

RESOLUTION NO. 3969

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING EXTENSION OF A LEASE AGREEMENT WITH BRAGA RANCH
FOR USE OF A PORTION OF THE CITY LANDFILL FOR GRAZING OF
LIVESTOCK**

WHEREAS, on April 21, 2004 the City entered into a grazing lease agreement with Braga Ranch use of 125.6 acres, known as the City of Soledad Landfill; and

WHEREAS, the term of the lease was for a period of three (3) years with annual rental payment: and

WHEREAS, the agreement is scheduled to expire on May 1, 2007 and Mr. Braga, Braga Ranch, has expressed interest in extending the agreement for an additional three (3) years; and

WHEREAS, Staff has no objections to extension of the agreement; and

WHEREAS, Braga Ranch will pay rent in the amount of \$1,600.00 for the first year of the extension with the following years rent to increase by the Urban Consumers Price Index (CPI-U) for San Francisco.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Council authorizes the City Manager to enter into a lease with Braga Ranch for use of the City Landfill to graze cattle, in the form attached hereto as Exhibit "A" and by this reference incorporated herein.

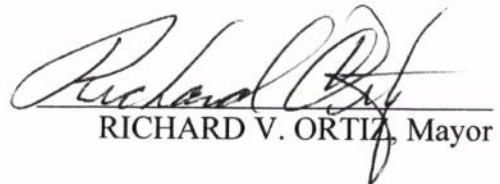
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 4th day of April, 2007, by the following vote:

AYES, and in favor thereof, Councilmembers: Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: Martha Camacho


RICHARD V. ORTIZ, Mayor

ATTEST:


NOELIA F. CHAPA, City Clerk

GRAZING LEASE

THIS LEASE is made as of the 1st day of May, 2007, between the City of Soledad, hereinafter called Lessor, and Braga Ranch, a Partnership, hereinafter called Lessee.

Recitals

A. Lessor is the owner of that real property situated in Rancho San Vicente, Monterey County, California, located at San Vicente Road, consisting of 125.6 acres, more or less, as depicted in Exhibit A, attached hereto.

B. For and in consideration of the rents, covenants and agreements set forth herein, Lessor desires to lease the above referenced real property, hereafter "the leased premises," for purposes of cattle grazing.

C. The leased premises have previously been used as a garbage dump and as a quarry, and 14 acres of said property are currently being used as a shooting range pursuant to a lease with the Arroyo Seco Rod and Gun Club.

THEREFORE, Lessor and Lessee agree to the terms and conditions of this Lease as follows:

1. Term.

The term of this Lease shall be 3 years, commencing as of the May 1, 2007 and ending April 30, 2010. Notwithstanding the foregoing, either party may terminate this Lease with or without cause by providing the other party with ninety (90) days notice of termination in writing. Pre-paid rent, if any, will be reimbursed on a prorated basis within fifteen (15) days of the termination date.

2. Rent.

As rental for the leased premises, Lessee hereby agrees to pay to Lessor a total annual rent of \$1,600, payable in lawful currency of the United States of America, without deduction or offset. Payment shall be made on the first of each annual period, commencing May 1, 2007 for the first year, at the office of the Lessor, 248 Main Street, Soledad, CA 93960. Rent payments not received by the fifteenth of May will be subject to a \$25 late charge. In no case shall the minimum yearly rent rate be reduced. Rent payable hereunder for any period of time less than that for which periodic rent is paid shall be prorated for that applicable period.

At the end of the first year of the term of this lease, the yearly rent payable hereunder may be increased by Lessor according to the general cost of living index for the immediate preceding year, measured by the Urban Consumers Price Index (CPI-U) for San Francisco as published by the Bureau of Labor Statistics of the United States Department of Labor. The timing of all rent payments shall remain the same.

3. Use.

The leased premises are demised to Lessee for the purpose of open space, feeding, maintenance, and grazing of agricultural livestock, consistent with the terms of this Lease and with good farming practices and animal husbandry, and for no other purpose.

Lessee shall carry on all of Lessee's activities in accordance with good husbandry and the best practices of the farming community in which the leased premises are situated. Should Lessee fail to take any action required by the best course of husbandry practiced in the farming community surrounding the leased premises, or should Lessee fail to conduct any operation undertaken by Lessee on the leased premises in accordance with the best course of husbandry practiced in the farming community surrounding the leased premises, Lessor may, after serving notice, enter the leased premises and take any reasonable action Lessor may deem necessary to protect Lessor's interest in this Lease and the leased premises. Lessee agrees to reimburse Lessor on demand for the cost of any reasonable actions taken by Lessor in accordance with the provisions of this paragraph.

Lessee shall, at Lessee's cost and expense, comply with any and all present or future laws, ordinances, rules, regulations, requirements, and orders of federal, state county or municipal governments that may apply in any way to the use, maintenance or operations on the leased premises, or the sale or disposition of livestock kept thereon.

Lessee agrees not to apply pesticides, insecticides, fungicides, herbicides, or other chemical treatments on the leased premises that will have a residual effect beyond the term of this Lease, except with the prior written consent of Lessor.

It is understood and agreed by Lessee that the leased premises shall be subject to concurrent use by 1) Lessor as a garbage disposal site and for the removal by the Lessor of gravel from the demised premises at such times and in such amounts as the Lessor may from time to time see fit; 2) By Lessor's lessees on that portion of the property designated for use as a shooting range, as depicted on Exhibit A. Lessee shall not interfere with the use of the property by Lessor or additional lessees as a garbage disposal site, nor shall Lessee interfere with gravel removal operations by Lessor or third persons removing gravel pursuant to agreement with the Lessor, or on that portion of the property designated for use as a shooting range.

4. Waste or Nuisance.

Lessee shall not commit, or permit others to commit, any waste on the leased premises. Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by state statute or local Code on the leased premises. Lessee shall not use or permit the use of the leased premises for any unlawful purpose.

5. Operating Costs.

Lessee shall pay all costs in connection with Lessee's operations on the leased premises, including but not limited to production costs, costs of tools and labor, electricity and other utilities.

6. Taxes and Assessments.

Lessee shall pay all personal property taxes or assessments levied on Lessee's personal property situated in or about the leased premises during the term of this Lease. On demand, Lessee shall provide to Lessor satisfactory evidence of payment of taxes.

Pursuant to California Revenue and Taxation Code Section 107.6, notice is hereby given to Lessee that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to payment of property taxes levied or assessed on such interest. Lessee shall be responsible for the payment of all taxes, assessments, license fees, and other charges ("taxes") that are levied or assessed during Lessee's occupancy against lessee's possessory and/or leasehold interest in the leased premises.

7. Insurance.

A. **Public Liability Insurance.** Lessee shall, at all times during the term of this Lease, at it's sole expense, maintain in full force, for the mutual benefit of Lessor and Lessee, a policy or policies of comprehensive broad form general public liability insurance issued by one or more carriers insuring against claims and liability for personal injury or death of persons and loss of or damage to property arising from the use, occupancy, disuse or condition of the Premises and improvements. Said liability insurance shall be in an amount of not less than \$2,000,000 combined single limit, which amount may be adjusted upward periodically based on insurance industry recommended changes in coverage. In addition, Lessee shall pay for and shall maintain in full force and effect blanket contractual liability insurance to cover all of the indemnity obligations of Lessee under this Lease.

B. **Workers Compensation Insurance.** Tenant shall at all times maintain workers' compensation insurance in compliance with California and federal law covering all persons employed by Lessee or Lessee's contractor's, subcontractor's and assigns.

C. **Automobile Liability Insurance.** Comprehensive automobile liability insurance having a combined single limit of not less than \$1,000,000 per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired, or non-owned automobiles.

D. Insurance on Improvements, Fixtures, Equipment and Personal Property. Lessee shall, at Lessee's cost and expense, obtain and maintain in full force and effect at all times a standard policy insuring the improvements, trade fixtures, equipment and other personal property located on the Premises and used by the Lessee in connection with its business against "all risks" perils including fire, vandalism, and malicious mischief, in an amount equal to the full replacement cost (without deduction for depreciation) of the Premises and such equipment and personal property. Such policy shall name Lessor as a loss payee. Such policy shall not be subject to cancellation or change in coverage except upon at least thirty (30) days prior written notice to Lessor. Evidence of such policy shall be deposited with Lessor. Each party hereby waives its entire right of recovery against the other party, the other party's officers, directors, agents, representatives, employees, volunteers, successors and assigns with respect to any loss or damage, including consequential loss or damage, to the waiving party's property caused or occasioned by any peril or perils (including negligent acts) covered by any policy or policies of property insurance carried by the waiving party.

8. Maintenance and Repairs.

Lessee acknowledges that it has received the leased premises in good order and condition and covenants that it will keep and maintain said premises in good order and condition at all times, and that at the expiration of the term hereof or sooner termination of the interest hereby created, it will peaceably leave, surrender and yield up the said premises unto the Lessor in as good condition as when received. Lessor shall not be called upon to make any improvements or repairs or replacement whatsoever upon said premises, or any part thereof, during the term of this Lease.

9. Livestock Health.

Lessee shall provide Lessor, within 15 days from the date of this Lease's commencement, a letter attesting to the good health of the livestock to be placed on the leased premises.

10. Improvements and Alterations.

Lessee shall not make or permit any alterations or improvements to the leased premises without the prior written consent of the Lessor. On termination or expiration of this Lease, all improvements and alterations other than trade fixtures shall be the property of Lessor, and no reimbursement to Lessee shall be required. Lessee shall remove all trade fixtures placed by Lessee on the leased premises within 30 days after the expiration of this Lease.

11. Inspection by Lessor.

Lessee shall permit Lessor or Lessor's agents or employees to enter the leased premises at all reasonable times to determine whether Lessee is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect Lessor's interests in the leased premises.

12. Acceptance by Lessee.

Lessee accepts the leased premises, as well as the improvements on the leased premises, and facilities appurtenant to the leased premises, in their present condition. Lessee agrees with, and represents to Lessor, that the leased premises have been inspected by it and that Lessee has been assured by means independent of Lessor or any agent thereof of the truth of all facts material to this Lease and that the leased premises are being leased by Lessee as a result of its inspection and investigation and not as the result of any representations made by Lessor or any agent of Lessor.

13. Indemnification of Lessor.

Lessee, throughout the term of this lease, shall indemnify and hold Lessor, its officers, elected officials, employees and agents harmless from all damages, injuries, or claims arising in or about the leased premises or in connection with the conduct by Lessee of any operations thereon, except as otherwise provided in this Lease.

14. Assignment or Subleasing.

Lessee shall have no right to assign, transfer, or encumber this Lease or any interest in this Lease. Lessee shall not sublease all or any part of the leased premises, or allow any persons other than Lessee's agents, family or employees, to occupy or use all or any part of the leased premises. Any assignment or subleasing shall be void.

15. Default by Lessee.

The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee;

A. Any failure to pay the rent or make any other payment required to be made by Lessee under this Lease when that failure continues for 10 days after written notice of the failure is given by Lessor to Lessee.

The abandonment or vacation of the Premises by Lessee.

A failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, when that failure continues for 20 days after written notice of Lessee's failure is given by Lessor to Lessee, provided however that if the nature of the default is such that it cannot reasonably be cured within a 20 day period, Lessee shall not be deemed in default if Lessee commences that cure with the 20 day period and thereafter diligently prosecutes it to completion.

The making by Lessee of any general assignment for the benefit of creditors, the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy; the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, when possession is not restored to Lessee within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, when that seizure is not discharged within 30 days.

The notices provided for in subsections A through C of this paragraph are not intended to replace, but rather, are in addition to any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161 et seq.

16. Recovery of Damages on Lessee's Default.

In the event of any default by Lessee under this Lease, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the right to terminate this Lease and all rights of Lessee under this Lease by giving written notice of the termination. No act of Lessor shall be construed as terminating this Lease except written notice given by Lessor to Lessee advising Lessee that Lessor elects to terminate the Lease. In the event Lessor elects to terminate this Lease, Lessor may recover from Lessee all of the following:

- The worth at the time of the award of any unpaid rent that has been earned at the time of the Lease's termination;
- The worth at the time of award of the amount by which the unpaid rent that would have been earned after the Lease's termination until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;
- The worth at the time of the award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

Any amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease.

17. Lessor's Right to Continue Lease in Effect After Breach.

If Lessee breaches this Lease and abandons the premises before the natural expiration of the Lease's term, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of the premises, in which event Lessor shall be entitled to enforce all its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

18. Condemnation.

If all or any part of the leased premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease, either Lessor or Lessee may terminate the Lease by giving the other 30 days written notice of termination, provided, however, that Lessee cannot terminate this Lease unless the portion of the leased premises taken by eminent domain is so extensive as to render the remainder of the premises useless for the uses permitted by this Lease.

If only a portion of the leased premises is taken by eminent domain and neither Lessor nor Lessee terminates this Lease, the rent thereafter payable under this Lease shall be reduced by the same percentage that the total acres of the portion taken by eminent domain bears to the total acreage of the leased premises.

Any and all damages and compensation awarded or paid because of a taking of the leased premises shall belong to Lessor, and Lessee shall have no claim against Lessor or the entity exercising eminent domain power for the value of the unexpired term of this Lease or any other right arising from this Lease.

19. Oil, Gas and Mineral Rights.

All rights in any and all minerals, oil, gas and other hydrocarbons located on or under the leased premises are reserved to Lessor and are particularly excepted from the property covered by the terms of this Lease.

20. Attorneys Fees.

If any litigation is commenced between the parties to this Lease concerning the premises, this Lease, or the rights and duties of either in relation to the premises or to this Lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorney's fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

21. Notices.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the designated agent of the party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

City Manager
City of Soledad
249 Main Street
P.O. Box 156
Soledad, California 93960

Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

22. Binding on Heirs and Successors.

This Lease and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this Lease. Nothing contained in this paragraph shall be construed as a consent by Lessor to any assignment of this Lease or any interest in this Lease by Lessee.

23. Time of the Essence.

Time is of the essence of this Lease and of each provision contained within, and each provision is made and declared to be a material, necessary and essential part of this Lease.

24. Sole and Only Agreement.

This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the premises, the leasing of the premises to Lessee, or the lease term created under this Lease, and correctly sets forth the obligations of Lessor and Lessee to each other as of this date. Any agreements or representations respecting the premises or their leasing by Lessor to Lessee not expressly set forth in this instrument are null and void. This Lease may not be extended, amended, modified, altered, or changed, except in a writing signed by Lessor and Lessee.

25. Effect of Partial Invalidity.

If any term or provision of this Lease or any application of this Lease shall be held invalid or unenforceable, the remainder of this Lease and any application of the terms and provisions shall remain valid and enforceable under this Lease or California law.

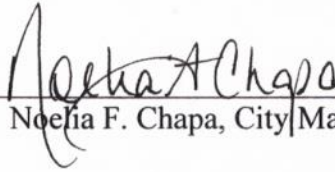
26. Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of California.

27. Waiver.

The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

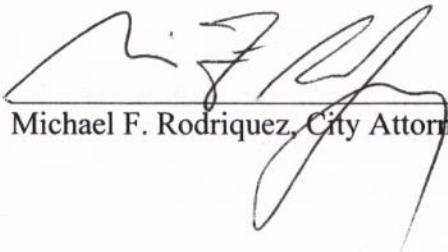
LESSOR:
CITY OF SOLEDAD

By: 
Noelia F. Chapa, City Manager

LESSEE:

By: 

APPROVED AS TO FORM:


Michael F. Rodriguez, City Attorney



May 14, 2007

Norman Braga, Partner
Braga Ranch
P. O. Box 425
Soledad, California 93960

RE: GRAZING LEASE

Dear Mr. Braga:

Enclosed is an original copy of the Grazing Lease for the City of Soledad Landfill site approved by our City Council on April 4, 2007. Please review and if acceptable, please sign, keep a copy for yourself and return to my attention. I will secure the City Attorney signature and return a signed copy to you. Also enclosed is a copy of Resolution No. 3969. A certified copy will be sent after the City Attorney signs.

If you have any questions, please feel free to call me at 831/223-5012.

Sincerely,

A handwritten signature in cursive script that reads "Lupe A. Martinez".

LUPE A. MARTINEZ
Deputy City Clerk

Enclosures

Handed blank lease
7/26/07

