

# Santa Clara County Open Space Authority

## Grazing License

This GRAZING LICENSE (“License”) is dated as of \_\_\_\_\_, by and between the SANTA CLARA COUNTY OPEN SPACE AUTHORITY (“Licensor” or “OSA”), a special district created by California state law, and \_\_\_\_\_, a \_\_\_\_\_ (“Licensee”).

### 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, grazing on OSA land is a stewardship management tool and OSA’s grazing management objectives include, but are not limited to: 1) encouraging and enhancing native grasslands and biodiversity, 2) minimizing potential for wildfires and brush encroachment, 3) controlling and managing invasive weedy vegetation, 4) enhancing wildlife habitat, 5) protecting and enhancing riparian and wetland habitat values, 6) controlling and minimizing erosion, and 7) maintaining open landscapes and viewsheds; and

D. WHEREAS, Licensor is the owner of record of a certain parcel of real property located [within the unincorporated area of the County of Santa Clara], State of California and more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference (“Property”); and

E. WHEREAS, Licensee desires to obtain a limited, restricted and non-exclusive license to use a portion of the Property depicted in Exhibit A, containing an area of approximately \_\_\_\_\_ acres, for the purpose of livestock grazing thereon, more particularly described in Exhibit “B,” attached hereto and incorporated by reference (“Grazing Area”); and

F. WHEREAS, Licensor and Licensee enter into this License for the purpose of Licensee receiving a limited, restricted, freely revocable and non-exclusive License, solely for the purposes described below in this License, solely in the License Area portion of the Licensor’s 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, Licensor and Licensee (collectively, the “Parties”) hereby agree as follows:

### 1. Property

a) **As Is Condition of Property.** OSA makes no warranties or representations to Licensee concerning the suitability of the Property and the Grazing Area for grazing purposes. Licensee represents

and warrants that Licensee has conducted a thorough and diligent inspection and investigation of the Property and the suitability of the Property for the Licensee's intended use. Licensee is fully aware of the needs of its grazing operations and has determined, based solely on its own inspection, that the Property and Grazing Area are suitable for its operations and intended use. Licensee 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 foregoing, this License 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. Licensee 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; (iv) the feasibility, cost or legality of constructing any improvements on the Property if required for Licensee's use as permitted under the License; (v) the condition of any fences, roads, gates or range improvements; or (vi) 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.** Licensee shall use the Property for livestock grazing and for no other purpose or purposes whatsoever and grazing is limited to the Grazing Area. Livestock grazed on the Property must be either owned by the Licensee or grazed under the direct supervision of the Licensee. Licensee 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.. Licensee'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.

**c) Acknowledgement of Property Rights.** Licensee acknowledges that this License does not convey a property right to Licensee. No right to legal possession is transferred, no fee is transferred and no leasehold is formed by this License. Licensee further acknowledges that the Property is public land. This License provides only revocable permission to engage in those specific activities on the Property authorized by the License, and no other rights whatsoever.

**d) Use of the Property In Accordance with OSA's Policies.** Licensee 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. Licensee'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. Licensee's use

shall not damage any Property resources, including animals, plants and natural features, and Licensee shall only be permitted to use the Property as designated in this License.

## 2. TERM

a) **Term.** This license is for a term of five (5) years, beginning \_\_\_\_\_ (“Commencement Date”) and expiring on \_\_\_\_\_ (“Expiration Date”). This License automatically expires on the Expiration Date. Licensee may apply for a new license prior to the Expiration Date of this License.

b) **Freely Revocable at Any Time.** Notwithstanding the Expiration Date stated herein, this License is freely revocable at any time by OSA, with or without cause.

c) **Grazing Capacity and Grazing Season.** Licensee will graze the Property only during the Grazing Season and in compliance at all times with the authorized Grazing Capacity as set forth herein. Licensee may go on to the Property during other times of the year (the “Off-Season”) to conduct activities reasonably related to permitted grazing, including infrastructure maintenance and repair related to such improvements as may be authorized in writing by OSA.

## 3. FEES

a) **License Year Fees.** Each year during the Term, Licensee shall pay to OSA annual Fees (“Fees”) as payment for grazing on the Property. The Fees shall be \_\_\_\_\_, with annual adjustment thereafter, if any, pursuant to Section 3(b). Fee due dates consists of bi-annual payments on \_\_\_\_\_, and \_\_\_\_\_ (“Fees Payment Dates”) and shall be paid at the address shown for OSA in this License. Fees shall be paid in full when due and payable regardless of whether livestock are grazed upon the Property, or whether or not the Property is grazed at the Grazing Capacity authorized for any License year.

b) **Annual Adjustment of Fees.** Prior to the beginning of the Grazing Season, fees may be adjusted for each License year based on the calculations set forth in Exhibit C. Licensee shall be notified by OSA on or before \_\_\_\_\_ of each current License year of the new per fee amount, if any, for the next License year.

c) **Late charge.** Any Fees received by OSA five (5) or more days past the Payment Date on which such amount was due, shall be subject to a penalty of 10% of the amount due to OSA, and Licensee shall pay such additional sum concurrently with the late payment.

d) **Livestock Lien.** Licensee hereby acknowledges that all Fees not paid on Payment Date set herein shall become a lien on any and all livestock located on the Property as authorized by Cal. Civ. Code § 3080, et seq. OSA shall have the right to proceed under the procedure set forth in Cal. Civ. Code § 3080 et seq. to take possession and retain all such livestock.

## 4. TAXES

a) **Personal Property Taxes.** Any taxes assessed on the personal property of Licensee are the sole responsibility of Licensee.

## 5. ANNUAL GRAZING CAPACITY AND GRAZING SEASON DETERMINATION

**a) Definition of Grazing Capacity.** Grazing Capacity, for all purposes herein, is the level of livestock use allowed on the Property consistent with forage production, resource conservation, and open space preservation objectives (the “Grazing Capacity”). The unit of measure of Grazing Capacity shall be the AUM, defined herein as the amount of forage, equivalent to 1,000 pounds of dry, herbaceous plant material, necessary to sustain a mature cow for a period of one month. OSA may regulate the kind and number of livestock and the amount of time the Property is grazed by same, to assure conformity to Grazing Capacity estimates.

**b) Minimum Residual Dry Matter (RDM) Requirements.** Residual dry matter (“RDM”), as used herein, is a measure of the amount of dry vegetation left on the ground, typically measured at the end of summer or in the fall, prior to rainfall. The height in inches of standing vegetation remaining on the ground is a general indicator of RDM levels, however the pounds per acre measurements shall be used for the purposes of monitoring and enforcing minimum RDM requirements. In the absence of a property specific management plan (which will state desired RDM) OSA has set the following minimum RDM requirements for the Property depending upon average slope:

- i) On 0% to 30% slopes, the average minimum RDM shall be 1,000 pounds per acre (which is approximately 2 to 3 inches of standing vegetation).
- ii) On slopes greater than 30%, the average minimum RDM shall be 1,200 pounds per acre (which is approximately 3 to 4 inches of standing vegetation).

A layer of RDM shall be maintained by Licensee throughout the Grazing Season to minimize soil erosion and enhance both the quality and quantity of forage produced. Licensee and OSA acknowledge that localized over-utilization will occur directly adjacent to watering facilities, corrals, and salting areas. Thus, OSA will exclude, in its sole discretion and determination, areas around watering facilities, corrals and salting areas from any determination of RDM levels. If the RDM levels drop below the amounts specified above, OSA may notify Licensee, and Licensee shall within 48 hours remove all livestock from the affected pasture(s) until such time as OSA determines that such pasture(s) have recovered sufficiently for restocking.

**c) Procedure for Establishing Annual Grazing Capacity and Grazing Season.** The livestock carrying capacity shall not exceed \_\_\_\_\_ AUMs, and shall be subject to adjustment upward or downward at the discretion of OSA. The Grazing Season shall be for \_\_\_\_\_, and ending \_\_\_\_\_. The procedure for establishing the Grazing Capacity and Grazing Season thereafter shall be as follows:

- i) OSA shall conduct an annual range assessment of the Property to identify areas OSA considers suitable for grazing and to estimate the available forage production for the forthcoming License year. Licensee will be provided an opportunity to review this annual range assessment.
- ii) RDM requirements described in Subsection 5(b) herein shall be subtracted from the estimated total amount of available forage within the Property to determine how much forage is available for livestock to consume in an average year, a wet year, and a dry year.
- iii) Prior to \_\_\_\_\_ of each year, OSA shall notify Licensee in writing of the authorized Grazing Capacity and Grazing Season for the Property for the forthcoming License year. The notice shall set forth any required changes to Licensee’s range management methods or grazing practices that OSA in its judgment and discretion determines are necessary.

iv) Subject to any modifications that OSA may impose pursuant to this License, the authorized Grazing Capacity for the Property shall remain the same throughout the License year.

d) **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.

e) **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 Licensee, who shall have ten (10) days in which to implement reduction.

f) **Exceeding Grazing Capacity Without Authorization.** Licensee shall limit the number of livestock to be grazed upon the Property and the period of use so that the authorized number of AUMs is not exceeded. Should the Property, or any portion thereof, ~~intentionally~~ be grazed in excess of the authorized number of AUMs, Licensee shall immediately remove all or such number of livestock as are necessary to comply with the Grazing Capacity authorized by OSA. In addition to all rights which OSA may have or exercise under this License, in the event that Licensee grazes the Property in excess of the authorized Grazing Capacity, the charge per AUM shall be three (3) times the annual Fees provided for in this License of each AUM or portion thereof grazed in excess of said authorized numbers, for any length of time, such amount being herby agreed upon as the liquidated minimum damages to OSA from such excess usage and OSA shall be entitled to prove and be awarded any greater damage amount, or other relief sought, by a court of competent jurisdiction. Licensee shall pay such amount to OSA promptly upon demand.

## 6. ANNUAL STOCKING AND WORK PROGRAM

Licensee shall prepare an annual stocking and work plan ("Stocking and Work Program") prior to the beginning of each Grazing Season. No later than \_\_\_\_\_ of each year, Licensee shall deliver to OSA a proposed Stocking and Work Program that shall include information on the number and type of all livestock proposed to be grazed upon the Property during the forthcoming Grazing Season. The Stocking and Work Program shall set forth the number of AUMs to be stocked on each pasture (based on current forage conditions and the grazing Capacity for the forthcoming Grazing Season established by OSA) shall specify distribution and rotation of livestock, shall specify all proposed management activities related to herd health, pest control, infrastructure maintenance and/or the development of range resources that may be warranted for the conditions and circumstances on the Property. OSA shall notify Licensee in writing whether the Stocking and Work Program is approved. If unacceptable, OSA shall state in its notice all changes to be made to the Stocking and Work Program. Licensee shall incorporate all changes into the Stocking and Work Program and resubmit it to OSA for approval before commencing grazing operations.

## 7. GRAZING PRACTICES

a) **Land Management and Forage Utilization.** Licensee shall distribute or rotate livestock throughout the Grazing Area as specified or directed by OSA and in Licensee's annual Stocking and

Work program approved by OSA. Licensee 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. Licensee shall maintain in good condition and repair all cross-fences and gates that define any pasture, and shall distribute salt blocks uniformly throughout the Property, except that salt blocks should not be placed in close proximity to any public trails. Licensee shall maintain any developed livestock watering system in good condition and repair. Licensee 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.** Licensee shall, at all times, prevent livestock from trespassing onto lands owned or managed by OSA which Licensee 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.** Licensee may apply to OSA to provide supplemental feed to maintain the health and vitality of permitted livestock, subject to written authorization from OSA. In applying for such permission, Licensee shall indicate the source and content of any supplemental feed to be distributed to livestock. Any supplemental feed shall be certified to be free of non-native, invasive plant materials, commonly known as “weed free” feed or forage. Licensee may not conduct supplemental feeding on the Property to prolong grazing use in areas where the forage levels specified in the approved annual Stocking and Work Program have been reached or exceeded.

d) **Health of Livestock.** Licensee 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. Licensee will cull or remove the grazing herd of all diseased or otherwise unhealthy livestock in a prompt and responsible manner.

e) **Motorized Vehicles and Heavy Equipment.** Motorized vehicles used by Licensee shall be restricted to two-track fire roads, and Licensee shall refrain from using roads during wet conditions, except when absolutely necessary. Licensee 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, Licensee shall not use motor vehicles on the Property except for All Terrain Vehicles approved by OSA. All motorized vehicles and equipment used by Licensee 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 Licensee with prior notice thereof.

f) **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. Licensee shall fully cooperate with OSA in any programs designed to control or eradicate weed and pest populations, including relocation of livestock if necessary. Licensee shall not introduce any noxious vegetation onto or about the Property. In no event shall OSA be liable to Licensee for presence or introduction of noxious vegetation or animal pests on the Property. Licensee 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 License.

**g) Hazardous Substances.** Except for equipment and vehicle fuel and fueling operations typical for use in grazing operations, Licensee 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.

**h) Compliance with Law.** Licensee 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. Licensee shall not use, nor permit others to use the Property for any unlawful or prohibited purpose or purposes.

## **8. IMPROVEMENTS**

**a) Improvements.** Prior to beginning of each Grazing Season under this License, Licensee may propose to OSA potential improvements desired by Licensee. Licensee may submit a proposal to OSA to substitute performance of work ("Work") on the Property in lieu of all or a portion of Fees. Proposals may only be submitted for Work for which Licensee is not otherwise obligated or responsible. The type of Work that may be considered for credit shall include, but is not limited to:

- i) Road brushing, minor grading, and maintenance
- ii) Invasive plant treatment
- iii) Repairing perimeter fencing and constructing new fencing
- iv) Water improvements

### **b) Proposal for Improvements**

- i) Licensee shall submit a written proposal to OSA for Approval of specific Work and shall provide an estimate of the value of such Work (Exhibit D).
- ii) OSA shall review such Licensee proposal and value estimate, and may elect, in its sole discretion, to authorize the performance of such Work. OSA may authorize the performance of such Work in lieu of all or a portion of Fees. Any such authorization shall be in writing. Authorization will not be granted for Work performed by Licensee prior to submittal of a written proposal. Under no circumstances is the OSA required to authorize Work even if deemed necessary by the Licensee for grazing operations.
- iii) In the event that OSA approves specific Work to be performed by Licensee in lieu of all or a portion of Fees, all such Work shall be performed in a timely and professional manner, to the satisfaction of OSA.
- iv) Licensee shall notify OSA upon completion of the authorized Work and shall arrange for inspection of such Work by OSA. If OSA, after inspection, accepts the Work as fully and correctly performed, it shall authorize, in writing, that such Work be substituted for all or a portion of Licensee's Fees obligations in the amount previously authorized. If OSA determines that the Work has not been fully or correctly performed, it shall notify Licensee of the deficiencies and

Licensee shall have a reasonable period of time to correct the identified deficiencies. Licensee shall thereafter notify OSA and request further inspection.

- v) In no event shall credit for Work performed in lieu of Fees exceed the amount of Fees due for the remainder of the current Term and any excess claimed may not be carried over or otherwise applied to Fee obligations arising thereafter. Should OSA terminate this License for any reason permitted hereunder, OSA shall prior, to the full application of any such credit to Fees due, reimburse Licensee for Work that was approved by OSA and correctly performed by Licensee, provided that OSA's termination of this License is not due to a default or breach by Licensee as set forth in Section 11 herein.
- vi) Nothing contained herein shall be constructed to make Licensee an employee or agent of OSA.

**c) Routine Maintenance Improvements.**

During the term of the License, Licensee shall in a timely manner, maintain and repair all improvements related to grazing use, whether existing at commencement of the License or newly constructed, including roads, fences, gates, livestock guards, barns, buildings, structures corrals, wells, pumps and pressure systems, spring boxes, pipelines, ponds, and water troughs. If Licensee desires Fee credit for any maintenance or repairs, Licensee must submit a proposal to OSA in accordance with Subsection 8.(b) above.

**9. ALTERATIONS**

Licensee 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 unless authorized pursuant to Section 8.

**10. TERMINATION OF LICENSE WITHOUT CAUSE**

**a) OSA's Right to Terminate Without Cause.** Notwithstanding the Term of this License, this License is freely revocable by OSA at any time, with or without cause. In the event of OSA's election to terminate this License under this provision, OSA shall provide Licensee with thirty (30) days notice of termination. In the event of such early termination, Licensee's sole claim against OSA shall be pro-rata refund of grazing Fees actually paid in advance, and Fee credit due pursuant to Section 8.

**b) Licensee's Right to Terminate.** Licensee may terminate the License upon providing thirty (30) days written notice to OSA.

**11. TERMINATION WITH CAUSE**

**a) OSA's Right to Terminate for Cause.** OSA may terminate the Lease for any failure by Licensee to pay the Fees or any other monetary sums required to be paid hereunder or for other material default or breach of this License. In the event of OSA's election to terminate under this provision, OSA shall provide Licensee with five (5) days written notice to quit or pay Fees. In the event of such termination, Licensee shall be allowed ten (10) days following OSA's written notice of termination to Licensee in which to vacate the Property.

**b) OSA's Right to Terminate for Other Default.** The occurrence of any of the following shall also constitute a material default under and breach of this License by Licensee, which permits OSA



to immediately terminate this License, and upon such notice of termination by OSA, Licensee shall be allowed ten (10) days to vacate the Property if Licensee has not already done so:

- i) The abandonment of the Property by Licensee.
- ii) The making by Licensee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Licensee of a petition to have Licensee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Licensee, the same is dismissed within sixty (60) days); the appointment of trustee or receiver to take possession of substantially all of Licensee's assets located at the Property or of Licensee's interest in this License, where possession is not restored to Licensee within thirty (30) days; or, the attachment, execution or other judicial seizure of substantially all of Licensee's assets located at the Property or of Licensee's interest in this License, where such seizure is not discharged within thirty (30) days. Licensee agrees that in the event of the occurrence of any of the above-specified circumstances, then this License shall not become an asset in any of such proceedings.

c) **Cumulative Rights.** All rights, options and remedies of OSA contained in this License shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and OSA shall have the right to pursue any one or all such remedies and any other remedy or relief which may be provided for by law or in equity, whether or not stated in this License, including but not limited to damage caused to the Property or the environment or removal or storage of all personal property and livestock for failure to remove the same after termination of this License. No waiver of any default of Licensee hereunder shall be implied from any acceptance by OSA of any Fees or other payments due hereunder or any omission by OSA to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. Consent, approval, or acts shall not be deemed to waive or render unnecessary OSA's consent or approval to or of any subsequent similar acts by Licensee.

## **12. SURRENDER OF PROPERTY**

Licensee agrees that upon termination of this License 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 Licensee's livestock and personal property from the Property.

## **13. ASSIGNMENT**

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

## **14. DISCRIMINATION**

During the term of this License, Licensee agrees that Licensee and Licensee'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. Licensee and Licensee'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.

## 15. WAIVER AND INDEMNIFICATION

a) **Waiver of claims.** Licensee 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 License 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 Licensee's use of the Property, including but not limited to any act, neglect, fault or omission by Licensor, or any person directly or indirectly employed by or acting as an agent for Licensor.

b) **Indemnification.** Licensee 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 License 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 Licensee's use of the Property, including but not limited to, any act, neglect, fault or omission by Licensor, or any person directly or indirectly employed by or acting as an agent for Licensor.

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

d) In the event Licensee is required to defend OSA under any of the terms of this License, 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 License 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 License.

## 16. INSURANCE

Licensee agrees to obtain, and keep in force during the term of the License, at Licensee'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 \$1,000,000.000 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. Licensee shall also comply with all applicable statutory worker compensation requirements. Upon request by

OSA, Licensee shall direct his insurer or insurance agent to furnish OSA with a copy of any policy required by this License, certified to be a true and complete copy of the original.

## 17. GENERAL PROVISIONS

**a) Amendments; Entire Agreement.** Neither this License 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 License, 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 License shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this License) may be introduced in any judicial, administrative or other legal proceedings involving this License. Licensee 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 License except expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Licensee by implication or otherwise unless expressly set forth herein.

**b) Waiver.** No waiver of any term, provision or condition of this License, 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 License.

**c) Severability.** If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, 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 License 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 License 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 License and are not to serve as a basis for interpretation or construction of this License, or as evidence of the intention of the Parties hereto.

**g) Notices.** Wherever this License 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 Licensee at any time, in the manner provided herein, change the place or person designated for receiving notice.

LICENSEE:

[NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

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Telephone:

LICENSOR:

Megan Robinson  
Santa Clara County Open Space Authority  
Megan Robinson  
6980 Santa Teresa Blvd. Suite 100  
San Jose, CA 95119  
Cell: (408) 506-8267  
Land Management Office: (408) 226-3175  
Administrative Office: (408) 224-7476

IN WITNESS WHEREOF the parties hereto subscribe their names.

OSA:

LICENSEE:

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
[NAME]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Legal Counsel  
Santa Clara County Open Space Authority

**EXHIBIT A**

(Map and Description of Property)

**EXHIBIT B**

(Map and Description of Grazing Area)

**EXHIBIT C**

**GRAZING FEES ADJUSTMENT CALCULATION**

For the purpose of calculating the per AUM rental rate, the average selling price of beef cattle shall be taken as the average selling price of Medium Frame No. 1 Muscling Steers and Heifers, 500-800 lbs., as reported by the Cattle Marketing Information Service, Inc. (Cattle Fax) for the month of June prior to the start of the new License year. In the event that the average sales price of beef cattle is not obtained in any year from Cattle-Fax as now constituted, then the average sales price to be used in determining the rental rate shall be obtained from some other authentic source to be selected by OSA as providing a comparable price for this purpose.

**EXAMPLE**

OSA property- 50 AUM's per month for an average of 8 months=400 AUMs

Total Grazing Capacity= 400 AUM

Per AUM Rent adjusted= \$13.89-.49 = \$13.40

Fees for first License year= 400 AUM X \$13.40= \$5,360

The total authorized AUMs shall be established by OSA on the basis of the Grazing Capacity of the Property as determined by OSA, and stocking levels shall be computed by calculating the relative forage requirements of each of the kind or kinds of livestock intended to be grazed on the Property in any one grazing year, as expressed by the following conversion factors:

<b><u>Type of Livestock</u></b>	<b><u>Animal Unit Months (AUMs)</u></b>
Adult Cow with Calf up to 6 months old	1.00
Heifer or Steer, 2 years & older (1,000 lbs., or more)	1.00
Yearling to 2-year-old (750 to 1,000 lbs.)	0.75
Weaned Calf to Short Yearling (up to 750 lbs.)	0.50
Bull	1.00
Horse	1.25
Sheep	0.20
Goat	0.20

Licensee shall use the Property only for grazing the type of livestock permitted by OSA under the terms of the License

**EXHIBIT D**

**SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

**FEES CREDIT PROPOSAL**

Written bids should be attached. If more space for Project Description or Costs is needed, attach additional sheets.

**Date Submitted:** \_\_\_\_\_ **Date Completed:** \_\_\_\_\_

**Property Name:** \_\_\_\_\_ **Licensee Name:** \_\_\_\_\_

**Project Description** (include type of work involved and location within the grazing unit):

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**Estimated Project Costs**

Licenses (include Licensees' names and bid amounts):

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*Total Estimate License Cost:* \_\_\_\_\_

*Total Final License Cost:* \_\_\_\_\_

Materials (include itemized list of materials needed to complete the project and their cost; attach additional page(s), if necessary):

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*Total Estimate Materials Cost:* \_\_\_\_\_

*Total Final Cost:* \_\_\_\_\_

Labor (include name(s) of person(s) contributing labor, their estimated time involved in the project, and their cost per hour or day):



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*Total Estimate Labor Cost:* \_\_\_\_\_

*Total Final Labor Cost:* \_\_\_\_\_

Rental Equipment (include type of equipment needed, estimated rental time, and cost per hour or day; include hourly rate of equipment operator if this is a separate expense):

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*Total Estimate Rental Equipment Cost:* \_\_\_\_\_

*Total Final Rental Equipment Cost:* \_\_\_\_\_

**Total Estimated Project**

**Cost\*:** \_\_\_\_\_

**Total Final Project**

**Cost:** \_\_\_\_\_

**Estimated/Actual Completion**

**Dates:** \_\_\_\_\_

**Approvals (signature and date):**

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Licensee

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Property Supervisor