

Memo



Date: June 20, 2011

File: 2390-20

To: City Manager

From: Manager, Property Management

Subject: Farm Lease to Diamond T Ranch Ltd./Len Tonn (Tutt Ranch)

Report Prepared by: T. Abrahamson

Recommendation:

THAT Council approves the City entering into a five (5) year Farm Lease Agreement commencing March 15, 2011, with Diamond T Ranch Ltd., for the use of City-owned property on the plan attached, being portions of Lots 5 - 7 and A, Block 10, Plan 1068, O.D.Y.D., and portions of Lots 29 - 31, 10 and A, Block 14, Plan 1068, O.D.Y.D., in the form attached to the Report of the Manager, Property Management, dated June 20, 2011;

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

Purpose:

To enter into a farm lease with Diamond T Ranch Ltd. for the purpose of cultivating alfalfa crops on City owned ALR property in the Glenmore Valley.

Background:

The City purchased the Tutt Ranch in September, 2006, for long term civic purposes. At the time of acquisition, the property was being actively farmed with annual leases governing the use and responsibilities related to the farming operation.

Mr. Len Tonn is one of the farmers who has been cultivating alfalfa on the property since the City's acquisition. He has exhibited expert farming practices and has met all obligations under the terms of the annual leases. The proposed five (5) year lease would allow for the recovery of the Lessee's costs to seed and harvest the farmland for the proposed term while retaining the farm classification of the property for tax purposes. No further right of renewal has been granted.

The proposed lease is consistent with existing zoning, it is allowable under the Agricultural Land Commission ("ALC") regulations and supports recent direction from the ALC with respect to the continued use of these lands.

Financial/Budgetary Considerations:

The Lessee agrees to pay \$13,650.00 per year. The lease value is \$150.00/acre for approximately 91 acres and represents fair market value for actively farmed land.

Legal/Statutory Authority

Section 26(3) of the Community Charter

Legal/Statutory Procedural Requirements:

Disposition must be published in a weekly newspaper for two (2) consecutive weeks and posted on the public notice posting place

Internal Circulation:

Strategic Project Manager

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Community & Media Relations Considerations:

Alternate Recommendation:

In light of the above, the Real Estate and Building Services department requests Council's support of this lease.

Submitted by:



Ron Forbes, Manager
Property Management

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services

cc: Director, Financial Services





FARM LEASE

Having an effective date of March 15, 2011.

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

(the "Landlord")

AND:

DIAMOND T RANCH LTD. & MARVIN TONN
1 - 1555 Glenmore Road North
Kelowna, British Columbia V1V 2C5

(the "Tenant")

WHEREAS:

- A. The Landlord is the owner of certain lands and premises located in the City of Kelowna, in the Province of British Columbia, more particularly known and described on Schedule "A" attached hereto (the "Land").
- B. The Tenant is desirous of leasing those portions of the Land shown as fields #1, #2, #3, #4 and #5 and coloured orange on Schedule "B" attached hereto for the purpose of cultivating alfalfa crops.
- C. In consideration of the rents, covenants, conditions and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and leases unto the Tenant the Land all on the terms, conditions and covenants as set forth in this Lease.

1. TERM OF THE LEASE

- 1.1 To have and to hold the Land from March 15, 2011 to March 14, 2016 (the "Term").

2. RENT

- 2.1 The Tenant shall pay rent for the Land in the amount of THIRTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$13,650.00) plus applicable taxes to the Landlord on the 15th day of September in each year of the term, without deduction, set-off or abatement, at the address of the Landlord noted above, or at such other place as the Landlord may direct in writing.

3. USE OF THE LAND

- 3.1 The Tenant shall use the Land for cultivating and mowing of alfalfa crops and for no other purpose whatsoever without the prior written consent of the Landlord.

4. TENANT'S COVENANTS: The Tenant covenants with the Landlord:

- 4.1 **Rent.** To pay rent as aforesaid.

- 4.2 **Horticultural Standards.** To till, spray, fertilize, irrigate and generally cultivate the alfalfa crops grown upon the Land and to farm the Land in a good and husbandlike manner according to modern horticulture standards recognized in the Okanagan Valley in the Province of British Columbia. In the event the Landlord does not feel the Tenant is meeting the obligations as set forth in this paragraph, then the Landlord shall give the Tenant written notification of those concerns and the Tenant shall rectify the problem within 10 days of receiving such notification.

4.3 **Pesticides.** To handle all pesticides as required by law and to save harmless and indemnify the Landlord for any costs, charges, expenses or damages suffered or incurred by the Landlord as a result of any pesticide spill caused by the Tenant.

4.4 **Operating Costs.** To be fully responsible for all the operating costs incurred in the cultivating of the alfalfa crops on the Land during the Term and to indemnify the Landlord for any costs, charges, or expenses incurred by the Landlord as a result of the Tenant's failure to pay all such operating costs.

4.5 **Assignment and Subletting.** Not to sublet all or any part of the Land or assign this Lease in whole or in part or permit the occupation or use of all or any part of the Land by any person without first obtaining the written consent of the Landlord.

4.6 **Irrigation.** To repair, clean out and keep clean and in a state of repair all irrigation pipes, and other irrigation equipment on the Lands.

4.7 **Rules and Regulations.** To comply with all the laws, rules, regulations and ordinances and by-laws of any governmental authority or other body having jurisdiction over the Land or its use and to indemnify and save harmless the Landlord from all liability, loss or damage to which the Landlord may be put or suffer by reason of any breach by the Tenant thereof.

4.8 **Insurance.** To apply for and maintain Tenant public liability insurance in the form attached as Schedule "C" in an amount reasonably satisfactory from time to time to the Landlord and to deliver promptly to the Landlord a copy of such policy of insurance if so required by the Landlord. Such insurance shall be obtained at the Tenant's expense.

4.9 **Additional Items.** To be included as a component of the Lease, Schedule "D" attached hereto.

4.10 **Peaceful Surrender.** To peacefully surrender to the Landlord the Land at the end of the Term and to leave the Land in good condition.

4.11 **Right of Inspection.** To allow the Landlord or an agent or representative of the Landlord the right at all reasonable times to attend and inspect the Land.

5. INDEMNITY, WARRANTY, ETC

5.1 **Damage to Property.** The Landlord shall not be liable for any injury or damage to the Tenant, any agent or employee of the Tenant, any person visiting or doing business with the Tenant or any other person or to property belonging to the Tenant or to any agent or employee of the Tenant, or to any person visiting or doing business with the Tenant or to any other person while such property is on the Land whether such property has been entrusted to any employee or agent of the Landlord or not.

5.2 **Tenant's Indemnity.** The Tenant agrees to reimburse the Landlord for all expense, damages, loss or fines incurred or suffered by the Landlord by reason of any breach, violation or non-performance by the Tenant of any covenant or provision of this Lease or by reason of damage to persons or property caused by the Tenant, employees or agents or persons visiting or doing business with the Tenant.

6. RIGHT TO FARM

6.1 The Landlord acknowledges and accepts that farming involves the use of machinery, pesticides, and hired labour, among other practices and confirms and agrees that the Tenant shall be free to use any farming practices deemed necessary to produce alfalfa crops on the Land provided that the Tenant complies with all government regulations and operates same in a good and husbandlike manner.

7. NOTICE

7.1 Any notice required to be given hereunder by any party shall be deemed to have been well and sufficiently given if mailed by prepaid registered mail, or delivered at, the address of the other party set out on page 1 hereof, or at such other address as the other party may from time to time direct in writing, and any such notice shall be deemed to have been received, if mailed, 48 hours after the time of mailing.

8. INTERPRETATION

8.1 Severability. If any one or more of the provisions contained in this Lease should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8.2 Governing Law. This Lease shall in all respects be governed by and construed in accordance with the laws of the Province of British Columbia, including all matters of construction.

8.3 Counterparts/Electronic. This Lease may be executed in counterparts, each of which when delivered shall be deemed to be an original and all of which together shall constitute one and the same document. A copy of this Lease delivered by facsimile or other electronic means and bearing a copy of the signature of a party hereto shall for all purposes be treated and accepted as an original copy thereof.

9. SUCCESSORS

9.1 This Lease and everything herein contained shall enure for the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto.

Signed by the parties as of the date on the first page.

SIGNED, SEALED & DELIVERED

in the presence of:

Signature

[Handwritten Signature]

Print Name

TAMMAY ABRAHAMSON

Address

1435 WATER ST, KELOWNA

Occupation

PROPERTY OFFICER

[Handwritten Signature]

MARVIN TONN

[Handwritten Signature]

LEN TONN

CITY OF KELOWNA by its authorized signatories:

Name:

Schedule "A"

69 ACRES (FIELD 2, 4 & 5)

| | |
|-------------|---|
| 011-842-504 | PORTION OF LOT 5, BLOCK 10, TWP. 23, ODYD PLAN 1068 |
| 011-842-512 | PORTION OF LOT 6, PLOCK 10, TWP. 23, ODYD PLAN 1068 |
| 011-842-521 | PORTION OF LOT 7, BLOCK 10, TWP. 23, ODYD PLAN 1068 |
| 027-265-927 | PORTION OF LOT A, TWP. 23, ODYD PLAN 1068 |

22 ACRES (FIELD 1 & 3)

| | |
|-------------|---|
| 011-843-390 | PORTION LOT 10, BLOCK 14, TWP. 23, ODYD PLAN 1068 |
| 011-843-799 | PORTION LOT 31, BLOCK 14, TWP. 23, ODYD PLAN 1068 |
| 011-843-721 | PORTION LOT 30, BLOCK 14, TWP. 23, ODYD PLAN 1068 |
| 011-843-713 | PORTION LOT 29, BLOCK 14, TWP. 23, ODYD PLAN 1068 |
| 027-265-927 | PORTION LOT A, BLOCK 14, TWP. 23, ODYD PLAN 1068 |

Schedule "B"

