



City Council Memorandum

To: Mayor Manier & City Council
From: Jim Culotta, City Administrator
Date: May 18, 2017
Re: Resolution Extending Cash Rent Farm Lease

BACKGROUND

Last year, the City leased the W223 property to Bell Brothers Farming. Attached is an extension of the lease with Mark Bell with the same terms (one year at \$59,744). An extension is recommended given the need to plant the crop immediately.

The one deviation from the prior lease is the removal of a 30' by 40' area at the north-east corner of the south field (Field #2) from the planting area in order to accommodate the installation of the recently approved official city sign to promote the historic square. The sign will be smaller than 30'x40' but extra room is being sought so construction activity does not disturb the crops. Mr. Bell has agreed to this change.

REQUESTED ACTION

Staff requests Council consideration of the proposed lease. If inclined to approve, I ask that you approve the resolution on 1st Reading as it will improve the chances of a successful crop.

ATTACHED

1. Cash Rent Farm Lease

RESOLUTION NO. _____

Resolution Synopsis: This resolution approves and authorizes the extension of a Cash Rent Farm Lease with Bell Bros Farming for the 2017 growing season. Among other things, the agreement provides for a lease payment to the city in the amount of \$59,744 for the W223 Property.

**RESOLUTION AUTHORIZING THE EXECUTION OF A CASH RENT FARM LEASE
WITH BELL BROS FARMING c/o Doug and Mark Bell**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEVELL
COUNTY, that:**

Section 1. The Mayor and City Clerk are hereby authorized to extend and execute a Cash Rent Farm Lease Agreement with Bell Bros Farming, in substantially the form of the documents attached hereto, marked "Exhibit A", and by reference expressly made a part hereof.

Section 2. That this Resolution shall be in full force and effect from and after its passage by a two-thirds (2/3) vote of the corporate authorities then holding office.

PASSED AND APPROVED in due form of law at a regular meeting of the City Council of the City of Washington, Tazewell County, Illinois, on the _____ day of _____, 2017.

Mayor

ATTEST:

City Clerk

EXHIBIT A

Cash Rent Farm Lease

This Lease is entered into on May 15, 2017, between the City of Washington, an Illinois home-rule municipal corporation, whose mailing address is 301 Walnut Street, Washington, Illinois 61571 ("**Landlord**") and Mark Bell ("**Tenant**"), whose mailing address is PO Box 109, Deer Creek, Illinois 61733.

BACKGROUND

A. Landlord owns the real property legally described in Exhibit A, together with all buildings and improvements thereon belonging to the Landlord ("**Property**").

B. Tenant desires to lease the Property owned by Landlord and Landlord and Tenant desire to enter into a written lease to set forth the terms and conditions of the lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article 1.

Description of Rented Land and Length of Tenure

A. **Description of Land.** The Landlord rents and leases to the Tenant, to occupy and to use for agricultural purposes only, the Property with the exception of an area approximately 30' (E-W) x 40' (N-S) located in the northeast corner of Field #2 and labeled "Official Sign Location" as shown in Exhibit B. Tenant shall have no right to occupy or use any portion of the Property that is timberland except as is necessary for ingress and egress.

B. **Length of Tenure.** The term of this lease shall be one year, commencing on May 15, 2017, to December 31, 2017, unless sooner terminated as provided herein.

Article 2.

Rent

Tenant will pay Landlord as rent for the Property in a lease year an amount equal to the fifty-nine thousand seven hundred and forty-four Dollars (\$59,744) ("**Rent**"). Twenty-five percent of the Rent shall be paid on or before June 1, 2017. The remainder of the Rent shall be paid on or before December 1, 2017. Rent payments shall be made payable and delivered to the City of Washington, c/o Washington City Clerk, 301 Walnut Street, Washington, Illinois 61571.

Article 3.

Tenant's Duties in Operating Farm

A. Tenant covenants and agrees as follows:

- i. To cultivate the Property faithfully and in a timely, thorough, and businesslike manner.

- ii. To prevent all unnecessary waste, loss, or damage to the property of Landlord.
- iii. To use the Property only for agricultural purposes.
- iv. Not to erect or permit to be erected any structure or building or to incur any expense to Landlord for such purpose, without the prior written consent of Landlord.
- v. Not to permit, encourage, or invite other persons to use any part or all of the Property for any purpose or activity not directly related to its use for agricultural production.
- vi. Not to allow any livestock on the Property.
- vii. Not to cut live trees for any reason without the express written consent of the Landlord.
- viii. To comply with all federal, state and local statutes, regulations, ordinances, rules and policies, all court and administrative orders and decrees, all arbitration awards, and the common law, which pertain to environmental or natural resource matters or contamination of any type whatsoever ("**Environmental Laws**").
- ix. Not to permit the erection of any commercial advertising signs.
- x. Not to assign this Lease to any person or persons or sublet any part of the Property.
- xi. To prevent noxious weeds from going to seed on the Property and to destroy the same and keep the weeds and grass cut.
- xii. To keep open ditches, tile drains, tile outlets, grass waterways, and terraces in good repair. In the event of a major tile break, Tenant shall notify the City Administrator of the break before any repairs are undertaken.
- xiii. To preserve established watercourses or ditches and to refrain from an operation that will injure them.
- xiv. To keep the fences (including hedges), and other improvements on the Property in as good repair and condition as they are when Tenant takes possession or in as good repair and condition as they may be put by the Landlord during the Lease term – ordinary wear, loss by fire or unavoidable destruction excepted.
- xv. To prevent all unnecessary waste or loss or damage to the Property.
- xvi. To comply with rules and regulations of the Illinois Pollution Control Board, United States Department of Agriculture and the Natural Resources Conservation Service. Tenant shall not be responsible for action of Landlord that may be contrary to said rules and regulations.

- xvii. To plant crops in accordance with generally accepted farming and soil conservation practices and provide Landlord with written reports of the crops planted, fertilizers, herbicides and other products applied to the Property.

Article 4. Real Estate Taxes

Landlord shall pay the general real estate taxes and special assessments levied against the Property during the term of this Lease.

Article 5. Inspection

Landlord shall have the right to enter the Property at any time to inspect the Property, and to perform any acts related to the safety, protection, preservation, reletting or improvement of the Property.

Article 6. Early Termination of Lease Term

Landlord reserves the right, with ten (10) days written notice to Tenant, to demand and take possession of all or any portion of the Property at any time for any purpose and terminate the Lease for such property (the "**Terminated Property**"). In such event, Landlord shall pay to Tenant the reasonable value for work performed on the Terminated Property prior to the termination date, including but not limited to input costs applied to the Property and machinery and labor costs for applying the inputs to the Terminated Property. Landlord shall not pay for the value of the crops planted on the Terminated Property unless Landlord harvests crops on the Terminated Property. If Landlord harvests crops on the Terminated Property, Tenant shall receive the market value of the crops harvested instead of the reasonable value for work performed on the Terminated Property. Notwithstanding the above, Landlord shall not reimburse Tenant for the cost of any inputs (seed, fertilizers, herbicides, etc.) that were purchased by Tenant but were not applied to the Terminated Property. Tenant agrees that it will not plant any crop on the Property prior to May 15 in a lease year and will not apply any inputs on the Terminated Property once it has received written notice under this Article. The amount payable by reason of Landlord's termination of the Lease affecting only a portion of the Property shall be deducted from the second rental payment. Reasonable value shall be determined by a Tazewell County farm agent or extension advisor of the University of Illinois if the parties are unable to select a farm agent. Tenant shall only be entitled to compensation under this Article 6 if Tenant is not in default under the terms of the Lease at the time Landlord sends Tenant the notice of lease termination.

Article 7. Public Liability Insurance

Tenant shall, at his own expense, at all times during the term of this Lease, maintain in effect a comprehensive public liability insurance policy with a carrier acceptable and approved by Landlord, which will name Landlord as an additional insured, insuring against claims, demands and actions with respect to bodily injury, death or property damage arising from Tenant's use of the Property, with the following minimum limits of coverage:

Crop Insurance: \$286.60 per acre (to match lease amount).

Liability Insurance: \$2,000,000 per occurrence

Property Damage: \$2,000,000 per occurrence

Tenant shall deliver to Landlord appropriate insurance certificates evidencing such coverages, such certificates providing for not less than 30 days notice to Landlord of cancellation or termination.

Article 8.

Default

A. The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease:

- i. The failure by Tenant to pay any installment of rent or any money due under this Lease and such failure is not cured within five (5) days after delivery of written notice from Landlord specifying such failure to pay.
- ii. The failure by Tenant to perform any other covenant or agreement to be performed by Tenant under this Lease except those requiring the payment of rent or any money due under this Lease and Tenant shall have failed to cure such breach within thirty (30) days after written notice from Landlord specifying the nature of such breach; provided, however, if Tenant's default cannot be reasonably cured within such thirty (30) day period, then Tenant shall not be in default if it commences to cure the default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- iii. A receiver or similar officer becomes entitled to the leasehold interest of Tenant under this Lease.
- iv. Abandonment of the Property by Tenant.
- v. Levy, seizure, attachment, or sale of the leasehold interest of Tenant under this Lease.
- vi. Tenant becomes insolvent or unable to pay debts as they mature, or admits in writing to such effect; makes an assignment for the benefit of creditors; a proceeding is instituted by or against Tenant alleging that Tenant is insolvent or unable to pay debts as they mature; or a petition under any bankruptcy or insolvency law is brought by or against Tenant.

B. Tenant shall promptly notify Landlord in writing upon the happening or occurrence or existence of any Event of Default, or any event or condition which with the passage of time or giving of notice, or both, would constitute an event of Default.

C. Upon the occurrence of any of the Events of Default, Landlord may, at its option, without notice to or demand upon Tenant, exercise any one or more of the following remedies:

- i. Landlord may reenter the Property immediately with or without process of law and with the use of such force as may be necessary, and remove all persons and all property therefrom. Landlord shall not be liable or responsible for any damages resulting therefrom.
- ii. Landlord may terminate this Lease by ten (10) days written notice to Tenant. Reentry only, without notice of termination, will not terminate this Lease. Upon termination of this Lease, Landlord may recover from Tenant all damages proximately resulting from the termination, including the cost of recovering the Property. All such amounts shall be immediately due and payable from Tenant.
- iii. If Landlord terminates the Lease under this Article by reason of Tenant's default, Tenant shall not be entitled to any amounts set forth in Article 6.
- iv. After reentering, Landlord may relet the Property or any part thereof, for any term, without terminating this Lease at such rent and on such terms as Landlord may choose.
- v. Landlord may pursue any other remedy or combination of remedies legally available to Landlord, including the recovery of damages caused by Tenant's failure to perform or observe any covenant or condition of this Lease.

Article 9.

Possession, Landlord's Lien, Mineral Rights, Liability and Indemnification

A. **Yielding Possession.** Tenant agrees at the expiration or termination of this lease to yield possession of the premises to Landlord without further demand or notice, in as good order and condition as when they were entered upon by Tenant, loss by fire, flood, or tornado, and ordinary wear excepted.

B. **Mineral Rights.** Nothing in this Lease shall confer upon Tenant any right to minerals underlying the land. Such mineral rights are hereby reserved by Landlord together with the full right to enter upon the premises and to bore, search, excavate, work and remove the minerals, to deposit excavated rubbish, to pass over the premises with vehicles, and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. Landlord agrees to reimburse the Tenant for any actual damage Tenant may suffer for crops destroyed by these activities and to release Tenant from obligation to continue farming this property when development of mineral resources interferes materially with Tenant's farming operations.

C. **Tenant Liability.** Tenant takes possession of the Property subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in the pursuance of farming operations.

D. **Landlord's Lien.** The Landlord's lien provided by statute on crops grown or growing, together with any other security agreement(s) created by Tenant in favor of Landlord, shall be the security for the rent herein specified and for the faithful performance of the terms of the lease. The Tenant shall provide the Landlord with the names of persons to whom the Tenant intends to sell crops

grown on these premises at least 30 days prior to the sale of such crops. A lesser period may be allowed by mutual written agreement. Tenant consents to any filing required by law to perfect the statutory landlord's lien upon crops. If the Tenant fails to pay the rent due or fails to keep any of the agreements of this lease, all costs and attorney fees of the Lessor in enforcing collection or performance shall be added to and become a part of the obligations payable by the Tenant.

E. **Indemnification.** Except to the extent of the negligence or willful misconduct of Landlord, or its agents, employees or contractors, Tenant shall hold harmless, indemnify and defend Landlord and its members, agents and employees from all damages, liabilities, penalties, actions, attorney's fees, costs and expenses resulting from or arising out of any of the following: (a) Tenant's occupancy or use of the Property; (b) any accident or other occurrence in the Property arising in connection with Tenant's use of the Property; (c) any violation resulting from an act or omission by Tenant or Tenant's members, stockholders, partners, officers, agents, employees, or invitees, of any law or ordinance in any way related to the Property, including but not limited to Environmental Laws.

Article 10.

General Provisions

A. Titles to Articles and sectional headings herein are for information purposes only.

B. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

C. This Lease shall be construed, enforced and governed in all respects in accordance with the laws and the statutes of the State of Illinois.

D. The invalidity of any particular term or provisions of the Lease shall not affect the validity of the remaining terms and provisions hereof.

E. No alterations to or modification of the terms or the provisions of this Lease shall be effective unless such alteration or such modification is reduced to writing, and is then properly executed by the parties hereto.

F. This Lease supersedes any prior contract or arrangement between the parties hereto, and represents the complete agreement of the parties hereto.

G. All notices provided by this Lease shall be given in writing (i) either by actual delivery of the notice to the party thereunder entitled, or (ii) by mailing of the notice in the United States mail, first-class postage prepaid, to the address of the party entitled thereto, registered or certified mail, return receipt requested. The notice shall be deemed to be received (i) on the date of its actual receipt by the party entitled thereto and (ii) on the date of its mailing. All notices, demands or other communications to any of the parties to this Lease shall be addressed as described above. The address of any party hereto may be changed by notice to the other party duly served in accordance with the provisions hereof.

H. Any waiver by a party hereto of a breach of any term or condition of this Lease shall not be considered as a waiver of any subsequent breach of the same or any other term or condition hereof.

I. Nothing contained in this Lease shall be deemed or construed as creating a relationship of principal and agent, or of partnership or of joint venture between the parties hereto.

J. Time is of the essence of each and every provision, covenant, and condition herein contained and on the part of Tenant or Landlord to be done and performed.

K. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

L. Tenant will permit no lien, notice of intention to file lien, or other charges (whether arising out of work of Tenant or any contractor, subcontractor, mechanic, laborer or material man of Tenant or any mortgage, conditional sale, security agreement, chattel mortgage or otherwise) which might be or become a lien or encumbrance or charge upon the Property or any part thereof.

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Executed by the parties hereto as of the day and year first above written.

Landlord:

City of Washington, Illinois

Gary W. Manier, Mayor

Tenant:

Mark R Bell

Mark Bell

Exhibit A

Tract 1: A part of the Southeast Quarter of Section 10 and a part of the Southwest Quarter of Section 11, all in Township 26 North, Range 3 West of the Third Principal Meridian, as shown on Survey recorded in Plat Book "CCC" at page 142, being more particularly described as follows: Commencing at the Northwest corner of said Southwest Quarter of Section 11, said point also being the Point of Beginning of the tract to be described: From the Point of Beginning, thence North 88 degrees 25 minutes 14 seconds East (bearings are for descriptive purposes only), along the North line of said Southwest Quarter of Section 11, a distance of 1082.42 feet to a point on the Northerly right-of-way line of U.S. Route 24; thence the next three courses are along said Northerly right-of-way line of U.S. Route 24; thence South 69 degrees 49 minutes 06 seconds West, a distance of 408.90 feet; thence South 58 degrees 13 minutes 13 seconds West, a distance of 360.25 feet; thence South 62 degrees 59 minutes 50 seconds West, a distance of 1810.15 feet to a point on the Easterly right-of-way line of Nofsinger Road; thence North 21 degrees 09 minutes 40 seconds West along said Easterly right-of-way line of Nofsinger Road, a distance of 121.90 feet to a point on the apparent existing Easterly right-of-way line of Nofsinger Road; thence South 88 degrees 10 minutes 01 seconds West, a distance of 25.00 feet; thence North 01 degrees 51 minutes 28 seconds West, a distance of 408.06 feet; thence North 00 degrees 55 minutes 13 seconds West, a distance of 255.88 feet; thence North 04 degrees 29 minutes 49 seconds East a distance of 266.74 feet; thence North 04 degrees 56 minutes 38 seconds East, a distance of 55.97 feet to a point on the North line of said Southeast Quarter of Section 10; thence North 88 degrees 54 minutes 04 seconds East along said North line of the Southeast Quarter of Section 10, a distance of 1281.67 feet to the Point of Beginning; EXCEPTING THEREFROM any part taken or used for roadway purposes; situated in Tazewell County, Illinois.

Permanent Index Number for information only: 02-02-10-400-028

Tract 2: A part of the Southeast Quarter of Section 10, part of the Southwest Quarter of Section 11, part of the Northwest Quarter of Section 14, and part of the Northeast Quarter of Section 15, all in Township 26 North, Range 3 West of the Third Principal Meridian, more particularly described as follows: Commencing at the Northeast corner of said Northwest Quarter of Section 11; thence South 01 degrees 21 minutes 13 seconds East, (bearings are for descriptive purposes only), along said East line of the said Northwest Quarter of Section 11, a distance of 2720.91 feet to the Northeast corner of said Southwest Quarter of Section 11; thence continuing South 01 degrees 21 minutes 13 seconds East, along the East line of said Southwest Quarter of Section 11, a distance of 153.93 feet to a point on the Southerly right-of-way line of U.S. Route 24, said point also being the Point of Beginning of the tract to be described; From the Point of Beginning, thence continuing South 01 degrees 21 minutes 13 seconds East, along said East line of the Southwest Quarter of Section 11, a distance of 2523.44 feet, more or less, to a point which lies 40.00 feet North of an iron rod marking the Southeast corner of said Southwest Quarter of Section 11; thence South 89 degrees 51 minutes 25 seconds West, along the proposed Northerly right-of-way line of Cruger Road, as shown on Survey recorded in Plat Book "CCC" at page 141, a distance of 708.76 feet to a point 42.38 feet normally distant Northerly from the proposed centerline of Cruger Road; thence North 00 degrees 08 minutes 35 seconds West, 10.00 feet to a point 52.38 feet normally distant Northerly from the proposed centerline of Cruger Road; thence South 89 degrees 51 minutes 25 seconds West, 40.00 feet to a point 52.38 feet normally distant Northerly from the proposed centerline of Cruger Road; thence South 00 degrees 08 minutes 35 seconds East, 10.00 feet to the said proposed Northerly right-of-way line of Cruger Road, as shown on Survey recorded in Plat Book "CCC" at page 141, which lies 42.38 feet normally distant Northerly from the proposed centerline of Cruger Road; thence continuing South 89 degrees 51 minutes 25 seconds West, 588.48 feet along said proposed Northerly right-of-way line, to a point 43.07 feet normally distant Northerly from the proposed centerline of Cruger Road; thence continuing North 89 degrees 58 minutes 16 seconds West, a distance of 441.98 feet, to a point which lies 45.00 feet normally distant Northerly from the proposed centerline of Cruger Road; thence continuing along the existing right-of-way line of Cruger Road, as shown on Survey recorded in Plat Book "CCC" at page 141, South 88 degrees 08 minutes 43 seconds West, a distance of 422.39 feet; thence North 86 degrees 52 minutes 55 seconds West, a distance of 159.05 feet; thence South 73 degrees 43 minutes 53 seconds West, a distance of 164.93 feet; thence South 70 degrees 03 minutes 40 seconds West, a distance of 622.49 feet; thence South 89 degrees 02 minutes 56 seconds West, a distance of 542.02 feet to a point on the East line of a 6.053 acre tract as shown in Plat Book "HH" at page 282, at the Tazewell County Recorder's Office; thence North 15 degrees 22 minutes 38 seconds West, along said East line of the 6.053 acre tract, a distance of 308.99 feet; thence North 78 degrees 56 minutes 07 seconds East, a distance of 20.11 feet; thence North 14 degrees 49 minutes 40 seconds West, a distance of 858.72 feet; thence North 75 degrees 09 minutes 01 seconds East, a distance of 24.91 feet to a point on the Easterly right-of-way line of Nofsinger Road; thence the next two courses are along said Easterly right-of-way line of Nofsinger Road; thence North 11 degrees 02 minutes 05 seconds West, a distance of 300.60 feet; thence North 10 degrees 05 minutes 12 seconds East, a distance of 74.66 feet to a point on said Southerly right-of-way line of U.S. Route 24; thence the next six courses are along said Southerly right-of-way line of U.S. Route 24; thence North 62 degrees 59 minutes 50 seconds East, a distance of 1919.97 feet; thence North 64 degrees 35 minutes 34 seconds East, a distance of 359.14 feet; thence North 62 degrees 59 minutes 46 seconds East, a distance of 204.74 feet; thence along a curve concave to the Southeast, having a radius of 1800.00 feet and an arc length of 792.65 feet, being subtended by a chord bearing of North 75 degrees 36 minutes 24 seconds East, and a chord length of 786.27 feet; thence North 88 degrees 13 minutes 03 seconds East, a distance of 204.74 feet; thence North 88 degrees 12 minutes 59 seconds East, a distance of 704.41 feet to the Point of Beginning; EXCEPTING THEREFROM any part taken or used for roadway purposes; situated in Tazewell County, Illinois.

Permanent Index Numbers for information only: 02-02-11-300-007 / 02-02-14-100-037 / 02-02-15-200-040

Exhibit B

