or communications, the Party through whom the broker or finder makes a successful claim shall be responsible for said commission or fee and all costs and any expenses (including reasonable attorneys' fees) incurred by the other Party in defending against the same.

**20.5 Applicable Law and Forum.** This Agreement shall be construed and interpreted according to California law and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of San Bernardino.

**20.6 Covenants and Conditions.** All provisions of this Agreement whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions and such covenants shall survive termination.



**20.7 Time of Essence.** Time is and shall be of the essence of this Agreement and of each and every provision contained in this Agreement.

**20.8 No Discrimination.** Tenant shall comply with all applicable federal, state and local laws, rules and regulations relating to non-discrimination in employment and services because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition and handicap.

**20.9 No Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

**20.10 Construction of Agreement; Severability.** To the extent allowed by law, the terms, covenants, conditions, provisions and Agreements in this Agreement shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. City and Tenant covenant and agree that in the event any term, covenant, condition, provision or Agreement in this Agreement is held to be invalid or void by court of competent jurisdiction, the invalidity of any such term, covenant condition, provision or Agreement shall in no way affect any other term covenant, condition provision or Agreement in this Agreement.

**20.11 Relationship.** The Parties intend by this Agreement to establish the relationship of City and Tenant only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of City and Tenant.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement on the date set forth above.

**CITY OF RIALTO**

**AQUAPONIC FOOD SUPPORT SYSTEMS**

By: \_\_\_\_\_  
Authorized Agency Officer

By: \_\_\_\_\_

Robb R. Steel,  
Assistant City Administrator /  
Development Services Director

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

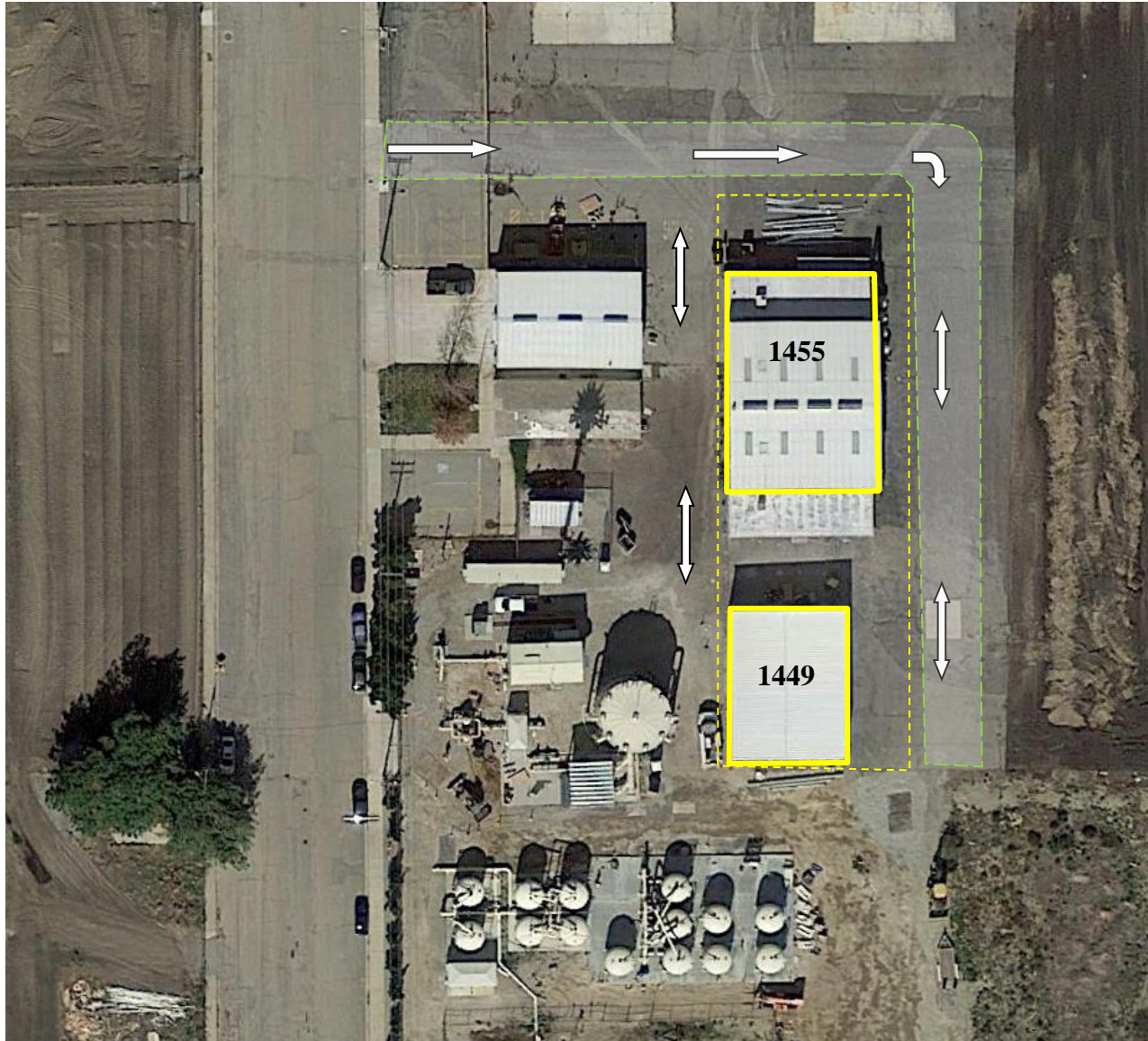
## Exhibit "A"

The Premises herein is described as:

1449 N. Linden Avenue Rialto, CA - a 3,200 square foot hangar

1455 N. Linden Avenue, Rialto, CA - a 6,600 square foot hangar with office

Depiction of Premises:



## Exhibit "B"

### WAIVER OF ALL RIGHTS INCLUDING RELOCATION ASSISTANCE AND BENEFITS

**Esteban Garcia and \_\_\_\_\_ DBA Aquatech Food Supply Systems, a**  
\_\_\_\_\_  
("Tenant") is concurrently herewith entering into a month-to-month lease (the "Agreement") on property located at 1449 and 1455 N. Linden, **Rialto, California** (the "Property").

Tenant has been fully informed and advised as to the relocation assistance and benefits available to persons and businesses displaced by a public entity, such as the City, as a result of implementation of a public program or project pursuant to the California Community Redevelopment Law, Health & Safety Code Section 33000, *et seq.*, ("CRL"), the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, the implementing regulations thereto in California Code of Regulations, Title 25, Chapter 6, Section 6000, *et seq.*, ("Guidelines"), and, as and if applicable, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U. S. C. 4200, *et seq.* and 49 CFR part 24, and, as and if applicable, the California Eminent Domain Law, California Code of Civil Procedure, Section 1230.010, *et seq.* (together, "Relocation Laws").

Tenant has been formally notified that the Property is to be conveyed for a program or project to be carried out by the City of Rialto ("City") and it may therefore be necessary for Tenant to move permanently from this location after entering into the Agreement. Tenant has been further advised that it would, except for execution of this waiver, be eligible for relocation payments and other assistance pursuant to the Relocation Laws if the Agreement were terminated or the Tenant is otherwise displaced as a result of City's disposition of the Property. It has been fully explained that the law provides for advisory assistance and compensation for eligible moving expenses incurred in connection with displacement.

The nature of compensable moving expenses and the means for calculating these have been specifically described to Tenant in such a manner and in sufficient detail so as to fully clarify Tenant's potential relocation assistance eligibility.

Tenant has reached a determination to not claim the benefits available to Tenant under the Relocation Laws and hereby releases the City from any and all obligations and liabilities that might otherwise pertain. This action is taken freely on the basis of a full understanding of all of our legal rights and in consideration of City entering into the Agreement. Tenant is under no duress or coercion by the displacing entity and makes this decision without reservation or qualification.

Furthermore, Tenant hereby waives any and all claims against the City, by reason of the City's disposition of the property and any dislocation of Tenant from same, specifically including, but not limited to, any and all rights to participation in the redevelopment of property in the Redevelopment Project Area, the value of the real property and any and all improvements pertaining to the realty, leasehold improvements, any and all claims for rental or leasehold value and loss of business goodwill, if any, loss of rental income, and any and all claims in inverse condemnation and for pre-condemnation damages, and any and all other claim that Tenant may have, whether or not specifically mentioned here, relating directly or indirectly to the disposition by the City of this subject property, however, and each and all of our collective agents' representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the City, from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, causes of action, including without limitations those relating to just compensation, damages, relocation benefits, which any of them now have, or might hereafter have by reason of any matter or thing arising out or in any way relating to any transaction or condemnation action affecting the Property.

## Exhibit "B"

This WAIVER OF ALL RIGHTS INCLUDING RELOCATION ASSISTANCE AND BENEFITS waiver shall become effective upon the executed date noted below.

**TENANT:**

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

Date: \_\_\_\_\_

**TENANT:**

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

Date: \_\_\_\_\_

[Tenant signature(s) must be Notarized]

### ALL CAPACITY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Date) (Name and title of the officer)

personally appeared \_\_\_\_\_,  
(Name of person signing)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of officer

(Seal)

## Exhibit “C”

### IN-KIND GOODS AND SERVICES AGREEMENT

In exchange for the use of the Premises, Tenant hereby agrees to provide the following goods and services to the City of in- lieu of rent:

**1. Donation of Food and Produce –**

Once fully operational, but not later than 90 days from date of occupancy, Tenant shall provide and donate to City on a monthly basis at least 1,000 pounds of fresh produce (vegetables/fruit/herbs) and fish that will be grown or produced at the facility. Donations may be made to City via participation at the weekly Farmer’s Market or through donations to designated third parties, including but not limited to local food banks or other religious or community organizations.

**2. Employment/Training Programs:**

Tenant shall hire and employ at least five (5) full time equivalent employees for their facility from the City of Rialto. Tenant shall target and hire these employees from existing Rialto residents, Veterans and/or other unemployed or displaced workers residing in Rialto.

**3. Educational Tours and Promotional Activities:**

Once fully operational, Tenant shall provide a weekly/monthly tour of the facility for local residents, students and interested parties at no cost to said residents, students, and interested parties. As part of the tour each persons should receive a small amount of produce grown from at the facility. On a monthly/quarterly basis, Tenant and City shall co-produce a 15-30 minute video program(s) to document and promote the operation of the facility for educational, public relations and promotional purposes.

**4. General Oversight and Security Services:**

On a daily basis Tenant shall provide City with general oversight and security services within the general proximity of the Premises. While occupying the Premises, Tenant and his employees shall use best faith efforts to provide basic “observe and report” security services (including the observation and oversight of the Premises and all remaining buildings within visible sight of the Premises). Tenant shall use best faith efforts to observe and promptly report any illegal or suspicious activities to the Rialto Police Department.