

Attachment A

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Monterey County

Board of Supervisors
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

Legistar File Number: A 19-266

July 09, 2019

Introduced: 6/19/2019

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Find that the amendments to Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency is a minor expansion of an existing use which is Categorically Exempt from the California Environmentally Quality Act pursuant to Section 15301 of the CEQA Guidelines;
- b. Approve Amendment and Modification No. 4 to the Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency to include the County of Monterey as a co-lessee to the Lease solely for the purposes of and only with respect to the rights and covenants established by Amendment and Modification No. 4; and
- c. Authorize the Resource Management Agency Director, or designee, to sign Amendment and Modification No. 4 to Standard Lease Agreement (General: Grazing) San Antonio Lease 2.

Proposed CEQA action: Categorically exempt under section 15301 of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find that the amendments to Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency is a minor expansion of an existing use which is Categorically Exempt from the California Environmentally Quality Act pursuant to Section 15301 of the CEQA Guidelines;
- b. Approve Amendment and Modification No. 4 to the Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency to include the County of Monterey as a co-lessee to the Lease solely for the purposes of and only with respect to the rights and covenants established by Amendment and Modification No. 4; and
- c. Authorize the Resource Management Agency Director, or designee, to sign Amendment and Modification No. 4 to Standard Lease Agreement (General: Grazing) San Antonio Lease 2.

Proposed CEQA action: Categorically exempt under section 15301 of the California Environmental Quality Act (CEQA) Guidelines.

SUMMARY/DISCUSSION:

The Monterey County Water Resources Agency (MCWRA) and Joseph E. Botts (Botts) are parties to a Lease/Agreement entitled, *Standard Lease Agreement (General: Grazing) San Antonio Lease 2* (Lease). The Lease allows certain portions of real property near Lake San Antonio to be subleased for public use should MCWRA and Botts agree in writing. The County of Monterey through the Resource Management Agency (RMA) has subleased a portion known as the "Long

Trail" from Botts for various events, such as the *Monterey Bay Equestrian Members Only Campout* and *Lightning in a Bottle*. For past sublease events, a separate amendment to the Lease has been required. The proposed Amendment and Modification No. 4 (Amendment) adds RMA as a party and co-lessee to the Lease solely for the purpose of and only with respect to the rights and covenants established by this Amendment, permitting access to Long Trail and obviating the need for a separate amendment for each future event.

Equestrian groups and various individuals have long expressed strong interest in having recreational access to the Long Trail. The proposed Amendment will provide increased access to Long Trail, which will broaden County Parks' appeal to residents and tourists by providing them with additional equestrian recreational activities when visiting the County's beautiful lake facilities.

OTHER AGENCY INVOLVEMENT:

County Counsel reviewed Amendment and Modification No. 4 and approved it as to form and legality. Also, MCWRA will consider approval of Amendment and Modification No. 4 this month in open session on its own agenda.

FINANCING:


There is no impact to the General Fund. The estimated \$500 in costs associated with this recommendation will have minimal financial impact on the RMA-Parks budget.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The recommended action supports the Board of Supervisors Strategic Initiatives for Administration and Health & Human Services by streamlining RMA's administrative process in providing increased access for both residents and tourists visiting Monterey County to healthy public recreational activities.

- ☐ Economic Development
- ☒ Administration
- ☒ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: Dona Luna, RMA-Parks Management Analyst, (831) 755-5455

Approved by: James M. Rodems, Chief of Parks 

Approved by: Shawne Ellerbee, RMA Deputy Director of Administrative Services 

Approved by: Carl P. Holm, AICP, RMA Director 

Attachments:

- Attachment A-Amendment & Modification No. 4 to San Antonio Grazing Lease 2
 - Attachment B-Conditional Waiver & Modification No. 3 to San Antonio Grazing Lease 2
 - Attachment C-Amendment/Conditional Waiver/Modification No. 2 to San Antonio Grazing Lease 2
 - Attachment D-Amendment/Conditional Waiver/Modification No. 1 to San Antonio Grazing Lease 2
 - Attachment E-Standard Lease Agreement (General: Grazing) San Antonio Lease 2
- (Attachments are on file with the Clerk of the Board)

Attachment A

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 “T” 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 Article V of the Monterey County Fee Resolution . 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: _____
Shauna Lorange
Title: Interim 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: Joseph E. Botts Jr.
Name: Joseph E. Botts Jr.

Date: 6-18-2019

COUNTY OF MONTEREY

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

By: _____

By: _____
Brian Briggs

Title: _____

Title: Deputy County Counsel

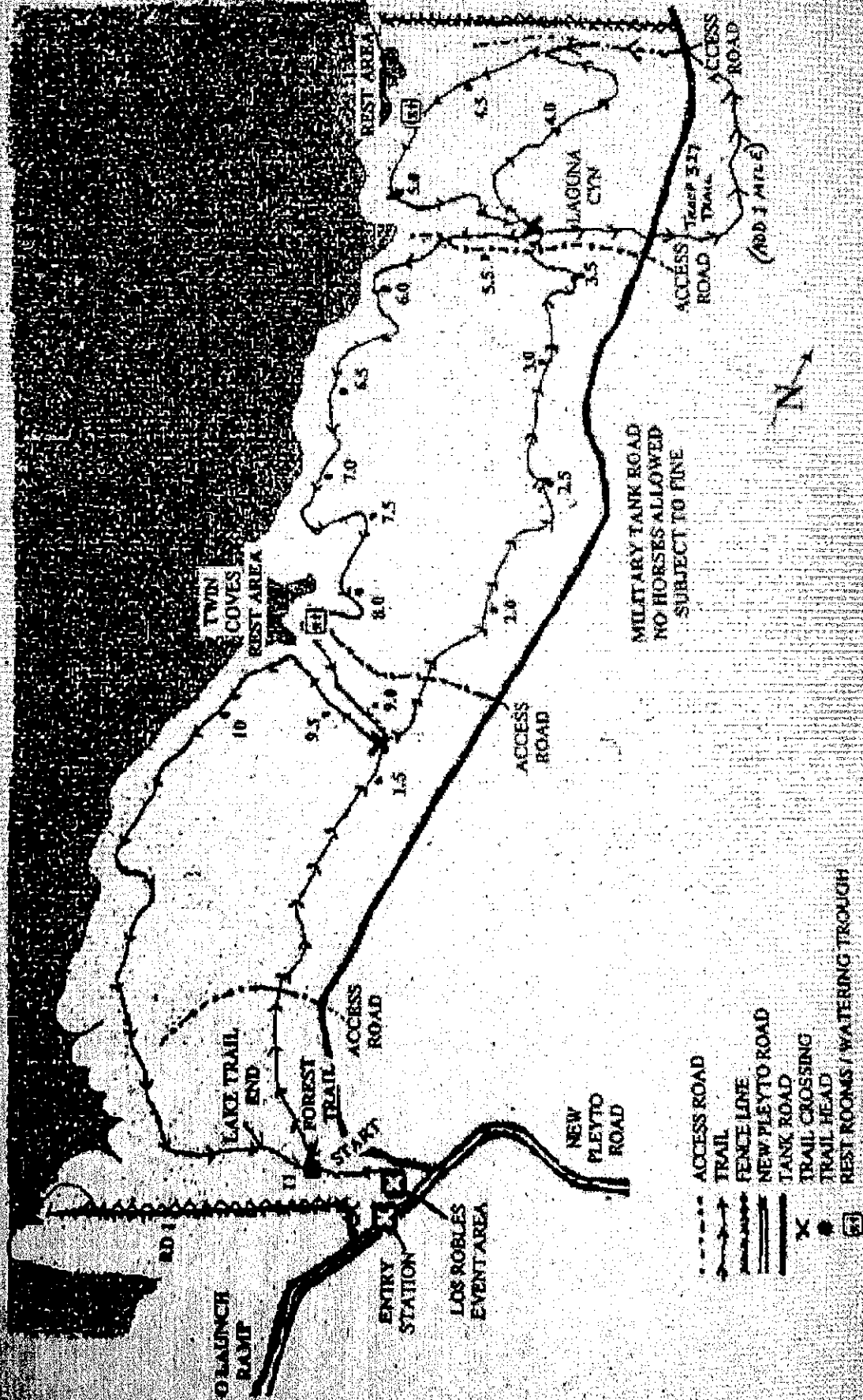
Date: _____

Date: _____

EXHIBIT I

LAKE SAN ANTONIO NORTH SHORE

LOS ROBLES TRAIL



LAKE SAN ANTONIO NORTH SHORE

Attachment B

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**Monterey Bay Equestrians
November 9, 2018 through November 13, 2018**

**Monterey County Water Resources Agency
Grazing Lease No. San Antonio Lease 2 (SA 2)
LESSEE: Joseph E. Botts, Jr.**

Conditional Waiver and Modification No. 3

- A. The Monterey County Water Resources Agency ("Agency" or "Lessor") and Joseph E. Botts, Jr. ("Botts" or "Lessee") are parties to an agreement relating to San Antonio Grazing Lease No. SA 2, executed February 27, 2018 ("Lease").
- B. Special Conditions of the Lease - Exhibit G, contemplate that special events may take place on the leased premises.
- C. Lessee agrees to accommodate the Monterey Bay Equestrian Members Only Campout November 9-13, 2018 ("MBE Event") during which some activities will take place on a portion of the leased premises. Agency does not object to the Lessee's participation in or sponsoring of the MBE Event, provided doing so does not expose the Agency or the County of Monterey to any cost, risk, or exposure to any liability.
- D. Sections 27 and 31 of the Lease provide that provisions of the Lease may be modified or waived, including on a one-time basis, provided the Botts and the Agency agree to such modification or waiver in writing.

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

- 1. The Agency concurs that the MBE Event on the San Antonio Grazing Lease No. SA 2 is consistent with the special event provisions of the Lease, provided it is conducted consistent with the conditions of this Conditional Waiver and Modification No. 3.
- 2. Botts executes a hold harmless agreement in the form attached hereto as Exhibit A.
- 3. Botts will permit the MBE Event on the San Antonio Grazing Lease No. SA 2 provided the MBE Event sponsors do all of the following:
 - a. Execute a Release from Liability and Hold Harmless Agreement in the form attached as Exhibit A and made part of this Conditional Waiver and Modification No. 3.
 - b. Procure and provide evidence of insurance as specified in the Hold Harmless Agreement, including endorsements naming the County of Monterey and the Agency as additional insured for commercial general liability (including premises

and operations), and business automobile liability (all motor vehicles) (Exhibit A).

- c. Require all MBE Event participants to execute a written Waiver and Release Agreement in the form attached as Exhibit B and made part of this Conditional Waiver and Modification No. 3.

LESSOR: MONTEREY COUNTY
WATER RESOURCES AGENCY

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

By: David E. Chardavoyne
David E. Chardavoyne

By: Kelly L. Donlon
Kelly L. Donlon

Title: General Manager

Title: Deputy County Counsel

Date: 9 November 2018

Date: 11/9/18

LESSEE: Joseph E. Botts Jr.

By: Joseph E. Botts Jr.
Name: Joseph E. Botts Jr.

Date: 11-7-2018

Attachment C

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Lightning in a Bottle Event May 15 – June 11, 2018

Monterey County Water Resources Agency
Grazing Lease No. San Antonio Lease 2 (SA 2)
LESSEE: Joseph E. Botts, Jr.

Amendment, Conditional Waiver and Modification No. 2

- A. The Monterey County Water Resources Agency (Agency or Lessor) and Joseph E. Botts, Jr. (Botts or Lessee) are parties to an agreement relating to San Antonio Grazing Lease No. SA 2, executed February 27, 2018 (Lease).
- B. Special Conditions of the Lease (Exhibit G) contemplate that special events may take place on the leased premises.
- C. Lessee desires to accommodate the May 23 – 27, 2018, Lightning in a Bottle Event (LIB Event) during which some activities will take place on a portion of the leased premises. Agency does not object to the Lessee's participation in/or sponsoring of the LIB Event, provided doing so does not expose the Agency or the County of Monterey to any cost, risk, or exposure to any liability.
- D. Section 27 of the Lease provide that provisions of the Lease may be modified or waived, including on a one-time basis, provided that Botts and the Agency agree to such modification or waiver in writing.

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

- 1. Section 21.3 of the Lease is amended to read:

21.3 Duty to defend and indemnify LESSOR from activities: LESSEE shall indemnify, defend, and hold harmless the AGENCY, 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 uses or activities on the lease premises:

- a. boats or other vehicles catching fire on the shore; and
- b. oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the lake.
- c. special events, such as the Monterey Bay Equestrian Poker Ride and Campout entailing the use of horses and the congregation of persons on the site.
- d. special events, such as Lightning in a Bottle Event entailing vehicle parking.

1. The Agency concurs that the 2018 MBE Event on the San Antonio Grazing Lease No. SA 2 is consistent with the special event provisions of the Lease, provided it is conducted consistent with the conditions of this Conditional Waiver and Modification No. 1.
2. The Agency concurs that the 2018 LIB Event on the San Antonio Grazing Lease No. SA 2 is consistent with the special event provisions of the Lease, provided it is conducted consistent with the conditions of this Conditional Waiver and Modification No. 2.
3. Botts provides proof of the insurance required in the Lease specifically referencing the activities in Section 21.3 of the Lease (as amended).
4. Botts may permit the MBE Event on the San Antonio Grazing Lease No. SA 2 provided the MBE Event sponsors:
 - a. Execute a hold harmless agreement in the form attached hereto as Exhibit A.
 - b. Procure and provide evidence of insurance as specified in the hold harmless agreement, including endorsements naming the County of Monterey and the Agency as additional insured for commercial general liability (including premises and operations) and business automobile liability (all motor vehicles) (Exhibit A).
 - c. Require all MBE Event participants to execute a written Release of Liability in the form attached as Exhibit B.
5. Botts may permit the LIB Event on the San Antonio Grazing Lease No. SA 2 provided the LIB Event sponsors:
 - a. Execute a Special Event Agreement in the form attached hereto as Exhibit B.
 - b. Procure and provide evidence of insurance as specified in the Special Event Agreement, including endorsements naming the County of Monterey and the Agency as additional insured for commercial general liability (including premises and operations) and business automobile liability (all motor vehicles) (Exhibit B).

**LESSOR: MONTEREY COUNTY
WATER RESOURCES AGENCY**

By: David E. Chardavoyne
David E. Chardavoyne
Title: General Manager
Date: 31 May 2018

APPROVED AS TO FORM:

Charles J. McKee, County Counsel

By: Brian Briggs
Brian Briggs
Title: Deputy County Counsel
Date: 5-29-18

LESSEE: Joseph E. Botts Jr.
By: Joseph E. Botts Jr.
Name:

Date: 5-18-18

Attachment D

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MBE Equestrian Event April 13-15, 2018

Monterey County Water Resources Agency
Grazing Lease No. San Antonio Lease 2 (SA 2)
LESSEE: Joseph E. Botts, Jr.

Amendment, Conditional Waiver and Modification No. 1

- A. The Monterey county Water Resources Agency (Agency or Lessor) and Joseph E. Botts, Jr. (Botts or Lessee) are parties to an agreement relating to San Antonio Grazing Lease No. SA 2, executed February 27, 2018 (Lease).
- B. Special Conditions of the Lease (Exhibit G) contemplate that special events may take place on the leased premises.
- C. Lessee desires to accommodate the April 13 - 15, 2018, Monterey Bay Equestrian Poker Event (MBE Event) during which some activities will take place on a portion of the leased premises. Agency does not object to the Lessee's participation in/or sponsoring of the MBE Event, provided doing so does not expose the Agency or the county of Monterey to any cost, risk, or exposure to any liability.
- D. Sections 27 and 31 of the Lease provide that provisions of the Lease may be modified or waived, including on a one-time basis, provided the Botts and the Agency agree to such modification or waiver in writing.

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

- 1. Section 21.3 of the Lease is amended to read:

21.3 Duty to defend and indemnify LESSOR from activities: LESSEE shall indemnify, defend, and hold harmless the AGENCY, 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 uses or activities on the lease premises:

- a. boats or other vehicles catching fire on the shore; and
- b. oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the lake.
- c. special events, such as the Monterey Bay Equestrian Poker Ride and Campout entailing the use of horses and the congregation of persons on the site.

1. The Agency concurs that the 2018 MBE Event on the San Antonio Grazing Lease No. SA 2 is consistent with the special event provisions of the Lease, provided it is conducted consistent with the conditions of this Conditional Waiver and Modification No. 1.
2. Botts provides proof of the insurance required in the Lease specifically referencing the activities in Section 21.3 of the Lease (as amended).
3. Botts may permit the MBE Event on the San Antonio Grazing Lease No. SA 2 provided the MBE Event sponsors:
 - a. Execute a hold harmless agreement in the form attached hereto as Exhibit A.
 - b. Procure and provide evidence of insurance as specified in the hold harmless agreement, including endorsements naming the County of Monterey and the Agency as additional insured for commercial general liability (including premises and operations) and business automobile liability (all motor vehicles) (Exhibit A).
 - c. Require all MBE Event participants to execute a written Release of Liability in the form attached as Exhibit B.

LESSOR: MONTEREY COUNTY
WATER RESOURCES AGENCY

APPROVED AS TO FORMS:

Charles J. McKee, County Counsel

By: 

David E. Chardavoyne

Title: General Manager

Date: 4/13/18

By: 

Jesse F. Ayala

Title: Deputy County Counsel

Date: 4-12-18

LESSEE: 

Name: Joseph E. Botts

Date: 4-13-18

Attachment E

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MONTEREY COUNTY WATER RESOURCES AGENCY

STANDARD LEASE AGREEMENT (General: Grazing)



LEASED PREMISES: **San Antonio Lease 2**

LESSEE:

Joseph E. Botts, Jr.
P.O. Box 258
Lockwood, CA 93932
rangerbotts@aol.com
(805) 286 -7982

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

PREAMBLE

This Lease ("Lease" or "Agreement") 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" or "Agency") and Joseph E. Botts, Jr., an individual ("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 **San Antonio Reservoir** (the "Lease Site") and described as follows:

Grazing Lease Number SA-2. The lease property is 1660 total acres.

See **Exhibit A**, Description of Premises.

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 Start-up Tasks (if any) identified in **Exhibit B**.

1.3 **Premises:** As the context dictates, the term "Premises" excludes land submerged by water.

ARTICLE 2 - TERM

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be [seven (7)] years, commencing on November 1, 2017 ("Lease Commencement Date"), and ending October 31, 2024, subject to the termination provisions of this Lease Agreement.

ARTICLE 3 – RENT

3.1 **Rent:** LESSEE shall pay to LESSOR as rent each year the amount of **\$41,000**. 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. 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 10% will accrue and shall be paid on any payment not made by LESSEE within thirty (30) days when due.

3.1.1 **Possessory interest tax; Initial Lease Administrative Charge:** An Initial Lease Administrative Charge (ILAC) calculated by the Agency Finance Department will be added to the rent. Rent will be re-calculated and increased annually according to cost of living provisions in this lease. In addition to such rent, LESSEE is responsible to separately pay the corresponding real property taxes and assessments (assessed by San Luis Obispo or Monterey County). LESSEE is advised that by entering into this lease a possessory interest may be created. The property interest if created may be subject to property taxation, and LESSEE may be subject to the payment of property taxes levied on the interest. The imposition or payment of such possessory interest tax shall not give rise to an entitlement on LESSEE's part to an off-set for any portion of the rent due and owing attributable to such possessory interest tax liability. LESSEE's failure to pay taxes constitutes a breach of this Agreement.

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 any 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, non-payment of other fees and charges under this Agreement, 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 pay all rent, and late and other charges as they are then due and unpaid, and shall not relieve LESSEE of the obligation to make any 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:

Joseph E. Botts, Jr
P.O. Box 258
Lockwood, CA 93932

LESSOR:

David Chardavoyne
General Manager
Monterey County Water Resources Agency
Post Office Box 930
Salinas, CA 93902

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 (805) 286-7982.**

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. Fencing material and method of construction must be appropriate to local conditions and type of use. Fencing material, design, and method of construction must be approved by the General Manager in writing prior to construction. 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 and 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 County of 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 **Reimbursement for improvements:** Certain tenant improvements are subject to limited reimbursement. To receive an eligible reimbursement, the proposed tenant improvements AND the maximum amount to be reimbursed must both be approved in writing by the General Manager and the Agency Board of Directors prior to the commencement of construction. The Agency may retain up to ten percent (10%), or such other amount as the parties may agree, of the amount to be

reimbursed until the Agency performs a final inspection following termination of the lease and ensures that the tenant improvements remain on the premises and are in good condition, normal wear and tear excepted. The amount to be reimbursed will be applied only to permanent improvements and will be calculated and distributed evenly over the remaining balance of the lease term.

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 relating to tenant improvements. The process for seeking pre-approval for improvements, verifying completion of improvements, and seeking reimbursement outlined in **Exhibit D** 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 work performed relating to 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 property owned or leased by the 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. 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 California Fish and Game Code §4181 et. seq. and 14 Cal. Code Reg. §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 from the premises.

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, except as permitted in writing by the General Manager under Article 11.1.1.

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

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 Agency. LESSEE shall not cut or allow the cutting of any timber without the prior written consent of the Agency. LESSEE shall not remove or place soil, sand, rocks or gravel to or from the subject property without the prior written consent of the Agency.

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 General Manager of any communications or actions by or with any local, state, or federal law enforcement agency or authority pertaining to operations on the premises or any illegal activities that may have occurred on Agency property.

11.4.2 LESSEE must report to the General Manager any trespass or encroachment onto

Agency property by an adjoining or neighbouring property owner 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. At LESSEE's request, LESSOR shall provide LESSEE with "No Trespassing" signs, at no cost to LESSEE, citing California Penal Code 602.

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 or has reason to believe 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.

ARTICLE 12 - SIGNS AND FIXTURES

12.1 **General Signs:** LESSEE shall not place signs or advertisements upon the Premises, except for directional, safety, or signs 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, UTILITIES and RESERVOIR WATER

13.1 **Services and utilities:** 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 **Use of reservoir water:** Unless and except as expressly provided in this agreement, this Agreement does not authorize LESSEE to use water from the reservoir for any purpose, including without limitation, domestic, potable, farming, or similar purposes. LESSEE is authorized to use water properly conveyed from the reservoir for the purpose of watering livestock, subject to the following limitations: water will be used only for the number and kind of livestock authorized by this Agreement; the amount of water shall not exceed schedules or criteria prescribed by the Agency for the number and type of authorized livestock (i.e., per animal unit); water shall be conveyed away from the reservoir so as to avoid contact by livestock with the reservoir; method of conveyance shall be pre-approved by the General Manager in writing. In using reservoir water, LESSEE shall comply with the range management practices prescribed by this Agreement.

ARTICLE 14 - REPAIR AND MAINTENANCE

14.1 **Maintenance of property:** LESSEE shall use, operate and maintain the property in a safe, clean and orderly manner, and in compliance with all applicable laws, ordinances and regulations, and in compliance with the governing documents of LESSEE (if any exist, and are equally or more restrictive than applicable law).

14.2 **No LESSOR duty to maintain or repair:** Agency 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 Agency.

14.3 **Mandatory Annual Report and Evaluation:** LESSEE's obligations are set forth in **Exhibit E**, Summary of Annual Report and Evaluation Meeting Duties. LESSEE's failure to meet its annual obligations is grounds for termination of this Lease.

14.3.1 **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 at LESSOR's option, either invoice LESSEE for the costs of such repair or 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 Agency 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 to the LESSOR's General Manager, which must include a course on soil erosion standards and control.

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 Clawson, W. J., N. K. McDougald, and D. A. Duncan. 1982. Guidelines for residue management on annual range. University of California Division of Agriculture and Natural Resources, Leaflet 21327.

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 LESSEE 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 F** 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 Agency.

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 Articles 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 Agency 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 AGENCY as an additional insured and is expressly intended to provide AGENCY with protection from third party property damage and bodily injury claims, and damage to AGENCY property, arising out of the use of the property. LESSEE shall provide proof of such insurance to the AGENCY annually, and upon AGENCY'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 LESSOR 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.

21.3 **Duty to defend and indemnify LESSOR from activities:** LESSEE shall indemnify, defend, and hold harmless the AGENCY, 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 uses or activities on the lease premises:

- a. boats or other vehicles catching fire on the shore; and
- b. oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the lake.

21.4 **Duty to defend and indemnify LESSOR generally:** LESSEE shall indemnify, defend, and hold harmless the AGENCY, 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 AGENCY. 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.

23.1.1 **Notice of default:** 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.

23.1.2 **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 AGENCY may, if such default is not cured within 30 days following written notice given by the AGENCY 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 AGENCY.

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 grazing operations, then this Lease shall terminate at the option of LESSEE as of the date title shall vest in the condemnor. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S grazing operations, then the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in the 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 of this agreement

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.

30.2 **Time is of the Essence:** Time is of the essence as to each and every provision 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 to 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 LESSOR 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, representatives, 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 AGENCY 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.

ARTICLE 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 C** to this Agreement, or as may be provided for by a schedule of fees and expenses adopted by the Agency from time to time.

ARTICLE 32 – PROPERTY TAX EXEMPTION

[Reserved]

**LESSOR: MONTEREY COUNTY WATER
RESOURCES AGENCY**

By: David E. Chardavoyne
David E. Chardavoyne
Title: General Manager
Date: 27 February 2018

APPROVED AS TO FORM:

Charles J. McKee, County Counsel

By: Jesse J. Avila
Jesse J. Avila
Title: Deputy County Counsel
Date: 2-20-18

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

By: [Signature]
Name: _____
Title: Auditor-Controller
Date: 2-21-18

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

By: [Signature]
Name: Jesse J. Avila
Title: Chief Risk & County Counsel
Date: 2/27/18

LESSEE:

By: Joseph E. Botts Jr.
Name: JOSEPH E. BOTTS JR.
Date: 10-6-2017

By: _____
Name: _____
Date: _____

Attachments

- A. Description of Premises
- B. Start-up Tasks
- C. Schedule of Fees and Expenses
- D. Improvements: Pre-Approval, Verification and Reimbursement
- E. Summary of Annual Report and Evaluation Meeting Duties
- F. Conservation Goals & Objectives
- G. General Conditions
- H. Special Conditions

EXHIBIT A

DESCRIPTION OF PREMISES

Within those portions of property owned by the MONTEREY COUNTY WATER RESOURCES AGENCY adjacent to the SAN ANTONIO RESERVOIR; Parcels and/or portions of parcels all within Monterey County or San Luis Obispo County as shown on the Exhibit "A" map on file in the office of said MONTEREY COUNTY WATER RESOURCES AGENCY, Post Office Box 930, Salinas, California, 93902.

Grazing Lease 2 Contains approximately 1660 total acres, 950 acres above the high water line and 710 acres below the high water line.

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

**Monterey County Assessor Parcel Numbers: Parcels and/or portions of parcels;
219-011-015-000 (portion), 219-021-001-000 (portion), 424-061-018-000 (portion)**

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

EXHIBIT B

START-UP TASKS

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

EXHIBIT C

SCHEDULE OF FEES AND EXPENSES

Name	Purpose	Amount/Rate
<i>Initial Lease Administration Charge</i> (ILAC—one time)	Administer the lease by periodic field inspections and yearly document review.	Flat: \$10,500.00 (payable over the lease term)
<i>Follow-up/ Compliance Inspection Fee</i> (Compliance)	Triggered by deficiencies such as untimely or inadequate Lessee reporting, document compliance; follow-up from annual field inspection.	Flat fee: \$600.00 per incident <u>Hours-Position:</u> 1- Attorney 3- Lease/ contract administrator 2- Field inspection / Technician
<i>Late Charge</i>	Assessed on balances 30 days after they come due, unless a different time is specified.	Ten percent (10%) of the Annual Lease
<i>Lease Violation (Breach) Administrative Penalty</i> (LVAP)	A contractual penalty assessed when certain breaches of lease occur: e.g., escaped cows; unauthorized improvements & booms; illegal dumping; runaway vessels; pollution; encroachment; allowing access to/for unauthorized tenants & uses.	First breach: \$250.00 Second breach: \$500.00 Third and subsequent breaches: \$1,000.00
<i>Property Clean-Up Fee</i>	Fee for clean-up, such as pollution, dumping, abandoned Property	Actual costs, plus ten percent (10%) Administrative Fee

ALL FEES AND CHARGES ARE SEPARATE AND CUMULATIVE

EXHIBIT D

**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 E

SUMMARY OF ANNUAL REPORT AND EVALUATION MEETING DUTIES

The Agency General Manager or designee shall conduct an annual on-site inspection and evaluation of the leased premises to determine the status of livestock operations and checking compliance with conditions of the Lease.

Lessee will be given at least 30 days notice of the scheduled inspection and evaluation date and time. Agency shall meet with the LESSEE or his designee as part of the evaluation. The meeting may be conducted via telephone conference, if Lessee makes a reasonable timely request.

One week prior to the evaluation, Lessee must submit evidence of:

1. Timely and current payment of rental and other charges and fees;
2. Certificate of current required insurance coverages; and
3. Written self-assessment report.

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

EXHIBIT F

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 G

SPECIAL CONDITIONS

As to Grazing Lease SA- 2:

SC 1. **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.

As to Grazing Lease NAC- 3A:

SC 2. **Termination due to Sale:** In the event that LESSOR sells the property, LESSOR may terminate this lease with sixty (60) day written notice to LESSEE.

EXHIBIT H

GENERAL CONDITIONS

As to ALL Grazing Leases the following General Conditions apply. LESSEE is required to be familiar with, and implement the requirements of, the most recent version of the statutes, regulations and policies listed below.

GC 1. Ranching Sustainability Self-Assessment (RSA) (completion of self-assessment with 12 months of lease commencement)

GC 2. Notices (posting, placement, content)

GC 3. Fish and Game Code Sections 1801, 1802, 4181, and 4181.1

GC 4. Guidelines for Wild Pig Depredation

GC 5. Options for California Livestock Producers to Discourage Wolf Presence and Guidance for Suspected Wolf Depredation

GC 6. Human/Wildlife Interactions in California: Mountain Lion Depredation, Public Safety, and Animal Welfare

GC 7. Cal. Code of Regulations § 400. Deer Depredation Hunts

GC 8. Cal. Code of Regulations § 401. Issuance of Permit to Take Animals Causing Damage

GC 9. Cal. Code of Regulations § 402. Issuance of Permits to Kill Mountain Lion Causing Damage

GC 10. States' Fence Laws State of California

GC 11. Cal. Agric. Code §§ 16901 to 16909, §§ 17001 to 17153, and Cal. Pub. Util. Code §§ 7626 to 7631

GC 12. California Board of Forestry and Fire Protection SRA Fire Safe Regulations

GC 13. San Luis Obispo County Department of Public Works & Transportation, 2011 Public Improvement Standards



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
cob@co.monterey.ca.us

Agreement No.: A-14452, Amendment No.: 4

A motion was made by Supervisor Lopez, seconded by Supervisor Parker to:

- a. Find that the amendments to Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency is a minor expansion of an existing use which is Categorically Exempt from the California Environmentally Quality Act pursuant to Section 15301 of the CEQA Guidelines;
- b. Approve Amendment and Modification No. 4 to the Standard Lease Agreement (General: Grazing) San Antonio Lease 2 with Joseph E. Botts and Monterey County Water Resources Agency to include the County of Monterey as a co-lessee to the Lease solely for the purposes of and only with respect to the rights and covenants established by Amendment and Modification No. 4; and
- c. Authorize the Resource Management Agency Director, or designee, to sign Amendment and Modification No. 4 to Standard Lease Agreement (General: Grazing) San Antonio Lease 2. Proposed CEQA action: Categorically exempt under section 15301 of the California Environmental Quality Act (CEQA) Guidelines.

PASSED AND ADOPTED on this 9th day of July 2019, by the following vote, to wit:

AYES: Supervisors Phillips, Lopez, Parker and Adams

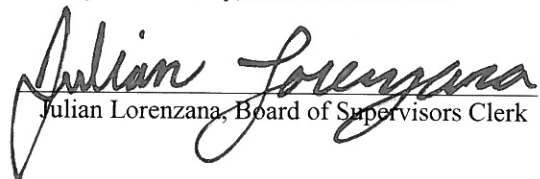
NOES: None

ABSENT: Supervisor Alejo

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting July 9, 2019.

Dated: July 18, 2019
File ID: A 19-266
Agenda Item No: 30

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Board of Supervisors Clerk