

**GRAZING LEASE
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
FIVE DOT LAND & CATTLE COMPANY
FOR A PORTION OF THE PROPERTY KNOWN AS
BENICIA
LOCATED IN SOLANO COUNTY, CALIFORNIA**

PREAMBLE

This grazing lease (Lease Agreement) is entered into between the City of Santa Clara, California, a chartered municipal corporation (City) and Five Dot Land & Cattle Company, a California corporation (Lessee). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease Agreement."

RECITALS

- A. City owns a certain parcel of real property located in Solano County, California, generally known as the Benicia Ranch Property (herein the "Property") which is more fully described in this Lease Agreement, in Exhibit B, entitled "Property Description," attached hereto and incorporated herein by reference;
- B. City owns and operates its own municipal electric utility, Silicon Valley Power. The Property was purchased by City as a part of a comprehensive plan to acquire its own electric resources and the Property is part of City's long-term plan to accomplish that public purpose;
- C. To help meet carrying charges incurred by City and to maintain good economic use of the Property, City seeks other uses of the Property which are compatible with its primary purpose of electricity generation and transmission. The other presently anticipated uses, all of which shall be subject to the above-stated primary uses, may include mining, microwave communication station(s), use of ranch houses and adjoining yards and garden areas, and cattle grazing; and,
- D. Lessee is aware of City's intention and desires to enter into this Lease Agreement under the Terms and Conditions set forth herein, and acknowledges that the secondary uses proposed under this Lease Agreement shall be compatible and subservient to City's primary electric generation and transmission use.

The Parties agree as follows:

LEASE AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Lessee shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Special Provisions

Exhibit B – Property Description

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all of the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

A. The initial term of this Lease Agreement is for five (5) years, commencing on the Effective Date of this Lease Agreement, and may be extended for an additional five (5) year period. Any extension of this Lease Agreement is subject to the discretion and written agreement of the Parties hereto.

3. DESCRIPTION OF PREMISES

City agrees to lease to Lessee, and Lessee agrees to lease from City, a portion of the Property. The portion of the Property which comprises the leased real property ("Premises") consists of approximately 2,050 acres of land ("Original Lease Acreage"), to be used for grazing purposes, more fully described in Exhibit B.

This Lease Agreement excludes the following areas within the perimeters of the Property:

A. Main Ranch Complex: Consisting of two (2) ranch houses and one (1) mobile home site together with their adjoining yards and garden areas; 600-foot hay barn; milking barn; and all other ranch buildings and barns including their immediate yard areas as depicted in Exhibit B, Sheets B-1 and B-2;

- B. Lower Ranch Site: Approximately 2.5 acres of land encompassing two (2) ranch houses and two (2) barns including their surrounding pastures, yards and sheds as depicted in Exhibit B, Sheets B-1 and B-3;
- C. Quarry Site: Consisting of 32 acres of City property and 32 acres of Parish property as depicted in Exhibit B, Sheets B-1 and B-4; and
- D. Chevron Microwave Site: Consisting of a 50' x 60' fenced communication station together with a 12-kilovolt line easement and access road as depicted in Exhibit B, Sheet B-1.

4. USE OF PROPERTY

The Premises is leased to Lessee for the express purpose of feeding, grazing, maintenance, and production of livestock and livestock products including: cattle and horses only. Human occupancy overnight is not allowed, except under special circumstances as pre-authorized in writing by City. Commercial wholesale or retail operations are not allowed on the Premises. Lessee shall not use, or permit to be used, any part of the Premises for any purpose other than the purposes for which the Premises are leased. All operations incident to this use of the Premises shall be carried on according to the best course of husbandry practiced in the vicinity including maintaining fencing and providing firebreaks, as may be required by governmental authority, law, order, rule or regulation.

5. SECURITY DEPOSIT

To secure the faithful performance of Lessee's obligations hereunder, Lessee shall provide to City a security deposit in the form of check or electronic fund transfer, in the amount of Five Thousand Dollars (\$5,000) ("Security Deposit"). Lessee agrees to pay Security Deposit fourteen (14) days after the Effective Date of this Lease Agreement. These funds shall be retained during the entire term of this Lease Agreement and any extensions. City shall have the right to draw against the Security Deposit in the event of a default by Lessee or in the event that Lessee fails to meet and fully perform any of its material obligations under this Agreement, following thirty (30) days written notice from City specifying the type and nature of such default and the actions required by Lessee to cure the same. Within thirty (30) days of receipt of written notice from City of its draw against the Security Deposit in accordance with this Agreement, Lessee shall bring the Security Deposit to the full amount stipulated herein.

In the event of termination of this Lease Agreement, City will return the Security Deposit within thirty (30) days on condition that the Premises are restored and all accounts are current.

6. RENT

Lessee shall pay City a semiannual rental payment ("Semiannual Base Rent") of Forty-Two Thousand Eighty-Six Dollars and Fifty Cents (\$42,086.50) payable in

advance. The first Semiannual Base Rent payment is due fourteen (14) days after the Effective Date of this Lease Agreement. Subsequent payments shall be made semiannually after the Effective Date ("Due Date"). Lessee shall not take possession of Property until City has received payment.

The Semiannual Base Rent Payment shall be increased each year on the anniversary of the Agreement by three percent (3%).

Lessee, as additional rent under this Lease Agreement, shall at Lessee's own expense, perform all conservation and maintenance work in accordance with the specifications and guidelines set forth in Exhibit A, entitled "Special Provisions" attached hereto and incorporated herein by reference. If Lessee fails to perform the required conservation and maintenance work, City may arrange for the work to be completed and Lessee shall be required to reimburse City for costs incurred.

7. DELINQUENCY CHARGE

Failure of Lessee to pay the Semiannual Base Rent or any other payments due to City by the Due Date shall constitute a default. In the event that Lessee fails to pay the Semiannual Base Rent or other payments due to City on or before the Due Date, simple interest on unpaid, undisputed amounts of the payment shall accrue, at one percent (1%) per month until paid in full.

8. TAXES AND ASSESSMENTS

The property interest created by this Lease Agreement may be subject to property taxation and Lessee hereunder in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the state, county, city or any tax or assessment levying body upon any interest in this Lease Agreement or any possessory right which Lessee may have in possessory interest or to the Property covered hereby by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Property and shall hold City harmless therefrom.

9. LEASE AGREEMENT SUBJECT TO RIGHTS OF CITY AND OTHERS

This Lease Agreement is subject to the following conditions and restrictions:

- A. All existing easements, servitudes, licenses, and rights-of-way for canals, ditches, levees, roads, highways, telegraph, telephone, electric and other power transmission lines, railroads, pipelines, and other purposes, whether recorded or not;

- B. The rights of other lessees under any existing or future oil, gas, and mineral lease or leases affecting the entire or any portion of the Premises, whether recorded or not; and,
- C. The rights retained by City under this Lease Agreement, including but not limited to:
 - i. City's intended purposes related to development, production and distribution of electrical power;
 - ii. Exclusive use by City or its tenants of all areas and facilities on the Premises as described in Section 3, and Exhibit B;
 - iii. The nonexclusive rights of ingress and egress to the Premises by existing roadways to City and its Lessees, tenants, visitors, or assigns, to gain access to the premises; and,
 - iv. The nonexclusive water rights to all water wells, springs, ponds and their associated equipment.

10. ENTRY BY CITY

Lessee shall permit City at all times, to enter the Premises and to use the roads established on the Premises now or in the future, for the purposes of inspection, compliance with the Terms and Conditions of this Lease Agreement, exercise of all rights under this Lease Agreement, posting notices and all other lawful purposes. Lessee shall supply City with keys and other instruments necessary to affect entry on the Premises. Lessee shall make and keep pertinent records of all operations and conduct under this Lease Agreement and shall make them available to City at all reasonable times for inspection.

11. REPRESENTATIONS

Lessee has examined, knows and accepts the condition and state of the Premises and all appurtenances and acknowledges that City has made no representation concerning such condition or any agreement or promise to alter, improve, adapt, repair or keep in repair the Premises and appurtenances, or any item thereof, which has not been fully set forth in this Lease Agreement which contains all the agreements made and entered into between Lessee and City. City makes no warranty of suitability for grazing or any other purpose which Lessee is authorized to do under this Lease Agreement.

12. IMPROVEMENTS

All improvements constructed or installed under the provisions of this Lease Agreement shall become the property of City and shall remain in place and intact upon the expiration or earlier termination of this Lease Agreement. Lessee shall not make, or permit to be made, alterations of the Premises, without first obtaining City's written consent. Lessee, during the term and at the termination of

this Lease Agreement, if not in default hereunder, may remove any of its personal property (including identification signs) from the Premises which can be removed without causing any damage to the Premises. Any personal property to be removed pursuant to this Section must be removed from the Premises prior to the last day of this Lease Agreement.

Subject to the prior written approval of City, Lessee shall have the right to erect temporary structures on the Premises as may be necessary or incidental to its use under this Lease Agreement. Lessee shall pay any and all taxes imposed on such structures. All such structures shall remain the property of Lessee and Lessee shall remove these structures from the Premises prior to the expiration of the term or termination of this Lease Agreement. All property not removed shall be deemed abandoned by Lessee and may be used or disposed of by City in manner whatsoever without compensation to Lessee. Such abandonment shall in no way reduce any obligation of Lessee to restore the Premises.

13. LIENS

Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Property by Lessee and shall keep the Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission.

14. UTILITIES

Lessee agrees to pay the cost of all utilities furnished to it in connection with its use and occupation of the Premises. City is not obligated to provide or pay for any utility services, but in the event City by arrangement with Lessee provides or pays for any utility services, Lessee shall pay City for such services or reimburse to City any payment City has made for such services not later than the first business day of the calendar month following Lessee's receipt from City of a billing statement for said services or reimbursement. Any and all other utility services required by Lessee shall be provided by Lessee at its expense.

15. DAMAGE TO CITY PROPERTY

In the event of the destruction of or damage to any City property located on or adjacent to the Premises by Lessee, or any of its officers, agents, servants, employees, subtenants, licensees or invitees, Lessee shall promptly repair or replace such property to the satisfaction of City, or pay to City an amount of money sufficient to compensate it for the loss or damage sustained, as City shall elect.

16. ALTERNATE COMPATIBLE USES

It is understood that City contemplates the erection and operation electrical generation facilities on the Premises. City may determine that there are other compatible uses for the number of grazing acres included in the Premises. To the

extent that such uses reduce the number of grazing acres included in the Premises, the Semiannual Base Rent shall be adjusted in proportion to the number of grazing acres remaining in this Lease Agreement following the reduction.

17. CONDEMNATION

If a part of the Premises is condemned for a public use, and the remaining part which is not condemned is retained by Lessee, this Lease Agreement shall terminate, as to the part taken, on the date that a certified copy of the final order of condemnation is filed in the office of the County Recorder. The Semiannual Base Rent payable under this Lease Agreement shall be adjusted in proportion to the number of acres remaining in the Premises following condemnation. City may, at its option, restore fences and replace access roads lost by the condemnation or City may terminate this Lease Agreement in accordance with Section 18 of this Lease Agreement. In the event that the Original Leased Acreage is reduced by more than fifty percent (50%), and the remaining acreage is less than that which is acceptable to the Lessee, Lessee has the option, upon sixty (60) days written notice to City, to terminate this Lease Agreement.

If the entire or a part of the Premises is taken or condemned, all compensation awarded on condemnation shall go to City, with Lessee having no claim to compensation. Lessee irrevocably assigns and transfers to City and right to compensation or damages to which Lessee may become entitled during the term of this Lease Agreement by the condemnation of the entire or a part of the Premises.

18. TERMINATION

- A. Termination by City. If City finds that there is a public need for use or sale of the Premises or Property, including appurtenance and improvements, or part not otherwise reserved in City under the terms of this Lease Agreement, which conflicts with Lessee's use of the Premises, City can direct that any and all rights of Lessee hereunder shall immediately cease and terminate as to that portion of the Premises for which there is a need upon one hundred eighty (180) days written notice of intention to terminate without claim or charge to City, and any assignment, subletting and licensing by Lessee shall likewise be so conditioned.
- B. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than ninety (90) days' prior written notice to Lessee. In the event that City terminates this Lease Agreement for convenience, City shall refund Lessee a prorated amount of the Semiannual Base Rent Payment, if applicable.
- C. Termination for Default. If Lessee fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Lessee. In the event that City terminates this Lease

Agreement on account of breach by Lessee of any of the terms and conditions of this Lease Agreement, no adjustment in advance rentals paid by Lessee shall be made. Additionally, City shall be entitled to recover, and Lessee shall pay to City, all of the following amounts:

- i. The cost incurred in resuming possession of the Premises;
 - ii. The costs incurred in performing any obligation on behalf of Lessee which is required to be performed under this Lease Agreement; and,
 - iii. An amount equal to the aggregate of all rents and charges assumed hereunder and not theretofore paid, less the net rentals, if any, collected by City on the reletting of the Premises. Such amounts shall be due and payable at the time when the rent under this Lease Agreement would become due and payable.
- D. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Lessee will deliver to City all City information or material that Lessee has in its possession.
- E. Upon termination, Lessee shall peacefully and quietly quit and surrender possession of the Premises and all appurtenances to City subject to all the Terms and Conditions of this Lease Agreement, and Lessee agrees to pay all monies then due and owing to City at such time, provided for in this Lease Agreement, or as a result of operations thereunder by Lessee, or in consequence thereof. Before the expiration of this Lease Agreement or the prior termination thereof, Lessee shall, if required to do so by City, restore the Premises to the condition existing at the time of its entrance thereon under this Lease Agreement, or to such improved condition as they may have been placed in by City or Lessee during the term of this or any prior Lease Agreement, reasonable wear and tear and damaged by the elements or from other causes over which Lessee had no control excepted.

19. HOLDING OVER

Lessee expressly waives the benefits conferred by California Code of Civil Procedure § 1161, which relates to the holding over upon grazing land after the termination of a Lease Agreement.

20. ABANDONMENT

Lessee shall not vacate or abandon the Premises at any time during the term; and if Lessee does abandon, vacate, or surrender the Premises, or is dispossessed by process of law, or otherwise, personal property belonging to Lessee and left on the Premises shall be kept for a reasonable time by City, but

in no event longer than fifteen (15) days after City gives Lessee notice to remove the property from the Premises, after which time, if it has not been reclaimed by Lessee, it may be treated by City as abandoned.

21. SURRENDER OF LEASE AGREEMENT NOT MERGER

The voluntary or other surrender by Lessee, or a mutual cancellation, of this Lease Agreement shall not work a merger, and shall, at City's option, terminate all existing subleases or sub tenancies, or may, at City's option, operate as an assignment to City of any or all subleases or sub tenancies.

22. FORFEITURES

- A. It is mutually covenanted and agreed and this Lease Agreement is made upon the condition that if rents or other sums which Lessee herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any of the terms, agreements, conditions or covenants herein contained on the part of Lessee, or should Lessee abandon and cease to use the Premises for a period of thirty (30) days or more at any one time except when use of the Premises is prevented by fire, earthquake, war, strike or other calamity beyond its control, then in any such event, at its option, City may declare this Lease Agreement forfeited, whereupon all improvements of every kind and description including all Leasehold Interests shall, at the option of City, be forfeited to and become the property of City, and City may exercise all rights of entry and re-entry into and upon the Property.
- B. Lessee shall not be considered to be in default until the expiration of fifteen (15) days of the Due Date in the case of a failure in the payment of rent or other sums herein provided to be made by Lessee, or ninety (90) days, in all other instances, after written notice by City to Lessee. If during such fifteen (15) or ninety (90) day period, such failure or condition in violation of the provisions of this Lease Agreement shall have been cured or obviated by Lessee, any right of City to terminate this Lease Agreement or re-enter the Premises by reason of such failure shall cease.

23. RIGHT OF ENTRY AS AGENT

In any and all cases in which provision is made herein for the termination of this Lease Agreement, Lessee hereby irrevocably appoints City the agent of Lessee to enter the Premises and remove any and all persons and/or property whatsoever situated into or upon the Premises, and place all or any portion of said property, except such property as may be forfeited to City, in storage for account of and at expense of Lessee; and in such case City may relet the Premises upon such terms as it may deem fit, and if a sufficient sum shall not thus be realized after paying expenses of such reletting and collecting to satisfy the rent and other sums herein agreed to be paid, Lessee agrees to satisfy and pay any deficiency, and to pay expenses of such reletting and collecting. Lessee hereby exempts and agrees to save harmless City from any cost, loss or damage

arising out of or caused by any such entry or re-entry into and upon the Premises and/or property and storage of such property by City or its agents.

24. WASTE

Lessee shall not commit, or permit others to commit, on the Premises, waste, or a nuisance, or any other act that could disturb the quiet enjoyment of City or any other tenant of City on reserved or adjacent property. Lessee understands and agrees that the storage and/or disposal on the Premises of any hazardous material that is unacceptable to any appropriate agency, whether local, county, state, or national is not permitted in or on the ground or into any drains, wash basins, toilets or the like, including storm drains. Lessee agrees to have any such liquid and/or material removed from the Premises including, if necessary, the hiring of a commercial disposal service, all at Lessee's expense and to the satisfaction of City.

25. OIL, GAS, MINERAL AND WIND RIGHTS

All rights in all minerals, oil, gas, wind, and other hydrocarbons located on, over or under the Premises are particularly reserved to City and are particularly excepted from the property covered by the terms of this Lease Agreement. Lessee expressly grants to City, and to lessees of these oil, gas, wind, and mineral rights, and to City's agents and licenses, a right of entry and a right-of-way for ingress and egress in and to, over and on, the Premises during the term of this Lease Agreement for the exploration, drilling, and mining of minerals, wind, oil, gas, and other hydrocarbons on the Premises.

26. HUNTING

Hunting or shooting on the Premises is expressly prohibited.

27. TIMBER RIGHTS

All timber rights, of every kind and character, in the Premises are reserved to City, which has the right to cut and remove the timber, or otherwise exercise all timber rights, at all times during the term of this Lease Agreement. Lessee shall not cut down, destroy, or remove, any trees, or shrubs, known or hereafter standing or growing upon the Premises without the written consent of City.

28. FEDERAL SUBSIDY PARTICIPATION (IF APPLICABLE)

Lessees of agricultural land who wish to enter into any United States Department of Agriculture, Agricultural Stabilization and Conservation Service ("USDA/ASCS") programs or agreements shall do so solely at the discretion of and subject to the USDA/ASCS rules and regulations. City makes no guarantees regarding agricultural uses of the Premises regarding normal crop acreage, allotments for crops, or the qualification of the land for USDA/ASCS programs.

29. ASSIGNMENT OR SUBLETTING

Lessee may not assign this Lease Agreement, or any rights under it, and shall not sublet the entire or any part of the Premises, or any right or privilege appurtenant to the Premises, or permit any other person (with the exception of the agents of Lessee) to occupy or use the entire or any portion of the Premises, without first obtaining City's written consent. City shall not unreasonably withhold consent to assignment, sublease, or other transfer of use or possession of the Premises. Consent to one assignment, subletting, occupancy or use by another person is not consent to a future assignment, subletting, occupancy or use by another person. An assignment or a subletting without City's consent shall be void, and shall, at City's option, terminate this Lease Agreement. No interest of Lessee in this Lease Agreement shall be assignable by operation of law without City's written consent. No assignment, subletting, or encumbrance by Lessee shall release it from any obligations hereunder.

30. SUBORDINATION

This Lease Agreement shall be subordinate to any mortgages or deeds of trust by City that may subsequently be placed on the Premises, to all advances made under them, to the interest on all obligations secured by them, and to all renewals, replacements, and extensions of them. Provided, however, the mortgagee or beneficiary in those mortgages or deeds of trust shall recognize this Lease Agreement in the event of foreclosure if Lessee is not in default under the terms of this Lease Agreement.

31. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

32. INDEPENDENT LESSEE

Lessee and all person(s) employed by or contracted with Lessee to furnish labor and/or materials under this Lease Agreement are independent Lessees and do not act as agent(s) or employee(s) of City. Lessee has full rights to manage its employees in their performance of Services under this Lease Agreement.

33. RULES AND REGULATIONS

Lessee shall comply with such rules and regulations may be prescribed, from time to time, by City.

34. TIME OF ESSENCE

Time is of the essence in this Lease Agreement.

35. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with this Lease Agreement – including claims of any kind by Lessee's employees or persons contracting with Lessee – and shall expressly include passive or active negligence. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Lessee's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, Lessees, Sublessees or other agents of Lessee, against City (either alone, or jointly with Lessee), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Lessee is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Lessee warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Lessee's responsibilities under the Act.

36. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Lessee shall provide and maintain in full force and effect, at no cost to City insurance policies as set forth in Exhibit C.

37. INSURANCE HAZARDS

Lessee shall not use the Premises nor permit others to use them, nor do or permit acts that will increase the existing rates of insurance on the structures, trees or crops on the Premises, or cause a cancellation of any insurance policy covering, in whole or in part, the structures, trees, and crops; nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any articles that are prohibited by the standard form of fire insurance policies. Lessee shall comply with all requirements, applying to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance covering the structures, trees and crops.

38. WAIVER

Lessee agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

39. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows.

City of Santa Clara

Attention: Electric Department

1500 Warburton Avenue

Santa Clara, CA 95050

And by e-mail at dshiles@santaclaraca.gov, and

manager@santaclaraca.gov

And to Lessee addressed as follows:

Five Dot Land & Cattle Company

Attention: Todd Swickard, Secretary

P.O. Box 50

Standish, CA 96128

530-254-6987

todd@fivedotranch.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

40. COMPLIANCE WITH LAW

Lessee shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Lessee's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Lessee has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

41. CONFLICTS OF INTEREST

Lessee certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Lessee and that no person associated with Lessee has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Lessee is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Lessee will advise City if a conflict arises.

42. FAIR EMPLOYMENT

During the term of this Lease Agreement, Lessee shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

43. NO USE OF CITY NAME OR EMBLEM

Lessee shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

44. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

45. AMENDMENT

This Lease Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Lease Agreement.

46. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

47. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same

instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

FIVE DOT LAND & CATTLE COMPANY
A CALIFORNIA CORPORATION
"LESSEE"

Dated: _____

By (Signature): _____

Name: Todd Swickard

Title: Secretary

Principal Place of
Business Address: P.O. Box 50, Standish, CA 96128

Email Address: todd@fivedotranch.com

Telephone: 530-254-6987

Fax: 530 254-6968

EXHIBIT 1 SPECIAL PROVISIONS

Lessee shall apply conservation and maintenance measures and use the Premises by following generally accepted grazing practices. Lessee shall in no manner substantially change the condition of the Premises except for such changes prescribed by City.

1. Site Coordination. Lessee shall closely coordinate Lessee's operations with City. Lessee must be available at all times to correct emergency situations in regards to this Lease Agreement. Lessee must provide City with emergency telephone numbers where Lessee may be contacted during working and nonworking hours. Lessee shall also provide at least one alternate contact (name, address, and phone number) who may act on behalf of Lessee in emergency situations. Lessee or Lessee's alternate(s) must be available for contact seven days per week, 24 hours per day, and must arrive on site within two hours of an emergency. Lessee must provide information for a qualified veterinarian that is authorized to care for the livestock by Lessee in case of an emergency.
2. Conservation and Maintenance Work. It is the intent of City that the land be utilized for multiple uses including, but not limited to, utility, grazing, wildlife habitat, recreation, and soil and water conservation. Lessee is required to participate in a conservation and maintenance program as outlined in these Special Provisions and as may be further directed from time to time by City based upon accepted range and grazing practices. The conservation and maintenance measures are intended to provide for the long-term productivity of the grazing area on the Premises while protecting natural resources and permitting a reasonable economic return to Lessee. Lessee will be responsible for performing conservation and maintenance of the Premises at Lessee's own expense.
3. Grazing Management.
 - a. Grazing Intensity. The amount of grazing must be sufficient each year to reduce overall fire hazard while protecting against soil erosion. It is the express concern of City that the range not be overgrazed. Lessee agrees to avoid grazing where the soil is very wet or muddy and damage is likely to occur. A pasture rotation plan for protection against overgrazing shall be submitted each year by Lessee to City for review and approval. This plan must insure protection of all grazing areas on the Premises from overgrazing or related damage. A minimum three inch stubble height of vegetation shall be maintained in each grazing area at all times.
 - b. Season of Use. The grazing season is yearlong, subject to availability of feed and water.
 - c. Livestock Tagging. Livestock must be tagged with identification ear tags or other recognized tagging method that uniquely identifies the livestock and

its owner.

- d. Livestock Distribution. Lessee shall strive for optimum distribution of livestock over the leased area. Salt blocks and feed supplements shall not be located within 1/4 mile of watering areas but shall be distributed uniformly throughout the leased area.
- e. Animal Health. Lessee shall comply with all federal, state and local animal health laws, and regulations with respect to livestock grazing on the Premises. Any livestock that requires medical intervention must be treated by a licensed veterinarian immediately. City or City caretaker shall contact Lessee if injured or ill livestock is discovered. If Lessee does not respond within a reasonable timeframe in relation to the injury or illness, City or City caretaker may contact the listed veterinarian for emergency treatment at Lessee's sole expense.
- f. Removal of Deceased Livestock. Lessee, at Lessee's own expense, shall immediately dispose of any deceased animals in a manner satisfactory to City and in accordance with local ordinances. Disposal shall take place within 24 hours or sooner after notification to Lessee.
- g. Supplemental Feeding. Supplemental feeding may be allowed in any lease year provided Lessee annually submits a prior written request and subsequent written permission is granted from City. Care must be taken so that Supplemental Feed does not introduce any non-native vegetation, rodents or insects to the Premises.
- h. Standard of Operation. Lessee agrees to manage and operate the Premises in an efficient and appropriate manner following acceptable land use practices.
- i. Security and Access. Access to and from the Premises is strictly controlled. The access point for the Premises shall, unless otherwise authorized by City, be through the main ranch house complex at 2313 Lopes Rd., Benicia CA, 94510. If a City caretaker is present on the Premises, all persons representing the Lessee are required to register with City caretaker and must identify themselves to City or City caretaker while on the Premises. The number of livestock occupying the Premises at any one time shall be registered in a City-issued log book ("City log book") kept by City caretaker or kept by the Lessee in the case of no caretaker present on the Premises. All movements of livestock on or off of the Premises shall be recorded in City log book including livestock escapes. City shall, upon entering and/or leaving the Premises, close and secure all gates to the Premises used in entering or leaving. This is essential to the proper control of livestock and to control access to the Premises by other persons or animals. Lessee shall not take any actions which interfere with the legitimate activities of other authorized Lessees on the Premises.

- j. On Site Contractors. If at any time City requires City employees or contractors to perform work that may require that the livestock be restricted from a portion of the Premises, City shall provide Lessee notice so that any necessary temporary fencing or other livestock control facilities may be erected at the Lessee's sole expense.
 - k. Animal Aggressiveness. Livestock shall not be overly aggressive as to pose a risk towards neighbors, visiting City officials or persons otherwise on the Premises and/or Property. Any such livestock must be removed immediately from Premises once aggressive behavior has developed.
 - l. Escaped Livestock. Lessee is responsible for any damage caused by its livestock that escape and leave the Premises. Lessee must be able to contain the animal within two hours notification of escape. After the livestock is secured Lessee must take measures to ensure that the escape will not reoccur. The number of escaped livestock with livestock identification numbers, incident details, and remedial actions taken must be recorded in City log book by Lessee.
4. Water. During the term of this Lease Agreement, water shall be available to Lessee for Lessee's livestock from springs and pipelines presently existing on the Premises; and from the domestic well and pump located at the main ranch house, if required, and to the extent such use does not interfere with the domestic and animal water requirements of other Lessees at that location. Water from the sources to or on the Premises available to Lessee under this Lease Agreement shall be used only on the Premises and in the performance of Lessee's obligations under this Lease Agreement. Lessee shall not export this water to other lands. City assumes no responsibility to Lessee for any water shortage from the facilities mentioned above and assumes no responsibility for and does not warrant the quality or quantity of the water supply on or to the Premises. All watering systems presently on the Premises shall be for the exclusive use of cattle or horses while this Lease Agreement applies to the areas where the systems are located.
5. Maintenance. Lessee, at Lessee's own expense, shall frequently inspect and maintain existing and future livestock watering facilities during the term of this Lease Agreement, including springs, ponds and water troughs. Maintenance includes, but is not limited to: maintaining water free of excessive amounts of algae, silt and manure; clearing obstructions away from drain and spillways, repairing float and valve mechanisms, cleaning or replacing blocked or damaged piping, repairing spring boxes, and stabilizing reservoir slopes.

Lessee shall care for the Premises and appurtenances of the Premises, including, but not limited to, perimeter fencing (including the fencing surrounding the excluded areas of the Property), corrals, springs, water troughs, and fire breaks, and maintain them in the same or better order and condition in which received, ordinary wear and tear excepted. Roads may serve as firebreaks provided that their function as roads is not degraded. Disking of roads is strictly

prohibited. All materials used in maintaining City owned facilities shall be of at least the same type of quality as those used in original construction. All materials used for such repairs shall become the property of City and shall not be removed by Lessee upon termination of this Lease Agreement.

- a. Management of Maintenance Areas. Maintenance areas shall be managed to prevent erosion. Lessee, at Lessee's own expense, shall control weeds on maintenance areas at a maximum height of 6" per year by mowing, chopping or spraying. No soil sterilants may be used. Any area on the Premises which is not grazed shall be considered a maintenance area.
- b. Pest Management. Lessee shall, at his own cost and expense, comply with all state, county, city, and district weed and rodent control programs. The following weeds and rodents shall be controlled to the satisfaction of City whether under any control program of the state, county or city, or not.

Weeds

Artichoke thistle
Purple star thistle
Rattleweed

Rodents

Ground squirrel

Artichoke thistle and purple star thistle control shall be performed annually by April 1st on a nonreimbursable basis with a minimum 95% kill. The term "pesticide" includes herbicides, insecticides, fungicides, rodenticides, algaecides, and avicides. Lessee may apply limestone or commercial fertilizer to established meadows and pastures for soil improvement at Lessee's expense and consistent with the terms of this Lease Agreement. All such improvements shall become and remain the property of City. Lessee shall be responsible for complying with all federal, state, and local environmental standards, including obtaining required permits. At least five working days prior to pesticide application, Lessee shall furnish City the following information:

- i. Common name/concentration of the product;
- ii. Formulation of the product;
- iii. Amount to be used;
- iv. Target pest or weed (if applicable);
- v. Crop and acreage to be treated;
- vi. Application rate/acre; and
- vii. Time/frequency of application.

Lessee shall not proceed with the application program without a forty-eight (48) hour prior notification and subsequent receipt of City approval.

6. Fire Prevention. Lessee agrees to repair and maintain all firebreaks to the extent such repairs or maintenance is required from time to time by governmental authority, law, order, rule or regulations. Lessee shall comply with local fire control and prevention regulations. In the event of any accidental or uncontrolled fire on the Premises, Lessee shall immediately contact the fire department and exercise due care to prevent damage to the Premises from such a fire.
7. Equipment. All engine-driven equipment used by Lessee on the site must be equipped with properly operating spark arresters, mufflers, and tailpipe assemblies. In addition, any vehicle having a catalytic converter pollution device may not be driven off of improved roads due to the extreme heat generated by the device during the dry season. City will fence or otherwise secure equipment, structures, apparatus, and other critical items from grazing livestock, specifically including many windmills, wind power apparatus or other electrical generation facilities of City or other Lessees of City, at City's sole discretion.
8. Storage of Equipment and Materials. Equipment utilized in the operation of this Lease Agreement may be stored only in an area approved by City. No hazardous material shall be stored on the Premises.
9. Debris Removal. Lessee shall maintain all areas of the Premises in a neat and orderly appearance at all times. Broken down or discarded equipment or material shall be removed from the Premises immediately. Lessee may burn debris or waste located on the Premises only with the previous written permission of City. Lessee must also obtain the appropriate permits from governmental agencies before any burning is done on the Premises.
10. Erosion Control. Lessee shall apply prudent erosion control measures as prescribed by City, county and/or special district to reduce the loss of soil due to the actions of wind and water.
11. Additional Conservation Work. City may approve projects determined to be in the best interest of City for construction by Lessee on a cost sharing basis. Upon completion of the work and acceptance by City, Lessee shall receive payment in full for City's portion of actual costs, previously agreed to in writing by City, or shall receive rent credit in the same amount against rents payable under the terms of this Lease Agreement. However, in no event shall a rent credit exceed the total amount of cash rent required by the Lease Agreement. Lessee shall be responsible for maintenance of such completed projects at Lessee's own expense. Lessee hereby acknowledges that any such work may be subject to the requirements of California Labor Code section 1720 et seq., including requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements, and agrees to abide by those requirements.

EXHIBIT B
PROPERTY DESCRIPTION

THE LAND REFERRED HEREIN AS DESCRIBED AS FOLLOWS:

City owned real property generally known as the Benicia Ranch, located in the County of Solano, State of California,

DESCRIBED AS FOLLOWS:

PARCEL ONE:

Being that portion of Real Estate situated in Section 5 and 6 in Township 3 North, Range 2 West, Mount Diablo Base and Meridian; Section 31 in Township 4 North, Range 2 West, Mount Diablo Base and Meridian; section 36 in Township 4 North, Range 3 West, Mount Diablo Base and Meridian; and Section 1 in township 3 North, Range 3 West, and formerly known as the "Bartlett Ranch" and which is more particularly described as Parcel One in the deed recorded in Book January 7, 1982 of Solano County Official Records at Page 797, therein, as Instrument No. 452.

EXCEPTING — however, from the above described parcel of land all that portion conveyed by Antone Doe Reis, et al, to Family Gun Club by deed dated September 25th 1908 and recorded January 15, 1910 in Book 173 of deeds, Page 29, Solano County Records, and being all that portion lying easterly of the westerly line of County Road No. 87.

ALSO EXCEPTING THEREFROM - those certain parcels of land described in deed dated November 29, 1961, from Antone Lopes, also known as Tony Lopes, and Zelinda Lopes, husband and wife, to the State of California, recorded March 14, 1962 in Book 1129 of Official Records, Page 286, Instrument No. 62270.

PARCEL TWO:

Being that portion of real estate in Sections 6 and 7 in Township 3 North, Range 2 Est, Mount Diablo Base and Meridian, and is more particularly described as Parcel Two of that deed recorded in Book January 7, 1982 of Solano County Official Records at Page 797, therein, as Instrument No. 452.

PARCEL THREE:

Being that portion of real estate situated in Sections 5 and 6 in Township 3 North, Range 2 West, Mount Diablo Base and Meridian, and portion of Section 31 and 32 in Township 4 North, Range 2 West, Mount Diablo Base and Meridian, and is more Lease Agreement with Five Dot Land Cattle Co.

particularly described as Parcel Three in that deed recorded in Book January 7, 1982 of Solano County Records at Page 797, therein, as Instrument No. 452.

PARCEL FOUR:

Being that portion of real estate in Sections 1 and 12 in Township 3 North, Range 3 West, Mount Diablo Base and Meridian, and Sections 6 and 7 in Township 3 North, Range 2 West, Mount Diablo Base and Meridian, and is more particularly described as Parcel Four of that deed recorded in Book January 7, 1982 of Solano County Official Records at Page 797, therein, as Instrument No. 452.

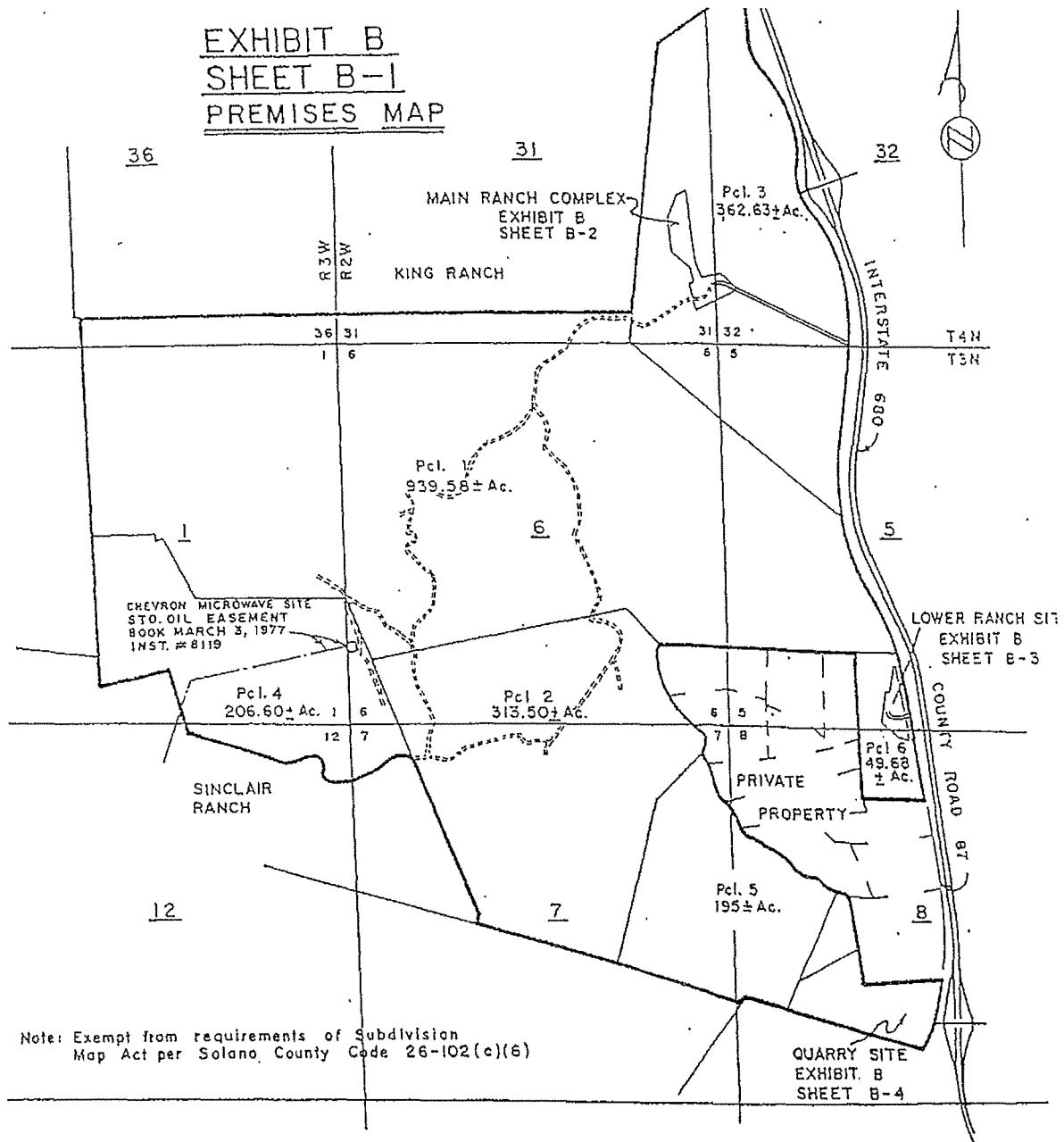
PARCEL FIVE:

Being that portion of real estate in Section 7 and 8 in Township 3 North, Range 2 West, Mount Diablo Base and Meridian, and is more particularly described as parcel Five of that deed recorded in Book January 7, 1982 of Solano County Official Records at Page 797, therein, as Instrument No. 452.

PARCEL SIX:

Being that portion of real estate situated in Section 5 and 8, Township 3 North, Range 2 West, Mount Diablo Base and Meridian, and is more particularly described as Parcel Six in that deed recorded in Book January 7, 1982 of Solano County Records at Page 797, therein, as Instrument No. 452.

EXHIBIT B
SHEET B-1
PREMISES MAP



Note: Exempt from requirements of Subdivision
Map Act per Solano County Code 26-102(c)(6)

All Townships and Ranges Referenced to Mount Diablo Base
Line and Meridian.

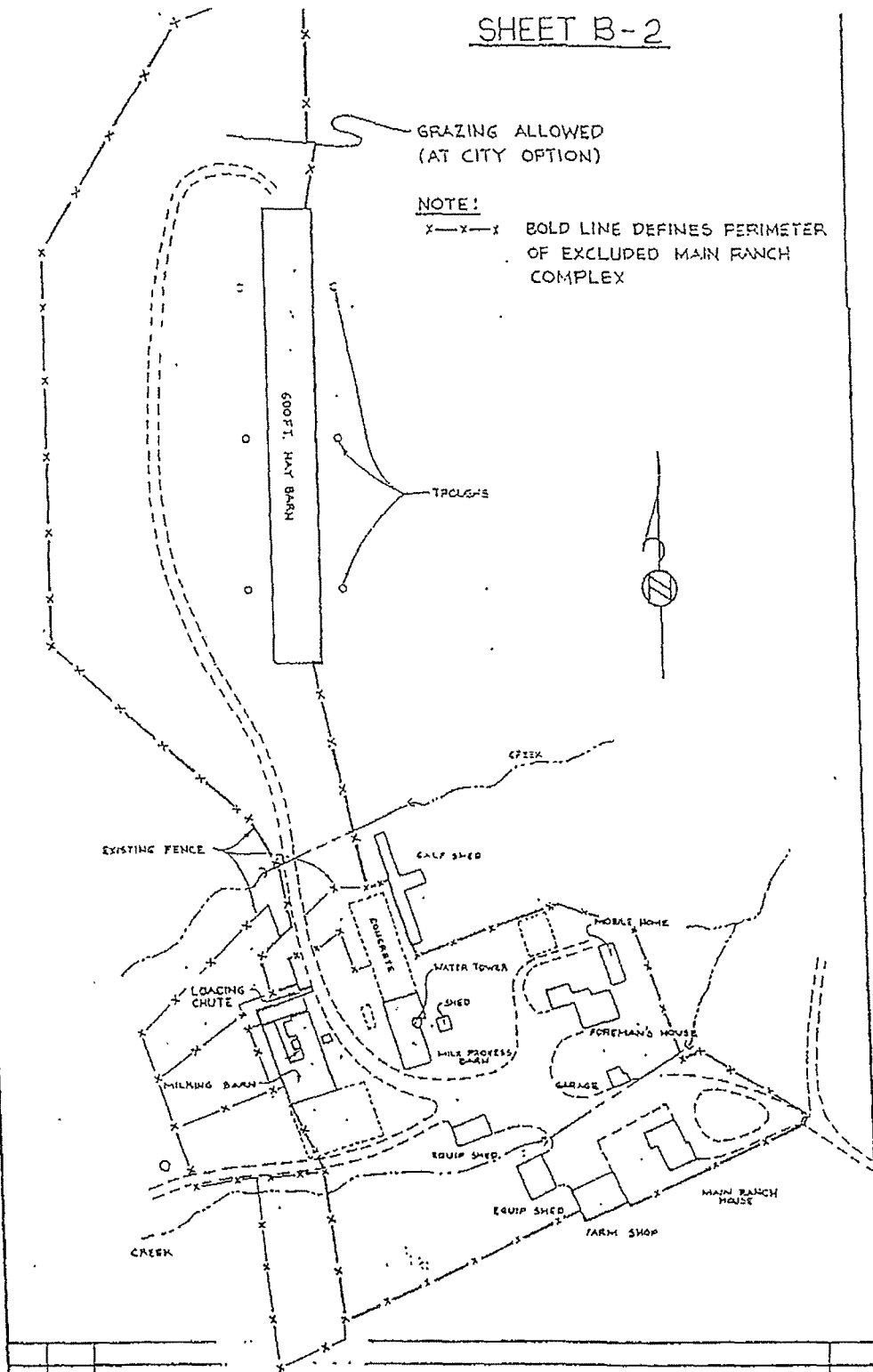
| | | |
|---------|-------------------------|---------------------|
| ed by: | CITY OF SANTA CLARA | Scale: Not to scale |
| n by: | CITY LAND — LEASE AREAS | Ref. SC 15,368 |
| red by: | BENICIA PROPERTY | SHEET B-1 |

SHEET B-2

GRAZING ALLOWED
(AT CITY OPTION)

NOTE:

X—X—X BOLD LINE DEFINES PERIMETER
OF EXCLUDED MAIN RANCH
COMPLEX

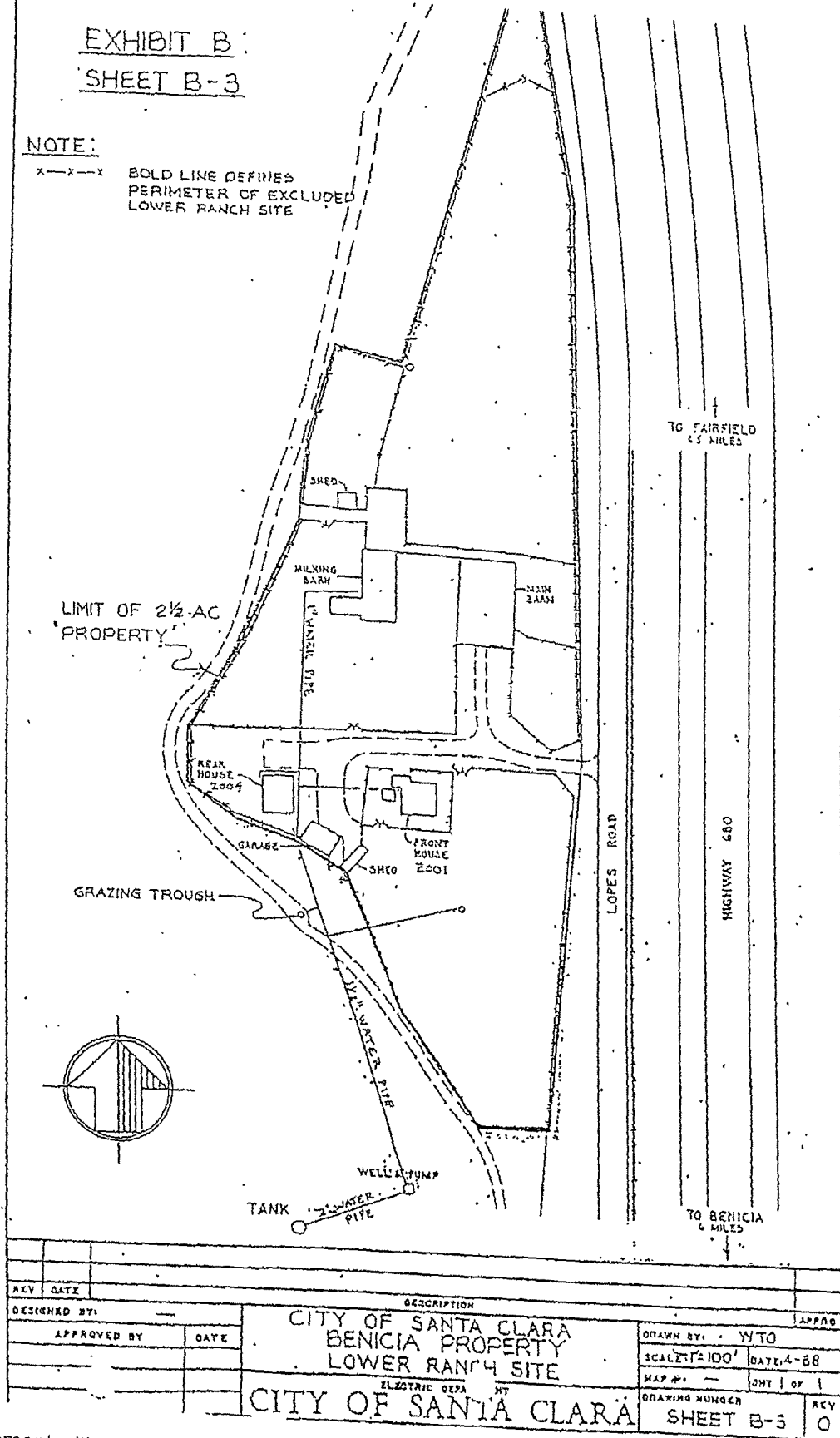


| REV | DATE | DESCRIPTION | APPROV |
|-------------|------|---------------------|------------|
| DESIGNED BY | | BENICIA PROPERTY | |
| APPROVED BY | DATE | MAIN RANCH COMPLEX | |
| | | ELECTRIC DEPAR. | |
| | | CITY OF SANTA CLARA | |
| | | DRAWN BY: HKT | |
| | | SCALE: N.T.S. | DATE: 3/56 |
| | | SHEET 1 OF 1 | |
| | | DRAWING NUMBER | KEY |
| | | SHEET B-2 | 0 |

EXHIBIT B:
SHEET B-3

NOTE:

x---x---x BOLD LINE DEFINES PERIMETER OF EXCLUDED LOWER RANCH SITE



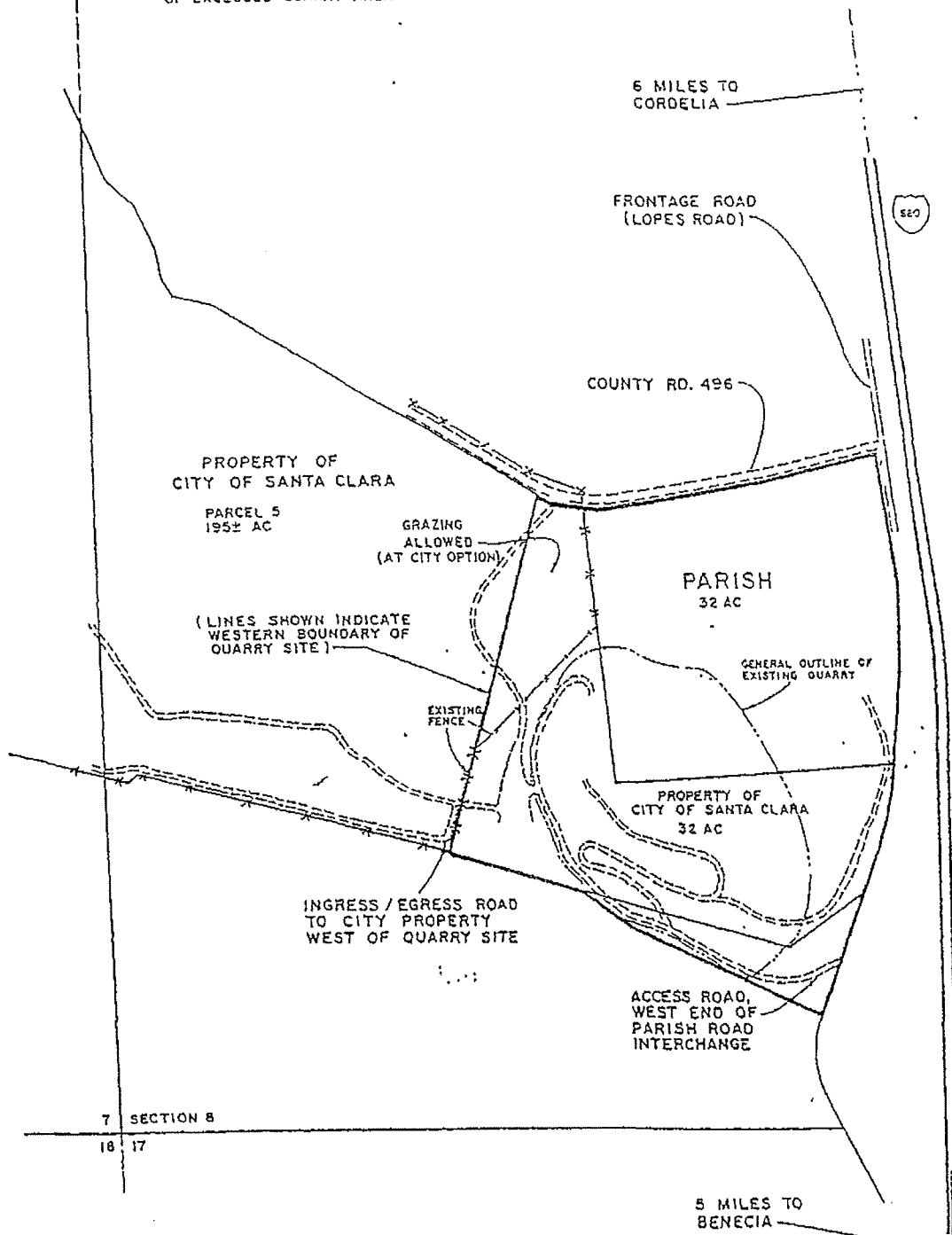
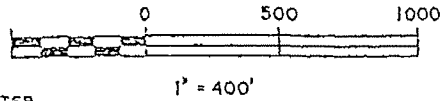
Lease Agreement with Five Dot Land Cattle Co.

EXHIBIT B SHEET B-4

SECTION 8
T3N, R2W MDBLSM
SOLANO COUNTY,
CALIFORNIA

NOTE:

— BOLD LINE DEFINES PERIMETER
OF EXCLUDED QUARRY AREA



**Lopes Ranch, Benicia, Ca.
Solano County**

Legend

- Pond
- Seasonal Wetland
- Road
- Property of SVPP
- Silicon Valley Power/Owned Property
- Pasture

0 0.25 0.5 Miles

SILICON VALLEY POWER
A subsidiary of SCL

EXHIBIT C
INSURANCE REQUIREMENTS

During the term of this Agreement, Lessee shall provide and maintain the following insurance policies with the indicated policy limits and endorsements:

- A. Commercial General Liability (CGL), with policy limits not less than \$1,000,000 for each occurrence covering bodily injury and property damage;
 - a. CGL Primary Insurance Endorsement; and
 - b. This CGL policy shall include an endorsement which adds the City of Santa Clara, its Council, employees, and officers as additional insureds.
- B. Business Automotive Liability (BAL), with policy limits not less than \$1,000,000; and
- C. Workers' Compensation and Employers' Liability with policy limits of California statutory limits.

All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement shall be mailed directly to the City's insurance compliance representative as follows:

EBIX Inc.
City of Santa Clara – Department of Electric Utility
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com