

CITY OF LOMPOC
AGRICULTURAL LEASE

This Agricultural Lease ("this Lease") is made and entered into on _____, 2014, by and between the City of Lompoc, a California municipal corporation ("City") and Big "E" Produce, Inc. ("Tenant"), with reference to the following facts:

A. City owns certain unimproved real property consisting of approximately 3.7 acres, located in, or adjacent to, the City of Lompoc, County of Santa Barbara, State of California, presently identified as Assessor's Parcel Number 097-270-044 (collectively, "the Property"); and

B. Tenant and City desire Tenant farm the Property in accordance with this Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Lease of Premises. City hereby leases to Tenant, and Tenant leases from City, on the terms and conditions set forth in this Lease, the Property, as described above, and as shown on the Map attached as Exhibit "A."

2. Term and Effective Date. The term of this Lease begins on August 5, 2014, and runs year to year and may be terminated upon 60-days' written notice from either party prior to August 1st of subsequent years (the "Lease Term").

3. Use of Property.

A. The Property is leased to Tenant for the planting, growing, and harvesting of annual, legally-marketable crops, and soil preparation as needed (the "Permitted Use"). Tenant shall not use, or permit to be used, any part of the Property for any purpose other than the Permitted Use. All operations directly or indirectly related to the Permitted Use shall be performed in accordance with all then applicable laws and the best course of farming practiced in the vicinity. If Tenant fails to so perform, City provides Tenant 10-days' written notice of such failure and Tenant does not take satisfactory remedial measures within that 10-day-period, then City reserves the right to take those necessary remedial measures, at the expense of Tenant, for which Tenant agrees to reimburse City on demand.

B. Tenant will not permit any noxious weeds to go to seed on the Property, and all seed planted thereon shall be free from morning glory and other noxious weed seeds. City reserves the right to go on the Property, at any time, for the purpose of inspecting same and treating any morning glory or other noxious weeds which may be growing thereon. Whenever Tenant removes crops from the Property,

Tenant agrees to immediately proceed to plow, disk, or otherwise cultivate the land where such crops have been removed, so that no weeds may grow thereon.

C. Tenant shall, at Tenant's sole cost and expense, properly comply with any and all laws, ordinances, rules, regulations, requirements, and orders, present or future, of the federal, State of California, County of Santa Barbara, or City's government which may in any way apply to the Permitted Use, maintenance of, occupation of, or operations on, the Property, the production of crops thereon, or the sale or other disposition of such crops.

D. Tenant shall not release, discharge, dispose of, or spill any toxic or hazardous substance, waste, or materials on the Property, except that Tenant may apply pesticides, herbicides, and fungicides as usually used in farming operations in accordance with industry standards and any and all regulations pertaining to the use thereof; provided, however, that Tenant agrees not to use pesticides, herbicides, or fungicides that will have residual effect beyond the Lease Term, without the prior written consent of City.

E. Tenant agrees to defend, indemnify and hold harmless City, and each of its officers, directors, employees, and agents (collectively, the "Indemnitees") from and against any and all obligations (including removal and remedial actions), losses, claims (including third-party claims), suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including consultants' and attorneys' fees and expenses) of whatever kind or nature whatsoever that may at any time be incurred by, imposed on, or asserted against, the Indemnitees directly or indirectly based on, or arising, or resulting from:

(i) The actual or alleged presence of Hazardous Substances or Materials at, on or beneath the Site; or

(ii) Any environmental claim relating in any way to the alleged presence of Hazardous Substances or Materials at, on, or beneath the Site; provided, that this indemnification shall only apply to Hazardous Substances or Materials resulting from Tenant's actions or omissions.

For the purpose of this Agreement, "Hazardous Materials" or "Hazardous Substances" shall include, but not be limited to, substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code, as "infectious waste" in Section 25117.5 of the California Health and Safety Code, or as "hazardous substances" in Section 25316 of the California Health and Safety Code or "hazardous materials" as defined in Section 353 of the California

Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

4. Taxes. The use or occupancy of the Property by Tenant constitutes a property interest, which may be subject to possessory interest taxes and Tenant shall be solely liable for the payment of such taxes. Tenant shall pay, when due, any other taxes and general and special assessments of every description which, during the term of this Lease, may be levied upon or assessed against the Property and all interest therein (possessory or otherwise). Tenant shall also pay all license or permit fees necessary or required by law for the conduct of Tenant's operation.

5. Rent.

A. Tenant agrees to pay \$3,700.00 per year, effective August 5, 2014, to City at 100 Civic Center Plaza, Lompoc, California, as rent for the use and occupancy of the Property. Partial years shall not be prorated (the "Rent"). The Rent is due in advance every year on August 1 during the term of this Lease, except for the following: \$3,700.00 initial lease payment shall be due by August 15, 2014.

B. Adjustments to the Rent. Effective August 1, 2015, and each August 1, thereafter, during the term of this Lease, a new annual rent shall be determined by City and paid by Tenant, based upon the following:

(i) For the purpose of this adjustment, the basic index to be used for adjusting the rent shall be the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers U.S. City Average published by the U.S. Department of Labor, Bureau of Labor Statistics for the month of, or nearest to, April 1st of each year during the term of this Lease (the "Applicable CPI").

(ii) Effective each August 1st during the term of this Lease, the monthly rent shall be increased in accordance with the Applicable CPI, plus one percent (1%).

(iii) In the event the Applicable CPI decreases to the point of reflecting a negative figure for any year, the rental rate for the applicable year shall not be reduced, but the one percent (1%) increase will still apply.

(iv) If the foregoing index is at any time no longer available, then a comparable economic indicator shall be used to determine the annual rent adjustment.

The adjusted amount shall be defined as the Rent.

C. If Tenant continues to occupy the Property after the effective date of the notice of termination described in Paragraph 2., above, then Rent shall immediately be equal to 200% of the then applicable Rent.

6. Entry by City. Tenant shall permit City, and City's agents and assigns, at all reasonable times, to enter the Property, for the purposes of inspection, ascertaining compliance with the terms of this Lease, exercise of City's rights under this Lease, to survey and complete studies associated with City's future use of the Property, and for all other lawful purposes. City shall use caution in entering the Property for such purposes, in order to avoid causing damage to Tenant's crops.

7. Condition of Property. By execution of this Lease, Tenant accepts the Property in its present condition, and agrees, on the last day of the term or on sooner termination of this Lease, to surrender the Property to City in the same condition as when received, reasonable use, wear, and damage by fire, act of God, or the elements excepted, and to promptly remove all of Tenant's property from the Property.

8. Disclaimer of Warranty – Soil Suitability. City makes no warranty of the soil's suitability for growing the crops Tenant is authorized to grow under this Lease. Tenant represents Tenant has made an independent inspection of the Property and is not relying upon any representation or warranty from City as to such condition.

9. Operating Costs. All costs incurred by Tenant directly or indirectly connected to the Permitted Use, including, but not limited to, costs of tools, labor, materials, water, electricity, and other utilities shall be the sole responsibility and borne and paid by Tenant when due.

10. Release and Hold Harmless. Tenant, as a material part of the consideration of this Lease, hereby waives all claims against the Indemnitees for damages to Tenant's crops and equipment, in, upon, or about the Property. Tenant also agrees to indemnify, defend and hold harmless the Indemnitees from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorney's fees and court costs) ("Damages") arising from, or as a result of, the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Property, or otherwise in connection with this Lease; provided, that Tenant's obligation to indemnify and hold harmless shall only be to the extent Tenant was a direct or indirect cause of the Damages.

11. Insurance.

A. Liability Insurance. Tenant shall maintain in good standing, liability insurance at least as broad as Insurance Services Offices Commercial General Liability Coverage (occurrence form CG 0001), to protect against loss from liability imposed by law for damages on account of, but not limited to:

(i) Bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Tenant on the Property, or in connection with the operations thereof,

resulting directly or indirectly from any acts or activities of Tenant or its sublessees, or any person acting for Tenant, or under Tenant's control or direction; and

(ii) Damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Tenant, or any person acting for Tenant, or under Tenant's control or direction.

Such property damage and bodily injury insurance shall also provide for and protect City against incurring any legal cost in defending claims for alleged loss. Such Commercial General Liability insurance shall be maintained in full force and effect during the term of this Lease in the following amount: Commercial General Liability insurance with limits not less than \$1,000,000 for each occurrence, combined Single limit for bodily injury and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. Any deductible or self-insured retentions must be declared to, and approved by, the City. At City's option, City may require Tenant to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers, or City may require Tenant to provide a financial guaranty satisfactory to City, guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

B. Workers' Compensation Insurance. Tenant shall maintain in good standing workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California, to insure employers against liability for compensation under the workers' compensation laws now or hereafter in force in California or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Tenant in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for, or on behalf of, any person incurring or suffering injury or death in connection with the Property or the operation thereof by Tenant. Notwithstanding the foregoing, Tenant may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation, in which event Tenant shall deliver to City evidence that such self-insurance has been approved by the appropriate State authorities.

C. No required policy shall be subject to cancellation, reduction in coverage, or nonrenewal, except after notice in writing shall have been sent by registered mail addressed to City, to the extent practicable 30 days in advance thereof, but in any event, prior to the effective date thereof. All policies shall name the City and Tenant as insured, additional insured, and/or loss payable parties as their interests may appear. Tenant shall deliver a certificate of evidence of insurance and amendatory endorsements to City upon execution of this Lease.

12. Lease Subject to Existing Rights of Others. This Lease is subject to all existing easements, servitudes, licenses, and rights of way for canals, ditches, levees,

roads, highways, telephone, telegraph, and electric power lines, railroads, pipelines, and other purposes, whether or not of record.

13. Quiet Enjoyment. City hereby covenants and agrees if Tenant pays the Rent as herein provided and faithfully performs the terms and conditions on Tenant's part to be kept, observed, and performed, Tenant shall have the quiet enjoyment of the Property during the term hereof, without hindrance or interference from City.

14. Waste. Tenant shall not commit, or permit others to commit, any waste or nuisance upon the Property, or commit or allow any other act thereon that could disturb the quiet enjoyment of City, any other tenant of City, or other persons lawfully upon the Property or upon adjacent or nearby property.

15. Assignment or Subletting. Neither this Lease nor any interest therein shall be assigned, either voluntarily or involuntarily, by Tenant, or by operation of law or otherwise, nor shall the Property, or any part thereof, be subleased by Tenant without the prior written consent of City. Any assignment or subletting without such prior written consent of City shall be void.

16. Liens. Tenant shall not permit or suffer any liens of any kind to be recorded or filed against the Property for any reason whatsoever, and Tenant shall diligently take all steps necessary and proper to immediately remove and discharge any liens which are filed.

17. Time of Essence. Time is of the essence of this Lease and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Lease.

18. Governing Law and Venue. This Lease will be construed, interpreted, and enforced pursuant to California law. Venue regarding any matter arising out of this Lease between the parties shall be the County of Santa Barbara, Santa Maria Branch of the Superior Court.

19. Attorneys' Fees. In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to all costs incurred and to reasonable attorneys' fees, including the fees of in-house counsel.

20. Relocation Waiver. Tenant hereby waives any and all compensation that may be due under Title 25, Division I, Chapter 6, Subchapter 1, of the California Code of Regulations relating to relocation assistance. However, Tenant shall be entitled to receive the market value of the crop if the Lease is terminated prior to harvest. Market value shall be based on the futures price of the crop on the first day of the month in which the crop likely would have been harvested. The measure of the likely yield of the acreage under production shall be based upon the professional judgment of the Santa Barbara County Agriculture Commissioner.

21. General. If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, then the remainder of this Lease and any other application of such terms or provisions shall not be affected thereby. The captions of this Lease are for convenience of reference only and shall not define or limit any of its terms or provisions. All of the covenants of Tenant hereunder are deemed and construed to be "conditions," as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate instance. The relationship created by this Lease is one of landlord/tenant. This Lease is not intended to create a joint venture relationship or any relationship other than that of landlord/tenant. This Lease may be amended, in writing, with the approval of the Tenant and Landlord's City Administrator or Public Works Director, unless the amendment reduces the Rent.

IN WITNESS WHEREOF, City and Tenant have entered into this Lease on the day and year first above written.

CITY

TENANT

City of Lompoc
100 Civic Center Plaza
P.O. Box 8001
Lompoc, CA. 93438
ATT: Kevin P. McCune
Public Works Director

Big "E" Produce, Incorporated
901 Floradale Avenue
Lompoc, CA 93436

By: _____
John H. Linn
Mayor

By: _____
Petra Espinoza
President

ATTEST:

By: _____
Stacey Alvarez
City Clerk

By: _____
Petra Espinoza
Treasurer

APPROVED AS TO FORM:

By: _____
Joseph W. Pannone
City Attorney