

# MONTEREY COUNTY WATER RESOURCES AGENCY

## STANDARD LEASE AGREEMENT (General: Grazing)



LEASED PREMISES: **APN-XXX-XXX-XXX**

LESSEE:

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**MONTEREY COUNTY WATER RESOURCES AGENCY  
STANDARD LEASE AGREEMENT  
(General: Grazing)**

**PREAMBLE**

THIS Lease ("Lease") is made by and between the MONTEREY COUNTY WATER RESOURCES AGENCY, a public agency created pursuant to the Monterey County Water Resources Agency Act (Cal. Water Code, Appendix Chap. 52) ("LESSOR") and LESSEE , a(n) \_\_\_\_\_ ("LESSEE"). LESSOR and LESSEE hereby agree as follows:

**ARTICLE 1 - PREMISES**

1.1 **Description:** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at \_\_\_\_ **APN-XXX-XXX-XXX** \_\_\_\_ (the "Lease Site") and described as follows:

**[Insert more detailed description of property here]. The lease property is \_\_\_\_\_ acres.**

1.2 **Items to be completed within ninety (90) days of Lease Commencement date:** Within ninety (90) days of the Lease Commencement Date, LESSEE, at LESSEE'S sole cost and expense, shall complete the following:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

**ARTICLE 2 - TERM**

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be [seven (7)] years, commencing

on \_\_\_\_\_, 20\_\_ ("Lease Commencement Date"), and ending \_\_\_\_\_, 20\_\_, subject to the rights of termination of the Lease Term in this agreement.

### **ARTICLE 3 – RENT**

**3.1 Rent:** For the first year of this Agreement LESSEE shall pay MCWRA, monthly, the sum of \$\_\_\_\_\_. The payments shall commence on the first day of the month following the month this Agreement becomes fully approved and executed and shall continue to be paid on the first day of each month, thereafter. The first rent payment will, in addition to the payment for the current month, include monthly payments for any month or portion of a month between \_\_\_\_\_ and the date monthly rental payments under this lease commence. The payment is to be made by LESSEE by check payable to the Monterey County Water Resources Agency (MCWRA), delivered in accordance with instructions by MCWRA. A late payment penalty of \_\_\_\_\_ percent of the monthly rent will accrue on any payment not made by LESSEE within \_\_\_\_\_ days of the first of the month and shall be paid as part of the following month's rent payment.

3.1 **Rent** (Grazing Lease): LESSEE shall pay to LESSOR each year the amount of \$\_\_\_\_\_. The annual rent for the first year shall be paid in full, on or before execution of this lease. The annual rent for each succeeding year shall be due and payable in advance, in full, on or before the immediately preceding July 31.

3.1.1 The rental amount is determined according to corresponding, annually-assessed San Luis Obispo County (or Monterey County) property taxes, per-acre charge and additional LESSOR administrative costs that have been calculated by the Agency Finance Department.

3.1.2 **No rent reduction during periods of reduced grazing.** There will be no reduction in rent during any period during which overgrazing restrictions, remedies, or protective measures are in force. It is LESSEE's responsibility to ensure that good range management practices are utilized at all times, including during drought as well as during normal and wet years, so as to avoid the need for LESSOR to direct reductions in the number of animals allowed on the premises or to direct other reductions in the use of the premises. All rent obligations shall remain in force, even in the event the herd is reduced to zero.

3.1.3 **Late charges.** LESSEE shall pay a late charge equal to 10% of the overdue amount, for rent payments and for any other payments due from LESSEE to LESSOR under this lease, for each successive 30-day period or portion thereof during which the amount due remains unpaid.

### **ARTICLE 4 – ANNUAL RENT ADJUSTMENT**

4.1 **Adjusted rent:** At the end of each one-year pay period of the Lease Term the base rent (the rent in effect at the end of the immediately preceding one-year term of the lease, as adjusted by the cost of living index) shall be adjusted to reflect any increase in the Cost of Living Indexes for all urban consumers for the San Francisco-Oakland-San Jose area. The base rent shall be increased at the end of each year by the percentage increase in said index in the (12) calendar month period preceding such adjustment, based on the most recent publications of the index prior to the adjustment rate.

## **ARTICLE 5 - TERMINATION BY LESSOR**

5.1 **Cause for Termination:** LESSOR may terminate this Lease for good cause upon sixty (60) days written notice. Good cause shall include non- payment of rent, breach of any provision of this Agreement, or breach of any rules or regulations governing the use of the Premises.

5.2 **LESSEE Obligations:** Such termination of the lease, re-entry of the premises, and/or occupation of the premises, shall not relieve LESSEE of the obligation to make all rental payments and late charges as are then due and unpaid, and shall not relieve LESSEE of the obligation to make all future rent and other payments under this lease when due.

## **ARTICLE 6 - NOTICES**

6.1 **Written notices:** All notices or correspondence provided for herein shall be effective when made in writing, personally delivered or deposited in the United States mail, sent certified, postage prepaid, and addressed as follows:

6.2 **Service of notices:** All notices, correspondence, or other written communication related to this Agreement shall be sent to the following:

LESSEE:

LESSOR:

David Chardavoyne  
General Manager  
Monterey County Water Resources Agency  
893 Blanco Circle  
Salinas, CA 93901

6.3 Rent payments to LESSOR shall be directed to the Agency's Finance Manager at the address listed above.

6.4 Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by phone, regular mail, email or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail if requested by either party. By written notice to the other, either party may change its own mailing address or correspondence information.

6.5 LESSOR'S designated property management representative shall be available to LESSEE by phone during regular business hours, and for emergencies after hours and weekends. LESSOR or LESSOR'S designated property management company shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone**

**number for LESSOR is (831) 796-1166.**

6.6 LESSEE shall be available to LESSOR, by phone during regular business hours, and for emergencies after hours and on weekends. LESSEE shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone number for LESSEE is(XXX) XXX-XXXX.**

## **ARTICLE 7 –IMPROVEMENTS BY TENANT**

7.1 **Fencing:** Fencing shall be according to specifications approved by the Agency in writing prior to commencement of construction.

7.1.1 **Stock Fencing:** LESSEE shall contain all stock within the premises by fences or suitable enclosures, or by providing riders. Regardless of the containment method used, LESSEE shall maintain all fences in a “stock tight” condition, and in accordance with Cal Agric. Code §17121. “Stock tight” is defined as fences or other restraints of sufficient tensile strength and durability to prevent livestock from roaming at large. Such fences may be constructed of barbed wire. Use of barbed wire is limited to the containment of livestock. Where necessary to contain stock, LESSEE shall build new fences where none presently exists and shall repair or upgrade existing fences. The location of any new fencing shall be mutually agreed upon between LESSEE and LESSOR prior to any construction. LESSEE shall provide fencing around recreational facilities where needed to prevent stock from entering said recreational facilities.

7.1.2 **Fencing in Reservoir; No Inundation of Fencing:** LESSEE shall provide temporary fencing extending into the water at the shore of the reservoir to prevent movement of stock between adjacent properties when the water level in the reservoir recedes. For Safety reasons, and when the water level is rising in the reservoir, LESSEE shall remove fencing before it is completely submerged. Fencing cannot extend farther than 10 feet into the water without written approval by the Agency. Any fencing in the water at any level must be identified by buoys or markers visible for a distance of 200 feet to anyone on the lake. New fencing to the maximum extent possible shall follow above the high-water mark in order to prevent stock contact with reservoir waters. **The provisions of this Section 7.1.2 are a material term of this agreement. Failure of LESSEE to comply with all terms of this provision constitutes cause and grounds for termination of this agreement.**

7.2 All improvements, construction of all types shall meet or exceed construction and uniform codes of the County of Monterey or San Luis Obispo. Where applicable, or where required by the Agency, improvements and construction shall meet other applicable codes and regulations, such as the health, environmental health, operations and regulatory requirements of the United States, State of California, and County of Monterey or San Luis Obispo.

7.3 In granting approval for any construction or work, Agency may impose special standards or conditions. Digging, excavation, piling or mounding of material such as earth, and the use of heavy

equipment shall be approved in writing by the Agency beforehand. Operation of machinery and equipment shall be by trained and experienced operators who are licensed and adequately insured for that purpose.

**7.4 Credit for improvements:** Certain tenant improvements are subject to limited credit. To receive an eligible credit, the tenant improvements must be approved in writing by the General Manager and the Agency Board of Directors, AND the maximum amount to be credited must be agreed to prior to the commencement of construction. The Agency may retain up to \_\_\_\_\_ percent, or such other amount as the parties may agree, of the amount to be credited until a final inspection following termination of the lease is performed by the Agency ensuring that the tenant improvements remain on the premises and are in good condition, normal wear and tear excepted. The amount to be credited will be applied only to permanent improvements and will be calculated and spread out over the remaining time left on the tenant's lease agreement. Under no circumstances may tenant improvements be removed after installation or construction unless the General Manager authorizes removal in writing. Under no circumstances may Lessee deduct from (or take credit toward) rents any amounts due to tenant improvements. The process for seeking pre-approval for improvements, verifying completion of improvements, and seeking credit outlined in **Exhibit \_\_\_\_\_** shall be followed.

#### **ARTICLE 8 - NOTICE OF COMPLETION**

If applicable, LESSEE is responsible to ensure that a properly prepared Notice of Completion is filed with the County Clerk-Recorder's Office on all construction and remodeling work performed as a result of this Lease. The Notice of Completion form is to be filed within ten (10) working days after the LESSOR and the LESSEE have concurred that the construction is complete. LESSEE shall forward a copy of the recorded Notice of Completion to LESSOR within five (5) days of recordation.

#### **ARTICLE 9 - PUBLIC WORKS LAWS**

Under Section 1720.2 of the California Labor Code, any construction contract to improve owned or leased by the MONTEREY COUNTY WATER RESOURCES AGENCY may be considered a 'public work' if certain conditions are met. If applicable, LESSEE shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as amended from time to time.

#### **ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY**

It shall be LESSOR'S responsibility to remove any prior LESSEE in the Premises at LESSOR'S sole cost and expense.

#### **ARTICLE 11 - USE**

11.1 **Use:** Subject to the following, LESSEE may use the Premises for mooring on LESSEE-owned slips, day beaching and picnicking, and overflow parking. Except as provided in Section 11.2, LESSEE may alter said use to any lawful purpose, upon the written consent of LESSOR, which consent shall not be unreasonably withheld.

LESSEE will use the premises only for the grazing of stock, in conformity with the terms of this agreement. Reasonable overnight use to facilitate working with stock or to protect the premises may be permitted, provided that prior written approval is obtained from the General Manager, or designee

11.1.1 Unless specifically permitted in this agreement, LESSEE will not use nor permit the use of any of the premises for any of the following:

- a. Camping: including any overnight occupancy, (except as otherwise permitted herein) lighting of any campfires or other activities associated with camping, including but not limited to erecting of tents, campers or other temporary structures;
- b. Sport Hunting: Hunting for sport is strictly prohibited on the property at all times. Depredation permits from the California Department of Fish and Wildlife are required for any hunting on the property under FGC §4181 et. seq. and 14 CCR §401(a) et. seq. LESSEE must request written approval from the General Manager prior to seeking or obtaining a depredation permit. Such approval shall not be unreasonably withheld. If granted, LESSEE must submit written proof of a valid depredation permit from the California Department of Fish and Wildlife to the LESSOR's General Manager. No hunting shall take place on the property prior to filing written verification of a validly issued depredation permit with the General Manager. The provisions of this Section 11.1.1 are a material term of this agreement.
- c. Boating: including but not limited to installation of any ramp, dock, slip, or other such boating launch or mooring structures on the reservoir, or any;
- d. Fishing: unless LESSEE is given prior written approval from the General Manager, no fishing is permitted in the reservoir.

11.1.2 The discharge or shooting of any firearm, including but not limited to: rifles, handguns, pistols, crossbows, or other projectile weaponry are not be permitted on the premises at any time, for any purpose, without exception.

11.1.3 LESSEE's failure to comply with the provisions of Section 11.1 is grounds for immediate termination of this agreement.

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11.2 **Construction, building, cutting timber:** LESSEE may not erect any permanent structures or improvements, or make alterations, on the Property without the prior written consent of MCWRA. LESSEE shall not cut, and shall not allow the cutting, of any timber without the prior written consent of the MCWRA. LESSEE shall not remove or place soil, sand, rocks or gravel to or from the subject property without the prior written consent of the MCWRA.

11.3 **Clearing land.** LESSEE shall not clear any portion of the land, and shall not cut any standing trees on the land, without first obtaining the written consent of the MCWRA.



11.4 **Compliance with Laws:** LESSEE represents and warrants to LESSEE that any construction performed by, for or on behalf of LESSEE, and LESSEE's current and proposed uses, and the operation of the Premises are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSEE agrees to defend and indemnify LESSOR for any responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances related to LESSEE's use, operations or construction.

11.4.1 LESSEE must notify the Agency's General Manager of any interaction LESSEE encounters with any local, state, or federal law enforcement agency or authority pertaining to operations on the premises and/or any illegal activities that may have been conducted or occurred on the Agency property.

11.4.2 LESSEE must notify the Agency's General Manager in the event of any adjoining or neighboring property owner's trespass, encroachment or other such illegal intrusion or invasion onto Agency property as soon as LESSEE becomes aware of such activity.

11.5 **Hazardous Substances:** LESSOR shall have no liability or responsibility for toxic or hazardous materials or substances on the Premises which result from LESSEE'S acts or omissions, or which occur on property not owned and occupied by LESSOR. LESSEE will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or polychlorinated biphenyl (PCB) containing materials. Nothing in this Lease shall be taken as LESSOR'S assumption of any duty or liability not otherwise imposed by law.

11.6 **Lease subject to recreational use of reservoir:** If any of the leased premises are inundated by the waters stored in the reservoir, LESSEE shall allow the boating public free access over the inundated portions of the premises. The boating public may also use the beaches immediately adjacent to the shoreline, during daylight hours, provided that LESSEE shall not provide overland access to those beaches. If recreational use interferes with LESSEE's use and enjoyment of the property, , or for other good reason, LESSOR may post any beach on the premises as "off limits" to the general populace and post "No Trespassing" signs on such beach a distance of no less than fifty (50) feet from the shore at no cost to LESSEE. LESSOR shall provide LESSEE with "No Trespassing" signs, at no cost to LESSEE, citing California Penal Code 602, at LESSEE's request.

11.7 **Stock management:** LESSEE shall not suffer or permit stock, especially bulls, or animals used to control stock to harass or endanger persons or property. LESSEE shall remove any aggressive or dangerous animals from the premises, as soon as LESSEE learns that those animals possess such tendencies.

11.8 **No waste, nuisance, or unlawful use:** LESSEE shall not commit or permit others to commit



waste on the premises. LESSEE shall not maintain, commit, or permit the maintenance or commission of any nuisance on the premises as defined in Section 3479 of the California Civil Code. LESSEE shall not use or permit the use of the premises for any unlawful purpose.

11.9 **Special Events.** LESSOR reserves the right to temporarily, and with prior sixty (60) day written notice to LESSEE, sublease any unused portion of the property for third-party use for special events.

## **ARTICLE 12 - SIGNS AND FIXTURES**

12.1 **General Signs:** LESSEE shall not place signs or advertisements upon the Premises, except for directional, safety reasons, or as required by this agreement or by applicable law. At the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will repair any damage caused by such removal.

12.2 **Grazing Livestock Notices:** LESSOR's General Manager will, at no cost to LESSEE, provide, and replace signs regarding presence of grazing livestock in areas of public access. It shall be the responsibility of LESSEE to post and maintain all grazing signage and to notify LESSOR of any need for replacement signs.

12.3 **Gates.** LESSOR shall install and maintain its own separate gate locks for access to property and LESSEE shall at all times comply with 14 CCR Article 2, §1273.00 et. seq. regarding gate entrances for emergency access and egress under California Department of Forestry and Fire Protection State Responsibility Area regulations.

## **ARTICLE 13 - SERVICES AND UTILITIES**

13.1 Any services or utilities required for the uses and activities permitted by this agreement on the Premises shall be furnished and the cost borne by LESSEE. LESSEE shall notify LESSOR at least seven (7) days in advance of the installation of any services or utilities.

13.2 Unless expressly so provided under this Agreement, this Agreement does not authorize LESSEE to use water from the reservoir for any purpose, including (without limitation) for domestic, potable, farming, livestock or similar purposes.

## **ARTICLE 14 - REPAIR AND MAINTENANCE**

14.1 **Maintenance of property:** LESSEE shall operate and maintain the property in a clean and orderly manner, and in compliance with all applicable laws, ordinances and regulations, and in compliance with the governing documents of LESSEE. LESSEE shall inform MCWRA in writing within 30 days of the effective date of this Agreement of its plans for controlling and removing litter and trash and of its restroom management and maintenance policies.

14.2 **No LESSOR duty to maintain or repair:** MCWRA shall not have any obligation, during the term of this Agreement, to repair, restore, or maintain the subject property, except to the extent of any damage caused to the property by willful misconduct or negligent conduct of MCWRA.

14.3 **LESSOR and LESSEE Obligations:** LESSEE'S repair and maintenance responsibilities are set forth in **Exhibit \_\_\_\_**, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. As stated in **Exhibit \_\_\_\_**, the term "deemed necessary" shall mean that appropriate action needs to be taken to ensure the health, safety and general well-being of the occupants and or invitees of the Premises.

14.3.1 **Mandatory Annual Meetings.** LESSEE's obligations are set forth in **Exhibit \_\_\_\_**, Summary of Annual Report and Evaluation Meeting Duties, which by this reference is incorporated herein. As stated in the Exhibit, LESSEE's failure to meet their annual obligations is grounds for termination of this lease.

14.3.2 **LESSOR Obligation with Annual reports.** LESSOR's General Manager shall provide LESSEE with written documentation regarding satisfaction of LESSEE's annual report and evaluation meeting obligations.

14.4 **Negligent Acts or Omissions of LESSEE:** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance to the extent required as a direct result of the negligence or willful misconduct of LESSEE.

14.5 **Failure of LESSEE to Make Repairs:** If LESSEE fails to maintain the Premises or to make the repairs required in this article within the time periods as specified in Article 23, LESSOR may perform such maintenance or make such repairs at its expense and add the cost of such repairs to the upcoming rent due from LESSEE.

14.6 **LESSOR/LESSEE Obligations in Applying Noxious Substances:** If applicable, LESSEE shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to occupied spaces with the Premises or the Common Areas without prior coordination and approval of LESSOR. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the LESSOR. Examples of such substances or materials include, but are not limited to, the following:

- a. Termite Control Materials
- b. Pesticides
- c. Paint
- d. Water Treatment Chemicals
- e. Any other substance that is or could be construed as hazardous

14.7 **Pest control.** LESSEE will at the request of and no cost to LESSOR and in conformity with

all applicable governmental regulations, trap and/or poison squirrels and/or noxious weeds, or take other appropriate steps to control the population of such pests.

**14.8 Roads.** LESSEE shall be responsible for, at a minimum, maintaining all roads in accordance with 14 CCR Article 2, §1273.00, et. seq., at all times.

### **ARTICLE 15 - Invasive Species Inspection and Control Measures**

[RESERVED]

### **ARTICLE 16 - SERVICE COMPANIES**

[RESERVED]

### **ARTICLE 17 - CONDITION OF THE LEASED PROPERTY**

17.1 **Opportunity to inspect:** LESSEE acknowledges that it has inspected the subject property and knows its condition and further acknowledges that the MCWRA has not, and does not, make any representation or warranty regarding the condition of the subject property.

17.2 **Erosion standards and control:** LESSEE will take an Agency-approved rangeland management class . LESSEE shall submit proof of completion of said rangeland management class, which must include a course on soil erosion standards and control, to the LESSOR's General Manager.

17.3 **Overgrazing and Best Management Practices:**

17.3.1 LESSEE shall not suffer or permit the overgrazing of any portion of the premises. Overgrazing occurs when, in the opinion of LESSOR's General Manager, accessible forage has been utilized to the extent where further grazing would be detrimental to the land or vegetative resources. LESSOR shall determine whether overgrazing has occurred using any method that fairly determines the amount of forage remaining on the premises or on any portion thereof. The decision by the General Manager that overgrazing has occurred shall be conclusive and final. In determining whether overgrazing has occurred, the General Manager may refer to standards set forth in University of California Leaflet 21327, "Guidelines for Residue Management on Annual Range."

17.3.2 If the General Manager determines that overgrazing has occurred, the General Manager may take any or all of the following actions: the General Manager may direct that the stock be removed from all or part of the affected premises; may direct that the herd be reduced in number, even down to zero if necessary to protect the forage; and, if the General Manager directs that stock be removed from a portion of the premises, may direct that Tenant install appropriate fencing or take other protective measures needed to keep the stock off the affected portion of the premises. In any event, if the General Manager determines that there remain on the premises or any

portion thereof less than 600 pounds of residual dry matter per acre, the General Manager may direct that the number of stock on that portion of the premises be reduced to zero. LESSEE shall comply promptly with any such direction by the General Manager, and LESSEE shall continue to comply with such directions and any modifications thereof, until LESSEE receives written notification from the General Manager releasing such directions.

17.3.3 **Ranch Plan**. The LESSEE agrees to complete a Ranch Plan form provided by the Agency within one year of occupancy. LESSEE will work closely with LESSOR to complete and implement this plan, which will include Best Management Practices that are applicable for this lease. LESSEE shall complete and implement the Ranch Plan in order to meet LESSOR's Conservation Objectives and Goals

17.3.4 The Conservation Goals and Objectives listed in Exhibit \_\_\_\_\_ provide the LESSOR's management objectives for these premises. All lessees must employ practices which are in accordance with these Goals and Objectives. Standard practices on all of the LESSOR's leases shall be to provide water for stock away from the reservoir's high-water mark.

## **ARTICLE 18 - MECHANICS' LIENS**

18.1 **Mechanic's Liens**: LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by such LESSEE or on its behalf.

## **ARTICLE 19 - ASSIGNMENT AND SUBLETTING**

LESSEE has no right to assign this Agreement to any party or entity, or in any manner sublease, transfer, or in any manner encumber, the subject property, without the prior written consent of the MCWRA.

## **ARTICLE 20 - ENTRY BY LESSOR**

20.1 **Entry by LESSOR**: LESSOR shall, at all times during the term of this Agreement, have the right to enter upon and inspect the property for any purpose, including, but not limited to, assuring that the obligations of LESSEE, including those set forth in Paragraphs 14 and 17, above, are met. LESSOR and LESSOR'S agents will give reasonable advance notice of entry (except in the case of emergency), and such entry shall be made in a reasonable manner and not unreasonably interfere with the conduct of LESSEE'S business.

20.2 **Entry by peace officers and LESSOR employees**: LESSEE agrees that MCWRA employees, Monterey County Park's employees, and any County, State, or Federal peace officer may enter the Property at any time to routinely patrol the property, investigate any crime, or for any other lawful purpose.

## **ARTICLE 21 - INSURANCE AND INDEMNIFICATION**

21.1 **Insurance:** LESSEE shall, at all times during the term of this Agreement, maintain public liability and property damage insurance of at least \$2,000,000 per occurrence or if LESSEE requires aggregate no less than \$5,000,000 and property damage insurance of at least \$250,000 insuring against all liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE'S use or occupancy of the Premises. LESSEE must also carry Auto liability of \$1,000,000 combined single limit. Such insurance shall name the MCWRA as an additional insured and is expressly intended to provide MCWRA with protection from third party property damage and bodily injury claims, and damage to MCWRA property, arising out of the use of the property. LESSEE shall provide proof of such insurance to the MCWRA upon MCWRA's request.

21.2. ***Insurance for Grazing operations.*** LESSEE shall acquire and maintain throughout the lease such insurance as required by Monterey County Risk Management Division. Without limiting LESSEE's duty to indemnify, LESSEE shall, at no cost to LESSOR, maintain in effect throughout the term of this agreement a policy or policies of insurance including meeting the requirements hereinafter set forth:

a. LESSEE shall maintain comprehensive general liability insurance, covering all of LESSEE's operations on the premises and LESSEE's use and occupancy of the premises with a combined single limit of not less than \$3,000,000.00;

b. Each policy shall be with a company authorized by law to transact insurance business in the State of California, and shall be written on an occurrence form;

c. Each policy shall provide that LESSOR shall be given notice in writing at least thirty (30) days in advance of any change, cancellation or non-renewal thereof;

d. Each policy shall provide an endorsement naming the LESSOR and the County of Monterey and their officers, agents and employees as additional insureds, and shall further provide that such insurance is primary and non-contributory to any other insurance maintained by the Landlord or the County of Monterey.

e. Prior to the execution of this agreement by the LESSOR, LESSEE shall file certificates of insurance with the LESSOR's Risk Management Division, showing that LESSEE has in effect the insurance required by this contract. LESSEE must submit a renewed certificate of insurance every year at the time annual rent payment is due. LESSEE shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

21.2 ***Duty to defend and indemnify LESSOR from activities:*** LESSEE shall indemnify, defend, and hold harmless the MCWRA, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting from the following:

a. boats or other water vehicles sinking in the lake;

b. boats or other water vehicles catching fire on the lake or on shore; and

- c. oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the lake.

21.3 **Duty to defend and indemnify LESSOR generally:** LESSEE shall indemnify, defend, and hold harmless the MCWRA, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the LESSEE's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the MCWRA. LESSEE's performance" includes LESSEE's action or inaction and the action or inaction of LESSEE's officers, employees, agents and subcontractors.

## **ARTICLE 22 - DESTRUCTION**

22.1 **Destruction of property:** If the Premises are totally destroyed by fire or other casualty, either party may terminate this Lease immediately by giving notice to the other party.

22.2 **LESSOR termination for default:** If LESSEE remains in occupancy of the Premises though partially destroyed, the rent for said Premises as herein provided, during restoration, shall be reduced by the same ratio as the usable square feet LESSEE is thus precluded from occupying, bears to the total rentable area in the Premises. For purposes of this Article, "usable area" shall not include public areas.

## **ARTICLE 23 - DEFAULT BY LESSEE**

23.1 **Default:** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR'S option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent or other obligation when such default continues for a period of thirty (30) days after written notice from LESSOR to LESSEE of such default, or
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof from LESSOR to LESSEE of such default or, if such default is not reasonably curable within such thirty (30) day period, LESSEE fails to commence to cure such default within such thirty (30) day period and thereafter diligently pursue such cure to completion, or
- c. LESSEE is adjudicated bankrupt, or
- d. LESSEE'S lease interest is sold under execution of judgment.
- e. Notice of default is sufficient if it is in writing, identifies the act, omission, or condition



that constitutes the default, and is served upon LESSEE in the manner provided by this Lease for the giving of notice.

23.1.1 **Prohibition against involuntary assignment.** Any involuntary assignment of LESSEE's interest in this lease shall constitute a default by LESSEE under this lease and shall give LESSOR the right to terminate this lease by giving written notice of termination to LESSEE or to LESSEE's successor or personal representative. For purposes of this section, "involuntary assignment" shall mean any of the following:

- a. The transfer of this lease or any interest in this lease by will or intestate succession on LESSEE's death;
- b. The appointment of a receiver, trustee, or other like official to take possession of substantially all of tenant's assets located at the premises or of LESSEE's interest in the lease, when possession is not restored to LESSEE within 45 days;
- c. The attachment, execution, or other judicial seizure of substantially all of LESSEE's property located at the premises or of LESSEE's interest in this lease, when such seizure is not discharged within 30 days;
- d. The making by LESSEE of any general assignment or general arrangement for the benefit of creditors;

23.2 **Remedies:** If LESSEE fails to cure a prospective default within the time frames outlined above, if any, LESSOR shall have the option to cure the default, if curable, or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSOR elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSEE to LESSOR, as additional rent, within thirty (30) days of receipt of LESSOR'S invoice for said costs.

23.3 **Termination following notice to cure:** In the event that LESSEE defaults under any provision of this Agreement the MCWRA may, if such default is not cured within 30 days following written notice given by the MCWRA to LESSEE, elect to terminate this Agreement. Such termination is effective upon the expiration of the 30 day cure period and a written "notice of election to terminate" being served upon LESSEE by the MCWRA.

Such election to terminate in no way absolves LESSEE from any obligations under this Agreement, including the payment of any rent then owing, or the obligation to return the property in substantially similar condition to that at the effective date of this Agreement.

## **ARTICLE 24 - DEFAULT BY AGENCY**

24.1 **Default:** LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR'S obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

24.2 **Remedies:** If LESSOR fails to cure a prospective default within the time periods outlined



above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs.

#### **ARTICLE 25 - CONDEMNATION**

If the Premises are taken or condemned for a public or quasi-public use, or the part taken renders the entire Premises insufficient for the conduct of LESSEE'S business and operations, then this Lease shall terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S business and operations, then the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in proportion that the rentable area of the Premises taken bears to the rentable area of the Premises before the taking.

#### **ARTICLE 26 - HOLDING OVER**

If LESSEE remains in possession of the Premises after the Lease Term or any Extended Term, this Lease shall automatically be extended on a month-to-month basis at the monthly rent applicable to the last month of the Lease Term, subject to termination upon sixty (60) days' written notice by either party. During such holdover period, the cost of living increases provided by this Lease shall be applied to rent. All other terms and conditions shall remain in full force and effect.

#### **ARTICLE 27 - WAIVER**

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party consent to any breach of any term, covenant or condition, nor shall either party be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

#### **ARTICLE 28 - QUIET POSSESSION**

LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR, subject to the terms of this Lease.

#### **ARTICLE 29 - ESTOPPEL CERTIFICATE**

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was

requested.

### **ARTICLE 30 - MISCELLANEOUS PROVISIONS**

30.1 **Amendment; Waiver:** This Lease may be amended or modified only by an instrument in writing signed by LESSEE and LESSOR. Any waiver of any term or condition of this Lease must be in writing and signed by LESSEE and LESSOR. A waiver of any of the terms and conditions of this Lease shall not be construed as a waiver of any other term or condition in this Lease.

30.2 **Time is of the Essence:** Time is of the essence of in each and all of the provisions of this Lease.

30.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

30.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

30.5 **Authority:** Any individual executing this lease on behalf of LESSEE or LESSOR represents and warrants hereby that he or she has the requisite authority to enter into this Lease on behalf of such party and bind the party to the terms and conditions of this Lease.

30.6 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Lease and the provisions of any addendum or exhibit attached hereto, the provisions of this Lease shall prevail and control.

30.7 **Integration:** This Lease, including the exhibits and addenda, represents the entire agreement between LESSEE and LESSOR with respect to the subject matter of this Lease and shall supersede all prior negotiations, representations or agreements, either written or oral, between LESSEE and LESSOR as of the effective date of this Lease, which is the date that LESSEE signs this Lease.

30.8 **Successors and Assigns:** This Lease and the rights, privileges, duties, and obligations of LESSEE and LESSOR under this lease, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successor, permitted assigns, and heirs.

30.9 **Headings:** The headings in this lease are for convenience only and shall not be used to interpret the terms of this Lease.

30.10 **Governing Law:** This Lease shall be governed by and interpreted under the laws of the State of California.

30.11 **Construction of Lease:** LESSEE and LESSOR agree that each party has fully participated in the review and revision of this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this lease or any amendment to this Lease. The parties agree that they have been afforded an opportunity to have this

Agreement reviewed by counsel of their choice. In interpreting this Agreement there shall be no presumption based upon the authorship of this Agreement.

30.12 **Counterparts:** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

30.13 **Disputes; consultations by parties:** In the event that any problem or issue arises with respect to the implementation or interpretation of the Agreement, the parties mutually agree to meet at the request of either of them to discuss and resolve the issue. In such event, the General Manager of LESSEE will meet with the General Manager of MCWRA or his/her designee to reach a mutually satisfactory and reasonable conclusion.

If the parties cannot resolve the dispute pursuant to the preceding paragraph above, the Parties agree to mediate any disagreements in good faith. Should either Party determine the dispute cannot be resolved in mediation, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

30.14 **LESSOR's lease administrator.** LESSOR's General Manager, or designee, (herein referred to as "General Manager") shall act as the lease administrator for LESSOR.

### **31 – LESSEE FEES AND EXPENSES**

In addition to any other rates, rents, charges, cost of living increases or other fees and expenses otherwise provided for in this Agreement, LESSEE agrees to pay, upon invoice or demand, those costs, fees and expenses provided for in **Exhibit I** to this agreement, or as may be provided for by a schedule of fees and expenses adopted by the Agency from time to time.

### **32 – PROPERTY TAX EXEMPTION**

**[Reserved]**

DRAFT

*[signature page follows]*

**LESSEE: MONTEREY COUNTY WATER  
RESOURCES AGENCY**

By:

\_\_\_\_\_  
David E. Chardavoyne

Title: General Manager

Date:

\_\_\_\_\_

**APPROVED AS TO FISCAL  
PROVISIONS: (County Auditor/Controller)**

By:

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

Title: [Assistant] Auditor Controller

**APPROVED AS TO FORM:**

**Charles J. McKee, County Counsel**

By:

\_\_\_\_\_  
Jesse J. Avila

Title: Deputy County Counsel

Date:

\_\_\_\_\_

**APPROVED AS TO LIABILITY  
PROVISIONS: (Risk Management)**

By:

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

Title:

Date:

---

Date:

---

**LESSEE:**

(\_\_\_\_\_)

By:

---

Name:

---

Title:

---

Date:

---

By:

---

Name:

---

Title:

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Date:

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**Attachments**

- A. Lease Property Description
- A-1. Conservation Goals & Objectives
- B. Improvements: Pre-Approval, Verification and Reimbursement
- C. Schedule of Fees and Expenses
- D. Amortized Premise Improvement Costs
- E. Summary of Annual Report and Evaluation Meeting Duties

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

Within those portions of property owned by the MONTEREY COUNTY WATER RESOURCES AGENCY adjacent to the NACIMIENTO RESERVOIR; the southern half of the Northwest ¼ of the Northwest ¼ of Township 25 South, Range 10 East, Section 28, all within San Luis Obispo County or Monterey County as shown on the Exhibit “A” map on file in the office of said MONTEREY COUNTY WATER RESOURCES AGENCY, 893 Blanco Circle, Salinas, California.

PARCEL \_\_\_\_\_ Contains approximately \_\_\_\_\_ acres above the high water line and \_\_\_\_\_ acres below the highwater line.

In case of a discrepancy between words and figures, the words shall prevail.

See attached map of premises.

**Legal Description**  
**Common Description or address**  
**Existing facilities, structures, improvements**  
**Current Basic Floor Plan**  
**Natural features**  
**Vicinity Map**  
**Site Plan/ Plot Plan**

**EXHIBIT A-1**

**CONSERVATION GOALS AND OBJECTIVES**

1. Protect the Water Quality and Quantity of Reservoirs. A goal of the Agency is to eliminate access by cattle to reservoir waters as soon as practicable.
2. Minimization of fire hazards through vegetative fuel management and responsible livestock management.
3. Preservation of open space for recreation, scenic beauty and education, and preservation of native plants and animals, and biotic communities; all or portions of the Agency Land, including the Premises, may be made open to the public subject to reasonable restrictions determined by Landlord.
4. Maintenance of rich and productive grassland and oak woodland communities with healthy populations of rare, threatened or endangered vertebrates, significant native grasses, and for components and minimal exotic pest plants.
5. Restoration of degraded vegetation and wildlife habitat.
6. Maintenance of livestock distribution over the Premises, to achieve uniform range utilization, reduce overall fire hazard, minimize sacrifice forage areas and meet conservation objectives.
7. A key requirement for any lease will be the completion of a ranch plan within one year of execution of a contract which will lay out specific measures that will be used on each lease to protect the water quality and quantity of the reservoirs.



**EXHIBIT B**

**IMPROVEMENTS: PRE-APPROVAL, VERIFICATION OF COMPLETION,  
REIMBURSEMENT PROCESS**

1. Construction Plan submitted to Agency General Manager with request that some or all costs be reimbursed. The Construction Plan must include:
  - a. A complete list of all estimated costs for materials and labor to complete the project;
  - b. Any permits required and whether any other agency approval is needed in order to complete the project;
  - c. Start and completion dates for the project;
  - d. Any annual maintenance costs needed after the project is completed.
2. Agency General Manager reviews, plans and approves or okays with conditions or modifications or rejection in whole or in part. General Manager's decision is in writing;
3. Lessor completion improvements and submission to General Manager as-built drawings and Notice of Occupancy/completion.
4. Board of Directors approves or denies Construction Plan as submitted by Lessee, after General Manager review;

**EXHIBIT C**

**SCHEDULE OF FEES AND EXPENSES**

Name	Purpose	Amount/Rate
Lease Administration Fee	Administer the lease by periodic field inspections and yearly document review.	A- Flat: \$9,755.00; or B- Per acre: \$8.90
Follow-up/ Compliance Inspection Fee	Document compliance with deficiency or discrepancy; follow-up from annual field inspection.	A- Flat (Based on actual hourly, plus administration) <u>Hours:</u> Attorney-1 Deputy General Manager-1 Lease/ contract administrator: 1.5 Field inspection: 2
Late Charge		Ten percent (10%)
Lease Violation Administrative Penalty	Escaped cows; unauthorized improvements; illegal dumping; runaway vessels; booms; pollution; encroachment; authorizing access by non-tenants, etc.	First violation: \$250.00  Second violation: \$500  Third and subsequent violations: \$1,000
Pollution Clean-Up Fee		Actual costs, plus Administrative Fee
Administrative Fee		Ten percent (10%)

**EXHIBIT D**

**AMORTIZED PREMISE IMPROVEMENT COSTS**

[TO BE ATTACHED TO THE LEASE WHEN COMPLETED]

## EXHIBIT E

### SUMMARY OF ANNUAL REPORT AND EVALUATION MEETING DUTIES

The Agency General Manager or designee shall conduct an annual on-site evaluation of Lessee's lease beginning August 2017 for the purpose of determining the status of Lessee's livestock operations and resolving any landlord/tenant issues.

Lessee will be given at least 30 days notice of the scheduled evaluation meeting date and time. Evaluations may be conducted via telephone, if Lessee makes a reasonable timely request.

Lessee must submit their rental payment prior to the evaluation meeting with the General Manager.

Lessee must submit proof of insurance certificate prior to the evaluation meeting with the General Manager.

Lessee must submit their self-assessment report prior to the evaluation meeting with the General Manager.

**Failure to meet any of these obligations is grounds for termination of the lease agreement.**