

draft

LEASE AGREEMENT

This Lease Agreement ("Lease") is hereby entered into by and between the Bolinas Community Public Utility District ("BCPUD" or "Lessor") and Gospel Flat Farms ("Lessee"), effective June 15, __, 2011, as amended effective March __, 2014.

WHEREAS, BCPUD is the owner of land and improvements commonly known as the BCPUD's "Sewer Pond Property", APN 193-030-38, and numbered as 101 Mesa Road, Bolinas, California.

WHEREAS, the Sewer Pond Property is held in trust of the people of Bolinas and any contractual obligation BCPUD enters into involving use of the Sewer Pond Property is to be expressly for the purpose of enhancing the quality of life in the community and meeting the goals expressed in the Bolinas Community Plan.

WHEREAS, the BCPUD desires to lease to the Lessee and the Lessee desires to lease for agricultural purposes from the BCPUD for the term, at the rental and upon the covenants, conditions and provisions herein set forth, the following three parcels within the Sewer Pond Property:

Parcel A; approximately one (1) acre of property currently under cultivation located at 25 Olema-Bolinas Road as designated on the attached site plans (attached hereto as Exhibit A-1 (aerial map) and Exhibit A-2 (topographical map)); and

Parcel B: approximately two (2) acres of property located below the sprayfield #4 fencing as designated on Exhibit A-1 and Exhibit A-2; and

Parcel C: approximately two (2) acres of property located below the sprayfield #3 fence line as designated on Exhibit A-1 and Exhibit A-2.

Collectively, Parcels A, B and C shall be referred to herein as the "Leased Premises".

NOTE: the Leased Premises do **not** include any paved or unpaved pathways or driveways near or within any of the above described parcels and, subject to the provisions of Section 3(A)(c), below, any and all fencing (whether temporary or permanent) must be set back a minimum of fifteen (15) feet from either side of any paved pathway or driveway; provided, however, that temporary fencing may be placed on Parcel A and set back a minimum of ten (10) feet from the paved pathway and no setback is required between the fence on Parcel A and the Resource Recovery driveway.

THEREFORE, in consideration of the mutual promises herein set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, BCPUD and Lessees agree as follows:

1. **Term.**

A. BCPUD hereby leases the Leased Premises to the Lessee, and the Lessee hereby leases the same from BCPUD, for a term beginning June 15, 2011 and ending June 15, 2016 (the "Term"), unless earlier terminated as provided in this Lease Agreement. Lessee and Lessor may modify the terms of this Lease during the Term from time to time, but only by a written agreement signed by both Parties. Lessor may not agree to modify the terms of this Lease other than as approved by the BCPUD Board of Directors at a duly noticed public meeting. Lessee agrees to submit an annual report of its planned activities for the upcoming calendar year and its completed activities of the prior calendar year to the BCPUD Board of Directors at the regular monthly Board meeting each [identify which month] (beginning [month] 2014) during the Term (or any Renewal Term as defined in subparagraph B, below).

B. The Lessee shall have the option to renew the Lease for one extended term of five years ("Renewal Term"), which term shall also be subject to earlier termination as provided in this Lease Agreement. The Lessee shall exercise such renewal option, if at all, by giving written notice to the BCPUD not less than ninety (90) days prior to the expiration of the Term. The Renewal Term shall be upon the same covenants, conditions and provisions as provided in this Lease Agreement, as it may be amended from time to time during the Term or during the Renewal Term.

2. **Rental.**

A. The Lessees shall pay to the BCPUD during the Term cash rental of \$100.00 (One Hundred Dollars) per year, payable in one annual installment on June 15 of each year during the Term and made payable to the BCPUD at 270 Elm Road, Bolinas.

B. The rental for any Renewal Term shall be determined at the time of renewal.

3. **Lessee Use and Responsibilities.**

A. Use.

a. Lessee's use of the Leased Premises shall be limited to certified organic agriculture, specifically:

(i) as to Parcel A, the cultivation of legal crops;

(ii) as to Parcels B and C, the cultivation of fruit trees and dry crops, *provided that* any crop intended for human consumption must be located at least 200 feet from the closest wastewater treatment sprinkler head. Such crops may only be irrigated by natural precipitation or other legal off-site sources of potable non-BCPUD water.;

(iii) the making of compost for vegetable production, provided that any and all compost piles are temporary and must be located inside the fences established on the Leased Premises as described in subsection c, below.

b. Additional Uses.

(i) Any other proposed use(s) of the Leased Premises must be submitted by Lessee in writing to the BCPUD office and reviewed by the BCPUD's Sewer Pond Lands Committee at a duly noticed public meeting within sixty (60) days of receipt of the proposal. The Committee shall make a written recommendation concerning Lessee's proposed use to the BCPUD Board of Directors at the next regularly scheduled monthly meeting following the Committee meeting. The BCPUD Board of Directors reserves the right in its sole discretion to refuse to approve the proposed use.

(ii) Notwithstanding the foregoing subparagraph (i), no livestock activity of any kind shall be permitted on the Leased Premises.

c. Fencing.

(i) Lessee and Lessor acknowledge and agree that fence lines have been established for Parcels A, B and C during site visits with the Sewer Ponds Lands Committee effective as of the date of the amendment of this Lease Agreement. No additional fencing on these Parcels shall be permitted without the approval of the BCPUD Board of Directors at a duly noticed public meeting.

(ii) No uses by Lessee are permitted on any portion of Parcels A, B or C outside of the approved fence lines.

d. Under no circumstances shall the agricultural crops or fencing, to be installed by Lessee be located or allowed onto any portion of the Sewer Pond Property that is not the Leased Premises without the prior approval of the BCPUD Board of Directors at a duly noticed public meeting, and the BCPUD Board of Directors reserves the right in its sole discretion to refuse to grant such approval.

e. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may later be in force, regarding its activities and its use of the Leased Premises.

f. Notwithstanding the foregoing, Lessee shall not use the Leased Premises for the purposes of storing, manufacturing or selling and explosives, flammables or other inherently dangerous substance, chemical, thing or device.

B. Responsibilities.

a. Lessee shall maintain the Leased Premises in a tidy and sanitary condition.

b. If so requested by the BCPUD, prior to the termination of this Lease Agreement Lessee shall return the Leased Premises to its prior condition and remove all facilities installed by it at Lessee's sole expense.

c. If Lessee's representatives will operate motor vehicles on the Leased Premises, Lessee warrants and represents that said representatives is or are duly licensed driver(s) by the State of California and that he or she has and will maintain during the term of this Lease (and any Renewal Term) valid vehicle insurance policies. Subject to the foregoing sentence, Lessee shall be considered to have "authorized vehicles" and shall be entitled to access the Leased Premises via Olema-Bolinas Road (for access to Parcel A) and/or via the paved pathway uphill from Parcel A (for access to Parcels B and/or C); any other access must be approved by BCPUD staff at least 48 hours in advance and shall be permitted only on a limited basis and in a manner compatible with the operational requirements of the BCPUD for the purpose of delivering materials and supplies.

d. No long-term storage of vehicles, motorized equipment or any other materials belonging to Lessee is allowed on the Leased Premises and in no event will any vehicles or equipment be parked on the Leased Premises or elsewhere on the BCPUD's Sewer Pond Property for longer than thirty (30) days.

e. Under no circumstances shall Lessee use or apply or cause to be used or applied within the Leased Premises or any other section of the BCPUD's Sewer Pond Property any pesticides, herbicides, or any other poisons or toxic products or materials of any kind.

f. Lessee shall use, manage and/or maintain the Leased Premises so as not to cause or contribute to any runoff or erosion anywhere within the Leased Premises or elsewhere on the BCPUD's Sewer Pond Property.

g. Lessee shall not remove any trees from the Leased Premises without the approval of, and subject to any and all conditions imposed by, the

BCPUD Board of Directors at a duly noticed public meeting. The BCPUD Board of Directors reserves the right in its sole discretion to refuse to approve any such proposed tree removal.

4. Sublease and Assignment.

Lessee shall not sublease all or any part of the Leased Premises, or assign this Lease Agreement in whole or in part to any other person or entity without BCPUD's prior written consent in the form of written approval by the BCPUD Board of Directors following a duly noticed public meeting. The BCPUD Board of Directors reserves the right in its sole discretion to refuse to consent to any proposed sublease or assignment of the Leased Premises.

5. Repairs.

During the Term and during any Renewal Term, Lessee shall promptly make, at Lessee's sole expense, all necessary repairs to the Leased Premises and any fencing thereupon and shall maintain the Leased Premises in a good and safe condition. Repairs for which Lessee is responsible shall include, but not be limited to, such items as routine repairs of fencing and other parts of the Leased Premises damaged or worn through normal occupancy and use.

6. Alterations and Improvements.

No substantial alteration or improvement to the Leased Premises other than the fencing described in Section 3(A)(c), above, shall be made by the Lessee without the prior written consent of the BCPUD in the form of written approval by the BCPUD Board of Directors following a duly noticed public meeting. The BCPUD Board reserves the right in its sole discretion to refuse to consent to any proposed alteration or improvement to the Leased Premises.

7. Insurance.

A. Lessee is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Lessee will comply at all times during the Term (and any Renewal Term) with such provisions in connection with its use of the Leased Premises.

B. At all times during the Term and any Renewal Term, Lessee shall maintain (and shall provide the BCPUD a copy thereof) general liability insurance with a limit of no less than Three Hundred Thousand Dollars (\$300,000) per occurrence for bodily injury, personal injury and property damage.

C. Lessee's general liability insurance policy shall contain, or shall be endorsed to contain, the following provisions:

a. BCPUD, its directors, officers, employees and authorized volunteers, are to be given insured status and the coverage shall contain no special limitations on the scope of protection afforded to BCPUD, its directors, officers, employees or authorized volunteers.

b. For any claims relating to this Lease, Lessee's insurance shall be primary insurance as respects BCPUD, its directors, officers, employees or authorized volunteers. Any insurance, self insurance or other coverage maintained by BCPUD, its directors, officers, employees or authorized volunteers shall not contribute to it.

c. Any failure of Lessee to comply with reporting or other provisions of the insurance policy, including breaches of warranties, shall not affect the coverage provided to BCPUD, its directors, officers, employees, or authorized volunteers.

d. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Lessee's insurance policy shall state or be endorsed to state that coverage shall not be canceled by the insurance carrier or Lessee, except after thirty (30) days (10 days for non-payment of premium) prior written notice has been hand-delivered to BCPUD.

8. Utilities.

Lessee shall pay for all utilities and/or services supplied to the Leased Premises.

9. Signs.

Subject to the BCPUD's prior written consent, Lessee may place signs on the Leased Premises as permitted by applicable zoning ordinances and at locations selected by Lessee. BCPUD may refuse consent to any proposed signage that is in BCPUD's opinion inconsistent with or inappropriate to the Leased Premises.

10. Right of Entry.

BCPUD shall have the right to enter the Leased Premises at reasonable hours to inspect the same, make repairs or conduct the business of BCPUD, provided BCPUD shall not thereby unreasonably interfere with Lessee's activities on the Leased Premises.

11. Parking.

During the Term (and any Renewal Term), Lessee shall have the non-exclusive use in common with BCPUD, of the non-reserved automobile parking areas, subject to rules and regulations for the use thereof as prescribed from time to time by BCPUD. BCPUD reserves the right to designate parking area outside the lab building or in reasonable proximity thereto, for Lessee and Lessee's agents and employees.

12. Damage/Destruction.

If the Leased Premises or any part thereof is so damaged by fire, casualty or structural defects such that the same cannot be used for Lessee's purposes, then Lessee shall have the right within sixty (60) days following damage to elect by written notice to BCPUD to terminate this Lease Agreement as of the date of such damage. In the event of minor damage, casualty or structural defect to any part of the Leased Premises, if such damage, casualty or structural defect does not render the Leased Premises unusable for Lessee's purposes, Lessee shall promptly repair such damage at its own expense. In making the repairs called for in this paragraph, BCPUD shall not be liable for any delays resulting from strikes, government restrictions, inability to obtain necessary materials or labor or other matters which are beyond reasonable control of BCPUD. Lessee shall be relieved from paying rent and other charges during any portion of the Lease Term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Lessee's purposes. The provisions of this paragraph are intended to be broad and include not only the foregoing, but also any occurrence which is beyond Lessee's reasonable control and which renders the Leased Premises inoperable or unfit for occupancy or use, in whole or in part, for Lessee's purposes.

13. Default.

If Lessee should default in the payment of rent when due to BCPUD as herein provided of and if said default shall continue for fifteen (15) days after written notice thereof has been given to Lessee by BCPUD, then BCPUD may declare the Term of this Lease ended and terminated by giving Lessee written notice of such intention, and if possession of the Leased Premises is not surrendered, BCPUD may reenter said premises. BCPUD shall have, in addition to the remedy herein provided, any other right or remedy available to BCPUD on account of any Lessee default, either in law or equity. BCPUD shall use reasonable efforts to mitigate its damages.

14. Indemnification.

To the fullest extent permitted by law Lessee shall indemnify, defend and hold harmless BCPUD, its directors, officers, employees and/or authorized volunteers, and each of them, from and against:

A. Any and all claims, demands, causes of action, damages, costs, expenses (including attorneys' fees), penalties, losses or liabilities, in law or in equity, of every kind or nature whatsoever including, but not limited to, injury to or death of any person, including the BCPUD, or Lessee or their respective directors, officers, employees or

authorized volunteers, and damages to or destruction of property of any person, including but not limited to, the BCPUD or Lessee or their respective directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the Lessee's use of the Leased Premises; and

B. Any and all claims, demands, causes of action, damages, costs, expenses (including attorneys' fees), penalties, losses or liabilities, in law or equity, of every kind or nature whatsoever, including, but not limited to, injury to or death of any person, including the BCPUD or Lessee or their respective directors, officers, employees or authorized volunteers, and damages to or destruction of property of any person, including but not limited to, the BCPUD or Lessee or their respective directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly resulting from or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of the Lessee.

Lessee shall defend, at Lessee's own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against the BCPUD or its directors, officers, employees, or authorized volunteers. Lessee shall pay and satisfy any judgment, award or decree that may be rendered against the BCPUD or its directors, officers, employees, or authorized volunteers, in any and all such suits, actions, or other legal proceedings.

15. Termination.

Notwithstanding any other provision of this Lease Agreement, BCPUD shall be entitled to terminate this Lease Agreement or any use permitted under Section 3, above, upon thirty (30) days written notice in the event: (1) it is required or advised to do so by any federal, state or other public agency with due authority over the operations of the district or by its insurance authority, ACWA/JPIA and/or (2) the BCPUD determines in good faith that the Lessee's use of the Leased Premises has or will create unacceptable operational difficulties for the BCPUD's wastewater facility and/or (3) the BCPUD determines in good faith that the Lessee's use of the Leased Premises creates a nuisance or otherwise poses a public health or safety risk to BCPUD staff or the public, and/or (4) Lessee fails to comply with any of the material terms of this Lease Agreement or any of Lessee's material obligations hereunder. Any notification of early termination of this Lease Agreement by the BCPUD may be protested by Lessee for a final determination to the BCPUD Board of Directors.

16. Notices.

Any notices required or permitted under this Lease Agreement may be given by personal delivery to an authorized representative of the recipient or by certified or registered United States mail. In the case of the Lessee, notices shall be addressed to:

Donald Murch
Mickey Murch

c/o Gospel Flat Farms
140 Olema-Bolinas Road
Bolinas, California 94924

In the case of the BPCUD, notices shall be addressed to:

Bolinas Community Public Utility District
P.O. Box 390
Bolinas, California 94924
Attn: General Manager

Notice shall be presumed to be received three (3) business days after deposit in the mail, postage prepaid, or upon the date of delivery, if personally given.

17. Governing Law.

This Lease Agreement is executed and shall be performed in Marin County, California. It shall be governed by and construed in accordance with the laws of the State of California.

18. Legal Actions.

Any action relating to this Lease Agreement, including all disputes between the parties, shall be instituted and prosecuted in a court of competent jurisdiction in the State of California. Each party hereby appoints the individual listed opposite its name to act as its initial agent for service of process relating to any such action.

DISTRICT: Jennifer Blackman
General Manager
Bolinas Community Public Utility District
270 Elm Road
Bolinas, California 94924
(415) 868-1224

LESSEE: Donald Murch
Mickey Murch
c/o Gospel Flat Farms
140 Olema-Bolinas Road
Bolinas, California 94924
(415) 640-5425

IN WITNESS WHEREOF, the parties hereto have signed this Lease Agreement as of the day and year first above written.

BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT:

BY: _____
Jennifer Blackman, General Manager

LESSEE:

BY: _____
Donald Murch on behalf of Gospel Flat Farms

BY: _____
Mickey Murch on behalf of Gospel Flat Farms