



Legislation Details (With Text)

File #: 56285 **Version:** 1 **Name:** 11689 - 2004 Wheeler Rd - Cherokee Marsh Farm Lease - Kaltenberg

Type: Resolution **Status:** Passed

File created: 6/11/2019 **In control:** FINANCE COMMITTEE

On agenda: 6/18/2019 **Final action:** 7/16/2019

Enactment date: 7/22/2019 **Enactment #:** RES-19-00533

Title: Authorizing the Mayor and City Clerk to execute a lease for farming purposes with Daniel J. Kaltenberg for approximately 22 acres of land located at 2004 Wheeler Road, which land was acquired in 2018 for the expansion of Cherokee Marsh Conservation Park. (18th A.D.)

Sponsors: Rebecca Kemble

Indexes:

Code sections:

Attachments: 1. 11689_Exhibit_A.pdf, 2. 11689_Exhibit_B_print.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|-------------------------------|---|--------|
| 7/16/2019 | 1 | COMMON COUNCIL | Adopt | Pass |
| 7/10/2019 | 1 | BOARD OF PARK COMMISSIONERS | Return to Lead with the Recommendation for Approval | Pass |
| 7/8/2019 | 1 | FINANCE COMMITTEE | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | Pass |
| 6/24/2019 | 1 | PLAN COMMISSION | Return to Lead with the Recommendation for Approval | Pass |
| 6/19/2019 | 1 | FINANCE COMMITTEE | Referred | |
| 6/19/2019 | 1 | FINANCE COMMITTEE | Referred | |
| 6/18/2019 | 1 | COMMON COUNCIL | Refer | Pass |
| 6/11/2019 | 1 | Economic Development Division | Referred for Introduction | |

Fiscal Note

The proposed resolution authorizes a lease for farming purposes on approximately 22 acres of City owned land. The lessee will pay annual rent of \$2,200, payable in two (2) equal installments due on or before June 1, 2019 and December 31, 2019, respectively. The lease may be renewed for a subsequent one (1) year term upon agreement of the parties. Rent during future renewal terms, if any, will be subject to agreement between the lessee and Office of Real Estate Services staff.

Title

Authorizing the Mayor and City Clerk to execute a lease for farming purposes with Daniel J. Kaltenberg for approximately 22 acres of land located at 2004 Wheeler Road, which land was acquired in 2018 for the expansion of Cherokee Marsh Conservation Park. (18th A.D.)

Body

WHEREAS, in April 2018 the City acquired from Cherokee Property Development, LLC a tract of land described as Lot 2, Certified Survey Map No. 14762, located at 2004 Wheeler Road (the "Property"), for the expansion of the adjacent Cherokee Marsh Conservation Park; and

WHEREAS, such acquisition was authorized by Resolution No. RES-18-00089, ID No. 49975, adopted on January 16, 2018; and

WHEREAS, the City acquired the Property subject to a farm lease between the seller and Daniel J. Kaltenberg for calendar year 2018; and

WHEREAS, as the Property will not be formally designated as a conservation park until after 2019, Parks Division staff support the continued farming of the Property for the interim land management benefit of controlling invasive species and other undesirable vegetation; and

WHEREAS, the terms of a lease have been negotiated between Daniel J. Kaltenberg and the Office of Real Estate Services; and

WHEREAS, Parks Division staff have reviewed the lease terms and recommend entering into a lease with Daniel J. Kaltenberg, and the lease has been approved by the City Attorney's Office and Risk Manager.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease with Daniel J. Kaltenberg (the "Lessee") allowing for the use of approximately 22 tillable acres of land for farming purposes, subject to the following terms and conditions:

1. The "Leased Premises" are more particularly described on attached Exhibit A and depicted in attached Exhibit B.
2. The term of the Lease shall commence as of January 1, 2019 and expire on December 31, 2019.
3. The Lessee shall pay annual rent of \$2,200.00 (22 acres x \$100.00 per acre), payable in two (2) equal installments due on or before July 1, 2019 and December 31, 2019, respectively.
 4. The Lease may be renewed for subsequent one (1) year terms upon agreement of the parties as to the terms of the renewal, including the rental rate.
 5. The Lessee shall use the Leased Premises solely for the farming of crops.
 6. The Lessee shall not apply atrazine or any herbicide that lists atrazine as an active ingredient on the Leased Premises.
 7. The Lessee shall not hunt upon the Leased Premises and shall ensure that the Leased Premises are not used for hunting purposes.
 8. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.
 9. The Lessee shall not assign the Lease or sublet the Leased Premises, or any portion thereof, without the prior written consent of the City, which consent the City may withhold in its sole discretion.
 10. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Lessee or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in or related to the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive

termination and assignment or transfer of the Lease.

11. The Lessee shall carry farm general liability insurance covering as the named insured the Lessee and naming the City, its officers, officials, agents, and employees as additional insureds, with a minimum limit of \$500,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Lease is in effect, Lessee shall provide a renewal certificate to the City for approval.

12. The Lessee represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease, or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of the Lease.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.