

AMENDMENT TO AGRICULTURAL LEASE

This amendment ("Amendment") is made by and between the City of San Jose ("Lessor"), a California municipal corporation, and AGCO Hay LLC ("Lessee"), and the Santa Clara Valley Open Space Authority ("Manager"), parties to the Agricultural Lease ("Lease"), entered into on November 19, 2019.

Subsection 1 c) is replaced in its entirety with the following:

c) Use of Property. Lessee shall only use the Property for dry land farming of hay. Lessee shall not use the Property for any other purpose or purposes whatsoever and use of the Property by the Lessee is limited to the Lease Area as described herein. Lessee shall conduct all operations on the Property in a responsible, safe, professional, and environmentally conscious manner, and shall at all times comply with law. Lessee shall maintain a five-foot buffer from the coyote brush. All costs incurred by Lessee in connection with Lessee's operations upon the Property, including but not limited to, costs of preparing the Lease Area for planting of crops, production costs, or costs of tools and labor shall be borne and paid when due by Lessee. Lessee agrees that its use of the Property shall be consistent with and subject to the Conservation Easement, a copy of which Conservation Easement has been provided to Lessee by Manager.

Subsection 1 e) is replaced in its entirety with the following:

e) Lessor's and Manager's Use. Outside of the Leased Area, Lessor and Manager shall have the right to use the Property for any and all purposes. Lessor and Manager shall have the right to make use of all roads on the Property, regardless of whether they are within or outside the Leased Area, for patrol, maintenance and such other uses as Lessor and Manager may reasonably desire to make of such roads. Within the Lease Area, Lessor shall have the right to operate, maintain, flush or use any wells. The Lessee has no access to water on the Property and shall not use the wells for its operations. Within the Lease Area, Lessor and Manager shall have the right to conduct natural resources monitoring, studies or surveys, may perform management activities on areas that Lessee is not actively farming, or conduct any other activity that does not interfere with the Lessee's dry farming operation of the Lease Area. Lessor and Manager may install fences and gates around the perimeter of the Property. Lessor and Manager may use the Lease Area for any other purpose with permission of Lessee. The use of the Property by Lessor and Manager hereunder shall be subject to and consistent with the Conservation Easement, and nothing in this paragraph shall be construed as modifying or expanding the permitted uses of the Property by Lessor or Manager as set forth in the Conservation Easement. Upon written notice to Lessee, Manager may modify the Lease Area for restoration purposes. Such modification shall only be effective after Lessee has had an opportunity to harvest hay. **The lease rate charged to Lessee shall be reduced by \$35 per acre for such land taken out of production.**

Section 2 is amended to extend the Expiration Date to and including November 15, 2024.

Section 5 is replaced in its entirety with the following:

5. HAZARDOUS SUBSTANCES AND PESTICIDES

Lessee is prohibited from transporting, mixing, generating, applying, storing, or disposing of herbicides, pesticides, rodenticides or any hazardous substances or waste of any kind (except for equipment and vehicle fuel and fueling operations typical for use in dry hay farming operations) upon the Property without the prior express written consent of Lessor and Manager.

Notwithstanding the foregoing, Lessor and Manager hereby grant their consent to Lessee to apply the herbicide 2,4-D, or the generic form thereof, on the Property once per year during January or February only, provided that: (i) Lessee maintains a valid Restricted Materials Permit from the Santa Clara County Division of Agriculture; (ii) Lessee complies with the Restricted Materials Permit and all applicable laws and regulations concerning the use, transport, and disposal of the herbicide; and, (iii) if Lessee hires a third party to apply the herbicide, the applicator shall be a Certified Private Applicator pursuant to regulations of the California Department of Pesticide Regulation. Lessee may also spot spray of thistle between June 1 and September 30 upon the prior written consent of Lessor and Manager, which consent may be withheld in Manager's discretion, and Lessor and Manager may specify the duration and location of each such application for which Lessee seeks consent. Vehicle fuel shall be kept in properly sealed containers, suitable for the substance, and all fuel transfer operations shall 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. Any authorized use, storage or transportation of hazardous substances shall be in accordance with the applicable federal, state, county or municipal laws and regulations, and under no circumstances shall hazardous substances be disposed of on the Property. Lessee shall indemnify, defend and hold harmless Lessor and Manager, and its officers, directors, employees, or agents from and against any and all liabilities, claims, judgments, awards, settlements, damages and costs (including attorneys' and consultants' fee and costs), including, without limitation, those incurred for testing, remedial investigation, removal, interim and final remedial action, cleanup, abatement or other remedial work, natural resource damages, personal injury or property damages, fines and penalties arising from the presence of hazardous substances or wastes, or pesticides, on, in or under the Property or in the groundwater or surface waters of the Property arising from Lessee's operations. The provisions of this Paragraph shall survive the expiration or termination of this Lease.

Section 13 is replaced in its entirety with the following:

13. 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 and Business Auto Liability insurance, each in an amount of not less than \$2,000,000.00 aggregate and per occurrence or accident for all covered losses. Such policy or policies shall name Lessor and Manager as an additional insureds, and evidence of such endorsement, by duly executed Certificate of Insurance (ACORD 25-S, or successor or comparable form, subject to prior approval by Lessor and Manager) shall be provided to Lessor and Manager within ten (10) days of execution hereof and shall be updated thereafter as necessary. Each of

Exhibit D

the policies must contain a provision that such policy will not be cancelled or materially changed without thirty (30) days prior written notice to Lessor and Manager. Lessee shall maintain Workers' Compensation limits as required by statute and Employers Liability limits of \$1,000,000 per accident. Such policy shall contain a waiver of subrogation in favor of Lessor and Manager. Insurance is to be placed with insurers having a rating from A.M. Best financial strength rating of A-, Financial Size Category VII or better. Lessee shall direct its insurer or insurance agent to furnish proof of insurance required by this Lease to the requesting Party. Proof of insurance shall be emailed to Lessor in pdf format to: Riskmgmt@sanjoseca.gov

Certificate Holder
City of San José – Finance Department
Risk Management
200 East Santa Clara St., 14th Floor Tower
San Jose, CA 95113-1905

Exhibit C is replaced in its entirety with the following:

(see Exhibit C attached)

Exhibit D

Except as set forth in this Amendment, the Lease is unaffected and shall continue in full force and effect in accordance with its terms.

CITY OF SAN JOSE

Approved as to form:
CITY OF SAN JOSE

Sarah Zarate
Director, Office of Administration,
Policy, and Intergovernmental
Relations

Dated: _____

Cameron Day
Deputy City Attorney

ACGO HAY, INC.

Allan Renz
Co-Owner

Dated: _____

SANTA CLARA VALLEY
OPEN SPACE AUTHORITY

Approved as to form:

SANTA CLARA VALLEY OPEN SPACE AUTHORITY


Andrea Mackenzie
General Manager


Dated: _____

William P. Parkin
Legal Counsel

Exhibit D
EXHIBIT C: MAP OF LEASED AREA (UPDATED 2022)



 Leased Area

 Assessors
Parcels

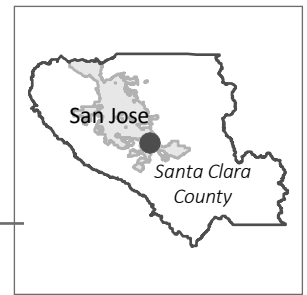


Exhibit D

Santa Cruz

Data Sources: SCVOSA, SCVWD, Santa Clara County Parcels 2018, City of San Jose
Created by Ikwong 3/22/2022