

RESOLUTION NO. 13-154

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
APPROVING A LICENSE AGREEMENT FOR FARMING OPERATIONS ON  
THE MUNICIPAL AIRPORT

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WHEREAS, the City of El Paso de Robles continues to operate the Paso Robles Municipal Airport for the benefit of the public; and

WHEREAS, the airport facility contains significant land which is limited in allowable use, but necessary to be maintained, and;

WHEREAS, a dry land farming operation has proven to be effective and beneficial to the airport, and;

WHEREAS, the current lease is with Lahargou Farming; and

WHEREAS, John Lahargou has acquired all the rights, interests and obligations of Lahargou Farming; and

WHEREAS, because the City has the right to determine and may change the area to be farmed, the parties have agreed that a License Agreement is appropriate;

THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles does hereby approve the License Agreement for Airport Farming with John Lahargou for the prescribed term and authorizes the City Manager to execute the License Agreement, attached hereto as Exhibit 'A' and incorporated herein by reference, subject to any minor, technical and clarifying changes approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 19<sup>th</sup> day of November, 2013, by the following vote:

AYES: Strong, Hamon, Martin, Steinbeck, Picanco

NOES:

ABSENT:

ABSTAIN:

ATTEST:

  
Caryn Jackson, Deputy City Clerk

  
Duane Picanco, Mayor

**LICENSE AGREEMENT  
BETWEEN THE CITY OF EL PASO DE ROBLES  
AND  
JOHN LAHARGOU**

THIS LICENSE AGREEMENT ("**Agreement**") is entered into as of December 1, 2013 (the "**Effective Date**"), by and between **THE CITY OF EL PASO DE ROBLES**, a municipal corporation of the State of California ("**City**"), and **JOHN LAHARGOU** ("**Licensee**").

**RECITALS**

A. City owns real property commonly referred to as the Paso Robles Municipal Airport, generally located east of Airport Road and North of Dry Creek Road, with offices located at 4912 Wing Way, Paso Robles, California 93446, as generally shown on the Map attached hereto and incorporated herein as Exhibit "A" ("**Airport**").

B. City entered into a Master Farming Lease, dated on or about January 1, 1986, and a new Farming Lease, dated March 1, 2010 (collectively, the "**Farming Lease**") with Lahargou Farming ("**Lahargou**"), a partnership between Licensee and Pierre Lahargou, whereby Lahargou leased approximately 800 acres of undeveloped area at the Airport, for the purpose of dry-land farming.

C. Licensee has acquired all rights, title and interest to the assets previously held by the Lahargou partnership, including the rights to the subject Farming Lease.

D. Given the non-exclusive nature of the rights under the Farming Lease, as well as the ability of City to change the locations of the areas on the Airport that could be farmed, the parties have decided it is appropriate that the Farming Lease be replaced with a License Agreement.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of License; License Fee. City hereby grants to Licensee a revocable, personal, non-exclusive and non-possessory license to enter upon and use farmable land within the Airport property not currently included in industrial lease agreements or designated for other Airport purposes ("**License Areas**"). Due to the changing needs and policies of the City, City shall retain the right to determine the actual areas of the Airport to be farmed from time to time. The current License Areas are shown on the map attached hereto as Exhibit A. During the Term of this Agreement, on January 1 of each year, City and Licensee shall prepare a map, signed by both parties, identifying the specific License Areas to be farmed for the coming year. Each such map shall be attached hereto and shall be deemed the new or updated Exhibit A, and shall replace the map from the prior year.

Licensee shall pay to City an amount equal to ten percent (10%) of gross revenue of the sale of all crops produced by Licensee on the License Areas ("**License Fee**"). Upon completion of the

harvest, Licensee shall diligently pursue the sale of the crops at a reasonable and fair market price. At the completion of the sales transaction, Licensee shall submit to City full payment of the City's share, together with a complete accounting of the crop, its quantities and weights, as verified by certified weight slips, in a manner verifiable and acceptable to City.

**2. Authorized Activities on License Areas**

A. Authorized Activities on the License Areas. Licensee may enter upon and use the License Areas for staging purposes, storage, tool and equipment storage, planting, irrigation, harvesting, and other activities and uses as necessary or appropriate from time to time for the growing of agricultural crops on the License Areas (collectively, the "**Activities**"). Licensee shall not use the License Areas for any other purpose without first obtaining City's written consent.

B. Responsibility for Vehicles, Equipment and Personal Property. Licensee shall be solely responsible for all vehicles, equipment and personal property stored or used on the License Areas pursuant hereto, and City shall have no duty whatsoever for any vehicle, equipment or personal property stored or used on the License Areas.

C. As Is Condition of License Areas; Disclaimer of Representations. Licensee acknowledges that it has performed farming activities on the License Areas for the past 27 years under the Farming Lease, and is fully aware of the condition of the License Areas. Licensee accepts the License Areas in their "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the License Areas. Without limiting the foregoing, this License is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the License Areas, whether foreseen or unforeseen, if such matters are of record or would be disclosed by an accurate inspection or survey.

**3. Restrictions on Use.** Licensee agrees that the following uses of the License Areas by Licensee, or any other person claiming by or through Licensee, are inconsistent with the limited purpose of this License and are strictly prohibited as provided below:

A. Licensee shall not use or permit the use of the License Areas for any purpose other than the growing of agricultural crops, in accordance with accepted dry-land farming techniques common to the local area, and Licensee shall comply promptly with all applicable laws, rules and regulations regarding the use of the License Areas, including but not limited to all rules and regulations promulgated by the Federal Aviation Administration ("FAA").

B. Licensee shall not use or permit the use of the License Areas in any manner that will (1) tend to create or permit any waste or nuisance, (b) tend to disturb other Licensees or users of the Airport, (c) invalidate or cause cancellation or be in conflict with fire and other hazard insurance policies covering the Airport, (d) increase the rate of fire insurance for the Airport or of property located therein, over that rate in effect as of the date of this Agreement.

C. Ponding; Water Courses. Licensee shall not cause any ponding on the License Areas or any flooding on adjacent lands or areas. Licensee shall not engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

4. Term of License; Extension. The privilege conferred to Licensee pursuant to this Agreement shall be for a term (“**Term**”), commencing on the date of this Agreement and expiring on December 31, 2018 (“**Expiration Date**”), unless earlier terminated as provided herein, or later extended as provided in this Section 4.

Licensee shall have the option to request an extension of the Term of this Agreement for one (1) additional term of four (4) years by providing written request (“Licensee’s Request”) to City at any time during the Term of this Agreement, so long as City receives Licensee’s Request no later than January 15, 2018, and provided that Licensee is not in default under this Agreement. City shall notify Licensee, in writing, of its decision (“City’s Decision”) to either accept or deny Licensee’s Request by no later than February 15, 2018. City’s failure to notify Licensee of City’s Decision by February 15, 2018, shall be deemed City’s denial of Licensee’s Request, and the expiration of this Agreement shall remain December 31, 2018. If City approves such extension, the Expiration Date of this Agreement shall thereafter refer to such extended Expiration Date, and this Agreement shall continue in force until such extended Expiration Date upon the same terms and conditions as set forth herein.

5. Real and Personal Property Taxes. Licensee agrees to pay all applicable property and possessory interest taxes levied against the License Areas. This shall include personal property taxes levied upon equipment, property, or inventory owned or under the control of Licensee.

6. Records. Licensee agrees to maintain crop records and rotations so as to achieve maximum benefit and yield from available Government subsidy programs.

7. Maintenance, Repairs and Alterations.

A. Licensee’s Obligations. Licensee, at Licensee’s sole cost, shall keep the License Areas in good order and condition during the Term of this Agreement. All operations incident to this use of the License Areas shall be carried on according to the best course of agricultural practices in the vicinity. On default of Licensee to use the License Areas as required by this Agreement, City reserves the right, after having given ten (10) days’ notice, to take reasonably necessary remedial measures at the expense of Licensee, for which Licensee shall reimburse City on demand. Licensee will make reasonably diligent efforts to prevent the spread of all noxious weeds on the License Areas and will take commercially reasonable measures in accordance with customary good farming practices to protect the License Areas from infestations of pests. Licensee will make reasonably diligent efforts to prevent infestations of organisms that may produce disease in crops grown on the License Areas during and after the Term of this Agreement.

B. Surrender. On the last day of the Term hereof, or on any sooner termination, Licensee shall surrender the License Areas to City in reasonably the same condition as when received. Licensee shall remove any equipment from the License Areas.

C. City’s Obligations. City shall have no obligation, in any manner whatsoever, to repair and maintain the License Areas. Licensee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Licensee the right to make repairs at City’s expense or to terminate this Agreement because of City’s failure to keep the License Areas in good order, condition and repair. Notwithstanding the foregoing, it is agreed that if any Airport activity under the control or responsibility of City causes damage to or renders Licensee unable to harvest or derive full benefit from an existing crop or soil preparation or treatment, Licensee shall be compensated for such loss at the current price of such treatment.

8. Utilities. Licensee shall pay for power, telephone or other utilities provided to the License Areas at Licensee's request or for Licensee's use.

9. Insurance.

A. Liability Insurance. Licensee shall procure and maintain at all times during the Term of this Agreement, at its sole cost and expense, a policy or policies of Commercial General Liability ("CGL") coverage by the terms of which both City and Licensee shall be "Named Insured" and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the License Areas or any part thereof, with limits of coverage in an amount of not less than One Million Dollars (\$1,000,000.00) single limit and Two Million Dollars (\$2,000,000.00) annual aggregate coverage applying to injury to or death of any one or more persons arising from the same occurrence and for damage or injury to property. If City's reasonably exercised judgment determines that the liability insurance amounts set forth herein become inadequate, then City may, by written notice, require a reasonable increase in coverage commencing with the next policy anniversary date. Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by City and shall contain a provision (provided such provisions are available without increased premium) that the City, although named as an insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the City, its agents and employees or the property of such persons by reason of the negligence of Licensee. Worker's compensation insurance shall be in the amounts required by law.

The following endorsements shall be attached to the liability insurance policy:

(i) If the insurance policy insures on an "accident" basis, it shall be changed to an "occurrence" basis.

(ii) The policy must cover personal injury, as well as bodily injury.

(iii) An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to City or any of its officers, agents, employees or volunteers shall be in excess of Licensee's insurance and shall not be called upon to contribute to a loss covered by the policy.

(iv) The policy must provide that it shall not be canceled or changed or made the "retroactive date" of the policy or any renewal or replacement policy be changed without thirty (30) days' prior written notice to City.

(v) A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.

(vi) The liability coverage may be either on a blanket basis or a policy which specifically identifies this Agreement with a contractual liability endorsement.

(vii) Any deductibles or self-insured retention must be declared to and approved by City. At the option of City, the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, agents, employees and volunteers or the Licensee shall procure a bond guaranteeing payment of losses and related investigation, claims administration and defense expenses.

B. Additional Requirements - Claims Made Policies.

(i) Statement of Coverage. If the policy or policies are written on a "claims made" basis, the insurer shall provide City with a statement specifically describing (a) the date coverage began under the policy and the retroactive date for claims received, (b) the reporting period(s) applicable to the policy, and (c) the incident, event and claims notice procedures applicable to the policy and the name and address of the person to whom notice of incidents, events and claims may be given.

(ii) Notice of Events and Claims. If the policy or policies are written on a "claims made" basis, Licensee shall give its insurance carrier and City written notice of each and every event or incident occurring during the Term of this Agreement that may ripen into a claim. Notice shall be given no later than ten (10) days after such event or incident.

C. Certificates or Policies of Insurance. All policies of insurance procured and maintained by Licensee hereunder shall be issued by companies authorized to do business in California having not less than Best's A rating. Executed copies of all insurance policies or a certificate thereof shall be delivered to City on the Commencement Date and shall contain a provision that not less than thirty (30) days' written notice shall be given to City prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

D. Failure to Provide Insurance. If Licensee fails or refuses to procure or to maintain insurance as required by this Agreement or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right at City's election, without notice, to procure and maintain such insurance. The premiums paid by City shall be treated as added rent due from Licensee with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers.

E. Waiver of Subrogation. The parties hereby release each other, and their respective representatives, from any claims for damage to any person or to the License Areas and the improvements which may be located upon the License Areas and to the fixtures, personal property, Licensee's improvements and alterations of Licensee in or on the License Areas and the improvements which may be located upon the License Areas that are caused by or result from risks insured against under any insurance policies carried by the parties hereto and in force at the time of any such damage. Each party hereto shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. Neither party hereto shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Agreement.

**10. FAA Requirements.** In connection with the ownership and use of the Airport by City, Licensee hereby agrees as follows:

A. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Licensee, and without interference or hindrance.

B. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and Licensee relative to the development, operation or maintenance of the Airport.

C. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349).

D. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the License Areas. This public right of flight shall include the right to cause within the said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operating on the Airport.

E. Licensee shall not erect or permit the erection of any structure or object on the Airport in violation of federal height restrictions and obstruction criteria. In the event the aforesaid covenants are breached, City reserves the right to remove the offending structure or object, all of which shall be at the expense of Licensee.

F. Licensee shall not make use of the License Areas in any manner which might interfere with the landing and taking off of aircraft from the Airport, or which might otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the License Areas and cause the abatement of such interference, at the expense of Licensee.

G. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport, or the exclusive or nonexclusive use of the Airport, by the United States during the time of war or national emergency or otherwise.

H. Licensee shall use reasonable precautions to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas.

I. Licensee is responsible for maintaining security in and around the License Areas or any other area adjacent to or upon the Airport which Licensee has possession or control. Licensee is further responsible for maintaining security with respect to entry upon the airfield or other portions of the Airport designated by City from time to time as security areas (the "**Airport Operating Areas**") by employees, sublessees, contractors, invitees or customers of Licensee or any other person who enters the Airport Operating Areas at Licensee's invitation, direction or authority, whether through or from the License Areas or otherwise.

J. Licensee shall comply with Part 107 of the Federal Aviation Regulations requiring that all persons who have unescorted access to the airfield side of the Airport security fence have background checks, including references and prior employment history. Licensee agrees to maintain records of employee background checks and to make such records available to the FAA and City as may be requested from time to time.

K. Licensee shall not cause or permit any hazardous materials or toxic substances to be brought upon, kept or used in or about the License Areas or the Airport by Licensee, its agents, employees, contractors or invitees, without the prior written consent of City. City shall

not unreasonably withhold such consent as long as Licensee demonstrates to City's reasonable satisfaction and covenants to City that such hazardous materials or toxic substances are necessary or useful to Licensee's business and will be used, kept and stored in a manner that complies with all laws relating to any such hazardous materials. Without limiting the foregoing, City acknowledges Licensee's permitted use and application of various hazardous materials or toxic substances ("**Licensee's Permitted Uses**") on the License Areas during Licensee's normal course of farming operations. Licensee's Permitted Uses shall be limited to such uses as identified on Licensee's Restricted Materials Permit issued by the County of San Luis Obispo Department of Agriculture/Weights and Measures for the applicable year. For example purposes only, a copy of Licensee's Restricted Materials Permit for the 2013 calendar year is attached hereto as **Exhibit B** and incorporated herein by this reference.

L. Notwithstanding Section 11.K hereof, if the presence of hazardous materials or toxic substances on the License Areas or the Airport caused or permitted by Licensee results in contamination of the License Areas or the Airport, or if contamination of the License Areas or the Airport by hazardous materials or toxic substances otherwise occurs for which Licensee is legally liable to City for damage resulting therefrom, then Licensee shall indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the License Areas or the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Areas or the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, actual attorneys' fees, consultant fees and expert fees), which arise during or after the term of this Agreement as a result of such contamination. This indemnification of City by Licensee includes, without limitation, costs incurred in connection with any investigation of site conditions, including regular inspections, or any clean up, remedial, removal or restoration work required or recommended by any federal, state or local governmental agency or political subdivision because of hazardous materials or toxic substances present in the soil or ground water on or under the License Areas and/or the Airport. The indemnity, defense and hold harmless obligations of Licensee hereunder shall survive any termination of this Agreement. Without limiting the foregoing, if the presence of any hazardous materials or toxic substances on the License Areas or the Airport caused or permitted by Licensee results in any contamination of the License Areas or the Airport, Licensee shall promptly take all actions at its sole expense as are necessary to return the License Areas and the Airport to the condition existing prior to the introduction of any such hazardous materials or toxic substances; provided that, City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions, in City's sole and absolute discretion, would not potentially have any material adverse long-term or short-term effect on the License Areas or the Airport.

M. Licensee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (A) that no person on the grounds of race, color, creed, religion, sex, marital status or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; (B) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination; and (C) that Licensee shall use the License Areas in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-



Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

N. That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and the license provided for herein, and to reenter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including expiration of appeal rights.

O. Licensee, by accepting this Agreement, agrees for itself, its successors and assigns that it will not make use of the License Areas in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the License Areas and cause the abatement of such interference at the expense of Licensee.

P. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

11. No Assignment. This Agreement and License is personal to Licensee and shall not be assigned, conveyed or otherwise transferred by Licensee under any circumstances, without the prior written approval of the City. Any attempt to assign, convey or otherwise transfer this Agreement, and the License provided herein, except in accordance with the preceding sentence shall be null and void and cause the immediate termination and revocation of this Agreement.

12. Liens. Licensee shall not permit any liens of any type, including but not limited to mechanic's or material men's liens, stop notices or other liens (collectively, "**Liens**") to be filed against the License Areas by reason of any action or inaction by Licensee. If any Liens of any type are filed against the License Areas during the term of this Agreement as a result, directly or indirectly, of any action or inaction by Licensee, Licensee shall cause the same to be discharged of record, by payment of the claim, by posting and recording the bond contemplated by the California Civil Code Section 3143, or by other action acceptable to City, within 20 days after demand by City. Licensee shall indemnify, hold harmless, and defend City from and against any and all claims relating to such Liens.

13. Defaults; Remedies.

A. Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Licensee:

(i) The vacating or abandonment of the License Areas by Licensee.

(ii) The failure by Licensee to make any payment required to be made by Licensee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from City to Licensee.

(iii) The failure by Licensee to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Licensee, other than described in paragraph (ii) above, where such failure shall continue for a period of thirty (30)

days after written notice hereof from City to Licensee; provided, however, that if the nature of Licensee's default is such that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commenced cure within such thirty (30)-day period and thereafter diligently prosecutes such cure to completion.

(iv) (a) The making by Licensee of any general arrangement or assignment for the benefit of creditors; (b) Licensee becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Licensee, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of Licensee's assets located at the License Areas or of Licensee's interest in this Agreement, where possession is not restored to Licensee within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Licensee's assets located at the License Areas or of Licensee's interest in this Agreement, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this paragraph 13.A.(iv) is contrary to any applicable law, such provision shall be of no force or effect.

B. Remedies. In the event of any such default by Licensee, in addition to any other remedies available to City at law or in equity, City shall have the immediate option to terminate this Agreement and all rights of Licensee hereunder. If City shall elect to terminate this Agreement, then City may recover from Licensee any amount necessary to compensate City for all the detriment proximately caused by Licensee's failure to perform Licensee's obligation under this Agreement or which in the ordinary course of things would be likely to result therefrom.

(i) Re-entry. In the event of any such default by Licensee, City shall also have the right, with or without terminating this Agreement, to re-enter the License Areas and remove all persons and property from the License Areas; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Licensee. No re-entry or taking possession of the License Areas by City pursuant to this paragraph 13.B.(i) shall be construed as an election to terminate this Agreement unless a written notice of such intention be given to Licensee or unless the termination thereof be decreed by a court of competent jurisdiction.

(ii) Cumulative Rights. All rights, options and remedies of City contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

(iii) Default by City. City shall not be in default unless City fails to perform obligations required of City within a reasonable time, but in no event later than thirty (30) days after written notice by Licensee to City specifying wherein City has failed to perform such obligation; provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion.

14. Condemnation. If the whole or any part of the License Areas shall be condemned or taken by any public authority under the power of eminent domain, then the terms of this Agreement shall cease as to the parts taken, from the day that possession of such portion shall

vest in the condemnor. If in excess of 50% of the License Areas shall be so taken, Licensee may, at its option, upon ten (10) days written notice, declare this Agreement terminated.

**15. Indemnification of City.** Notwithstanding anything to the contrary contained in this Agreement, Licensee agrees to protect, indemnify and hold the City and the License Areas harmless from any and all damages and liabilities at any time occasioned by or arising out of (A) any act, activity or omission of Licensee, or of anyone holding under Licensee, or (B) the occupancy or use of the License Areas or any part thereof, by or under Licensee, or (C) any state or condition of the License Areas or any part thereof.

**16. Notices.** Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to City or Licensee, as the case may be, at the respective addresses listed below, or may be made by personal service.

To Licensee:                      John Lahargou  
   2555 Adobe Road  
   Paso Robles, CA 93446  
   Telephone: 805-237-9677

To the City:                        City of El Paso de Robles  
   Attn: City Manager  
   1000 Spring Street  
   Paso Robles, CA 93446  
   Telephone: 805-237-3888

**17. Miscellaneous.**

A. Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

B. Time of Essence. Time is of the essence.

C. Additional Rent. Any monetary obligations of Licensee to City under the terms of this Agreement shall be deemed to be additional rent.

D. Incorporation of Prior Agreements; Amendments. This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Agreement, Licensee hereby acknowledges that neither City nor any of its employees and or agents have made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the License Areas and Licensee acknowledges that Licensee shall materially comply with all applicable laws and shall be responsible for the legal use and adaptability of the License Areas and the compliance thereof

with all applicable laws and regulations in effect during the Term of this Agreement except as otherwise specifically stated in this Agreement.

E. Covenants and Conditions. Each provision of this Agreement performable by Licensee shall be deemed both a covenant and a condition.

F. Succession and Choice of Law. This Agreement shall bind the parties, their personal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of California.

G. Attorney's Fees. If either party herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court.

H. City's Access. City and City's agents shall have the right to enter on the License Areas at reasonable times for any reasonable purpose. City shall defend, indemnify and hold Licensee harmless from all liability relating to such entry, except for liability which results solely from Licensee's negligence or willful acts.

I. Waiver of California Code Sections. Licensee waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to the destruction of the License Areas, Civil Code Sections 1932(1), 1941 and 1942 with respect to City's repair duties and Licensee's right of repair, and Code of Civil Procedure Section 1265.130, allowing either party to petition the Superior Court to terminate this Agreement in the event of a partial taking of the License Areas for public or quasi-public use by statute, by right of eminent domain, or by purchase in lieu of eminent domain, and any right of redemption or reinstatement of Licensee under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473, 1174(c) and 1179 and Civil Code Section 3275) in the event Licensee is dispossessed from the License Areas for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein, and this waiver shall apply even though Licensee may be the subject of a voluntary or involuntary petition in bankruptcy.

**20.** Termination of Farming Lease. Following execution of this Agreement by the parties, the Farming Lease shall be deemed terminated and of no further force and effect, except with respect to the indemnity provisions set forth in Section 14 of the Farming Lease, which shall remain in effect as to any damages or liabilities covered by said indemnity provision arising prior to the effective date of this Agreement.

**21.** Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Agreement. Signatures may be made by telecopy provided the original is promptly mailed to the other party.

**22.** Recitals. The recitals above are incorporated by reference as though fully set forth in the Agreement.

LICENSEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE AGREEMENT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the day and date first above written.

**City:**  
City of El Paso de Robles, a municipal corporation

By: \_\_\_\_\_  
James L. App, City Manager

ATTEST:

By: \_\_\_\_\_  
Caryn Jackson, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Iris P. Yang, City Attorney

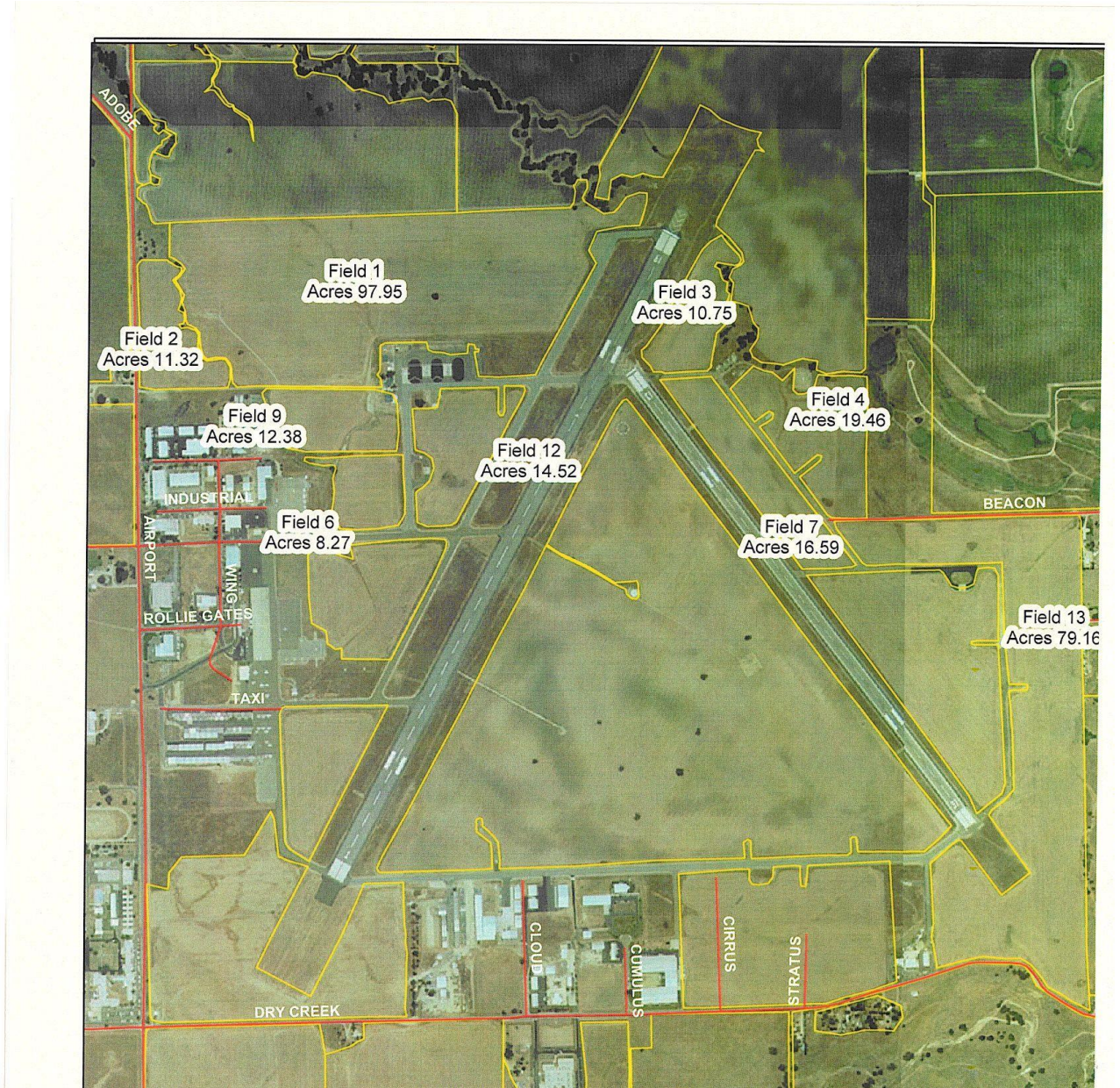
**Licensee:**  
John Lahargou

By: \_\_\_\_\_  
John Lahargou



EXHIBIT A

Description and Map of License Areas



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

Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_



EXHIBIT B

Licensee's Restricted Materials Permit



San Luis Obispo County Agricultural Commissioner  
2156 Sierra Way, Suite A  
San Luis Obispo, CA 93401

District Office: Templeton  
350 N Main Street Templeton, CA 93465  
Phone: (805) 434-5950  
Fax: (805) 434-5953

**RESTRICTED MATERIALS PERMIT: 40-13-4020163**

**Operator:** LAHARGOU, JOHN  
2627 ADOBE RD.  
PASO ROBLES, CA 93446-

# 4020163-2013-Version: 1  
County District #: 2  
Issued on: 1/29/2013  
Valid as of: 1/1/2013  
Expires on: 12/31/2013  
Primary Phone: (805) 238-0313  
Alternate Phone: ( ) -  
Mobile Phone:  
Fax:

**Type of Use:** Agricultural Use  
**Pesticide Possession:** Possession and Use  
**Permit Duration:** Seasonal

Notices Of Intent required 24 hours  
prior to application of pesticide  
containing restricted materials

**Permit Conditions:** 03A, 08, 11, 11B, 00A, 02B

See condition detail for  
code descriptions.

**Regulatory Notes:**

John Lahargou-PAC #40-90051 Exp 12/31/2013  
Uncultivated ag listing applies to all locations associated with this permit.

I understand that this permit does not relieve me from liability for any damages to any persons or property caused by the use of these pesticides. I waive any claims of liability for damages against the County Department of Agriculture based on the issuance of this permit. I further understand that this permit may be revoked when pesticides are used in conflict with the manufacturer's labeling or in violation of applicable laws, regulations, and specific conditions of this permit. I authorize inspection at all reasonable times and whenever an emergency exists by the Department of Pesticide Regulation or the County Department of Agriculture of all areas treated or to be treated, storage facilities for pesticides or emptied containers and equipment used or to be used in the treatment. I have considered alternative and mitigation measures pursuant to Title 3, California Code of Regulations, section 6426. Taking into account economic, environmental, social, and technological factors, I have adopted those that are feasible and would substantially lessen any significant adverse impact on the environment.

[Form PR-ENF-125 (Rev 11/06) Pesticide Enforcement Branch]

Applicant: John Lahargou Owner  
(Name & Title)  
Applicant Signature: John Lahargou Date: 9/6/13  
Issuing Officer: [Signature] Date: 9/6/2013