



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor


EC-19-467

Mayor Timothy M. Keller

August 2, 2019

INTER-OFFICE MEMORANDUM

TO: Klarissa Peña, City Council President

FROM: Timothy M. Keller, Mayor 

SUBJECT: Agricultural Lease between City of Albuquerque and J & T Farms, Inc.

The City owns approximately 87.5 acres of land known as "Hubbell Oxbow Fields" or "Meade Estate", which is agricultural land dedicated to farming, preservation of wildlife and designated as Major Public Open Space.

The City of Albuquerque and J & T Farms, Inc. have an Agricultural Lease for the preservation of agricultural traditions and growing crops, which is set to expire October 1, 2019. The City and J & T Farms, Inc. wish to renew the lease for five (5) years. The proposed lease also provides for one (1) additional five (5) year term at the expiration of the initial term.

The proposed annual rent for the initial term is \$75.00 per acre or \$6,562.50, payable in two installments which are due on April 30th and October 31st of each year.

The proposed annual rent for the extension term is \$82.50 per acre or \$7,219.76, payable in two installments which are due on April 30th and October 31st of each year, which reflects a 10% escalation of the annual rent paid during the initial term.

This Agricultural Lease is forwarded to City Council for approval.

Title/Subject of Legislation: Agricultural Lease between City of Albuquerque and J & T Farms, Inc.

Approved: SN 9/3/19

Sarita Nair Date
& Chief Administrative Officer

Recommended:

David Simon 8/1/19
David Simon, Director Date
Parks and Recreation Department (2) 8/1/19

Cover Analysis

1. What is it?

Agricultural Lease between City of Albuquerque and J & T Farms, Inc.

2. What will this piece of legislation do?

Renew the existing lease and farming presence of J & T Farms, Inc. at the Hubbell Oxbow Fields.

3. Why is this project needed?

The City wishes to preserve the agricultural traditions and wildlife in this area of designated Major Public Open Space.

4. How much will it cost and what is the funding source?

There is no cost to the City.

5. Is there a revenue source associated with this contract? If so, what level of income projected?

The proposed annual rent for the initial term is \$75.00 per acre or \$6,562.50, payable in two installments which are due on April 30th and October 31st of each year.

The proposed annual rent for the extension term is \$82.50 per acre or \$7,219.76, payable in two installments which are due on April 30th and October 31st of each year, which reflects a 10% escalation of the annual rent paid during the initial term.

6. What will happen if the project is not approved?

The City will lose potential revenue and the lease presence of J & T Farms, Inc.

7. Is this service already provided by another entity?

Not at this location.

AGRICULTURAL LEASE
HUBBELL OXBOW FIELDS
J & T FARMS, INC.

THIS AGRICULTURAL LEASE ("Lease") is made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation, (the "City"), and J & T Farms, Inc. a New Mexico corporation, ("Lessee").

RECITALS

WHEREAS, the "Hubbell Oxbow Fields" or "Meade Estate" is agricultural land owned by the City dedicated to farming, preservation of wildlife and designated as Major Public Open Space; and

WHEREAS, the Hubbell Oxbow Fields includes approximately eighty-seven and one-half (87.5) acres of agricultural fields designated for the preservation of agricultural traditions, wildlife feed, and other crops; and

WHEREAS, the City wishes to lease the Hubbell Oxbow Fields for farming and for growing crops; and

WHEREAS, the Lessee desires to lease the Hubbell Oxbow Fields for farming and growing crops.

NOW, THEREFORE, for mutual consideration, and on the terms set forth herein, the City and Lessee agree as follows:

1. **LEASE OF PREMISES.** The City hereby leases to Lessee, without warranty of title, express or implied, the following described real estate ("Premises") in Bernalillo County, New Mexico, for the uses and purposes and subject to the terms, conditions and covenants set forth in this Lease:

Premises to be leased to Lessee: Approximately eighty-seven and one-half (87.5) acres, more or less, of Hubbell Oxbow Fields, as depicted on Exhibit A attached hereto and incorporated by reference.

The Premises to be leased to Lessee is Tract 3C-1-A, MRGCD Map 48 and Tract C-1, Lands of the Federal Realty Corporation, subject to all reservations, restrictions, covenants, easements, licenses and other encumbrances of record.

2. **TERM OF LEASE.**

The term of this Lease shall commence on October 2, 2019 and shall continue for five (5) full calendar years ("Initial Term") through October 1, 2024, unless sooner terminated as provided herein. This Lease may be extended for one (1) additional term of five (5) years by the written mutual agreement of the parties.

3. HOLDER OVER.

A. With Consent. In the event Lessee remains in possession of the Premises after the expiration of this Lease with the City's written consent, but without the execution of a new Lease, it shall be deemed to be occupying said Premises as a tenant from month-to-month at a rental equal to the rent for the previous annual period plus any additional charges called for under the terms of this Lease, including, without limitation, those denominated in this Lease as Additional Rent, and shall otherwise be subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Should the month-to-month hold over tenancy continue for more than one twelve (12) month period, the rent will increase two percent (2%) for each of the subsequent twelve (12) month period. A holdover month-to-month tenancy may be terminated by either party upon at least a sixty (60) day prior written notice.

B. Without Consent. If Lessee remains in possession of the Premises after the expiration or earlier termination of the Lease without the City's consent, Lessee shall be in default hereunder without notice or opportunity to cure, and, in addition to any other right or remedy of the City, Lessee shall be a tenant at will. A holdover tenancy at will is terminable at any time by Landlord without notice. In the event Lessee remains in possession of the Premises after the expiration of this Lease without the City's consent, all other terms of this Lease shall continue to apply except that: (i) the Rent applicable during such tenancy shall be payable monthly in advance at a rate equal to one and twenty-five hundredths (1.25) times the rate in effect immediately before the holdover began, plus any additional charges called for under the terms of this Lease, including, without limitation, those denominated in this Lease as Additional Rent, and (ii) Lessee shall also pay to the City all direct and consequential damages sustained by the City resulting from retention of possession by Lessee, including without limitation the loss of any proposed subsequent tenant for any portion of the Premises.

4. RENT.

A. Notwithstanding the provisions requiring Additional Rents as described and set forth below, the Annual Base Rent for the Premises shall be Seventy Five Dollars (\$75.00) per acre or Six Thousand Five Hundred Sixty Two Dollars and 50/100 Dollars (\$6,562.50), payable in two installments of Three Thousand Two Hundred Eighty One Dollars and Twenty Five Cents (\$3,281.25), which shall be due on April 30th and October 31st of each year.

B. Upon lease extension, the Annual Base Rent shall increase by an amount equal to ten percent (10%) over the Base Rent paid during the initial five-year term. Beginning October 2, 2024, Annual Base Rent for the Premises shall be Eight two and 50/100 Dollars (\$82.50) per acre or Seven Thousand Two Hundred Eighteen and 76/100 Dollars (\$7,218.76), payable in two installments of Three Thousand Six Hundred Nine and 38/100 Dollars (\$3,609.38), which shall be due on April 30th and October 31st of each year.

C. All rent shall be paid by check to the City of Albuquerque, Central Accounts Receivable and Billing Division, PO Box 27780, Albuquerque, NM 87125, or at such other place as the City may designate from time to time for this purpose. Lessee's COA # shall be indicated on all payments.

D. At such times and in such forms as the City may require, Lessee shall furnish the City's Parks & Recreation Department all required statements, records, data and information pertaining to this Lease, including, but not limited to, the cropping plan which is the proposed crop plan for the Premises ("Cropping Plan"). The Cropping Plan must be approved in writing by the City prior to implementation by Lessee. Files must be clearly marked and data systems, if any, must be able to track and extract information directly related to such services. All records shall be maintained in a manner that allows information to be readily available upon request. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after termination of this Lease.

5. QUIET ENJOYMENT. Provided that Lessee continues to perform all terms, conditions and covenants of this Lease which Lessee is required to perform within any applicable notice and cure periods, Lessee shall at all times during the Term, peaceably and quietly enjoy the Premises without any disturbance from the City. Any entry by the City pursuant to the rights, terms, and conditions of this Lease shall not be deemed a constructive or actual eviction of Lessee and shall not be considered to be a breach of these provisions.

6. USE OF PREMISES.

A. Lessee shall:

- (1) Use the Premises for the agricultural purposes of growing, producing and harvesting alfalfa and other types of hay or grasses, and for growing crops;
- (2) Farm the Premises in a good and husband-like manner, observing accepted agricultural practices such as Good Agricultural Practices ("GAP") and Good Handling Practices ("GHP"), and in accordance with a Cropping Plan approved by the City;

- (3) Provide improvements to the Premises, at Lessee's own expense, including but not limited, to laser leveling, moving borders to improve production and irrigation, and rotating crops;
- (4) Control nuisance "tail water" during irrigation and not allow stagnant water to stand on the Premises caused by over-irrigation for longer than seventy-two (72) consecutive hours;
- (5) Maintain a liaison with the MRGCD, establish a schedule for the delivery of irrigation water to the Premises through MRGCD facilities, coordinate the delivery and diversion of water with ditch riders, and promptly notify the City of any difficulties that arise with the delivery of irrigation water to the Premises; and
- (6) Comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations, now or hereafter enacted or amended, affecting the Premises or any activity or condition on or in the Premises.

B. Lessee shall not:

- (1) Use herbicides, pesticides, or insecticides. It shall be Lessee's intent to farm the Premises organically, whenever possible.
 - a. However, notwithstanding the proceeding, at the City's discretion and with prior written approval by the City, Lessee shall only use certain fertilizers listed in the List of Acceptable Fertilizers attached hereto as Exhibit B and incorporated by reference only under the following conditions list below. Additionally, at the City's discretion and with prior written approval by the City, the Lessee may use herbicides, pesticides or insecticides when it is necessary for the immediate preservation of alfalfa or other approved cash crops.
 - i. Lessee shall provide the City with written notice of its request to use any herbicide, pesticide or insecticide one hundred twenty (120) hours prior to the application of any such product. The City must provide written approval for the Lessee to proceed with application of any herbicide, pesticide, or insecticide. Notwithstanding any of the forgoing, Lessee shall never use any herbicide, pesticide or insecticide on the crops without specific written permission from the City.

- ii. Lessee shall only request to use herbicides, pesticides, or insecticides when it is necessary for the immediate preservation of alfalfa or other cash crops.
 - iii. Lessee shall furnish the City records and information pertaining to Lessee's use of any herbicide, pesticide, or insecticide upon the City's request. Files must be clearly marked all records shall be maintained in a manner that allows information to be readily available upon request. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after termination of this Lease.
 - iv. Lessee shall provide the City with written notice of its request to use any fertilizer one hundred twenty (120) hours prior to the application of any such product.
 - v. Upon written approval by the City, Lessee shall utilize only licensed applicators for an herbicide, pesticide, or insecticide subject to regulation by the New Mexico Department of Agriculture.
 - vi. All State and Federal laws related to the use of herbicides, pesticides, or insecticides will be followed at all times.
- (2) Use or occupy Premises in a manner other than as set forth herein, or other than for an approved Cropping Plan without the prior written consent from City;
 - (3) Modify, change or alter the Premises or any improvements on the Premises, except with prior written consent of the City for Lessee's approved uses under this Lease in order to properly farm the Premises;
 - (4) Use the Premises for outdoor storage of any property other than in the designated ESA;
 - (5) Use or occupy or permit the Premises or any improvements located thereon to be used or occupied for any unlawful purpose;
 - (6) Transport to or from the Premises, cause or permit the release upon or from the Premises, or store upon the Premises any hazardous materials or permit any environmentally hazardous condition to exist on the Premises in violation of any law. The term "hazardous

materials” includes, but is not limited to, petroleum products and substances defined as hazardous substances, hazardous materials or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 *et se.*, the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, the Resources Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico or in the regulations adopted in publications promulgated pursuant to the laws; or

- (7) Use or occupy or permit the Premises or any part of the Premises or any improvements located thereon to be used or occupied, or do or permit anything to be done in or on the Premises or any improvements located thereon in any manner which will:
 - a. In any way make void or voidable any insurance coverages required of Lessee as stated in this Agreement and to be in effect continuously with respect to the Premises;
 - b. Cause or be likely to cause structural damage to any improvements located on Premises or any part thereof; or
 - c. Constitute waste or a public or private nuisance.

7. ACCEPTANCE OF PREMISES. Lessee acknowledges and agrees that Lessee has examined the Premises, and has determined by its own independent evaluation that the Premises is suitable and usable for the purposes, uses and activities intended by Lessee and further, Lessee acknowledges that the City has made no representation, warranty or guarantee, express or implied, as to the suitability of the Premises and /or its improvement or the suitability or adequacy of the water and/or water rights for irrigation or any other use of the Premises.

8. LESSEE'S GENERAL OBLIGATIONS.

- A. Lessee shall provide at its own expense all labor, equipment, materials and supplies necessary to perform Lessee's obligations under this Lease.
- B. Lessee shall, at its own expense, obtain prior to commencing work, and maintain thereafter, all necessary licenses or permits needed to carry out any permissible activities on Premises requiring a license or permit.
- C. Lessee shall pay all bills, debts and obligations promptly when due and payable that are incurred by Lessee or Lessee's employees in performing Lessee's operations on the Premises or under the terms of this Lease. Lessee will keep the

Premises free and clear of all construction, mechanic's, materialmen's, laborer's and supplier's liens, resulting from Lessee's use of the Premises. Any lien filed by any contractor, materialman, laborer, or supplier performing work for Lessee or any other type of lien associated with Lessee's use and lease of the Premises shall attach only to Lessee's interest in the Premises. If any contractor's, materialman's, laborer's, or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Property in connection with any such Lessee's work, Lessee shall, within thirty (30) days after receipt by Lessee of notice of such lien, discharge same as a lien either by payment or by posting of any bond as required by a court or as permitted by law. If Lessee shall fail to discharge any such lien, whether valid or not, within thirty (30) days after receipt of notice from City, City shall have the right, but not the obligation, to discharge such lien on behalf of Lessee and all reasonable and actual costs and expenses incurred by City associated with the discharge of the lien, including, without limitation, reasonable attorneys' fees, which costs and fees shall constitute Additional Rent hereunder and shall be immediately due and payable by Lessee.

D. All matters pertaining to personnel employment, supervision, promotion and discharge of Lessee's employees shall be the sole responsibility of Lessee. Lessee shall be responsible for hiring, promotion, discharge and supervision of all employees performing services in and about the Premises. Such employees shall be in the employ of the Lessee and as such, Lessee shall be solely liable to such employees for their wages, compensation, and "employee benefits," if any. Employee benefits include the employer's compensation to FICA unemployment compensation, and other employment taxes, pension plan contributions, worker's compensation, group life and accident and health insurance premiums, retirement, disability and other similar benefits applicable to such employee which accrue during the Term all of which shall be set, determined and paid solely by Lessee.

9. CITY'S GENERAL OBLIGATIONS.

A. The City shall ensure that all gates providing access to the Premises remain locked at all times to prevent entry by the general public and unauthorized individuals in order to protect the activities of Lessee, including protection of the crops.

B. The City, agents and other representatives shall not use, move, or otherwise access Lessee's equipment stored in the Equipment Storage Area on the Premises without prior written consent. In the event of an emergency as determined by the City, the City, agents and other representatives may enter at any time, without notice and without the presence of Lessee and may move or otherwise access Lessee's equipment.

C. The City, agents and other representatives shall not use, sell, move, or otherwise disturb the alfalfa, hay, or other grass products, including baled crops, supplies, and equipment which may be stored on the Premises in the Equipment Storage Area from time to time.

10. IMPROVEMENTS.

A. Lessee shall not construct, erect or place any improvements on the Premises without the prior written consent of the City and the prior approval by the City of the plans and specifications for the improvements in each instance unless otherwise agreed upon in an approved Cropping Plan. Building permits from the City of Albuquerque's Planning Department does not constitute prior written consent of the City, as the Landlord, for the improvements.

B. The improvements which Lessee may be authorized to place on the Premises shall be constructed, repaired, maintained and operated at Lessee's sole cost, expense and risk.

C. All improvements shall be constructed in compliance with any minimum standards and specifications that are prescribed by applicable statutes, ordinances or building codes.

D. Lessee shall give the City written notice not less than thirty (30) days prior to the commencement of any alteration, repair, addition or improvement so that the City may post notices of disclaimer.

11. SUBLEASES. Lessee shall not rent or sublet the whole or any part of the Premises without the City's prior written consent. Consent to rental or sublease shall not be deemed to be consent of any subsequent rental or sublease. The rental or making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease. Each rental and sublease shall be subject and subordinate to the rights of the City under this Lease and to any amendment or modification of this Lease. Any rental or sublease without the written consent of the City shall be void, and shall, at the option of the City, terminate this Lease.

12. ASSIGNMENT. Lessee shall not assign, transfer, or grant security interests in this Lease or any interest in this Lease, without the prior written consent of the City. Consent to an assignment, transfer or grant of a security interest shall not be deemed to be a consent to any subsequent assignment, transfer or grant of a security interest. Any assignment, transfer or grant of security interest, without the written consent of the City shall be void, and shall, at the option of the City, terminate this Lease.

13. REPAIRS AND MAINTENANCE. Lessee shall, at its sole cost, expense and risk, keep and maintain the Premises, and any improvements located thereon, in good order, condition and repair, and generally in a clean, sanitary and safe condition. All repairs and replacements shall be made promptly as and when necessary. All repairs and replacements shall be at least equal in

quality of materials and workmanship to the original work. Lessee shall be responsible for maintenance and repair to the well resulting from misuse or damage.

14. TAXES AND ASSESSMENTS. Lessee shall pay all taxes and assessments that may be imposed on Lessee's leasehold interest or on any improvements owned by Lessee on the Premises, promptly as they become due and payable.

15. CITY'S RIGHT OF ENTRY. The City, its employees, agents and representatives, shall have the right to enter the Premises and any improvement on the Premises at reasonable times for the purpose of inspecting the Premises and improvement. The City may enter the Premises to perform any repairs or maintenance work or testing, at its own discretion, which the City concludes will properly preserve the City's property interests.

16. TERMINATION BY LESSEE. If Lessee is not in default under this Lease, Lessee may terminate this Lease at any time upon sixty-(60) days' prior written notice. Lessee shall, notwithstanding the termination of the Lease, remain liable for any cause of action or liability that arises out of the Lessee's occupancy of the Premises prior to the termination of this Lease.

17. TERMINATION BY CITY.

A. In addition to any other remedy provided by law, the City may terminate this Lease by written notice delivered to Lessee in any of the following circumstances:

- (1) If Lessee fails to comply with the terms set forth in Section 3 herein.
- (2) If Lessee is in default in the performance of any term, condition or covenant of this Lease, other than the obligations set forth in Section 3 herein, and if Lessee does not cure the default within ten (10) days after notice, or, if the default is of such nature that it cannot be cured completely within the ten (10) day period and if the Lessee does not proceed with reasonable diligence and in good faith to commence to cure the default within the ten (10) day period;
- (3) Notwithstanding the above paragraph 2 of this subsection A, if Lessee is adjudged a bankrupt, makes a general assignment for the benefit of creditor, or takes the benefit of any insolvency act or if a permanent receiver or trustee in bankruptcy is appointed for Lessee's property and the appointment is not vacated within sixty (60) days;
- (4) Notwithstanding the above paragraph 2 of this subsection A, if the Premises become vacant or deserted or if Lessee ceases normal, seasonal farming operation for a period of sixty (60) days;

- (5) If this Lease is assigned or transferred or the Premises rented or sublet, other than in accordance with the terms of this Lease, and the default is not cured within ten (10) days after notice; or
- (6) If Lessee fails to furnish a certificate of insurance as required by this Lease and within the time required by this Lease and the default is not cured within ten (10) days after notice.

B. If the City exercises its right of termination under this Section 17, this Lease shall terminate ten (10) days following the end of the applicable cure period after the date written notice of termination is given, as completely as if it were the date definitely fixed for the expiration of this Lease.

18. TERMINATION WITHOUT DEFAULT.

A. Eminent Domain. If any time during the term of this Lease, all or substantially all of the Premises are taken by right of eminent domain, then this Lease shall terminate as of the date of such taking and all Rent shall be apportioned to the date of the taking. Substantially all of the Premises shall be deemed to have been taken if that portion of the Premises which remains cannot be economically utilized by the Lessee for agricultural purposes. If less than all or substantially all of the Premises is taken by right of eminent domain, this Lease shall not terminate. If there is a taking by right of eminent domain, the award shall belong to and be paid to the City.

B. Frustration of Purpose. If at any time during the Term, any ordinance, law or regulation is enacted which prohibits the use of the whole or a substantial part of the Premises for agricultural purposes, then this Lease shall terminate as of the date of the enactment of such ordinance, law or regulation.

19. EFFECT OF TERMINATION OR EXPIRATION.

A. Upon the expiration or sooner termination of this Lease, Lessee shall have no further right or interest in the Premises.

B. The surrender of the Premises by Lessee, mutual cancellation of this Lease, or termination of this Lease shall, at the option of the City, terminate all or any existing rentals or subleases or may, at the option of the City, operate as an assignment to the City including any and all rental payments or subleases.

C. At the expiration or sooner termination of this Lease, Lessee shall, if Lessee is not in default of any term condition or covenant of this Lease and if Rent has been paid to the dates of expiration or termination, remove Lessee's property, including harvested crops, from the Premises; remove any improvements placed on the Premises by the Lessee, unless the City consents in writing that the

improvements may remain on the Premises; surrender the Premises to the City in as good condition as it was in at the beginning of the Term, reasonable use, wear and tear excepted. Crops remain the property of the City at all times and shall not be considered Lessee's harvestable or removable crops under any circumstances absent prior written consent from the City. Any improvements that are placed on the Premises by Lessee and that are not removed from the Premises pursuant to the consent of the City shall become and be the property of the City upon the expiration or termination of this Lease. Lessee shall not remove any of the Lessee's property, including growing or harvested crops, from the Premises if Lessee is in default under any term, condition or covenant or if Rent has not been paid to the date of expiration or termination. In addition to the removal of Lessee's property, Lessee shall supply the City with copies of all records requested by the City pertaining to the Lessee's use of the property.

20. WATER COSTS AND UTILITY SERVICES.

A. The City shall pay all fees and taxes charged by the MRGCD for the delivery of irrigation water to the Premises through MRGCD facilities.

B. The City shall not be obligated to provide to the Premises any utility services, including, but not limited to potable water, gas, electricity, light, sewage, solid waste, telephone, and security services.

21. FIRE OR OTHER CASUALTY LOSS. In the event of damage to or destruction of improvements on the premises by fire or other casualty, the City shall have no obligation to rebuild, replace, or restore the improvements.

22. INDEMNITY. Lessee agrees to defend, indemnify and save harmless the City and its officers, agents and employees from and against all suits, action or claims or any character brought because of any injury, including death, or damage received or sustained by any person, persons or property arising out of Lessee's or Lessee's invitees', agents, employees', contractors' and subleases' use of or activities on the Premises or any improvements on the Premises whether or not constructed by Lessee, or arising out of any condition of the Premises caused by Lessee, or by reason of any wrongful act or omission, neglect or misconduct of Lessee or of Lessee's agents, contractors, employees, invitees or subleases. This indemnity provision shall equally apply to injuries to Lessee's employees occurring on the Premises. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this Lease.

Lessee is not required to indemnify the City for the negligence or intentional acts, errors, or omissions of the City or its employees or agents. The liability of the City in all cases shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1 *et seq.*, NMSA 1978, as amended.

23. INSURANCE. Lessee shall procure and maintain at Lessee's expense during the Term, insurance in the kinds and amounts hereinafter provided with insurance companies

authorized to do business in the State of New Mexico, covering all operations under this Lease, whether performed by it or its employees, agents or contractors. Upon execution of this Lease and on the renewal of all coverages, Lessee shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Paragraph. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103 with a copy of all certificates to the Real Property Division, City of Albuquerque, P.O. 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. The City shall be named an additional insured for all coverages and the coverage afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire - Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Lessee, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. During the term of this Lease, the City may require the Lessee to increase the maximum limits of any required insurance.

24. LESSEE'S PROPERTY. All property and improvements of Lessee which may be placed in or upon the Premises shall be done at the sole risk of Lessee. The City shall not be liable for any damage to property, including Lessee's cash crops, or improvements on the Premises arising from, or for any damage to the property caused by fire, water, flood, wind, vandalism, theft, larceny or burglary.

25. INDEPENDENT CONTRACTOR. It is further understood and agreed that the City shall in no event be construed or held to be a partner, joint venturer or associate of the Lessee in the conduct of the Lessee's business, nor shall City be liable for any debts incurred by the Lessee in the Lessee's business; but it is understood and agreed that the relationship is and at all times shall remain that of landlord and tenant. Neither the Lessee nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Lessee further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

26. FORCE MAJEURE. Neither party shall be in breach of or in default of its obligations under this Lease in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond the control of such party and without its fault or negligence, including, without limitary, war, insurrection, strike, other labor disputes, riot, interruption of transportation facilities or material deliveries, inability to procure material, rationing, civil disobedience, fire, flood, epidemic, tornado, other severe weather, explosion, earthquake, acts of the other party, actions of any governmental authority, and acts of God, and in the event of the occurrence of any such enforced delay, the time for performance of the obligations of the City or of Lessee shall be suspended for the period of the enforced delay. The party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of any such enforced delay, notify the other party thereof in writing, and of the cause thereof, and request the suspension of performance for the projected period of the enforced delay. A suspension of a party's performance under this paragraph shall not extend the Term.

27. AUDITS AND INSPECTIONS BY THE CITY. At such time during normal business hours and as often as the City reasonably may deem necessary, Lessee shall make available to the City for examination all of Lessee's records with respect to all matters covered by this Lease. Lessee shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Lease. The City shall pay the cost of the City's audit. Lessee understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

28. RIGHTS AND NON-WAIVER OF RIGHTS. All rights and remedies of the City or Lessee created by this Lease or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not exclude or waive the right to the exercise of any other. All rights and remedies may be exercised and enforced concurrently and as often as deemed advisable. No waiver of default by either party of any terms, covenants and conditions of this Lease required to be performed, kept and observed by the other party shall be construed as, or shall operate as a waiver of any subsequent default of the terms, covenants or conditions of this Lease

required to be performed, kept or observed by the other party. No acceptance of full or partial rent during the continuance of any breach or of any term, condition or covenant shall constitute a waiver by the City of any terms of this Lease. No obligation of this Lease which Lessee is required to perform and no breach thereof, shall be waived, altered or modified, except by written instrument executed by the City.

29. NO DISCRIMINATION.

A. In the operation and use of the Premises, the Lessee shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and disciplinary actions and grievances. The Lessee agrees to post in conspicuous places available to employees, and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. Lessee, in its activities under this Lease, agrees to meet all the requirements of the Americans with Disabilities Act of 1990, as amended, and all applicable rules or regulations ("ADA"), which are imposed directly on Lessee or which would be imposed on the City as a public entity. Lessee agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of Lessee or its agents in violation of the ADA.

30. NOTICES. All notices or payments required by this Lease to be given any party shall be deemed to have been fully delivered, given, made or sent when made in writing and deposited in the United States mail, certified return receipt requested, with postage prepaid thereon, and addressed to the following unless either the City or Lessee change their respective address by giving written notice of such change to the other:

Notice to the City:

City of Albuquerque
Attn: Parks & Recreation Department
Open Space Division, Farm Planner
P.O. Box 1293
Albuquerque, NM 87103

With a copy to:
City of Albuquerque
Attn: Real Property Manager
P.O. Box 1293
Albuquerque, NM 87103

Notice to Lessee:
J & T Farms, Inc.
Attn: Jim Roberts
PO Box 92618
Albuquerque, NM 87199

31. ESTOPPEL CERTIFICATES. Lessee shall at any time within ten (10) days after written request from City execute, acknowledge and deliver to City a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the term; (c) confirming the amount of the security deposit held by City; (d) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of City hereunder, or specifying such defaults if any are claimed; and (e) confirming such other matters as City may reasonably request. A prospective purchaser or encumbrancer of the Premises or the Property may conclusively rely upon any such statement. If Lessee fails to respond within the required period, Lessee shall conclusively be deemed to have certified, confirmed and acknowledged all matters requested by City. If City desires to finance or refinance the Property, Lessee hereby agrees to deliver to any lender designated by City such financial statements of Lessee and any Guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Lessee and any Guarantors. All such financial statements shall be received by City in confidence and shall be used only for the purposes herein set forth.

32. GOVERNMENT POWERS. Nothing in this Lease shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Premises or waiving or limiting the City's control over the management, operations or maintenance of the Premises, except as specifically provided in this Lease, or impairing exercising or defining governmental rights and the police powers of the City.

33. SEVERABILITY. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Lessee in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Lease.

34. TIME IS OF THE ESSENCE. Time is of the Essence in the performance of this Lease.

35. CHOICE OF LAW, VENUE. This Lease shall be construed under the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section 35. The provisions of this Section 35 shall survive the expiration or earlier termination of this Lease.

36. FINAL DATE. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

37. COMMISSION. Lessee warrants and represents that it has not consulted or negotiated with any broker or finder with regard to the Premises or this Lease. If Lessee shall be in breach of the foregoing warranty, Lessee shall indemnify the City against any loss, liability and expense arising out of claims for fees or commissions from anyone having dealt with the Lessee.

38. EXHIBITS. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

39. COMPLIANCE WITH LAWS. Lessee shall at all times during the term of this Lease at its own expense, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Lessee, including, but not limited to, the Americans With Disabilities Act.2. Lessee shall have the right to contest by appropriate legal proceedings, without cost or expense to City, the validity of any law, ordinance, order, rule, regulation or requirement affecting Lessee's use and/or occupancy of the Premises. If compliance by Lessee may be legally held in abeyance during the contest without subjecting City or Lessee to any liability whatsoever for failure to so comply, Lessee may postpone compliance until the conclusion of the proceedings.

40. COUNTERPARTS. The Lease may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

41. HEADINGS AND CAPTIONS. Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

42. INTERPRETATION. Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles will be deemed references to Sections, subsections, and Articles of this Contract and to Exhibits, which are attached hereto and made a part hereof for all purposes.

43. LIMITATIONS ON LIABILITY. Neither party has any liability with respect to its obligations under this contract or otherwise for incidental, consequential, special, indirect, exemplary or punitive damages even if it has been advised of the possibility of such damages.

44. REPRESENTATION. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Agreement.

45. AUTHORIZATION. If Lessee executes this Lease as a corporation or partnership, then Tenant and the person(s) executing this Lease on behalf of Lessee, represent and warrant that such entity is duly qualified to do business in the State of New Mexico and that the individuals executing this Lease on Lessee's behalf are duly authorized to execute and deliver this Lease on Lessee's behalf. City represents and warrants that it is the fee simple owner of the Premises and it has all requisite authority and approval to enter into this lease.

46. BINDING EFFECT. The covenants, terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their successors, heirs, devisees, personal representatives, subtenants and subleases.

47. PUBLIC DOCUMENT. City is a municipal corporation under the laws of the State of New Mexico. City and Lessee acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act.

48. FURTHER ACTIONS. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease.

49. ATTORNEYS' FEES. If either party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of

any provision of this Lease, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

50. ENTIRE AGREEMENT. This Lease, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

51. MODIFICATION. No subsequent agreement may modify this Lease unless it is in writing and signed by the parties or their authorized agents. This Lease represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the date indicated by each signature, and being effective after approval by the City Council and upon the signature of the City's Chief Administrative Officer or authorized designee.

[SIGNATURE PAGES IMMEDIATELY FOLLOWING]

LESSEE:
J & T Farms, Inc.
A New Mexico Corporation

Jim Roberts,
President

Date: _____

Hubbell Oxbow

87.5 Acres

Legend

- Albuquerque City Limits Restaurant
- Coors
- Feature 1
- Feature 2
- Hubbell Oxbow 87.5 Acres
- Mvd Field Office
- OS Hubbell Oxbow
- SUBWAY® Restaurants
- Walmart Supercenter

OS Hubbell Oxbow

Vista Verde Estates

Rose Acres

Rio Bravo Square

Google Earth

©2013 Google

1000 ft



EXHIBIT “A”

**Hubbell Oxbow Fields
(See Next Page)**

EXHIBIT "B"

LIST OF ACCEPTABLE FERTILIZERS

- Fertilizer produced by the Albuquerque Bernalillo County Water Utility Authority, provided to Lessee at no cost in coordination with the City
- Other fertilizers which may be subject to City review and approval on a case by case basis as presented to City by Lessee