

**BARNSTABLE COUNTY**

In the Year Two Thousand Nineteen

Proposed Ordinance 19-01

To authorize the County of Barnstable to execute a ground lease between Barnstable County and the Cape Cod Organic Farm Inc. for the parcels and improvements known as the Barnstable County Farm, located at 3675 Main Street in the Town of Barnstable, Massachusetts.

**The Cape Cod regional government, known as Barnstable county *hereby ordains;***

**Section 1. Source of Authority and General Purposes**

In accordance with Article II, Section 2-8, (d) (vii) of the Barnstable County Home Rule Charter, Barnstable County hereby enters into a ground lease with the Cape Cod Organic Farm Inc. for the parcels and improvements known as the Barnstable County Farm, located at 3675 Main Street in the Town of Barnstable, Massachusetts.

**Section 2. Effective Date**

The Ground Lease Ordinance shall take effect upon passage of the ordinance by the Barnstable County Assembly of Delegates and execution by the Barnstable County Commissioners, and Cape Cod Organic Farm Inc.

**Section 3. Ground Lease Table of Contents**

- ARTICLE I – INITIAL
- ARTICLE II – EXTENSION OF INITIAL TERM
- ARTICLE III – ANNUAL LEASE PAYMENT
- ARTICLE IV – IMPROVEMENTS TO FARM
- ARTICLE V – RESPONSIBILITIES OF COUNTY
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- EXHIBITS ANNEXED
  - A) PARCELS LEASED
  - B) PRICE PER PARCEL
  - C) PARCEL MAP
  - D) SAMPLE MEMORANDUM OF UNDERSTANDING
- DISCLOSURE STATEMENT

LEASE AGREEMENT

BY AND BETWEEN

BARNSTABLE COUNTY AND THE CAPE COD ORGANIC FARM, INC.

WHEREAS, the Barnstable County, acting through its County Commissioners (hereinafter the "County") is the owner of the property known as the County Farm which is located at 3675 Main Street (Route 6A) Barnstable, MA 02630 (hereinafter the "Farm");

WHEREAS, the Cape Cod Organic Farm, Inc. is a duly established Massachusetts Corporation, with a business office located at 3675 Main Street, Barnstable, MA 02630 (hereinafter the "CCOF");

WHEREAS, the Farm contains approximately 97 acres, a portion of that containing the land and buildings with improvements thereon as more fully described on Attachment A and made part of this Agreement;

WHEREAS, the CCOF is the current lessee of the Farm pursuant to an initial three (3) Lease Agreement between the County and the CCOF dated February 25, 2009, as subsequently extended, (hereinafter the "Initial Lease") which terminates on February 24, 2019;

WHEREAS, during the term of the Initial Lease the CCOF has made certain improvements, estimated by CCOF in excess of \$250,000.00, with the approval of the County, to the Farm as more fully described to Attachment B (hereinafter the "Improvements");

WHEREAS, the County issued a Request for Proposals dated August 1, 2018 (hereinafter the "RFP") for the leasing of the Farm upon the termination of the Initial Lease;

WHEREAS, the CCOF submitted a written response to the RFP as more fully described on Attachment C and made a part of this Agreement;

WHEREAS; the County and the CCOF intend to and in fact do enter into this Agreement to be effective on or before the mutual termination of the Initial Lease or February 24, 2019 whichever occurs first;

NOW THEREFORE, the County agrees to lease the Farm with the Improvements thereon to the CCOF upon the following terms and conditions:

ARTICLE I  
INITIAL TERM OF LEASE

The initial term of this agreement shall be for three (3) years effective upon the execution of this agreement.

ARTICLE II  
EXTENSION OF INITIAL TERM

This agreement shall be renewed for two additional terms of three (3) years each subject to the CCOF being in full compliance with the terms and conditions set forth herein and at the discretion of the

County. However, the parties agree that the unique investment required in farming, capital investment and equipment purchases, seasonal seed planting as well as the customary operations of farming requires that in the event that the County intends to exercise its option to terminate this lease prior to the renewal date that the County will act affirmatively to provide CCOF with written notice not less than 18 months prior to the next consequential renewal date or the option to extend shall prevail. Time of Notice is of the Essence of this Agreement.

### ARTICLE III ANNUAL LEASE PAYMENT

The CCOF shall pay the County an annual amount of \$ 625,000 commencing on the date of execution of this agreement any every year thereafter on the same month and day.

### ARTICLE IV IMPROVEMENTS TO FARM

The CCOF shall have exclusive rights to use and occupy the Farm and the Improvements thereon during the term of this agreement and shall use its best efforts to maintain said Improvements. Upon termination of this agreement all Improvements shall remain the property of the County.

The CCOF may make additional improvements, at its expense, to the Farm, subject to the written approval of the County, and have exclusive rights to occupy and use as provided for above.

### ARTICLE V RESPONSIBILITIES OF COUNTY

(1) ACCESS ROAD: The County shall be responsible for maintaining the access road to the Farm from Route 6A to the Extension Office as shown on Attachment D and made a part hereof. To facilitate the process of emergency repairs the County shall deliver gravel as needed to be stored on site.

(2) PROPERTY INSURANCE: The County shall be responsible for maintaining insurance on the buildings and structures (the "Improvements") on the Farm.

### ARTICLE VI INSURANCE RESPONSIBILITIES OF CCOF

(1) WORKER'S COMPENSATION: The CCOF shall maintain all necessary Worker's Compensation Insurance on the amounts required by the Commonwealth of Massachusetts.

(2) UMBRELLA LIABILITY INSURANCE: The CCOF shall maintain an Umbrella Liability Insurance Policy at a minimum of \$2 million.

### ARTICLE VII SUBLETTING

The CCOF shall not be permitted to sublet any portion of or land and buildings subject to this lease of the Farm without the prior written approval of the County.

ARTICLE VIII  
EVENT OF DEFAULT

If either party is alleged by the other to be in default of the terms and conditions of this agreement the non-defaulting party shall give a written Notice of Default with the reasons of said alleged default to the other party who shall have the following Options:

(a) If the party receiving a Notice of Default does not dispute the reasons given he shall have thirty (30) days to cure the same. Failure to so cure will result in a termination of this agreement.

(b) If the party receiving a Notice of Default disputes the reasons given for the default he shall give the other party a written notice within 30 days from the date of having received said Notice of Default providing the reasons why he disputes the same. In such event the parties shall make every reasonable effort to reach a resolution to said dispute. If the parties are unable to resolve the dispute they shall do so by way on professional mediation. The parties shall select an independent Mediator and shall share equally the cost of the same. The decision by the Mediator shall be final.

ARTICLE IX  
TERMINATION

Upon termination of this agreement pursuant to Articles II and or Article VIII (a) the CCOF shall vacate the Farm promptly and all Improvements made thereon shall be retained by the County as part of the Farm.

ARTICLE X  
GOVERNING JURISDICTION

This agreement shall be governed pursuant to the laws, rules and regulations of the Commonwealth of Massachusetts.

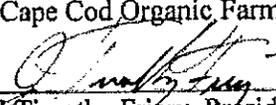
IN WITNESS WHEREOF. The parties hereto set their hands and seals:

The Barnstable County By its Board of Regional Commissioners:

\_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_

The Cape Cod Organic Farm, Inc.:

  
By: J. Timothy Friary, President

Dated: January 7, 2019

EXHIBITS ANNEXED

- A) Parcels leased
- B) Price per parcel
- C) Parcel Map
- D) Sample MOU

## **Parcels Leased**

### **Section A**

F1 - Field #1 - 0.85 Acres

### **Section B**

F2 - Field #2 - 3.4 Acres

### **Section C**

F3 - Field 3 - 2.75 Acres

### **Section D**

F5 - Field #5 - 0.33Acres

### **Section E**

G1 - Greenhouse #1

G2 - Greenhouse #2

G3 - Greenhouse #3

G4 - Greenhouse #4

### **Section F**

B1 - Storage Building

B2 - Office

B3 - Farm Stand

B4 - Shade Structure

### **Section G**

B14 - Poultry #2

### **Section H**

B15 - Poultry #3

### **Section I**

F8 - 9 Acres

**ATTACHMENT B  
Cost Proposal**

The County shall award the contract to the responsive, responsible proposer(s) offering the most advantageous proposal, taking into consideration price and all other evaluation criteria set forth in this solicitation. Multiple contracts may be awarded. Proposers are to submit a cost proposal and technical proposal for each Sections they are bidding on.

| LOCATION  | RENTAL PRICE PER YEAR |
|---|-----------------------|
| Section A<br>F1 - Field #1 - 0.85 Acres   | \$100                 |
| Section B<br>F2 - Field #2 - 3.4 Acres  | \$100                 |
| Section C<br>F3 - Field 3 - 2.75 Acres  | \$100                 |
| Section D<br>F5 - Field #5 - 0.33 Acres   | \$25                  |
| Section E<br>G1 - Greenhouse #1<br>G2 - Greenhouse #2<br>G3 - Greenhouse #3<br>G4 - Greenhouse #4 | \$100                 |
| Section F<br>B1 - Storage Building<br>B2 - Office<br>B3 - Farm Stand<br>B4 - Shade Structure      | \$100                 |
| Section G<br>B14 - Poultry #2   |                       |
| Section H<br>B15 - Poultry #3   |                       |
| Section I<br>F8 - 9 Acres   | \$100                 |
|   | TOTAL \$625.00        |

Company Name CAPE Cod ORGANIC FARM Date Sept 3, 18  
 Address: Box 93 Braintree

Telephone Number \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: info@capcodorganicfarm.org

Signature [Handwritten Signature] Title owner/operator

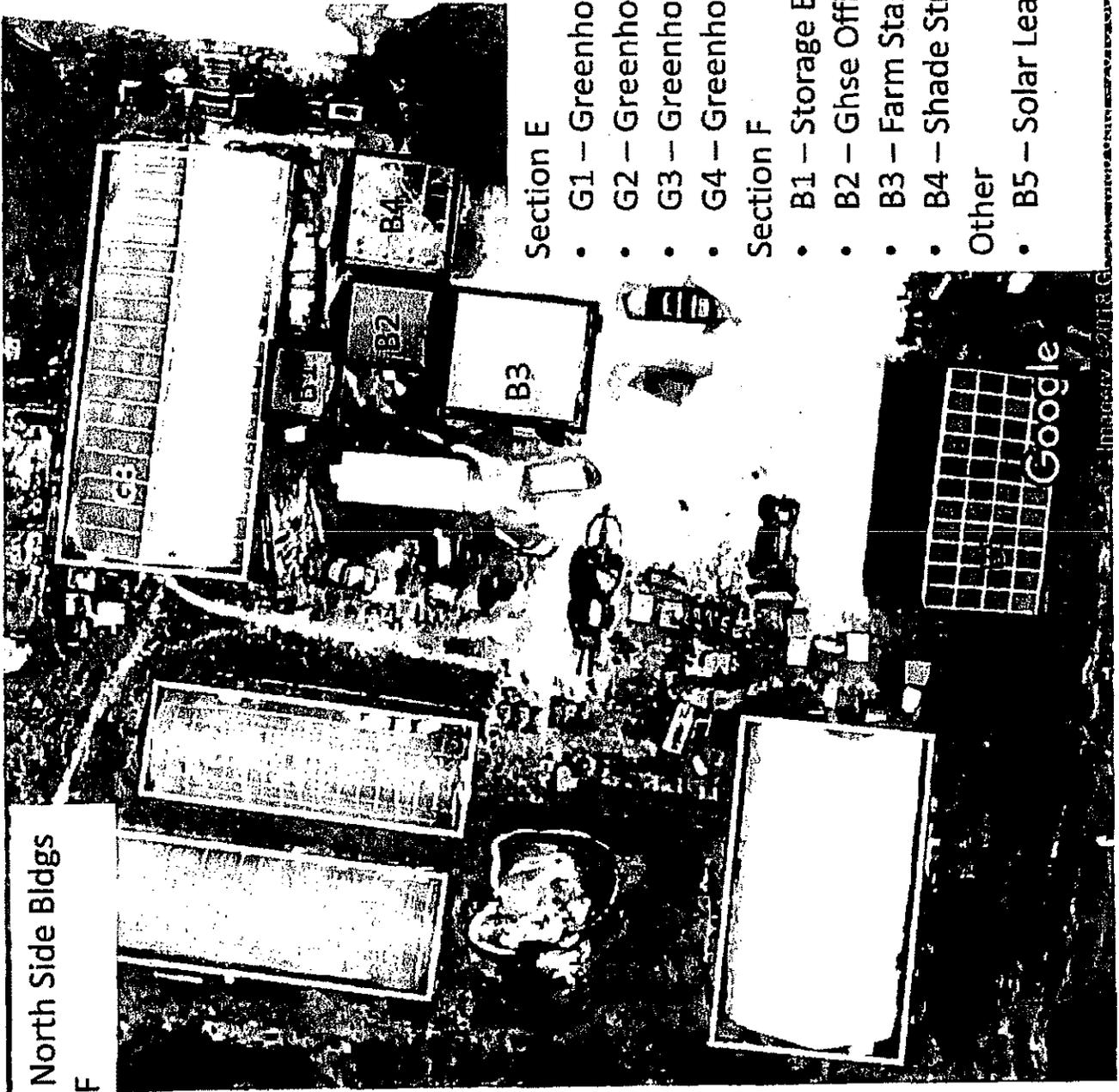
Print Name: J. Timothy Friday

County Farm North Side Fields  
Sections A-D



- SA – Section A ~ 0.85A Tilled
- SB – Section B ~ 3.4A Tilled
- SC – Section C ~ 2.75A Tilled
- SD – Field D ~ 0.33A Tilled

County Farm North Side Bldgs  
Sections E & F



Section E

- G1 – Greenhouse #1
- G2 – Greenhouse #2
- G3 – Greenhouse #3
- G4 – Greenhouse #4

Section F

- B1 – Storage Bldg
  - B2 – Ghse Office
  - B3 – Farm Stand
  - B4 – Shade Structure
- Other
- B5 – Solar Leanto

County Farm North Side Bldgs  
Sections G & H

B14

B15

B16

Section G

- B14 – Poultry Bldg

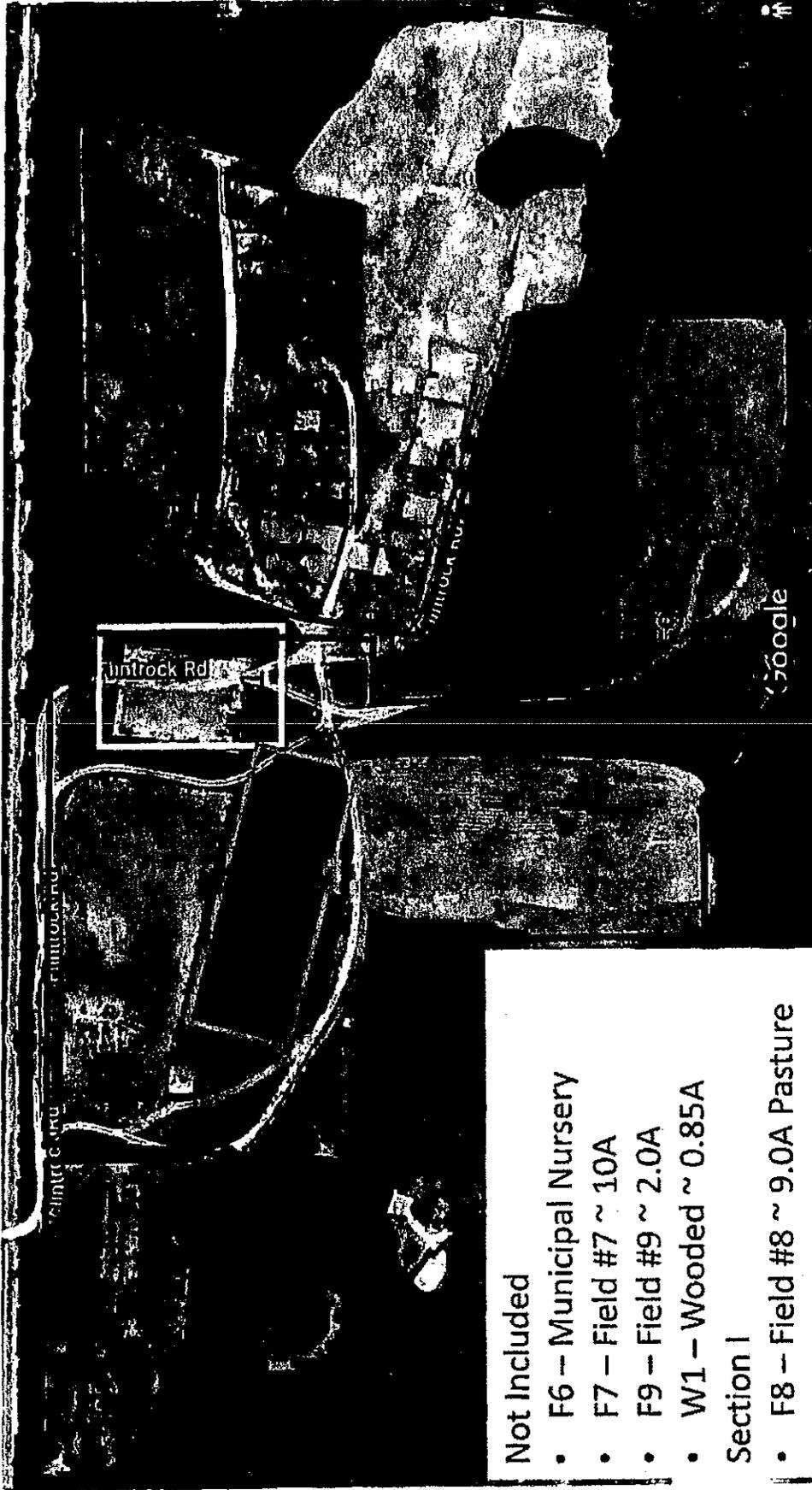
Section H

- B15 – Poultry Bldg

Other

- B13 – Electrical service/Poultry
- B16 - Quonset

County Farm South Side



Not Included

- F6 – Municipal Nursery
- F7 – Field #7 ~ 10A
- F9 – Field #9 ~ 2.0A
- W1 – Wooded ~ 0.85A

Section I

- F8 – Field #8 ~ 9.0A Pasture

Other

- S1 – Compost Pad

## Sample MOU

### MEMORANDUM OF UNDERSTANDING

Barnstable County and Cape Cod Organic Farm, Inc. (the parties)

The parties with the understanding that the tenant, Cape Cod Organic Farm Inc. operates an organic farm on the leased premises and that this operation requires unique organic sensitivities to protect the integrity of organic certification, none-the-less agree that the County reserves the right to possess and control Fields F7 and F9, solar lean-to and the so called concrete compost slab for the purpose of exploring alternative uses without restriction during the period of this tenancy. Nothing herein shall preclude the tenant from entering into a memorandum of understanding with the County for the use of these same un - bid parcels for any use consistent with the parcels agricultural restriction and consistent with the procured used under this County RFP.

The parties further agree that approval for structural changes to the real estate under this lease shall be at the discretion of the County and consistent with the filed business plan appended hereto and the parties further agree that approvals for requested work will not be unreasonably withheld by the County.

The parties and it is hereby agreed that structural changes that have occurred to date and that are now considered fixtures to the real estate include but are not limited to the following:

All new buildings and improvements to the structure of pre-existing buildings and greenhouses;

All irrigation upgrades;

All grounded solar arrays;

The concrete compost pad;

Should a dispute occur over the right to or ownership of said improvements or additions to the Real Estate, the parties agree to arbitrate their claims and should a discrepancy as to value occur, IRS rules on the depreciation set off shall be invoked and considered by the arbitrator in determining fair market value.

Barnstable County Commissioners

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ron Beaty

\_\_\_\_\_  
Ron Bergstrom

  
\_\_\_\_\_  
J. Timothy Friary, Cape Cod Organic Farm

4/7/19

**ATTACHMENT C**  
(not to be submitted with proposal)

**DISCLOSURE STATEMENT ACQUISITION OR DISPOSITION OF REAL  
PROPERTY**

For acquisition or disposition of Real Property by Barnstable County, the undersigned does hereby state, for the purposes of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

- (1) REAL PROPERTY DESCRIPTION: Barnstable County Farm
- (2) TYPE OF TRANSACTION: Lease
- (3) SELLER or LESSOR: Barnstable County
- (4) BUYER or LESSEE: Cape Cod Organic Farm, Inc
- (5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above:

NAME

J. Timothy Friary

RESIDENCE

PO Box 93 Barnstable, Ma

- (6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth except as listed below.
- (7) This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named above. If this form is signed on behalf of a corporation or other legal entity, it must be signed by a duly authorized officer of that corporation or legal entity. The undersigned acknowledges that any changes or additions to items 3 and or 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within thirty (30) days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: \_\_\_\_\_

Printed Name: Timothy Friary

Title: Pres. Inc.

Date: 1/2/15

**Proposed Ordinance 19-01: County Farm Lease**

**(Submitted by the Board of Regional Commissioners at a regular Assembly of Delegates meeting on 1/16/19)**