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Title: Actions related to Lease Agreement of City-owned land at the Fresno-Clovis Regional Wastewater Reclamation Facility (RWRF) (Council District 3):

1. Adopt a finding of Categorical Exemption pursuant to Sections 15301/Class 1, 15304/Class 4, and 15325/Class 25 of the California Environmental Quality Act (CEQA) Guidelines;
2. Approve a Fifth Amendment to the Lease and Agreement with Mr. James Cook for 550 acres of City-owned land at the RWRF, to include a payment arrangement for an amount totaling \$116,885 to be paid in 17 installments of \$6,875.59, beginning the fourth quarter of calendar year 2020 and continuing on a quarterly basis for 16 subsequent quarters; and to grant one four-year extension, for the period of January 1, 2021 through December 31, 2024.

Sponsors: Department of Public Utilities

Indexes:

Code sections:

Attachments: 1. 2020-11-05 Attachment 1 - Fifth Amendment to Cook's Lease.pdf, 2. 2020-11-05 Attachment 2 - Fourth Amendment to Cook's Lease- Forbearance.pdf, 3. 2020-11-05 Attachment 3 - Third Amendment to Cook's Lease.pdf, 4. 2020-11-05 Attachment 4 - Second Amendment to Cook's Lease.pdf, 5. 2020-11-05 Attachment 5 - First Amendment to Cook's Lease.pdf, 6. 2020-11-05 Attachment 6 - Land Lease Cook 550 Acres.pdf

Date	Ver.	Action By	Action	Result
12/3/2020	1	City Council	tabled	

REPORT TO THE CITY COUNCIL

December 3, 2020

FROM: MICHAEL CARBAJAL, Director
Department of Public Utilities

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

SUBJECT

Actions related to Lease Agreement of City-owned land at the Fresno-Clovis Regional Wastewater Reclamation Facility (RWRF) (Council District 3):

1. Adopt a finding of Categorical Exemption pursuant to Sections 15301/Class 1, 15304/Class 4, and 15325/Class 25 of the California Environmental Quality Act (CEQA) Guidelines;
2. Approve a Fifth Amendment to the Lease and Agreement with Mr. James Cook for 550 acres

of City-owned land at the RWRF, to include a payment arrangement for an amount totaling \$116,885 to be paid in 17 installments of \$6,875.59, beginning the fourth quarter of calendar year 2020 and continuing on a quarterly basis for 16 subsequent quarters; and to grant one four-year extension, for the period of January 1, 2021 through December 31, 2024.

RECOMMENDATIONS

Staff recommends that the City Council:

1. Adopt a finding of Categorical Exemption pursuant to Sections 15301/Class 1, 15304/Class 4, and 15325 /Class 25 of the California Environmental Quality Act (CEQA) Guidelines
2. Approve a Fifth Amendment to the Lease and Agreement with Mr. James Cook for 550 acres of City-owned land at the RWRF, to include a payment arrangement for an amount totaling \$116,885 to be paid in 17 installments of \$6,875.59, beginning the fourth quarter of calendar year 2020 and continuing on a quarterly basis for 16 subsequent quarters; and to grant one four-year extension, for the period of January 2021 to December 2024; and
3. Authorize the Department of Public Utilities Director or designee to execute the Fifth Amendment on the City's behalf.

EXECUTIVE SUMMARY

On December 8, 2016, the City Council approved a Lease between the City of Fresno (City) and Mr. James Cook (Lessee) for the lease of various APNs totaling 550 acres of City-owned land at the RWRF. The Lease permits the lessee to plant non-food crops irrigated with secondary treated wastewater or final effluent (Direct Reuse) provided by the RWRF. The term of the Lease is January 1, 2017, through December 31, 2019, with the option of two one-year extensions. Following approval of the Lease, several amendments were executed.

The First Amendment removed APN 327-030-41 from the Lease. The Second Amendment added APN 327-030-38T and three additional options for one-year extensions to the Lease totaling five one-year extensions. The Third Amendment deleted APN 327-030-38T updating the lease amount to \$233,770 per year. The Fourth Amendment modified rental fees with an agreement to forbear payment of two rental installments of \$58,442.50 each to be due and payable on December 31, 2020 with no late payment fees.

On July 31, 2020, the Lessee provided written notice indicating the desire to negotiate with the City regarding payment of the forborne rental fee installments. Thereafter, Lessee proposed a payment arrangement. The Fifth Amendment establishes a payment arrangement in the form of 17 equal installments of \$6,875.59 each to be paid starting December 2020 and continuing for a period of 16 quarters. In addition, the Fifth Amendment modifies the Agreement to provide one four-year extension, in lieu of the remaining four one-year extension options provided in the existing lease.

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 (effluent) 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.

The City advertised for the lease of various APNs at the RWRF in the classified section of the local newspaper. Information forms were sent to area farmers and parties inquiring about the lease of the property. Three farmers submitted lease proposals. Mr. James Cook (Lessee) was determined to provide the best value for the City of Fresno at \$482.00 per acre for a total of 550 acres (all parcels).

On December 8, 2016, the City Council approved a Lease with Mr. Cook. The Lease is for a period from January 1, 2017 through December 31, 2019, with an option of two one-year extensions at rate of \$265,100 per year, totaling \$795,300, or \$1,325,500 if the two one-year options are exercised. On January 1, 2019 65 acres were removed (First Amendment) from the Lease adjusting the annual rate to \$233,770. The Second Amendment added 51 acres to the Lease starting April 1, 2019, and adjusted the annual rate to \$258,352.00 with three additional one-year extensions for a total of five (5) one-year extensions after expiration of the Lease and Agreement.. The City Council approved the Second Amendment with conditions which include seeking Council approval prior to the granting of the first one-year extension.

On December 12, 2019, the City Council approved a Third Amendment deleting 51 acres and adjusting the annual rate to \$233,770. In addition, the first of five optional extensions was granted extending the Agreement to December 31, 2020

On April 1, 2020, the City Council approved a Fourth Amendment, agreeing to forbearance of rental fees for two quarters totaling \$116,885, with no late fees, due no later than December 31, 2020. It also allowed for a payment arrangement option if other funding sources were not available or feasible. On September 3, 2020, the Lessee submitted a proposal for a payment arrangement consisting on 17 equal installments of \$6,875.59 each, to be paid on a quarterly basis starting the last quarter of calendar year 2020 and continuing each quarter thereafter if extension options are approved.

The Fifth Amendment to the Agreement includes the payment arrangement, as proposed by the Lessee, and modifies the Lease terms to provide for one four-year extension in lieu of the remaining four one-year extension option contained in the Lease.

The total rental revenue paid by the Lessee will remain the same if the payment arrangement obligations are fulfilled until the end of the Lease which would be December 31, 2024. The revenue since the first one-year extension starting January 2020 until the fulfilment of the Lease and Agreement if the four-year extension to December 31, 2024, if approved will remain at \$1,168,500 to go to the Wastewater Management Division Enterprise Fund.

The City Attorney has reviewed and approved the Fifth Amendment as to form.

ENVIRONMENTAL FINDINGS

Staff previously assessed the Agreement and the subsequent amendments, including those which added and removed land from the lease. In 2019, staff performed Environmental Assessment No. P19-03800, which evaluated the Third Amendment. The Third Amendment deleted 51 acres from the

lease, adjusted the rental fee, and granted Lessee the first of five one-year extensions on the lease term. Staff determined that approval of the Third Amendment fell within the Categorical Exemptions set forth in Sections 15301/Class 1, 15304/Class 4, and 15325 /Class 25 of the CEQA Guidelines.

The proposed Fifth Amendment does not modify the acreage leased to Lessee for farming. The acreage leased has remained the same since the Third Amendment. The Fifth Amendment establishes a repayment plan for two forborne rental fee installment payments, extends the lease term by four years, and eliminates the provision allowing for four one-year extensions. Thus, the Fifth Amendment also falls within the Categorical Exemptions set forth in Sections 15301/Class 1, 15304/Class 4, and 15325 /Class 25 as detailed below.

This project falls within the Categorical Exemption set forth in section 15301 (Class 1/Existing Facilities) of 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.

Staff has determined that it also falls within the Categorical Exemption set forth in section 15304 (Class 4/Minor Alterations to Land) of the CEQA guidelines which applies to minor alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes, because the limitations of use expressly prohibit the construction of improvements as well as the alteration, improvement, or removal of trees upon the leased premises, minimizing possible alterations.

Staff has determined that the Lease and Agreement also falls within the Categorical Exemption set forth in section 15325 (Class 25/Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) of the CEQA guidelines which applies to the preservation of open space, habitat, or historical resources and specifically to the acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas, because the Lease and Agreement continues the agricultural use of the property.

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

LOCAL PREFERENCE

Local preference was not implemented because this item does not involve the bid or award of a construction or services contract.

FISCAL IMPACT

There is no fiscal impact. The cost per acre remains at \$482. The annual revenue for calendar year 2020 will be \$123,760.50, which includes the first deferred payment of \$6,875.59. The annual rent remains at \$233,700 until the end of the Lease. Deferred payment will account for \$27,502.36 per year totaling \$261,202.36 of annual revenue that will go to the Wastewater Enterprise Fund. The total revenue starting from the beginning of the first one-year extension through the end of the proposed 4 -year extension (January 1, 2020 through December 31, 2024) remains at \$1,168,850.

Attachments:

Attachment 1 - Fifth Amendment to Lease and Agreement between the City of Fresno and James Cook for the lease of 550 acres of farmland at the Fresno-Clovis RWRF

Attachment 2 - Fourth Amendment to Lease and Agreement between the City of Fresno and James Cook for the lease of 550 acres of farmland at the Fresno-Clovis RWRF

Attachment 3 - Third Amendment to Lease and Agreement between the City of Fresno and James Cook for the lease of 550 acres of farmland at the Fresno-Clovis RWRF

Attachment 4 - Second Amendment to Lease and Agreement between the City of Fresno and James Cook for the lease of 550 acres of farmland at the Fresno-Clovis RWRF

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

Attachment 6 - Lease and Agreement between the City of Fresno and James Cook for the lease of 550 acres of farmland at the Fresno-Clovis RWRF