

Santa Clara Valley Open Space Authority

Grazing and Farming Lease

This GRAZING AND FARMING LEASE ("Lease") is dated as of _____, by and between the SANTA CLARA COUNTY OPEN SPACE AUTHORITY ("OSA"), a special district created by California state law, and AgCo Hay LLC ("Lessee").

RECITALS

A. WHEREAS, the California Legislature created the OSA because "open-space preservation and creation of a greenbelt are immediate high priorities needed to counter the continuing and serious conversion of these lands to urban uses, to preserve the quality of life in the county, and to encourage agricultural activities."; and

B. WHEREAS, OSA has acquired and preserved thousands of acres of open space since it was created; and

C. WHEREAS, acquired the Tilton Ranch complex (APN 764-07-002, 764-07-011) ("Property"), shown in Exhibit A; and

E. WHEREAS, Lessee grazed and farmed the Property prior to OSA's acquisition thereof; and

F. WHEREAS, OSA and Lessee enter into this Lease to continue grazing and farming for a limited time while OSA plans for its future use of the Property, and subject to all terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OSA and Lessee (collectively, the "Parties") hereby agree as follows:

1. PROPERTY

a) **As Is Condition of Property.** OSA makes no warranties or representations to Lessee concerning the suitability of the Property for Lessee's intended purpose. Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation of the Property and the suitability of the Property for the Lessee's intended use. Lessee acknowledges, agrees to, and hereby accepts, the Property in its present condition "AS IS, WITH ALL FAULTS," without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, rules and regulations governing the use, occupancy and management of the Property. Without limiting the forgoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Property, or any portion thereof, whether or not recorded. Lessee acknowledges and agrees that OSA, including without limitation its directors, officers, employees and agents, has not made, and OSA hereby disclaims making any representations or warranties, express or implied, concerning (i) any title or survey matters affecting the Property; (ii) the physical, geological or environmental condition of the Property including without limitation, and notwithstanding any provisions of any Management Plan for the Property, the availability, suitability, sufficiency, or existence of any sources of water, livestock watering system, or water rights of any kind; (iii) the present or future capacity or suitability of the

Property for livestock grazing and farming; (iv) the condition of any fences, roads, gates or range improvements; or (v) any other matter whatsoever relating to the Property or its use, including, without limitation, any warranties of fitness for a particular purpose.

b) Use of Property. Lessee shall use the Property for livestock grazing and farming as stated herein and for no other purpose or purposes whatsoever. Lessee shall conduct all operations on the Property in a responsible, safe, professional, and environmentally conscious manner, and is responsible at all times for containment of livestock on the Property. OSA reserves and retains for itself and its successors or assigns all waters and water rights appurtenant to the Property and the right to all water subject to appropriation and use thereon, including the right to develop, conserve, store, and convey such water, and to remove, export, or deliver such water from the Property to locations elsewhere upon, or to properties other than, the Property. Lessee's use of the Property and water from the Property is with permission of OSA, and shall not develop into a prescriptive right. OSA shall have the right to use the Property for all public open space purposes, including but not limited to natural resource restoration and management, natural resource monitoring, road grading, mowing, plowing, seeding, fertilizing, prescribed burning, invasive plant management and performing any other appropriate or customary seasonal work. OSA further specifically shall have the right to make use of all roads and trails on the Property for patrol, maintenance and such other uses as OSA may reasonably desire to make of such roads or trails. OSA also shall have the right to make Property open to the general public. This Lease provides only revocable permission to engage in those specific activities on the Property authorized by the Lease, and no other rights whatsoever.

c) Use of the Property In Accordance with OSA's Policies. Lessee acknowledges that its use of the Property is not exclusive and is subject to all other users of the Property, including but not limited to, OSA's directors, officers, employees, agents and volunteers and the public authorized by OSA to enter Property. Lessee's use shall be consistent with the rules and policies of OSA and the purposes for which OSA uses the Property, including open space preservation and recreational use. Lessee's use shall not damage any Property resources, including animals, plants and natural features, and Lessee shall only be permitted to use the Property as designated in this Lease.

2. TERM

a) Term. This lease begins on the date of full Execution of this Lease ("Commencement Date") and expiring on November 30, 2022 ("Expiration Date"). This Lease automatically expires on the Expiration Date.

b) Grazing Capacity and Grazing Season. Lessee will graze the Property only during the Grazing Season and in compliance at all times with the authorized Grazing Capacity as set forth herein.

3. CONSIDERATION

Lessee shall pay the sum of \$1,600 for term of the lease, payable upon execution of this lease.

4. TAXES

Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operations as well as upon all trade fixtures, leasehold improvements, merchandise and other personal property of Lessee in or about the Premises. Lessee acknowledges that Lessee's interest in the Premises under this Lease may now or hereafter be subject to a

possessory interest tax imposed by another government entity. Lessee shall pay any such possessory tax when due, and shall not be entitled to offset the amount of such tax against rent payable under this Lease. Lessee shall be solely responsible and shall indemnify and hold OSA harmless for all federal, state and local taxes and penalties that may result due to Lessee's use of the Premises.

5. GRAZING CAPACITY AND GRAZING SEASON

a) Grazing Capacity. The total number of livestock authorized on the Property under this lease shall not exceed 35 animals and shall be limited to those livestock that are grazing on the adjoining Baird Reserve (APNs 764-07-010 and 764-07-005).

b) Grazing Season. The Grazing Season under this lease shall occur from the Commencement Date through November 30, 2021 or until planting of hay crop in the pastures on the Property begins, whichever is earlier. The composition of the hay crop shall be approved by the OSA prior to planting. Grazing in 2022 shall occur until 1200 lbs/acre Residual Dry Matter is reached.

c) OSA as Sole Judge of Grazing Capacity and Grazing Season. At all times OSA shall be the sole judge as to the Grazing Capacity and Grazing Season of the Property and any pasture thereof. In determining the Grazing Capacity and Grazing Season of the Property or any pasture thereof, OSA may take into account, by way of example only and without limitation thereby, such factors as erosion control, re-forestation, native and invasive vegetation, water quality, fisheries, wildlife, recreation or any other conditions that may affect the use, operation, and conservation of the OSA's lands for open space purposes.

d) Reduction of Grazing Capacity. At any time and from time to time, OSA may reduce the authorized Grazing Capacity or Grazing Season or impose a full or partial grazing moratorium in the OSA's discretion when such action is necessary or appropriate due to a threat to the physical and/or environmental condition of the Property. Written notice of any such reduction will be given by OSA to Lessee, who shall have ten (10) days in which to implement reduction.

6. GRAZING PRACTICES

a) Land Management and Forage Utilization. Lessee shall distribute or rotate livestock throughout the Grazing Area as specified or directed by OSA. Lessee shall maintain optimum distribution of livestock over the Property by distributing or rotating livestock among pastures to obtain uniform range utilization, minimize overgrazed areas and reduce the overall fire hazard. Lessee shall distribute salt blocks throughout the Property as needed for animal health. Lessee shall conduct grazing activities, and use the Property in accordance with, sound rangeland management practices, including, but not limited to, those standards and practices specified by the OSA, and shall otherwise conduct livestock grazing operations in a safe, responsible, professional and environmentally protective manner.

b) Grazing within Property. Lessee shall, at all times, prevent livestock from trespassing onto lands owned or managed by OSA which Lessee is not authorized to graze, into areas within the Property excluded from authorized grazing areas, or upon any adjacent third-party lands, whether private or public.

c) **Supplemental Feeding.** Lessee may conduct supplemental feeding on the Property only during calving season (which occurs from September through November) and only with hay grown on the Property or in Coyote Valley.

d) **Health of Livestock.** Lessee covenants and warrants that all livestock on the Property shall be in general good health and physical condition and that they have been inoculated with all the appropriate vaccinations according to good husbandry practice. Lessee will cull or remove the grazing herd of all diseased or otherwise unhealthy livestock in a prompt and responsible manner.

e) **Permissible Uses of Structures on Property.** Lessee is permitted to use the following structures found on the Property in the manner described below. See map attached as Exhibit B for reference.

- i. **Corrals.** In the months of December and January, Lessee may use the corrals for branding. In the month of June, Lessee may use the corrals for shipping calves. On an as needed basis, Lessee may use the corrals for tending to sick/injured cattle with notification to the OSA. Such notification can be communicated via telephone.
- ii. **Hay Barn.** Lessee may use the hay barn for storage of hay that is grown on the Property or in Coyote Valley.
- iii. **Overhang of Green Barn.** Lessee may use the overhang located the west side of the green barn on the Property for storage of basic fence repair materials and one (1) ATV. The Lessee is not permitted to use the remainder of the barn.
- iv. **Storage of Agricultural Vehicles.** Lessee may store agricultural vehicles, such as tractors, on the Property with prior notification to the OSA. Such notification can be communicated via telephone. The storage of agricultural vehicles on the Property is limited to the duration that such agricultural vehicles are needed for agricultural activities on the Property, such as planting and harvesting of hay crop. With the exception of the one (1) ATV that may be stored at the green barn on the Property, long term parking/storage of other vehicles is prohibited.
- v. **Limitations.** Tenant shall not have access to any other buildings on the Property besides those mentioned herein.

f) **Motorized Vehicles and Heavy Equipment.** Motorized vehicles used by Lessee shall be restricted to two-track fire roads, and Lessee shall refrain from using roads during wet conditions, except when absolutely necessary. Lessee acknowledges that use of roads and vehicle accessible trails and areas of the Property, both during and immediately following wet weather may cause serious degradation of road and ground surfaces, including but not limited to, rutting and erosion. During wet conditions, and/or when directed by OSA, Lessee shall not use motor vehicles on the Property except for All Terrain Vehicles approved by OSA. All motorized vehicles and equipment used by Lessee on the Property must be outfitted with appropriate spark arrestors and mufflers. No heavy equipment, including, but not limited to bulldozers, backhoes, excavators, or trenchers are permitted to cross or operate on the Property without OSA's prior written consent. OSA may, in its sole discretion, close any or all roads, or promulgate and enforce restrictions on road use for resource management, erosion control, law enforcement purposes, or other purposes necessary or appropriate for the sound management of the Property, by providing Lessee with prior notice thereof.

g) **Weed, Pest and Wildlife Control.** OSA will have the right, but not obligation, at its sole cost and expense, and its sole discretion as to the manner, time or extent of such efforts, for the control of

noxious weeds and animal pests on the Property. Lessee shall fully cooperate with OSA in any programs designed to control or eradicate weed and pest populations, including relocation of livestock if necessary. Lessee shall not introduce any noxious vegetation onto or about the Property. In no event shall OSA be liable to Lessee for presence or introduction of noxious vegetation or animal pests on the Property. Lessee also understands that the OSA protects native animals that might be regarded as a nuisance or harm to livestock, including but not limited to, California ground squirrels, coyote, bobcats, and mountain lions, and that removal of such native species is a violation of this Lease.

h) Hazardous Substances. Except for equipment and vehicle fuel and fueling operations typical for use in grazing operations, Lessee is absolutely prohibited from transporting, mixing, generating, applying, storing, or disposing of herbicides, pesticides, rodenticides or any hazardous substances or waste of any kind upon the Property without the prior express written consent of OSA. Vehicle fuel will be kept in properly sealed containers, suitable for the substance, and all fuel transfer operations will be conducted with sufficient care and diligence to prevent contamination of or on the Property. "Hazardous substances or waste" as used herein means and includes any substance which the placement, storage, use or removal of is prohibited or regulated by federal, state or local law.

i) Compliance with Law. Lessee will comply with all applicable laws, permits, statutes, ordinances, rules, governmental orders, regulations, and requirements pertaining to the occupancy and use of the Property, including without limitation, OSA rules and regulations. Lessee shall not use, nor permit others to use the Property for any unlawful or prohibited purpose or purposes.

7. ALTERATIONS

Lessee agrees to obtain and fully comply with all applicable permits, authorizations, laws, ordinances, and regulations. Any alteration of, changes in, or additions to the Property are prohibited.

8. SURRENDER OF PROPERTY

Lessee agrees that upon termination of this Lease to promptly surrender the Property and all appurtenances to OSA in the same condition as when received, reasonable use, wear and tear, damage by fire, acts of God or nature excepted, and to remove all of Lessee's livestock and personal property from the Property.

9. ASSIGNMENT

This Lease may not be assigned or otherwise transferred by Lessee, in whole or in part, in any matter whatsoever. Under no circumstances shall Lessee allow third parties to occupy the Property or graze the Grazing Area.

10. DISCRIMINATION

During the term of this Lease, Lessee agrees that Lessee and Lessee's subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, sex, sexual orientation, age (over 40), or veteran status. Lessee and Lessee's subcontractors will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, creed, national origin, ancestry, physical or

mental disability, medical condition, pregnancy, marital status, sex, sexual orientation, age (over 40), or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

11. WAIVER AND INDEMNIFICATION

a) Lessee hereby waives any and all claims, suits, or actions of any name, kind or description against OSA and its officers, directors, agents, and employees for any losses, injury or damage to any persons, including death, or damage to property, occurring during this Lease in, on, or about the Property, and arising directly or indirectly out of any condition of the Property whether known or unknown to Authority, or arising out of or in any way related to this Lease or Lessee's use of the Property, including but not limited to any act, neglect, fault or omission by OSA, or any person directly or indirectly employed by or acting as an agent for OSA.

b) Lessee agrees to indemnify, defend and protect OSA and its officers, directors, agents, and employees from all liabilities and from and against all claims, suits, or actions of any name, kind or description for any losses, injury or damage to any persons, including death, or damage to property, occurring during this Lease in, on, or about the Property, or arising directly or indirectly out of any condition of the Property whether known or unknown to Authority, or arising out of or in any way related to this Lease or Lessee's use of the Property, including but not limited to, any act, neglect, fault or omission by OSA, or any person directly or indirectly employed by or acting as an agent for OSA.

c) Lessee agrees to compensate OSA for any damage to the Property as a result of, or in any way related to, Lessee's use of the Property.

d) In the event Lessee is required to defend OSA under any of the terms of this Lease, OSA shall control the choice of counsel and defense of any such claim, action or proceeding as against OSA.

e) The indemnification obligations arising from this Lease are intended to include, but not be limited to, damages, costs, expenses, attorneys' fees and expert witness costs incurred by OSA.

f) The provisions of this section shall survive the termination or expiration of this Lease.

12. INSURANCE

Lessee agrees to obtain, and keep in force during the term of the Lease, at Lessee's own cost and expense, a policy or policies of Commercial General Liability Insurance and Business Auto Coverage insurance, each in an amount of not less than \$1,000,000.00 aggregate and per occurrence or accident for all covered losses. Such policy or policies shall name OSA as an additional insured, and evidence of such endorsement, by duly executed Certificate of Insurance (ACORD 25-S, or successor or comparable form, subject to prior approval by OSA) shall be provided to OSA within ten (10) days of execution hereof and shall be updated thereafter as necessary. Each of the policies must contain a provision that such policy will not be cancelled or materially changed without thirty (30) days prior written notice to OSA. Lessee shall also comply with all applicable statutory worker compensation requirements. Upon request by OSA, Lessee shall direct his insurer or insurance agent to furnish OSA with a copy of any policy required by this Lease, certified to be a true and complete copy of the original.

13. GENERAL PROVISIONS

a) Amendments; Entire Agreement. Neither this Lease nor any term of provision hereof may be changed, waived, amended, discharged or terminated except by written instrument signed by the Parties hereto or as otherwise permitted hereunder. This Lease, including the Exhibits hereto, contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease) may be introduced in any judicial, administrative or other legal proceedings involving this Lease. Lessee hereby acknowledges that neither OSA, nor OSA's directors, officers, employees or agents, have made any representations or warranties with respect to the Property or this Lease except expressly set forth herein, and no rights, easements or Leases are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

b) Waiver. No waiver of any term, provision or condition of this Lease, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Lease.

c) Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and enforceable, to the fullest extent permitted by law.

d) Time. Time is of the essence to every term and condition hereof to which time is a material factor.

e) Governing Law and Venue. This Lease shall be construed pursuant to California law and proper venue for all purposes shall be in the County of Santa Clara.

f) Captions. Captions are provided herein for convenience only and they form no part of this Lease and are not to serve as a basis for interpretation or construction of this Lease, or as evidence of the intention of the Parties hereto.

g) Notices. Wherever this Lease provides for notices between the Parties, so wherever the law requires or gives the right of serving a notice, the same shall be in writing and either served personally or sent by registered or certified mail, postage prepaid and addressed to the appropriate party as shown below. OSA and Lessee at any time, in the manner provided herein, change the place or person designated for receiving notice.

h) Signatories. The persons signing below represent and warrant that they are authorized to execute this Lease on behalf of the Parties hereto.

LESSEE:

AgCo Hay LLC
9336 Airline Highway
Tres Pinos, CA 95075
Telephone: 831-801-0039

Exhibit F

OSA:

Santa Clara Valley Open Space Authority
Megan Robinson
33 Las Colinas Lane
San Jose, CA 95119
Cell: (408) 506-8267
Administrative Office: (408) 224-7476

IN WITNESS WHEREOF the parties hereto subscribe their names.

OSA:

LESSEE:

Andrea Mackenzie
General Manager

Allan Renz

Date: _____

Date: _____

Approved as to form:

Legal Counsel
Santa Clara Valley Open Space Authority

EXHIBIT A

(Map and Description of Property)

DRAFT



- Property Boundary
- OrthoImageryMosaic2020
- Red: Band_1
- Green: Band_2
- Blue: Band_3



EXHIBIT B

(Map and Description of Structures)

DRAFT



- Property Boundary
- OrthoImageryMosaic2020
- Red: Band_1
- Green: Band_2
- Blue: Band_3

