



STAFF REPORT

DATE: April 7, 2020

CONSENT

AGENDA ITEM: Keene Farm Lease 2020

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

When the city acquired 180 acres in 2019 from 3M, it was being farmed by Keene Farms LLC. They had been farming the land since 2006.

ISSUE BEFORE COUNCIL:

Should the Council approve a one year lease with Keene Farms LLC?

PROPOSAL:

In your packet is a new lease drafted by Attorney Sonsalla. It allows Keene Farms LLC to farm the 180 acres the city owns near Ideal Ave. The annual rental fee is \$26,000 with half the payment due in April and half in November. The rent will go into the city's water fund to pay the taxes on the land since the land is considered an asset of the water fund.

Staff is only proposing a one year lease in anticipation of the city possibly selling the land for development next year.

FISCAL IMPACT:

The rent will cover the taxes and staff time associated with the lease. Any remaining funds will stay in the water fund.

RECOMMENDATION:

If removed from the consent agenda:

“Motion to Approve Farm Lease with Keene Farms LLC for 2020”

ATTACHMENT

- Farm Lease

FARMING LEASE

THIS FARMING LEASE (this "Lease"), is made this ___ day of _____, 2020, by and between the City of Lake Elmo, a Minnesota municipal corporation (the "City") and Keene Farms, LLC, a limited liability company organized under the laws of the state of Minnesota (the "Tenant") (Each referred to herein as a "Party" or together the "Parties").

1. Property Description. The City hereby rents to the Tenant in consideration of the rents and promises hereinafter described the property consisting of approximately 180.26 acres (the "Property"). The Property is legally described on Exhibit A attached hereto.
2. Term. The Term of this Lease is for one year commencing on January 1, 2020 and terminating on December 31, 2020, unless otherwise terminated pursuant to the terms herein (the "Term").
3. Base Rent. The Tenant shall pay to the City a total of \$26,000 as the base rent for its use and enjoyment of the Property during the Term ("Rent"). The Tenant shall pay Rent to the City in two equal installments of \$13,000 on or before April 1, 2020 and November 1, 2020. Payments shall be sent to the City at the address provided below in Section 20 of this Lease.
4. Property Taxes. The City shall be responsible for paying the annual Real Estate Taxes attributable to the Property when they become due. The term "Real Estate Taxes" shall not include any special assessments levied upon or assessed against the Property. In the event such assessment occurs, Tenant shall be responsible for the timely payment of such assessment and shall provide proof of payment to the City.
5. Authority to Enter into Agreement & Quiet Enjoyment. The Parties each hereby represent and warrant to the other that it is duly authorized and empowered to execute, deliver and perform this Lease and that such action does not conflict with or violate any provision of law, regulation, policy, prior agreement, bylaw or other instrument to which it is a party or by which it is bound and that this Lease constitutes a valid and binding obligation of it enforceable in accordance with the terms herein. Further, the City warrants that the Tenant, upon the Tenant's performance of all the terms, conditions, covenants, and agreements on the Tenant's part to be observed and performed under this Lease, may peaceably and quietly enjoy the Property subject to the terms and conditions of this Lease.
6. Access to the Property. The Tenant agrees to permit the City and the authorized representatives of the City to enter the Property at all times during normal business hours (upon 24 hours' notice to the Tenant) for the purpose of inspecting the same and conducting such investigations, tests, measurements, and assessments as may be desired by the City. In the event of an emergency constituting a danger to life, health, safety, or property, the City may enter the Property at any given time without the consent of or notice to the Tenant.

7. Tenant Obligations. The Tenant shall be responsible for paying or doing the following:
- A. The Tenant shall use the Property for agricultural purposes only, which includes farming and cultivation. The production of any legal agricultural crop is permitted on the Property, provided that the production of such crop does not damage the Property due to excessive runoff or erosion. During farming operations, the Tenant must fertilize the soil on the Property in order to keep the proper elements in the soil and at a proper pH for crop production. The Tenant shall not use any herbicides that will have any residual carry over effect on any properties or bodies of water that are in the vicinity of the Property. The Tenant shall not keep any farm animals, livestock, or poultry on the Property. The Tenant agrees to use normal and customary farming practices in the care and maintenance of the Property and, without limiting normal practices, keep the Property free of noxious weeds to the greatest extent possible;
 - B. The Tenant agrees that throughout the Term of this Lease, the Tenant shall not use the Property for the storage, handling, transportation, or disposal of any Hazardous Substances. "Hazardous Substances" for purposes of this Lease shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated, or classified under any Environmental Law or other applicable federal, state, or local laws and the regulations promulgated thereunder as: (i) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 (14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5) , 6921, as now or hereafter amended; (iii) toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives, and urea formaldehyde;

- C. The Tenant agrees to comply with all statutes, ordinances, rules, orders, regulations, and requirements of the federal, state, county, municipal, watershed, and other units of government regulating the use of the Property;
 - D. The Tenant shall not do anything in or about the Property which will in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease;
 - E. The Tenant shall not make any alterations or improvements to the Property without the City's prior written consent. Any additions or improvements authorized by the City shall be made at the Tenant's sole expense and shall remain on the Property at the expiration of this Lease;
 - F. The Tenant shall at all times during the Term maintain active entity status and keep good standing with the Minnesota Secretary of State;
 - G. The Tenant is not required to plow back the Property prior to the termination of this Lease; and
 - H. This Lease does not entitle the Tenant to allow or authorize use of the Property by the Tenant or any of Tenant's invitees for recreational purposes, including, but not limited to, hunting or the riding of snowmobiles, all-terrain, or similar recreational vehicles.
8. Costs Associated with the Lease. The City is not responsible for paying any of the Tenant's costs associated with this Lease, including preparation of the Property for farming. The Tenant shall pay all costs related to farming the Property.
9. Insurance. The Tenant shall, at the Tenant's expense during the Term of this Lease, keep in full force and effect a policy or policies of "occurrence" based general liability insurance, providing coverage for personal injury, personal property damage, and contractual liability, on terms and with companies acceptable to the City. Such policy or policies shall name both the Tenant and the City as insured parties and shall have combined policy limits in amounts not less than \$1,500,000. Such policy or policies shall provide that 30 days written notice must be given to the City prior to cancellation or termination thereof (with the exception of non-renewal which shall provide for 10 days' notice). The Tenant shall furnish evidence satisfactory to the City at the time this Lease is executed that such coverage is in full force and effect. The Tenant shall also carry insurance for the full insurable value of the Tenant's personal property located on the Property. The Tenant hereby waives and releases all claims, liabilities, and causes of action against the City and its officials, agents, employees, and contractors for loss or damage to, or destruction of the Tenant's personal property located on the Property.
10. Indemnification. The Tenant shall hold the City harmless from and indemnify and defend the City against any claim or liability arising in any manner from the Tenant's

use, improvement, and occupancy of the Property, or relating to the death or bodily injury to any person or damage to or loss of any personal property present on or located upon the Property, including all persons upon the Property at the Tenant's invitation or sufferance. All personal property and equipment kept, maintained, or stored on the Property shall be kept, maintained, or stored at the sole risk of the Tenant. The Tenant agrees to pay all sums of money in respect to any labor, service, materials, supplies, or equipment furnished or alleged to have been furnished to the Tenant in or about the Property, and not furnished on order of the City.

11. Assignment and Sublease Prohibited. The Tenant shall not sublet any portion of the Property or transfer or assign this Lease. Any purported assignment, sublease or transfer of this Lease by Tenant shall be deemed invalid and void. The City's right to assign this Lease is and shall remain unqualified.
12. Surrender of Possession. Upon expiration or termination of this Lease, the Tenant shall peaceably surrender the Property and remove all debris, crops, and personal property from the Property. The Tenant shall be conclusively deemed to have abandoned any personal property and crops not removed prior to the effective date of the City's termination of this Lease or the Tenant's surrender of the Property. All debris, crops, and personal property may be removed and disposed of by the City. The Tenant shall be responsible for any removal and disposal costs.
13. Holding Over. If the Tenant remains in possession of the Property after the expiration or termination of this Lease, the Tenant shall be deemed to be occupying the Property as a tenant at sufferance, subject to all the conditions, provisions, and obligations of this Lease insofar as the same can be applicable to a tenancy at sufferance, including, but not limited to, the duty to pay monthly rent at a rate equal to 150% of the Rent applicable under this Lease.
14. Sale or Encumbrance of the Property. If the City sells or otherwise voluntarily conveys the Property during the Term of this Lease, and the City does not terminate this Lease pursuant to the terms herein, this Lease shall be subject to the rights of the purchaser of the Property from the City and the Tenant shall attorn to the rights of the purchaser.
15. Tenant's Default.
 - A. Events of Default: The occurrence of any one or more of the following events shall constitute an "Event of Default":
 - (1) The Tenant's failure to pay rent when due;
 - (2) The Tenant's failure to maintain the insurance required pursuant to paragraph 9 above, which failure remains uncured for 15 days following the City's written notice to the Tenant of the Tenant's failure to perform such obligation;

- (3) The Tenant's attempt to sublet any portion of the Property, or assign the Tenant's interest under this Lease;
- (4) The Tenant's failure to fully perform any of the Tenant's obligations, other than the obligations referenced in subsections (1), (2) or (3) above, which failure remains uncured for 30 days following the City's written notice to the Tenant of the Tenant's failure to perform such obligation; or
- (5) The Tenant's filing, or having filed against the Tenant, any bankruptcy or debtor proceedings or proceedings for the appointment of a receiver or trustee of all or any portion of the Property, or if the Tenant makes an assignment for the benefit of creditors.

B. City's Remedies: If an Event of Default occurs, the City shall have the following remedies;

- (1) The City may, but shall not be obligated to, and without notice to or demand upon the Tenant and without waiving or releasing the Tenant from any of the Tenant's obligations under this Lease, pay or perform any obligations of the Tenant; pay any cost or expense to be paid by the Tenant; obtain any insurance coverage and pay premiums therefor; and make any other payment or perform any other act on the part of the Tenant to be made and performed as provided for in this Lease, in such manner and to such extent as the City may deem desirable, and in exercising any such right, may also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees. The Tenant shall pay costs to the City upon demand with interest at seven percent per annum.
- (2) The City may terminate this Lease by written notice to the Tenant in which case the Tenant shall vacate the Property in accordance with Section 12 of this Lease. Neither the passage of time after the occurrence of an Event of Default nor the City's exercise of any other remedy with regard to such Event of Default shall limit the City's right to terminate the Lease by written notice to the Tenant.
- (3) The City may, whether or not the City has elected to terminate this Lease, immediately commence summary proceedings in unlawful detainer to recover possession of the Property. In the event of the issuance of a writ of restitution in such proceeding, upon the City's reentry upon and repossession of the Property, the City may remove the Tenant and all other persons from the Property (subject to the Tenant's right and responsibility to remove the Tenant's personal property pursuant to paragraph 12 of this Lease). In the event the City reenters the Property pursuant to this paragraph and the Tenant fails to remove the Tenant's personal property within the time period provided in paragraph 12, all items of personal property not removed by the Tenant within said period shall be deemed

abandoned, and title thereto shall transfer to the City at the expiration of such period or, upon the Tenant's vacation of the Property. These items may be disposed of by the City. The Tenant shall be responsible for any disposal costs.

- (4) In addition to all other remedies of the City, the City shall be entitled to reimbursement upon demand of all reasonable attorneys' fees which it incurs in connection with any Event of Default.
- (5) The City may initiate legal proceedings to enforce the provisions of this Lease.

No remedy provided for herein or elsewhere in this Lease or otherwise available to the City by law, statute, or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

16. Loss and Damage. The Tenant assumes and bears the risk of all loss and damage to the Property from any and every cause whatsoever, whether or not insured, except in the case of gross negligence or intentional misconduct on the part of the City, its officials, employees, agents, or contractors. No loss or damage to the Property or any part thereof shall impair any obligation of the Tenant under this Lease and the Lease shall continue in full force and effect unless the Tenant is unable to use the Property for the purposes intended under this Lease.
17. Eminent Domain. If an eminent domain or condemnation proceeding is commenced with respect to the Property during the Term of this Lease, the following provisions shall apply:
 - A. If a public or private body with the power of eminent domain or condemnation ("**Condemning Authority**") acquires all of the Property through the exercise of its power of eminent domain or condemnation or as a result of a sale in lieu thereof, this Lease shall cease and terminate as of the date the Condemning Authority acquires possession.
 - B. If a Condemning Authority acquires only a part of the Property, and such acquisition materially affects the Property so as to render the Property unsuitable for the Tenant, in the absolute discretion of the Tenant, then this Lease shall cease and terminate as of the date the Condemning Authority acquires possession.
 - C. If a Condemning Authority acquires only a part of the Property and such acquisition does not render the Property unsuitable for the Tenant in the absolute discretion of the Tenant, this Lease shall continue in full force and effect.

- D. The City shall be entitled to the award paid in any condemnation acquisition under power of eminent domain or the proceeds of a sale in lieu thereof, and the Tenant shall not receive any portion of such award.
- E. Although all damages in the event of any condemnation shall belong to the City whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Property, the Tenant shall have the right to claim and recover from the Condemning Authority, but not from the City, such compensation as may be separately awarded or recoverable by the Tenant, in the Tenant's own right on account of any and all damage to the Tenant by reason of the condemnation and for or on account of any cost or loss to the Tenant.
18. Limitation of Warranties and Liability. In no event shall the City be liable for special, incidental, or consequential damages, including but not limited to lost profits, lost business opportunity, or damages related to Tenant's use or intended use of the Property.
19. Lease is Binding. This Lease shall be binding upon the Parties hereto and their heirs, successors and assigns as permitted herein.
20. Notification. Notices related to this Lease shall be sent to the following addresses:
- A. As to the City: City of Lake Elmo
3880 Laverne Avenue North Suite #100
Lake Elmo, Minnesota 550142
Attn: Director of Public Works
- B. As to the Tenant: Nicholas Jeffrey Keene
15503 80th Street S.
Hastings, MN 55033
- or to such other address as either Party may notify the other of pursuant to this paragraph.
21. Entire Lease. It is understood that this Lease contains all agreements, promises, and understandings between the City and the Tenant regarding the subject matter hereof. This Lease supersedes any prior agreements between the Parties regarding the subject matter hereof and any prior lease related to the Property. No modification to this Lease is binding unless made in writing and signed by the City and the Tenant.
22. Choice of Law and Venue. The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Lease. For purposes of litigating any dispute that arises under this Lease, the Parties hereby submit and consent to the jurisdiction of the State of Minnesota and agree that such litigation shall be conducted in the courts of Washington County, Minnesota, or the federal courts for the United States for the District of Minnesota, where this lease is to be performed.

23. Waiver. No waiver of the City's remedies upon the occurrence of an Event of Default shall be implied from any omission by the City to take any action on account of such Event of Default, and no express waiver shall affect any Event of Default other than the Event of Default specified in the express waiver and such an express waiver shall be effective only for the time and to the extent expressly stated. One or more waivers by the City shall not be construed as a waiver of a subsequent Event of Default.
24. Relationship of Landlord and Tenant. This Lease does not create the relationship of principal and agent, partnership, joint venture, or of any association between the City and the Tenant, the sole relationship between the Parties hereto being that of landlord and tenant under this Lease.
25. City's Disclaimer of Warranty. The City disclaims any warranty that the Property is suitable for the Tenant's use.
26. Headings. The headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease.
27. Severability. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions herein will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the agreements contemplated herein are not affected in any manner materially adverse to any Party. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and year first above written.

CITY OF LAKE ELMO

By: _____

Mike Pearson

Its: Mayor

By: _____

Julie Johnson

Its: City Clerk

KEENE FARMS, LLC

By:  _____

Nicholas Jeffrey Keene

Its: Manager