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Title: Actions pertaining to leasing of City-owned land at the Fresno-Clovis Regional Wastewater Reclamation Facility (RWRF) (Council District 3) impacted by the COVID-19 global pandemic:

1. Adopt a finding of Categorical Exemption pursuant to Sections 15301/Class 1 of the California Environmental Quality Act Guidelines for the Fourth Amendment to the agricultural Lease and Agreement with James Cook for lease of 550 acres of City-Owned land at the RWRF;
2. Approve and ratify the Fourth Amendment to the agricultural Lease and Agreement with James Cook for 550 acres of City-owned land at the RWRF, waiving two quarterly rental fee installment payments totaling \$116,885, with revised revenue of \$166,885 for year 2020, retroactive to April 1, 2020.
3. Approve and ratify a Termination of the Lease and Agreement with James Cook for 125 acres of City-owned land at the RWRF retroactive to April 1, 2020.

Sponsors: Department of Public Utilities

Indexes:

Code sections:

Attachments: 1. Attachment 1-Cook Termination of Lease.pdf, 2. Attachment 2-Lease Cook 125 Acres.pdf, 3. Attachment 3-4th Amendment.pdf, 4. Attachment 4-Lease Cook 550 Acres.pdf, 5. Attachment 5-Previous Amendments to Lease Cook 550 acres.pdf, 6. Late Submission Supplement Updated SR and Homeless Rural Efforts to date 3-A.pdf

Date	Ver.	Action By	Action	Result
5/14/2020	1	City Council	approved as amended	Pass

REPORT TO THE CITY COUNCIL

May 14, 2020

FROM: MICHAEL CARBAJAL, Director
Department of Public Utilities

THROUGH: BRIAN S. SPINDOR, PE, ^(WA) Assistant Director
Department of Public Utilities - Wastewater Management Division

BY: ROSA LAU-STAGGS, Wastewater Manager - Environmental Services
Department of Public Utilities - Wastewater Management Division

SUBJECT

Actions pertaining to leasing of City-owned land at the Fresno-Clovis Regional Wastewater

Reclamation Facility (RWRF) (Council District 3) impacted by the COVID-19 global pandemic:

1. Adopt a finding of Categorical Exemption pursuant to Sections 15301/Class 1 of the California Environmental Quality Act Guidelines for the Fourth Amendment to the agricultural Lease and Agreement with James Cook for lease of 550 acres of City-Owned land at the RWRF;
2. Approve and ratify the Fourth Amendment to the agricultural Lease and Agreement with James Cook for 550 acres of City-owned land at the RWRF, waiving two quarterly rental fee installment payments totaling \$116,885, with revised revenue of \$166,885 for year 2020, retroactive to April 1, 2020.
3. Approve and ratify a Termination of the Lease and Agreement with James Cook for 125 acres of City-owned land at the RWRF retroactive to April 1, 2020.

RECOMMENDATIONS

Staff recommends City Council adopt a finding of Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines; approve and ratify the Fourth Amendment to the agricultural Lease and Agreement (Lease) of 550 acres of City-Owned land with James Cook, an individual, waiving two quarterly rental fee installment payments totaling \$116,885 as of April 1, 2020; and approve Termination of the Lease and Agreement of 125 acres of land as of April 1, 2020.

EXECUTIVE SUMMARY

On December 8, 2016, the City Council approved two leases of land at the RWRF between the City of Fresno and James Cook. The first Lease and Agreement was for leasing 550 acres, various parcels, at the RWRF for APN 327-030-41, APN 327-030-22s, APN 327-040-08, APN 327-040-11, and APN 327-040-26. The Lease and Agreement provides for an initial three-year term (January 1, 2017 through December 31, 2019) with an option of two additional one-year extensions. Subsequently, Council approved three amendments to this lease modifying the included parcels and the rental fees, allowing for five one-year renewal options, and granted the first one-year extension. The Lease and Agreement is set to expire on December 31, 2020. The second Lease and Agreement was for leasing 125 acres at the RWRF for portions of APN 327-021-05T, APN 327-021-04T, and APN 327-021-45T. The Lease and Agreement provides for a three-year term (January 1, 2017 through December -31, 2019) with an option of two additional one-year extensions. On October 24, 2019, the Lessee was granted the first of the two one-year extensions.

Due to current health crisis related to COVID-19, Mr. Cook has been unable to secure suppliers or farm labor, which has impacted his normal schedule of farming operations. The uncertainty of farming operations resulted in Mr. Cook's request which the Department of Public Utilities agrees to: (1) Terminate the Lease and Agreement for 125 acres, retroactive to April 1, 2020, and (2) Amend the Lease and Agreement for 550 acres, retroactive to April 1, 2020 waiving two quarterly rental fee installment payments totaling \$116,885. The Amendment will be effective from April 1, 2020 to September 30, 2020. Mr. Cook has agreed to refrain from planting and harvesting crops during this period and will continue fulfilling the maintenance, weed control, and insurance requirements outlined in the Lease and Agreement.

BACKGROUND

Wastewater Management Division (WMD) operates the RWRF which is regulated under Waste Discharge Requirements (WDR) Order No. R5-2018-0080 issued by the California Regional Water

Quality Control Board, Central Valley Region (Board). The Board encourages use of recycled water to reduce the amount of secondary treated wastewater sent to disposal ponds. WMD leases several tracts of land within the boundaries of the RWRF and recycled water is provided to farmers furthering the use of this valuable resource. Recycled water at the secondary treatment level produced at the RWRF meets Title 22 Recycled Water Criteria and can only be used to irrigate crops not for human consumption, such as cotton, or crops used for animal feed, such as alfalfa, Sudan grass, forage, winter wheat, silage corn and other fibrous crops. In addition, there is a specific area of 125 acres where winery stillage was received until December 31, 2003. That 125-acre area is under a remediation project to remove nitrogen and other nutrients through crop cultivation.

On December 8, 2016, the City Council approved two leases of land at the RWRF between the City of Fresno and James Cook, as follows (1) a Lease and Agreement was for leasing 550 acres, various parcels, at the RWRF for APN 327-030-41, APN 327-030-22s, APN 327-040-08, APN 327-040-11, and APN 327-040-26. The Lease and Agreement provides for an initial three-year term (January 1, 2017 through December 31, 2019) with an option of two additional one-year extensions and (2) a Lease and Agreement for leasing a 125-acre parcel of land at the RWRF for portions of APN 327-021-05T, APN 327-021-04T, and APN 327-021-45T. The Lease and Agreement provides for a three-year term (January 1, 2017 through December 31, 2019) with an option of two additional one-year extensions.

On October 24, 2019, the Lessee was granted the first of the two one-year extensions on the 125-acre lease. Council has approved three amendments to the 550-acre lease modifying the included parcels and the rental fees, allowing for five one-year renewal options, and granting the first one-year extension. Both leases are set to expire on December 31, 2020.

On March 30, 2020, Mr. Cook contacted WMD to request modifications to these leases. Due to the current uncertainty with suppliers and securing farm labor as a result of the COVID-19 global pandemic, Mr. Cook is unable to maintain normal farm operations under the terms of the lease agreements. Mr. Cook has requested that the City terminate the 125-acre lease and amend the 550-acre lease to waive the rental fee installment payments due on April 15 and July 15. The total rental fee installment payments waived is \$116,885. Payments will resume for the fourth quarter of 2020 covering the periods from October to December 2020. In exchange for waiver of these rental payments, Mr. Cook has agreed not to plant or harvest any crops on the leased premises from the effective date of the amendment to September 30, 2020. Mr. Cook has also agreed to continue to fulfill the maintenance provisions contained in the lease agreement, including the provisions concerning control of weeds on the leased premises, as well as maintain the required insurance.

ENVIRONMENTAL FINDINGS

By the definition provided by the California Environmental Quality Act (CEQA) Section 15378, approval of the termination of the 125-acre Lease and Agreement does not qualify as a "project."

Staff has determined that the Fourth Amendment to the 550 acre Lease and Agreement falls within the Categorical Exemption set forth in section 15301 (Class 1/Existing Facilities) for the CEQA guidelines which exempts operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public structures and facilities involving no expansion of use beyond that existing at this time because the authorized use specifically included in the Lease and Agreement continues the historical use of the properties for agricultural purposes.

Furthermore, Staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

LOCAL PREFERENCE

Local preference was not considered because a bid or award of a construction or services contract is not included.

FISCAL IMPACT

Revenue generated by the Lease Agreements goes to the Wastewater Enterprise Fund. Termination of the 125-acre Lease and Agreement will result in a revenue loss of \$28,500 and the Fourth Amendment to the 550-acre Lease and Agreement will result in a revenue loss of \$116,885; for a total revenue loss to the Wastewater Enterprise Fund of \$145,385. However, Mr. Cook will maintain the property for six months and he will be responsible for payment of the rental fee installment for the last quarter of 2020.

Attachments:

Attachment 1 - Termination of Lease Agreement of 125 acres between the City of Fresno and James Cook.

Attachment 2 - Lease and Agreement between the City of Fresno and James Cook of 125 acres of winery stillage beds at the Fresno-Clovis RWRF

Attachment 3 - Fourth Amendment to Lease and Agreement of 550 acres between the City of Fresno and James Cook.

Attachment 4 - Lease and Agreement between the City of Fresno and James Cook of 550 acres of farmland at the Fresno-Clovis RWRF

Attachment 5 - Amendments to the Lease and Agreement between the City of Fresno and James Cook of 550 acres of farmland at the Fresno-Clovis RWRF