



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Craig Woolard, Director of Public Works
Chris Kukulski, City Manager

SUBJECT: Ordinance No. 1880 authorizing the City Manager to enter into a 15-month ground lease with Bill Tatarka for the lease of the Mandeville Farm property for the purpose of farming.

MEETING DATE: January 27, 2014

AGENDA ITEM TYPE: Consent

RECOMMENDATION: Authorize the City Manager to enter into a 15-month lease with Bill Tatarka for the purpose of farming on the Mandeville Farm property.

BACKGROUND: The City of Bozeman has leased the Mandeville Farm property to a local farmer since it was purchased in 2003. Bill Tatarka has leased the property since January 1, 2008. In the past, this lease has been approved with a term of 2-years; however, with the eventual sale of the Mandeville Farm property we reduced the term to 15 months. The Mandeville Farm is also known as the North Park property.

Per the lease, Mr. Tatarka pays the City twenty-five percent of the value of any crop harvested, less the cost of chemicals used for weed control. The lease requires the lessee to control noxious weeds. The amount the City receives varies annually.

Section 2.11 of the Bozeman City Charter requires the Commission to adopt an ordinance any time the Commission “convey(s), lease(es) or authorize(s) the conveyance or lease of any lands of the city.”

Section 7-8-4201, Montana Codes Annotated (MCA) authorizes the City to lease property upon a vote of two-thirds (2/3) of the Commission which requires an affirmative vote of four members of the five member Bozeman City Commission.

This Ordinance is not codified but will be kept by the City Clerk and entered into a disposition list in numerical order with all other ordinances of the City and shall be organized in a category entitled “Conveyances and Leases of City Land.”

FISCAL EFFECTS: The City has received approximately \$25,000 since 2008. The property is used for farming purposes and the lessee is required to control weeds so the City does not incur the costs for maintenance.

ALTERNATIVES: As suggested by the City Commission.

Attachments:

- 1) Ordinance 1880; and
- 2) Mandeville Farm Agricultural Lease.

Report compiled on: January 8, 2014



ORDINANCE NO. 1880

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A 15-MONTH GROUND LEASE WITH BILL TATARKA FOR THE LEASE OF MANDEVILLE FARM PROPERTY, FOR THE PURPOSE OF FARMING.

WHEREAS, the City of Bozeman desires to lease property at the Mandeville Farm, located on Red Wing Road, for farming purposes as it has done since the property was purchased in 2003; and

WHEREAS, said lease allows land to be grazed and/or farmed, with 25% of the value of any crop harvested from premises, less cost of chemicals used for weed control, up to \$200 annually, to be paid to the City; and

WHEREAS, Bill Tatarka has indicated his desire to renew said lease; and

WHEREAS, the lease of this property benefits the public interest because the land is used for agricultural purposes and lessens the City's resources to maintain it; and

WHEREAS, the lease requires lessee to control noxious weeds; and

WHEREAS, Section 2.11 of the Bozeman City Charter requires the Commission to adopt an ordinance when the Commission "convey(s), lease(es) or authorize(s) the conveyance or lease of any lands of the city;" and

WHEREAS, Section 7-8-4201, MCA, authorizes the City to lease property upon a vote of 2/3rds of the Commission which requires an affirmative vote of four members of the five member Bozeman City Commission; and

WHEREAS, should this Ordinance never be finally adopted by the City Commission, the lease shall have no binding effect.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

The City Commission hereby authorizes the City Manager to enter into the attached 15-month ground lease (Exhibit A) with Bill Tatarka for lease of the Mandeville Farm property, located on

Red Wing Road, Bozeman, MT. The lease is incorporated herein by reference and made a part of this Ordinance.

Final execution of the lease is dependent upon final adoption of this Ordinance 1880 and as such the City Manager cannot execute the lease until 30 days after second reading of this Ordinance.

Section 2

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provision of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 4

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 5

Codification.

This Ordinance shall not be codified but shall be kept by the City Clerk and entered into a disposition list in numerical order with all other ordinances of the City and shall be organized in a category entitled "Conveyances and Leases of City Land."

Section 6

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 27th of January, 2014.

JEFFREY K. KRAUSS

Mayor

ATTEST:

STACY ULMEN, CMC

City Clerk

FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 10th day of February, 2014. The effective date of this ordinance is March 10, 2014.

JEFFREY K. KRAUSS

Mayor

ATTEST:

STACY ULMEN, CMC

City Clerk

APPROVED AS TO FORM:

GREG SULLIVAN

City Attorney

AGRICULTURAL LEASE

THIS AGREEMENT, made and entered into this _____ day of _____, 201____, by and between the CITY OF BOZEMAN, a municipal corporation located at 121 North Rouse Avenue, Bozeman, Montana 59715, hereinafter referred to as LESSOR, and BILL TATARKA, of 19 Lake Road, Bozeman, Montana 59718 hereinafter referred to as LESSEE.

WITNESSETH:

1. Premises Leased:

For and in consideration of the rents to be paid and the covenants to be performed by Lessee as hereinafter set forth, Lessor does hereby demise, lease and let unto Lessee those certain lots, pieces or parcels of real property situated, lying and being in the County of Gallatin, State of Montana, and more particularly described as follows:

Tract 1-A, Tract 2-A, Tract 3-A and Tract 4-A of Certificate of Survey No. 2153, situated in the NW1/4 of Section 36, Township 1 South, Range 5 East, P.M.M, Gallatin County, Montana, excepting the homestead and cell tower area. The grain bin, corrals and the steel sided shop building are available for Lessee's use.

2. Term:

To have and to hold said premises according to the provisions hereof for a period of fifteen (15) months from and after January 1, 2014, and unless terminated upon notice in writing given by either party to the other not less than sixty (60) days prior to the end of the initial term or any annual extension thereof, unless sooner terminated as herein provided. This lease and all terms therein, will be transferred along with the property when sold.

3. Consideration:

1. Lessee shall pay to the Lessor, as rental for the demised premises, a cash amount equal to 25% of the value of any crop harvested from the premises, based on market prices at the time said crop is harvested, for each year that this Lease remains in full force and effect. If chemicals are used to control weeds in the grazing pasture, the Lessor will reimburse the Lessee for the cost of the chemicals, in an amount not to exceed \$200 annually. Payment shall be made to Lessor on January 1 at Lessor's office located at 121 North Rouse Avenue, Bozeman, Montana 59715, or mailed to: City of Bozeman, P.O. Box 1230, Bozeman, Montana 59771.

4. Repairs and Improvements:

Lessee agrees to protect all improvements upon said premises and to keep the same in as good condition and state of repair as the same shall be at the time this Lease is executed, with reasonable wear, tear and damage by the elements excepted.

5. Use of Premises:

Lessee agrees to utilize said premises in a good farmer-like manner and according to the ordinary methods of husbandry employed in the area and to commit no waste upon the property. Lessee agrees that he will not use, or permit to be used, any part of said premises for any other purpose than normal farming purposes without the prior written consent of the Lessor. Lessee further agrees to conduct his activities in compliance with all State or County laws and regulations regarding the control of noxious weeds.

6. No Assignment or Sublease:

Lessee agrees that he will not assign this Lease, nor will he sublet the premises, or any part thereof, without the prior written consent of the Lessor.

7. Surrender of Premises to Lessor:

Lessee further agrees that at the termination of this Lease, whether by expiration of its term, by default or as otherwise provided herein, he will immediately surrender possession of said premises to Lessor with the improvements thereon in as good condition and state of repair as the same now are, with reasonable wear, tear and damage from the elements alone excepted.

8. Lessor's Right to Terminate:

Lessor hereby reserves, and Lessee grants to Lessor, the right to terminate this Lease at any time upon sixty (60) days' written notice; provided, however, that if the Lessee has seeded and fertilized the premises and said sixty (60) days run prior to grain harvest or first cutting, this Lease shall be extended until the harvest or first cutting has been completed.

9. Notice to Lessee:

Notice may be given by Lessor to Lessee by mailing the same to Lessee at the address provided herein. Notice shall be deemed delivered when the notice is deposited with the United States Post Office, first class postage, prepaid, addressed to the following: Bill Tatarka, 19 Lake Rd, Bozeman, Montana 59718.

10. Defaults:

Should Lessee default in the payment of any rental, or otherwise default in the performance of any term or condition of this agreement, Lessor may immediately re-enter and re-take possession of the premises, or any part thereof, without notice and without the necessity of resorting to any legal action whatsoever, without such re-entry working a forfeiture of the rents to be paid, or at its option, Lessor may cancel this lease and re-enter and re-take possession.

11. Access:

There is further reserved unto the Lessor, its successors and assigns, the right of access and entry upon the lands to make field inspections, examinations, soil tests, and other evaluations in connection with a determination of the highest and best use of the lands herein leased. Should any such testing be disruptive of planted crops, Lessee will be notified and fairly

compensated for damaged crop.

12. Hold Harmless:

Lessor shall not be liable in any manner to the Lessee, or to any other party or parties, for any loss, cost, damage or injury arising out of or in any manner connected with the use of said leased premises, or any part thereof, or arising out of or in any manner connected with the condition thereof or the previous maintenance thereof. Lessee shall indemnify and hold Lessor harmless from any and all injury, cost, loss, liability, expense or damage, or claim thereof, including reasonable attorney's fees.

13. Anti-Discrimination:

Lessee agrees not to discriminate in the fulfillment of this agreement on the basis of race, color, religion, creed, sex, age, marital status, national origin, or actual or perceived sexual orientation, gender identity or disability.

14. Miscellaneous Covenants and Provisions:

a. Lessee agrees that he will not use or permit the use of the demised premises contrary to any valid laws of the State of Montana or ordinance of the County of Gallatin or City of Bozeman and will save Lessor harmless from any and all claims for damages which may be sustained by reason of anything which may occur upon said premises or arise from the use or occupancy thereof by the Lessee.

b. The covenants and conditions of this Lease shall be deemed continuing and any forbearance by Lessor to enforce forfeiture on the occasion of one or more breaches thereof shall not be construed as a waiver of the right to enforce such forfeiture on any subsequent breach.

c. It is mutually agreed and understood that in the event either party hereto shall bring any legal action against the other to enforce any right or obligation based upon this Lease, the successful party in such legal action shall be entitled to recover in such action a judgment for all costs and expenses of any kind and nature whatsoever incident to the prosecution or defense of such action or the preparation thereof, including reasonable attorney's fees.

d. It is mutually understood and agreed that time shall be of the essence of this agreement and that the terms hereof shall bind the heirs, personal representatives, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent by the Lessor to any assignment of this Lease, or any interest therein by the Lessee, except as provided in paragraph 6 of this Lease.

e. It is mutually understood and agreed that all prior understandings of the parties, either written or oral, are merged herein and this document constitutes the entire understanding of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first above written.

LESSOR:

CITY OF BOZEMAN

By: _____
Chris A. Kukulski
City Manager

ATTEST:

Stacy Ulmen, CMC
City Clerk

LESSEE:

Bill Tatarka

STATE OF MONTANA)
) ss.
County of Gallatin)

On this _____ day of _____, 2014, before me, the undersigned a Notary Public for the State of Montana, personally appeared _____, known to me to be the person whose name is subscribed to within of the aforementioned agreement and the person whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(SEAL)

Notary Public for the State of Montana,
residing at _____
My commission expires _____

STATE OF MONTANA)
) ss.
County of Gallatin)

On this _____ day of _____, 2014, before me, the undersigned,

a Notary Public for the State of Montana, personally appeared _____, known to me to be the persons whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(SEAL)

Notary Public for the State of Montana
residing at _____
My commission expires _____