

**City of Palmer
Action Memorandum No. 18-045**

Subject: Authorizing the City Manager to Negotiate and Execute a Renewed Agricultural Lease with Ben VanderWeele for a Parcel of Land Containing Approximately Five Acres of Airport Land Located on Outer Springer Loop

Agenda of: April 10, 2018

Council Action: **Approved** **Amended:** _____
 Defeated




Originator Information:

Originator: City Manager

Department Review:

Route to:	Department Director:	Signature:	Date:
_____	Community Development	_____	_____
_____	Finance		3/22/18
_____	Fire	_____	_____
_____	Police	_____	_____
_____	Public Works	_____	_____

Approved for Presentation By:

	Signature:	Remarks:
City Manager		_____
City Attorney		_____
City Clerk		_____

Certification of Funds:


Total amount of funds listed in this legislation: \$ 271.28

This legislation (√):

<input checked="" type="checkbox"/>	Creates revenue in the amount of:	\$ <u>271.28</u>
<input type="checkbox"/>	Creates expenditure in the amount of:	\$ _____
<input type="checkbox"/>	Creates a saving in the amount of:	\$ _____
<input type="checkbox"/>	Has no fiscal impact	

Funds are (√):

<input checked="" type="checkbox"/>	Budgeted	Line item(s): <u>03-00-00-3432</u>
<input type="checkbox"/>	Not budgeted	_____

Director of Finance Signature: 

Attachment(s):

- Draft Lease Agreement with Exhibit A

Summary Statement/Background:

Ben VanderWeele has been farming on approximately 5 acres of agricultural land owned by the City of Palmer, located off the Outer Springer Loop across from the Golf Course and adjacent to his current fields in production. The previous lease expired on December 31, 2017. This legislation authorizes the City Manager to execute a renewed agricultural lease with Ben VanderWeele to perform agricultural operations on five acres of airport land, of which said agricultural products are not by nature, bird attractants.

The lease rate of \$54.26 per acre was established in 2016 and is based upon the Fair Market Rent for agricultural properties at the airport, as determined by the real estate appraisal completed by Follett & Associates, July 2010 with an increase in rate determined by the Consumer Price Index for Anchorage of 11.0% from year end annual(s) 2011 through 2015.

The agricultural leases at the airport are recognized in the Airport Master Plan as a source of revenue and thus are in agreement with Federal Aviation Administration Sponsor Assurance #6, "Consistency with Local Plans", #19 "Operations and Maintenance" and #24 "Fee and Rental Structure".

PMC 3.20.090 allows for two years or less without notice requirement. The term of this lease is for two years.

Administration's Recommendation:

To approve Action Memorandum No. 18-045 for a renewed agricultural lease to Ben VanderWeele.



**City of Palmer
231 West Evergreen Avenue
Palmer, AK 99645
907-745-3271**

**PALMER MUNICIPAL AIRPORT
AGRICULTURAL LEASE AGREEMENT No. 18-002**

This is a lease between Ben VanderWeele, hereinafter "Lessee", whose address is PO Box 461, Palmer, AK. 99645, and CITY OF PALMER, an Alaska Municipal Corporation, hereinafter, "Lessor", whose address is 231 W. Evergreen, Palmer, Alaska 99645.

1. Property and Rent. The property leased hereby is described in Exhibit A attached hereto and incorporated herein. The rent shall be \$54.26 per acre per year, or \$271.28. This shall be paid in annual payments of \$271.28, per the following schedule: Lessee agrees to pay the annual rent for 2018 upon written notification of award by the City. The second installment of the annual rent is due on or before July 1, 2019. This lease rate is based upon the Fair Market Rent for agricultural properties at the airport, as determined by the real estate appraisal completed by Follett & Associates, July 2010 with an increase in rate determined by the Consumer Price Index for Anchorage of 11.0% from year end annual(s) 2011 to 2015.
2. Term. The term of this lease is from April 10, 2018 until December 31, 2019.
3. Use of Property. The Property shall be used only for **the growing and harvesting of agricultural products or hay, which are not in nature, considered bird attractants. If under the sole opinion of the City of Palmer, said crops result in a bird attractant and are detrimental to Palmer Municipal Airport and aviation activities, at Lessees expense, Lessee will plow agricultural crops under within seven (7) days written notice. Lessee understands that No appeal of this decision is possible.** The Property shall not be used for any other purpose.
4. Operations on Property. All operations conducted on the Property by the Lessee as incidents of use specified in paragraph 3 of this lease shall be conducted by the Lessee in accordance with the best course of agricultural stewardship practiced. Should the Lessee fail to take any action required by said best course of agricultural stewardship or should the Lessee fail to conduct any operation undertaken by him on the Property in accordance with said best course of agricultural stewardship, the Lessor may, after serving ten (10) days written notice of such failure on the Lessee in the manner provided for service of notices in this lease, terminate this lease.
5. Waste or Nuisance. The Lessee shall not commit or permit the commission by others any waste, petroleum products, or the release of any hazardous material on the Property; the Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance on the Property; and the Lessee shall not use or permit

the use of the Property for any unlawful purpose. The Lessee shall not maintain any equipment or conduct any repairs on the Property.

6. Insurance Hazards. The Lessee shall not commit or permit the commission of any hazardous acts on the Property nor use or permit the use of the Property in any manner that will increase the existing rates for or cause the cancellation of any insurance policy insuring the Property. The Lessee shall, at his own cost and expense, comply with any and all requirements of Lessor's insurance carriers necessary for the continued maintenance at reasonable rates of reasonable insurance on the Property.
7. Maintenance. The Lessee shall, at his own cost and expense, keep and maintain the Property in good order and in as safe and clean a condition as they were when received by him from the Lessor.
8. Alterations and Liens. The Lessee shall not make or permit any other person to make any alterations to the Property or to any improvement thereon or facility appurtenant thereto without the written consent of the Lessor first had and obtained. The Lessee shall keep the premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted thereon at the instance or request of Lessee.
9. Inspection by Lessor. The Lessee shall permit the Lessor or Lessor's agents, representatives, or employees to enter the Property at all times for the purpose of inspecting the Property to determine whether the Lessee is complying with the terms of this lease and for the purpose of doing other lawful acts that may be necessary to protect the Lessor's interest in the Property.
10. Acceptance by Lessee. The Lessee accepts the Property in its present condition. The Lessee agrees with, and represents to the Lessor, that the Property has been inspected by him and that he has been assured by means independent of the Lessor or any agent of the Lessor of the truth of all facts material to this lease and that the Property is being leased by the Lessee as a result of his inspection and investigation and not as a result of any representations made by the Lessor or any agent of the Lessor.
11. Hold Harmless. The Lessee agrees to indemnify and hold the Lessor and the Property free and harmless from any and all claims, liability, loss, damage, or expense resulting from the Lessee's occupation and use of the Property, specifically including without limitations any claim, liability, loss, or damage arising:
 - (a) By reason of the injury to person or property, from whatever cause, while in or on the Property or in any way connected with the property or with the personal property in or on the Property including any liability for injury to the persons or personal property of the Lessee, his agents, officers, or employees:
 - (b) By reason of any work performed on the Property or materials furnished to the Property at the instance or request of the Lessee, his agents, or employee:
 - (c) By reason of the Lessee's failure to perform any provision of this lease

Or to comply with any requirement imposed on him or on the property by any duly authorized governmental agency or political Subdivisions; Because of the Lessee's failure or inability to pay as they become due any obligations incurred by him in the agricultural operations to be conducted by him on the Property.

12. Subleasing and Assigning. The Lessee shall not encumber, assign, sublet, or otherwise transfer this lease, any right or interest in this lease, or any right or interest in the Property, and any such transfer, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this lease. Neither shall the Lessee allow any other persons, other than the Lessee's agents, family and employees, to use the Property or any part thereof.
13. Abandonment by Lessee. Should the Lessee breach any provision of this lease or abandon the Property prior to the natural termination of the term of this lease, the Lessor may:
 - (a) Continue this lease in effect by not terminating the Lessee's right to possession of the Property, in which event the Lessor shall be entitled to enforce all his rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease: or
 - (b) Terminate this lease and recover from the Lessee:
 - (1) All rents that would come due under this lease;
 - (2) Any other amounts necessary to compensate the Lessor for all detriment proximately caused by the Lessee's failure to perform his obligations under this lease.
14. Default by Lessee. All covenants and agreements contained in this lease are declared to be conditions to this lease and to the term hereby demised to the Lessee. Should the Lessee default in the performance of any covenant, condition, or agreement contained in this lease the Lessor may terminate this lease and re-enter and regain possession of the Property in the manner then provided by the laws of unlawful detainer of the State of Alaska then in effect.
15. Insolvency of Lessee. The insolvency of the Lessee as evidenced by a receiver being appointed to take possession of all substantially all of the property of the Lessee, the making of a general assignment for the benefit of creditors by the Lessee, or the adjudication of the Lessee as a bankrupt under the Federal Bankruptcy Act shall terminate this lease and entitle the Lessor to reenter and regain possession of the Property.
16. Attorney's Fees. Should any litigation be commenced between the parties to this lease concerning the Property, this lease, or the rights and duties in relation thereto, the Lessor shall be entitled to reasonable attorney fees pursuant to Alaska Rule of Civil Procedure 82.

17. Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Lessee or to the Lessor at their above specified addresses. Either party, the Lessee or the Lessor, may change their address for the purpose of this paragraph by giving written notice of such change to the party in the manner provided in this paragraph.
18. Heirs and Successors. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by the Lessor to any assignment of this lease or any interest therein by the Lessee.
19. Miscellaneous.
- (a) This instrument contains all of the agreements and conditions made between the parties to this lease and may not be modified orally or in any other manner than by an agreement in writing signed by all parties to this lease or their respective successors in interest, or assigns.
 - (b) Time is of the essence of each term and provision of this lease.
 - (c) The titles of the paragraphs of this lease shall not be considered to be part of the lease for purposes of construction and interpretation.
 - (d) If any terms or provisions of this lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.
20. Waiver. The waiver of any breach or any of the provisions of this lease by the Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by the Lessee either of the same or of another provision of this lease.
21. Cancellation/Reduction. Any mortgage or statute notwithstanding, Lessor may cancel this lease at any time between and including November 1 and March 31 by so notifying Lessee and paying Lessee an amount equal to one-fourth (1/8) of the rent paid by Lessee for the previous year. Lessor may cancel the lease at any time between and including April 1 and October 31 by so notifying Lessee and paying Lessee an amount equal to (a) one-fourth (1/4) the previous year's rent payment plus (b) one and 2/10 (1.2) times the price of the fertilizer spread (if any) on the Property for the then current growing season (maximum 200 pounder per acre), minus (c) 75/100 (.75) times (b), if the first hay crop has been removed. Lessor may exercise these rights to cancel the lease or reduce acreage with or without cause. In addition to Lessor's right to cancel,

from time to time Lessor may reduce the acreage. The above formula shall be used on a prorated basis for such reductions in acreage.

22. Lessee agrees to apply a minimum rate of 200 pounds of fertilizer per acre annually. More than 200 pounds per acre will be at Lessee's discretion. Verification of fertilizer application shall be the responsibility of Lessee. Lessee shall maintain receipts of fertilizer applied each year with invoicing specifically noting "PMA 5 ACRE AG LEASE" by vendor.
23. Lessee agrees that any time that he will be working equipment around runways or taxiways he will first notify Palmer Flight Service Station operator, or the City of Palmer Airport Manager in the event contact cannot be made with the Flight Service Station.
24. Lessee shall, each year this agreement is in effect, give notice in writing on or before January 30th that he intends to operate and harvest the crop according to the agreement. Failure to do so shall be termination of the agreement and the Lessor may immediately seek a new tenant.

LESSOR: CITY OF PALMER

BY: _____
Nathan E. Wallace, City Manager

DATE: _____

LESSEE: BEN VANDERWEELE

BY: _____
Ben VanderWeele

DATE: _____

NOTARY

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____day of April, 2018, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared, Nathan E. Wallace, known to me to be the identical individual described in and who executed the within and foregoing Lease Amendment and Modification Agreement as City Manager of the City of Palmer, freely and voluntarily on behalf of the City of Palmer for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

Notary Public in and for Alaska

My commission expires: _____

NOTARY

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

This is to certify that on the ____ day of April, 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared, Ben VanderWeele, known to me to be the person named in the foregoing instruments, acknowledged to me that he had executed the same for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

Notary public in and for Alaska

My commission expires: _____

EXHIBIT A

Property:

The property hereby is described as: That portion of the NE ¼ NE ¼, Section 9, Township 17 North, Range 2 East, Seward Meridian, Palmer Recording District, Alaska: Commencing at the Northeast corner of said Section 9; thence South along the Section line common to Sections 9 and 10 a distance of 495.00 feet; thence West a distance of 40.00 feet to the Westerly right of way line of Outer Springer Loop which is the Point of Beginning; thence West a distance of 425.39 feet; thence South a distance of 512.00 feet; thence East to the highway right of way a distance of 425.39 feet; thence North along said right of way line a distance of 512.00 feet to the Point of Beginning, containing 5.00 acres, more or less.

DRAFT

