

# Memo



**Date:** March 15, 2011  
**File:** 2390-01-000  
**To:** City Manager  
**From:** Manager, Property Management  
**Subject:** Pasture Land Lease Renewal - 1639 Byrns Road  
Report Prepared by: T. Abrahamson, Property Officer

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## **Recommendation:**

THAT Council approves the City entering into a five (5) year Lease Agreement, with Byrns Farm (Kevin Day) for City-owned property located at 1639 Byrns Road to be used for farming practices, in the form attached to the report of the Manager, Property Management, dated March 15, 2011;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the attached Lease Agreement and all documents associated with this transaction.

## **Purpose:**

To enter into a five (5) year lease on vacant City land for the purpose of farming.

## **Background:**

The subject property was acquired in 1995 to accommodate construction of the future sewage treatment plant expansion. The property is not required for those purposes in the near future and is being leased under its current land use. The five (5) year term is intended to allow the land to be adequately prepared for extended farming operation while awaiting development.

The proposed five (5) year term is from April 1, 2011 to March 31, 2016 at a rate of \$1,150.00 per year with no further right of renewal. The proposed lease rate is representative of market value for active ALR farming property. A six (6) month termination clause allows for early termination of the lease, should the property be required by the City.

## **Internal Circulation:**

Design & Construction Services  
Civic Operations  
Infrastructure Planning  
Corporate Services  
Development Services  
Regional Services  
Land Use Management  
Policy & Planning

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**Legal/Statutory Authority**

Community Charter, Sec. 26 – Disposal of Municipal Property

**Legal/Statutory Procedural Requirements**

Community Charter, Sec. 94 – Notice Requirements

**Considerations not applicable to this report:**

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Community & Media Relations Comments:

Alternate Recommendation:

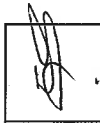
In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of this lease.

Submitted by:



\_\_\_\_\_  
Ron Forbes, RPA  
Manager, Property Management

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services

cc: Director of Financial Services



# LEASE AGREEMENT

**THIS AGREEMENT** made the 1st day of April, 2011.

BETWEEN:

**CITY OF KELOWNA**, a municipal corporation having its offices at 1435 Water Street, in the City of Kelowna, in the Province of British Columbia, V1Y 1J4

(hereinafter called the "City")

OF THE FIRST PART

AND:

**BYRNS FARM**  
2225 Burtch Road  
Kelowna, British Columbia  
V1Y 7Z5

(hereinafter called the "Tenant")

OF THE SECOND PART

**WITNESSETH** that in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the City hereby demises and leases unto the Tenant the premises hereinafter described all on the terms, conditions and covenants as hereinafter set forth.

- 1.01 **THE PREMISES.** The Premises hereby leased comprise those properties as described in Schedule "A"; the said properties are hereinafter referred to as the "Premises".
- 2.01 **TERM OF THE LEASE.** TO HAVE AND TO HOLD the said Premises for five (5) years from the 1st day of April, 2011 to and including the 31st day of March, 2016, subject to Articles 6.12 and 6.22 herein.
- 3.01 **RENT.** YIELDING AND PAYING to the City rental for the Premises, the sum of One Thousand One Hundred and Fifty Dollars (\$1,150.00) per annum, plus HST, payable on or before the 15th day of June each year, representing Twenty-three (23) acres at Fifty Dollars (\$50.00) per acre.
- 4.00 **TENANT'S COVENANTS.** The Tenant covenants with the City:
- 4.01 **RENT.** To pay rent.



- 4.02 **USE.** Not to use the premises for any purpose other than normal farming practices or such activity as may be properly authorized in writing by the City, and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.03 **BUSINESS LICENCES AND PERMITS.** That it will procure and maintain, at the cost and expense of the Tenant, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, including water permits and/or licences required in connection with the business of farming, and such private permits as may be necessary in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 4.04 **INSURANCE.** The Tenant shall, at his own expense, maintain and keep in force during the term of this Agreement, the insurance coverage listed in this Article. The "deductible or reimbursement" for any insurance policy required under this Article shall not exceed Five Thousand (\$5,000.00) Dollars per claim.

The Tenant shall at the time the contract is signed, submit to the City a certificate for all insurance policies or certified copies of the insurance policies (if requested) required under this Article and shall also provide the City from time to time, as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this Article shall contain an endorsement to provide all named insureds with prior written notice of changes and cancellations. Such endorsement shall be in the following form:

"It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled until thirty (30) days after written notice of such change or cancellation shall have been given or sent by registered mail to all named insureds."

Whenever the word "City" is to appear in the insurance policies, the legal name shall be inserted.

- 4.05 **LIABILITY INSURANCE.** The Tenant shall be responsible for a policy of public liability and property damage insurance in an amount of no less than Two Million (\$2,000,000.00) Dollars against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this Agreement. Participant coverage may also be required at the discretion of the City.

The City of Kelowna shall be a named insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following 'Cross Liability' clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action

brought against any of the named insured by or on behalf of any other named insured."

- 4.06 **NOT TO VOID INSURANCE.** Not to do or permit anything to be done which would render any other policy of insurance on the Premises or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Tenant does anything that would cause an increase in the insurance premiums on the Premises, the Tenant shall pay to the City that amount which represents the increase in the insurance premium by virtue of the Tenant's use or occupation of the Premises.
- 4.07 **AUTOMOTIVE INSURANCE.** The Tenant shall licence and insure for business purposes to a minimum of Two Million Dollars (\$2,000,000.00) public liability and property damage, all automotive equipment used by the tenant in the conduct of the business provided for in this Agreement.
- 4.08 **APPLICATION OF PESTICIDES.** To ensure that the application of sprays and/or pesticides used in connection with the agricultural business is only performed by a licensed applicator.
- 4.09 **ASSIGNMENT.** The Tenant shall not assign or sub-license in whole or in part without the City's prior consent in writing, which consent may be withheld without reason. The Tenant also agrees to reimburse the City for all costs that it may incur to effect any assignment at the Tenant's request. The minimum amount for such assignment shall be \$300.00.
- 4.10 **USE OF PREMISES.** Not to use the Premises for any purpose other than normal farming practices or such activity as may be properly authorized in writing by the City, and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.11 **NO OTHER AGREEMENT.** No verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained.
- 5.0 **CITY'S COVENANTS.** The City covenants with the Tenant:
- 5.01 **QUITE ENJOYMENT.** For quiet enjoyment of the Premises.
- 6.0 **PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:**
- 6.01 **PROVISO FOR RE-ENTRY ON DEFAULT.** If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Tenant of any of the provisions of this Agreement, and if the default continues for TEN (10) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for TEN (10) days, the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this Agreement and re-enter and take possession of the Premises or any part thereof by force if

necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or agreement on its part to be performed.

- 6.02 **ALTERATIONS BY TENANT.** The Tenant agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City and at the Tenant's sole expense and at such time, in such manner as the City may approve.
- 6.03 **REMOVAL OF ALTERATIONS BY TENANT.** If any alterations, additions or improvements are made to the Premises by the Tenant, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this Agreement not later than fifteen (15) days prior to the termination of this Agreement or, if the City would prefer any alterations, additions and improvements remain, the City may require the Tenant to restore the Premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Tenant.
- 6.04 **REMOVAL OF TENANT'S PROPERTY.** All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant on the Premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this Agreement, PROVIDED THAT the Tenant, at its own expense, shall repair any damage to the Premises caused by such removal or by the original installation.
- 6.05 **NO WARRANTY OF SERVICES BY CITY.** The City does not warrant that any service or facility provided by it in accordance with the provisions of this Agreement will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this Agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.
- 6.06 **CITY NOT LIABLE FOR INTERFERENCE.** The City shall not be liable to the Tenant for any interference or inconvenience caused by the labour dispute or by damage to the Premises or by repairs, alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.
- 6.07 **CITY NOT LIABLE FOR INJURY TO TENANT.** The City shall not be liable for any injury or damage to the Tenant, his agents, employees, customers or invitees as to any of their property while on the Premises, regardless of the cause of such injury or damage except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.

- 6.08 **INDEMINIFICATION.** The Tenant agrees to reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Tenant of any covenant or provision of this Agreement or by reason of damage to the premises, persons or property caused by the Tenant, its employees or agents or persons visiting or doing business with the Tenant. The Tenant further covenants and agrees to save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the term of this Agreement, whether such claim shall be made by an employee of the Tenant, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a wilful or negligent act or omission of the Tenant, its officers, servants, agents or employees; and at its own expense, the Tenant shall defend any and all such actions and pay all legal charges, costs , and other costs arising therefrom.
- 6.09 **NO REPRESENTATION.** The Tenant agrees that it has rented the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it be made in writing and signed on behalf of the City.
- 6.10 **ABATEMENT OF RENT.** If the Premises are damage by any cause for which the City is responsible by virtue of some act or neglect by the City, its servants or agents, then the rent shall be abated in whole or in part according to the portion of the Premises which is not usable by the Tenant until such damage is repaired.
- 6.11 **DAMAGE OR DESTRUCTION OF PREMISES.** Subject to the provisions of Article 6.12, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the Premises shall be repaired by the City with reasonable diligence at its expense except that repairs or alterations, additions or improvements made by the Tenant shall be performed by the City at the expense of the Tenant and the Tenant shall, at its own expense, make all repairs and replacements of property which belongs to the Tenant.
- 6.12 **PREMISES RENDERED UNTENABLE.** If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall, within ninety (90) days after such fire or other casualty, give the Tenant a notice in writing of such decision and thereupon the term of this Agreement shall expire forthwith and the Tenant shall vacate the Premises and surrender the same to the City. Upon the termination of this Agreement under the provisions of this Article, the Tenant's liability for rent shall cease as of the day following the fire or other casualty.
- 6.13 **RIGHT OF ENTRY TO MAKE REPAIRS.** The Tenant agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law. The City shall be allowed to take onto the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations, improvements or additions



- 6.14 are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 6.15 **DISTRAINT.** If the City levies distress against the goods and chattels of the Tenant, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable for any action in respect thereof or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the City, its employees and agents from all actions, proceedings, expressly released the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.
- 6.16 **COSTS OF RECOVERY OF RENT.** If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.
- 6.17 **INTEREST ADDED TO COSTS OF DEFAULT.** Without prejudice to any other remedy of the City, any money payable by the Tenant to the City hereunder, other than the rent referred to in Article 3 of this Agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Article 6.18 of this Agreement from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be collectable as rent unless otherwise provided in this Agreement, shall be payable with the next ensuing instalment of rent.
- 6.18 **INTEREST PENALTY ON OVERDUE RENT.** Without waiving any right of action of the City in event of late payment or default of payment of rents due herein, the Tenant shall pay a penalty of two (2%) percent per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.
- 6.19 **NO WAIVER.** The failure of the City to insist upon strict performance of any covenant or condition in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.
- 6.20 **OVERHOLDING.** If the Tenant shall continue to occupy the Premises after the expiration of the existing tenancy hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this Agreement insofar as the same are

applicable to a tenancy from month to month save and except that the rental payment shall be as determined by the City.

6.21 **ENUREMENT.** This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

6.22 **TERMINATION OF LEASE.** If at any time during the term of this Agreement, the City requires the Premises for redevelopment, the Tenant shall be given six (6) months notice, in writing, and the Agreement will be terminated, without penalty.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their signatures in the presence of witnesses, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

**SIGNED, SEALED and DELIVERED** by the )

City in presence of: )

)

)

\_\_\_\_\_)

Signature of Witness )

)

)

\_\_\_\_\_)

Name of Witness )

)

)

\_\_\_\_\_)

Address )

)

)

\_\_\_\_\_)

Occupation )

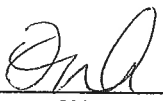
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**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

SIGNED, SEALED and DELIVERED by the  
Tenant in presence of: )

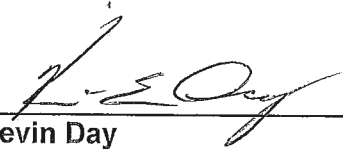
  
\_\_\_\_\_  
Signature of Witness )

TAMMY ABRAHAMSON  
Name of Witness )

1435 WATER ST, KELOWNA  
Address )

PROPERTY OFFICER  
Occupation )

BYRNS FARM by its authorized signatory:

  
\_\_\_\_\_  
Kevin Day

## SCHEDULE "A"

### PREMISES:

The premises are those lands situated in the City of Kelowna and legally described as:

1. Lot 12, District Lot 130, Osoyoos Division Yale District, Plan 415 shown on Plan B14830 except Plan B5905, located on 1649 Byrns Road (approx. 23 acres);

(hereinafter called the "Premises")





*This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.*