

Monterey County Water Resources Agency
Grazing Lease. San Antonio Lease 2 (SA 2)
LESSEE: Joseph E. Botts, Jr.

Amendment and Modification No. 4

RECITALS

- A. Whereas, the Monterey County Water Resources Agency (Agency or Lessor) and Joseph E. Botts, Jr. (Botts) are parties to an agreement entitled San Antonio Grazing Lease No. SA 2, executed February 27, 2018, which was amended on April 13, 2018; May 31, 2018 and November 9, 2018 (collectively, Lease.)
- B. Whereas, sections 27 and 31 of the Lease provide that the Lease may be modified or waived, including on a one-time basis, if Botts and the Agency agree to such modification or waiver in writing.
- C. Whereas, the County of Monterey by and through its Resource Management Agency (County,) seeks to secure for public use certain portions of the real property subject to the Lease and the Agency and Botts wish to accommodate County's request to allow for public use of certain areas of the real property subject to the Lease.

Now therefore the parties do agree to modify provisions of the Lease on the following terms and conditions:

- 1. The Recitals above are hereby incorporated by this reference.
- 2. County shall be added as a party and Co-Lessee to the Lease *solely* for the purposes of, and *only* with respect to the rights and covenants established by this Amendment and Modification No. 4, and County shall not be construed as a third-party beneficiary for any other purpose or as to any portion of the Lease not included in this Amendment and Modification No.4.
- 3. The Term of the County's rights as established hereunder shall co-terminate with the Botts' Term as established under sections 2.1, and or may be terminated by the Agency for cause pursuant to section 5.1 of the Lease.
- 4. Notice as required under section 6.2 of the Lease shall also be provided to:

COUNTY:

Monterey County Resource Management Agency
Attention: Deputy Director Administrative Services
1441 Schilling Place, 2nd Floor
Salinas CA 93901

5. Articles 9, 19, 20, 22, 23, 24, 26, 27, 28, 29, and 30 of the Lease shall apply to County in addition to Agency and Botts.
6. **ARTICLE 33 - COUNTY USE AND COVENANTS** is hereby added to the Lease to read as follows:

33.1 **Area of Public Use:** At no cost, County and permitted equestrian(s) shall have the right to use the area subject to the Lease, commonly known as the “Long Trail,” as more specifically described in Exhibit “I” attached hereto and incorporated herein by reference.

33.2 **Limitations on Public Use:** County and permitted equestrian(s) shall have the right to use Long Trail for equestrian purposes only. No motorized vehicles nor bicycles shall be allowed on Long Trail, except for County park staff and their vehicles. The County and Public shall not allow any animals to use or enter on Long Trail, excepting horses and service animals.

33.2.1 **Service Animals Defined:** a service animal pursuant to this section is hereby defined as: a) any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability; and b) a miniature horse not exceeding 34 inches in height, or 100 pounds in weight, that has been individually trained to perform tasks for the benefit of an individual with a disability.

33.3 **Trailhead Gate:** At its sole cost and expense, County shall install and maintain a container at the gate of the Long Trail trailhead, which contains a key for permitted equestrian(s) to use in order to unlock the gate and access Long Trail. County shall also provide Botts and Agency with separate keys to the gate. Access to the key shall be managed by the County, and access shall be limited to permitted equestrians and County staff only. In addition, County shall install and maintain physical improvements to prevent unauthorized vehicle entry (e.g.; post, bollard, bow gate, etc.) at the Long Trail gate. Equestrians shall complete an online registration to obtain a permit from the County. A hard copy of the permit or an electronic copy (e.g. on a mobile phone) must be presented to County staff for access and/or upon request.

33.4 **Signage:** At its sole cost and expense, County shall install and maintain a sign(s) at the gate of the Long Trail trailhead requiring all members of the public using the trail to close and lock the gate immediately after entry and to replace the key to the gate in the key container at the trail head. County shall also install and maintain a sign(s), subject to the approval of Agency and Botts as to form, at the gate of the Long Trail trailhead which shall at a minimum: 1) notify the public that there are live cattle grazing freely throughout the Long Trail area; 2) prohibiting the public from contacting or disturbing the cattle; 3) prohibiting the public from veering off the trail; and 4) warning that use of the trail is solely at the user’s own risk.

33.5 Botts' Use of County Facilities and Improvements: Botts shall have the exclusive right to use and occupy the County owned corral (including arena and holding pens) at no cost for a maximum of two 3-day periods during the term of the Lease, contingent upon corral has not previously been reserved during the following periods:

Period 1 - February 1 through April 30

Period 2 - October 1 through October 30

Botts shall notify County as to which weekend(s) they choose to reserve the corrals no later than January 1st each year for Period 1 and September 1st for Period 2. If Botts fails to so notify County of his reservation, County shall have the right to allow permitted equestrian(s) to reserve the corral during Periods 1 and 2 above but will work in good faith with Botts to provide alternative acceptable dates during which Botts may have exclusive use. In the event of rain, Botts may request changes to dates of use, which County may grant depending on availability of corral. Botts may request additional periods of use of the corral at the rental fees set forth in the Fee Article effective January 10, 2019. Botts shall repair, at its cost, all damage to County property as a result of Botts use of the property.

33.6 Botts' Water Access: County shall provide Botts with a ¾" water source to property line. Botts shall have the exclusive right to use of the County owned water source, location of which is set forth on Exhibit I. Botts shall be responsible for getting the water from the property line to the water trough, and for providing and maintaining the water trough in good and usable repair throughout the duration of the Lease. County shall also provide Botts access to and use of water from Lake San Antonio North Shore for Botts' cattle grazing at Lake San Antonio. Botts agrees that use of any County provided water is solely at Botts' own risk and County shall be held harmless for any claim of damage to Botts' cattle arising out of the cattle's consumption of water pursuant to this agreement.

33.7 Waiver of Warranty: COUNTY HEREBY WAIVES ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTY AS TO FITNESS OF USE, AS TO ANY AND ALL COUNTY FACILITIES AND IMPROVEMENTS BOTTS MAY USE PURSUANT TO THIS AMENDMENT AND MODIFICATION NO. 4, INCLUDING BUT NOT LIMITED THE COUNTY OWNED CORRAL AREA AND HOLDING PENS.

33.8 Indemnification: The following indemnification provisions apply only as to the County and Agency and County and Botts, and this section does not alter or modify any other indemnification provisions contained in the Lease between Botts and Agency.

33.9 As between County and Botts: BOTTS shall indemnify, defend and hold harmless COUNTY, its elected officials, employees, and agents, 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 attorney's fees) arising out of BOTTS use of County Improvements and Facilities pursuant to section 33.5 above.

COUNTY shall indemnify, defend and hold harmless BOTTS, his employees and agents, 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 attorney's fees) determined to be solely caused by the County or permitted equestrian(s)'s use of the Long Trail, the County owned corral area, and or Los Robles Horse Camp. Botts shall provide sufficient evidence that clearly demonstrates the County or its permitted equestrian(s) caused said damage.

33.10 **As between Agency and County:** COUNTY shall indemnify, defend and hold harmless AGENCY, its elected officials, employees, and agents, 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 attorney's fees) determined to be solely caused by permitted equestrian(s)'s use of the Long Trail, the County owned corral area, and or Los Robles Horse Camp.

33.11 **Enforcement of County Code:** The parties agree that as to permitted equestrian(s)'s use of the Long Trail and County owned corral, the County may enforce all applicable provisions and regulations of the Monterey County Code, as it may be amended from time to time.

7. All other terms and conditions of the Lease not modified by this Amendment and Modification No. 4 remain in full force and effect.
8. This agreement shall become effective as of the last date corresponding to the respective signatures below.

**LESSOR: MONTEREY COUNTY
WATER RESOURCES AGENCY**

By: _____

Brent Buche

Title: General Manager

Date: _____

**APPROVED AS TO FORM &
LEGALITY: Office of the County Counsel**

By: _____

Kelly L. Donlon

Title: Deputy County Counsel

Date: _____

LESSEE: Joseph E. Botts Jr.

By: _____

Name: Joseph E. Botts Jr.

Date: _____

COUNTY OF MONTEREY

**APPROVED AS TO FORM &
LEGALITY: Office of the County Counsel**

By: _____

By: _____
Brian Briggs

Title: _____

Title: Deputy County Counsel

Date: _____

Date: _____