

## Exhibit A

### LICENSE AGREEMENT

This License Agreement is made and entered into as of, and to be effective this the 27 day of October, 2020, by and between Licensor, the City of Burnet, a Texas home rule municipality acting by and through its Mayor and Licensee, Dustin Orman, an individual.

#### Recitals

**Whereas**, it is essential to the public health, the proper operation of the wastewater treatment plant, and the disposal of treated wastewater effluent that City directly, or by contracting for services, raise vegetation on the WWTP effluent irrigation land in order to maximize the effectiveness of the effluent irrigation system; and

**Whereas**, the public health and efficient operation of the WWTP irrigation system require the irrigation and raising of Crops to follow established standards; and

**Whereas**, licensing the Premises for hay and vegetation cultivation to increase the absorption of wastewater effluent is economical and beneficial to the public welfare; and

**Whereas**, Licensee, is an individual who under the Prior Contract, has demonstrated experience, expertise, and resources to perform desired cultivating activities on the Premises.

#### Article I. Definitions

For the purposes of this Agreement, the following words, terms, and phrases shall have the meanings set forth as follows:

**“Agreement”** shall mean this Agreement to License the Premises.

**“City”** shall mean the Licensor, City of Burnet, a Texas home rule municipality located within Burnet County.

**“City Consent”** shall mean the written consent of City, through its City Manager, for the Licensee to take the action requiring consent.

**“Council”** shall mean the governing body of City.

**“Crop”** shall mean Coastal Bermuda grass, hay, or other seasonal vegetation approved by the USDA or Texas A&M University.

**“Fiscal Year”** shall mean the fiscal year of City which begins each year on October 1<sup>st</sup> and ends the following September 30<sup>th</sup>.

**“Golf Course”** shall mean the City of Burnet Municipal Golf Course.

Initials: City: 

Licensee: 

“**Licensee**” shall mean Dustin Orman who is operating under this Agreement in his individual capacity.

“**Licensee Fee**” shall mean the annual fee Licensee is required to pay City for the License to cultivate Crops on the Premises.

“**Premises**” shall mean an area of land owned by the City of Burnet and abutting the City of Burnet wastewater treatment plant located at 301 Wastewater Plant Way, Burnet, Texas, consisting of approximately 109.63 acres, which the City designated for Crop cultivation under the Prior Contract.

“**Party**” or “**Parties**” shall mean City or Licensee separately or jointly as context requires.

“**Prior Contract**” shall mean that certain Hay Field Agreement between Licensor and Licensee dated May 13, 2008.

“**TCEQ**” shall mean the Texas Commission of Environmental Quality.

“**TCEQ Permit**” shall mean the permit issued by the TCEQ with respect to the WWTP.

“**USDA**” shall mean the United States Department of Agriculture.

“**Wastewater Treatment Plant**” or “**WWTP**” shall mean the public wastewater treatment facility authorized by TCEQ to treat wastewater effluent produced by City’s wastewater service customers.


## Article II. Acceptance and Conditions of Premises


2.1 **As is where is.** Licensee acknowledges and agrees he has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby **waives any claim for damages that may arise from defects of that character after occupancy.** Licensee’s taking possession of the Premises shall be conclusive evidence of Licensee’s acceptance of the Premises in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. City specifically disclaims any warranty of suitability for intended purposes of Licensee.

2.2 **Representations.** Licensee acknowledges and agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution, have been made by City or its agents to Licensee unless the same are contained herein.

## III. Effective Date, Term and Consideration

3.1 **Effective Date.** This Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Initials: City: 

Licensee: 

3.2 **Term of Agreement.** This Agreement shall be effective for a term ending on September 30, 2021 and shall annually renew automatically at the beginning of City's Fiscal Year, subject to termination as provided in Section 3.3.

3.3 **Termination.**

- (A) The License granted by this Agreement is revocable by City without cause, for any reason, and may be terminated by City by providing thirty days prior written notice to Licensee of such termination. In the event of such termination by City, and provided Licensee is not in Default under this Agreement, and, further to the extent Licensee was unable to harvest Crops during the term of the revocation, Licensee shall be entitled to a refund of the License Fee less any amounts Licensee received for sale of Crops during such term.
- (B) This Agreement may terminate for cause as provided in Article VIII.
- (C) Notwithstanding the forgoing City may terminate this Agreement effective October first of any subsequent Fiscal Year Council does not fund the operation of the WWTP for any reason.
- (D) In the event Licensee shall fail to vacate the Premises upon termination of this Agreement, the License Fee Amount, during any holding over period shall increase to Two-thousand Dollars per month; and, City's acceptant of such holdover payments shall not waive City's rights to seek termination remedies as provided in Article VIII.

3.4 **Consideration.** In consideration for permission to grow Crops on the Premises subject to the terms and conditions of this Agreement Licensee agrees to a Licensee Fee in the annual sum of Ten-thousand Dollars to be paid in hand to City.

- (A) Licensee shall make the first payment on or before July 15, 2021; and, shall make subsequent payments on or before July 15<sup>th</sup> of each new term.

**Article IV. Licensee's Use of Premises**

4.1 **Use of the Premises.** The License granted under this Agreement allows Licensee to occupy and use the Premises for agriculture purposes, as described herein. To that end, Licensee covenants and warrants to City that the Premises shall be used and occupied only for such purpose, and subject to the terms conditions and prohibitions set forth in this Article.

4.2 **Covenant of Financial responsibility.** Licensee acknowledges and agrees City's License of the Premises is made in reliance on evidence supporting Licensee's representation that Licensee has financial resources to undertake and perform the Licensee's obligations and duties pursuant to this Agreement. Licensee covenants and warrants he shall, as long as this Agreement is in effect, maintain sufficient financial resources to make the performances due to be made by Licensee pursuant to this Agreement; and, upon requested by City, provide City with information and documentation sufficient to show that Licensee continues to possess the financial resources necessary to perform its duties and obligations under this Agreement

4.3 **Conditions on Use of the Property.** The permission granted Licensee hereunder is subject to City's schedule for irrigation of the Premises, and operation of the irrigation program. Moreover, Licensee shall, at all times, adhere to the following:

- (A) Occupy the Premises, conduct its business, and control its agents, employees, invitees, and visitors in such a manner as is lawful, reputable and will not create a nuisance to other tenants of, or persons adjoining, the Premises.
- (B) Plant and harvest vegetation that will maximize the absorption of effluent to be applied to the Premises by City
- (C) Implement practices and procedures that both furthers City's objective of soil conservation and protects the soil from erosion.
- (D) Only grow Crops approved by the USDA or Texas A&M University as the best available vegetation for the absorption of effluent.
- (E) Focus growing activities to a primary Crop of Coastal Bermuda Grass; and, with the with the written approval of the City, and as may be required to maximize the absorption of irrigated effluent, hay varieties and seasonal vegetation in areas of the Premises authorized by the City for Crops other than Coastal Bermuda Grass. For the sake of clarity, it is reiterated that Licensee shall grow a primary Crop of Coastal Bermuda Grass on the premises, and may grow Crops, other than Coastal Bermuda Grass, only with City approval and only at such locations within the premises designated by the City for Crops other than Coastal Bermuda Grass.
- (F) Fertilize the Premise and provide chemical supplements as needed to maintain the appropriate level of nutrients in the soil.
- (G) Plant winter vegetation of a variety approved by the USDA or Texas A&M for the maximum absorption of effluent, as required.
- (H) Take reasonable and necessary action, consistent with this Agreement, to control noxious weeds and fire ants in a manner to assure that the grass, hay and other approved vegetation are such, at all times, to maximize the absorption of effluent.
- (I) At his sole cost and expense, Licensee shall comply with all laws, ordinances, orders, acts, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction over Licensee and regulating its use of the Premises; provided that City shall be responsible for the costs and expenses of irrigating the Premises in conformance with applicable TCEQ regulations.

4.4 **Performance requirements.** Licensee shall take specific actions as prescribed below:

- (A) Seasonally plant and harvest Coastal Bermuda and approved vegetation; and periodically fertilize as required by Section 4.3(F).
- (B) Annually cause soil tests to be completed on the Premises sufficient to determine that the appropriate level of nutrients are present in the soil to stimulate the maximum growth of the Coastal Bermuda, hay, or other approved seasonal vegetation.
- (C) In order that City may, to the extent possible, coordinate the irrigation with the Licensee's agricultural work, at the beginning of each growing season, provide City with a plan of operation, which includes details about plowing and leveling of land that is necessary to facilitate and maximize irrigation.

4.5 **Prohibited Activities.**

- (A) Licensee is strictly prohibited from planting, fertilizing, irrigating, mowing or harvesting Crops in a manner that causes any soil to be removed from the Premises.
- (B) Licensee is strictly prohibited from producing any Crop for human consumption.
- (C) Licensee shall not make or allow to be made any alterations, physical additions or improvements in or to the Premises without City Consent.
- (D) Licensee shall not interfere with City's irrigation schedule or irrigation program.
- (E) Licensee shall not interfere with the City's sludge land application process and shall coordinate the rotation of Crops with City to prevent such interference.
- (F) Licensee shall not permit any operation which emits any odor or matter which intrudes into or onto adjoining property, use any apparatus or machine which makes undue noise or causes vibration in any portion of the adjoining property or otherwise interfere with, annoy or disturb any tenant of the adjoining property in its normal business operations, or City in its management of the Premises.
- (G) Licensee shall neither permit any waste on the Premises nor allow the Premises to be used in any way which would, in the opinion of City, be extra hazardous on account of fire or which would in any way increase or render void any insurance on the Premises.
- (H) Licensee is strictly prohibited from placing signs of any type or description on the Premises.

**Article V. City Operations.**

5.1 **City Operations.** Licensee acknowledges and agrees the paramount purpose of this Agreement is the cultivation of grass and hay Crops on the Premises in a manner that will maximize the absorption of treated wastewater effluent; and that such paramount purpose shall supersede any commercial purpose Licensee may have for cultivating such Crops. Therefore, notwithstanding any provision of this Agreement to the contrary, the Parties agrees to the following:

- (A) The sole source of City's irrigation of the Premises shall be from WWTP; and such irrigation shall be in a manner that disposes of effluent from the WWTP as required by City's TCEQ Permit.
- (B) While WWTP effluent is the sole source of Premises irrigation, the WWTP effluent is also used by City to irrigate the Golf Course; and, City shall retain the right to use any or all of the effluent to irrigate the Golf Course or as otherwise found useful by City.
- (C) Licensee's ability to perform and control irrigation on the Premises shall be limited to the extent City makes reuse water available to the Premises; and, City may interrupt water availability to the Premises, should City in its sole discretion, determines such reuse water is needed to serve the Golf Course or such other use the City determines to be of public importance.

5.2 **City Control of Irrigation on the Premises.** City shall use reasonable effort to irrigate in a manner so as not to damage the grass and vegetation planted by Licensee.

- 5.3 **TCEQ Regulations.** The Premises will be irrigated with treated wastewater effluent and treated sludge in a manner calculated to comply with the TCEQ regulations. In the event of a conflict between the terms of this Agreement and the TCEQ regulations, the regulations will control. Licensee acknowledges and agrees that the terms of the TCEQ Permit may require, during period of wet weather, or drought conditions, for City to place more or less water on the Premises than would be beneficial for Licensee's Crops.
- 5.4 **License Imposes no Duty on City.** While City will endeavor to coordinate its activities on the Premises to benefit Licensee, City shall have no obligation to Licensee in the operations of the Wastewater Treatment Plant and irrigation fields on the Premises.
- 5.6 **City Resources.** City shall have no obligation under this Agreement to provide funds, resources, equipment, or labor to promote or assist with Licensee's efforts to cultivate and harvest Crops.

#### Article VI. Casualty and Insurance.

- 6.1 **Insurance.** Licensee, at all times during, the term of this Agreement shall assume all risks associated with, occasioned by, or resulting from Licensee's actions, non-actions, damages and losses, whether on the Premises or otherwise. Licensee, at Licensee's own expense, shall keep in full force and effect such insurance against casualty and liability risks as Licensee in its sole discretion may deem desirable. Licensee has inspected the Premises and assumes any and all risk of damage or injury to Licensee, or to Licensee's employees, agents, invitees, equipment or property that may arise from Licensee's use of the Premises. It is the intent of this Article that, as between City and Licensee with respect to damages to Licensee and Licensee's employees, agents, invitees, sub-Licensees and property, Licensee shall assume all risk, and shall have the duty and responsibility to obtain such insurance as Licensee deems necessary to protect Licensee and Licensee's employees, agents, invitees, Licensees and property.
- 6.2 **Waiver of Subrogation.** Anything in this Agreement to the contrary notwithstanding, Licensee hereby waives and releases City from any and all right of recovery, claim, action or cause of action, against City its agents, officers and employees, for any loss or damage to Licensee or Licensee's invitees, that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of any condition of the Premises, fire or the elements, regardless of cause or origin, but not including any future negligence of City and its agents, officers and employees. Licensee shall look solely to insurance obtained by Licensee, in his discretion, for any such loss or damages.
- 6.3 **Liability and Property Insurance.** Licensee at all times during the Agreement term shall, at its own expense, keep in full force and effect comprehensive general liability insurance with "personal injury" coverage, contractual liability coverage and property insurance, in such amounts as Licensee shall, within Licensee's sole discretion, determine necessary to protect Licensee for Licensee's exposure or risk or potential liability from use of the Premises.

6.4 **Environmental Matters.** Throughout the Term and any Extended Terms of this Agreement, Licensee shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Premises by Licensee or persons within the control of Licensee, other than in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. For purposes of this provision, the term "Hazardous Materials" shall mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any applicable local, state, or federal law, rule, regulation, or order; provided that the term "Hazardous Materials" shall not be interpreted or construed to include or mean any wastewater effluent or treated sludge City causes, suffers, allows or permits to be placed upon the Premises . Licensee shall indemnify, defend, and hold City harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by, or incurred by City or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state or local law, rule, regulation or order, or by any governmental agency, authority, or political subdivision having jurisdiction over the Premises , and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Materials on, under, in, above, to, or from the Premises , that arise from an action by Licensee or an action by any employee, invitee or agent of Licensee.

In the event Licensee causes any such deposit to be made on the Premises and, as a result, Remedial Work is required under applicable federal, state, or local law, rule, regulation or order, Licensee shall promptly perform or cause to be performed such Remedial Work in compliance with such law, rule, regulation, or order. In the event Licensee shall fail to commence the Remedial Work in a timely fashion, or shall fail to prosecute diligently the Remedial Work to completion, such failure shall constitute an event of default on the part of Licensee under the terms of this Agreement, and City, in addition to any other rights or remedies afforded it hereunder, may, but shall not be obligated to, cause the Remedial Work to be performed, and Licensee shall promptly reimburse City for the cost and expense thereof upon demand.

## VII. INDEMNIFICATION

7.1 **Licensee covenants and agree to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and the elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Licensee's activities under this Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, or employee, of Licensee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The**

**indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 7.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall advise City in writing within 24 hours of any claim or demand against City or Licensee known to Licensee related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Licensee of any of its obligations under this paragraph.

### **VIII. Defaults and Termination Rights**

- 8.1 **Default by Licensee.** Licensee's failure to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement shall be a default by Licensee. In the event Licensee's default causes the violation, or the potential for a violation of, the TCEQ Permit City may immediately seek remedies as prescribed in Section 8.2. In the event such default does not, or does not potentially, negatively impact the TCEQ Permit then, in such event, should the default continue for a period of ten days after notice by City to Licensee, City may seek remedies as prescribed in Section 8.2.
- 8.2 **Remedies of City.** Upon the occurrence of an event of default by Licensee as specified in this Agreement, City shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled. After such termination, Licensee shall have no further rights to access the Premises and shall immediately cease all activities thereon.
- 8.3 **Default by City.** City shall be in default under this Agreement if City fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by City, and such default shall continue for a period of ten days after notice thereof by Licensee to City.
- 8.4 **Remedies of Licensee.** Upon the occurrence of an event of default as specified in this Agreement hereof, Licensee shall be entitled to terminate this Agreement and demand refund of the License Fee Licensee tendered for the year of the termination. This shall be Licensee's sole remedy under this Agreement and in no event shall City ever be liable to Licensee for an amount more than one-year's License Fee; provided, Licensee shall not be entitled to any Licensee Fee refund if Licensee is in default with this Agreement.



## IX. Miscellaneous

- 9.1 **Assignment.** This Agreement is personal to Licensee. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to Licensee.
- 9.2 **Authority.** The signer of this License Agreement for Licensee hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of Licensee
- 9.3 **Captions.** The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.
- 9.4 **Conflict of Interest.** Licensee acknowledges that no elected or appointed officer of the City of Burnet has any financial interest in this Agreement.
- 9.5 **Entire Agreement/Amendment**
- (A) This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire Agreement between the Parties, any other written or oral agreement with City being expressly waived by Licensee.
- (B) No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the Parties.
- 9.6 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 9.7 **Immunity.** The Parties acknowledge and agree that City entered into this Agreement as a means for compliance with the TCEQ Permit associated with its operation of a public wastewater treatment facility, which is a governmental function; therefore, no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights City may have to immunity under the laws of the State of Texas.
- 9.8 **Jurisdiction and Venue.** This Agreement shall be construed under and in accordance with the Laws of the State of Texas; and, all obligations hereunder are performable in Burnet County.
- 9.9 **No Liability of City Personnel.** Licensee agrees that it may assert claims only against the assets of City and that under no circumstances shall any officer or employee of City ever be personally liable for any of the obligations of City under this Agreement.



9.10 **Notice.** Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by: (i) delivering the same in person to the Party to be notified, (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the Party to be notified at the address herein specified, or (iii) delivery by private courier with proof of delivery required. If notice is deposited in the United States mail pursuant to (ii) of this Article, it will be effective from and after the date of receipt or delivery thereof if refused. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purpose of notice, the address of the Parties shall be, until changed as hereinafter provided for, as follows:

Licensee: Dustin Orman  
754 CR 108  
Burnet, Texas 78611

City: The City of Burnet  
Attn. City Manager  
P.O. Box 1369  
Burnet, Texas 78611


The Parties shall have the right, at any time, to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other Party.


9.11 **Relationship of the Parties.** Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between Parties hereto. It is understood and agreed that no provision contained in this Agreement nor any acts of the Parties create a relationship other than the relationship of Licensor and Licensee.

9.12 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

9.13 **Waivers.** No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

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Initials: City: 

Licensee: 

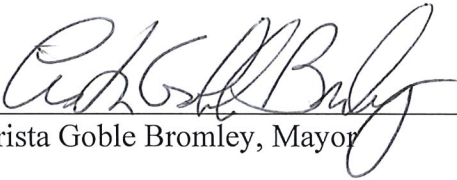
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

**Licensor:**

**Licensee:**

**City of Burnet:** a Texas Municipal Corporation

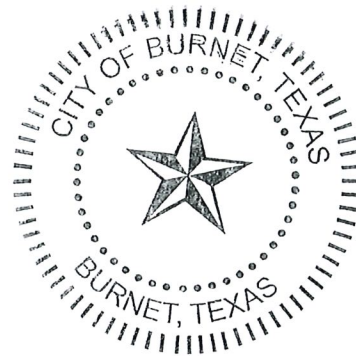
**Dustin Orman**


  
\_\_\_\_\_  
Crista Goble Bromley, Mayor

  
\_\_\_\_\_  
Dustin Orman

**ATTEST:**

  
\_\_\_\_\_  
Kelly Dix, City Secretary



Initials: City: 

Licensee: 