



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: *IM

Title:

Recommendation to approve a Resolution Authorizing the 2020 Farm Land Lease and Biosolids Application Agreement with Managers Brothers Farms

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: May 18, 2020

Proposed Cost: \$39,200

Budgeted Amount: \$45,000

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The Main Wastewater Treatment Plant generates approximately 4,000 cubic yards of biosolids annually. The City owns and leases 37.50 acres of farmland at the West Side Treatment Plant on Route 38. The current Lease and Biosolids Agreement is with Bill and Roger Mangers and is up for renewal. Historically the farmland has been leased to Bill and Roger Mangers with whom the City has built a good working relationship. In addition to leasing the acreage, the Mangers were contracted to spread biosolids on it.

To remain competitive with local farm lease rates and comparable lease rates on University of Illinois farm land, staff recommends renewal for a three year period with the following leasing terms:

- 2020 - \$189 per acre
- 2021 - \$199 per acre
- 2022 - \$209 per acre

The City has found that the biosolids application costs with Mangers Brothers are 25% lower than the competition. As part of the proposed agreement, any farm land managed by Mangers Brothers will be applied at the following costs:

- 2020 - \$9.80 per cubic yard
- 2021 - \$10.00 per cubic yard
- 2022 - \$10.20 per cubic yard

The proposed agreement provides the City with the flexibility to continue to look for additional farm land and biosolids appliers. As part of the application portion of the contract the city is requesting a bid waiver. Bid waiver form and additional pricing have been attached. The city attorney has reviewed and made recommended changes the 2020 agreement.

Attachments *(please list):*

- * 2020 Farm Lease and Biosolids Application Agreement
- * Bid Waiver Form for Biosolids Application
- * Resolution

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve the 2020 Farm Land Lease and Biosolids Application Agreement with Managers Brother Farms.



Data Source:
 City of St. Charles, Illinois
 Kane County, Illinois
 DuPage County, Illinois
 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
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Exhibit A - Farm Lease and Biosolids Application Agreement

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CITY OF ST. CHARLES

FARM LEASE AND BIOSOLIDS APPLICATION AGREEMENT

The City of St. Charles, Illinois (hereinafter referred to as "City"), and Roger Mangers and William Mangers (hereinafter collectively referred to as the "Mangers"), mutually agree to this lease on the following terms and conditions:

1. **DEMISED PREMISES:** City agrees to lease to the Mangers forty (40) acres of City owned farmland located at the City of St. Charles' Westside Wastewater Treatment Plant on Route 38 (hereinafter referred to as the "Demised Premises"), as depicted on Exhibit A.

2. **TERM:** The term of this lease shall commence on January 1, 2020 and continue until December 31, 2022, unless terminated earlier as provided in this lease.

3. **RENEWAL OPTION:** The City has the option to renew this lease for an additional three year period providing that the City gives written notice to the Mangers of its exercise of the three renewal option on or before August 1, 2022. Rent and Beneficial Reuse of Biosolids for the option period shall be the amount in an amount as negotiated between the City and the Mangers.

3. **RENT:** Rent for the Demised Premises shall be assessed on a per acre rate for thirty seven and half (37.50) tillable acres for an annual rent of payable on or before December 1 of each year, as follows:

- i. January 1, 2020 – December 31, 2020: \$189 / per acre = \$7,087.50 Annual
- ii. January 1, 2021 – December 31, 2021: \$199 / per acre = \$7,462.50 Annual
- iii. January 1, 2022 – December 31, 2022: \$209 / per acre = \$7,837.50 Annual

If the Mangers fail to pay rent as scheduled, a one and one-half percent (1.5%) per month finance charge shall be assessed against any balance due; said interest represents an annual percentage rate of eighteen percent (18%). Rent shall be payable to the City of St. Charles unless otherwise designated by City. Rental payments should be mailed to City of St. Charles, 2 East Main Street, St. Charles, Illinois 60174.

4. **TERMINATION:** The City has the right to terminate this lease and retake possession for all or any part of the Demised Premises, thereby terminating this lease with respect to that portion of the Demised Premises for any purpose, including but not limited to a sale, public or private land development activities, and/or grants of utility easements. Such termination shall be effectuated by written notice to the Mangers on the date specified by such notice. City shall pay to the Mangers no later than ten days (10) after the effective date of such termination the following:

- a. If such termination affects portions of the Demised Premises in which crops have been planted, the sum of eight hundred fifty dollars (\$850) per acre, prorated for any partial acre, in addition to a refund of rent paid hereunder for such portion of the Demised Premises.

b. If crop damage occurs as a result of soil testing or other activities on the Demised Premises as directed by the City, the Mangers shall have the right to be reimbursed for its prorated expenses to date for any measured acres damaged.

c. In the event that the City terminates the lease, as provided for above, the rent shall be prorated according to the percentage of acreage terminated. This amount shall then be subtracted from the total amount of rent otherwise payable under this lease.

d. If the Mangers default on any obligations imposed by this lease and do not cure the default within thirty days (30) of receipt of written notice specifying the instance(s) of default, then this lease shall automatically terminate on the thirty-first day (31st) following receipt of notice.

5. **ASSIGNMENT:** Mangers shall not assign or sublet this lease in whole or in part without first obtaining the City's written consent.

6. **NOTICES:** All notices shall be sent by certified mail. Notices to the City shall be directed to the City of St. Charles, Attention: Director of Public Works, 2 East Main Street, St. Charles, Illinois 60174, and notices to the Mangers shall be directed to William Mangers, 49W179 Main Street, Elburn, Illinois 60119.

7. **WAIVER OF WARRANTY:** The Mangers agree that they have fully inspected the leased property and take it as-is. The City reserves warranties of any kind and disclaims any responsibility for visible or latent defects in the Demised Premises.

8. **MANGERS' INVESTMENT AND EXPENSES:** The Mangers hereby agree to pay for and furnish the following at their sole cost and expense:

a. All machinery, equipment, labor, fuel and power necessary to farm the Demised Premises in a satisfactory manner.

b. All hauling of all materials needed for making repairs or minor improvements to the Demised Premises, except where otherwise agreed to.

c. All labor required for repairing or improving the Demised Premises, except where otherwise agreed.

d. All seeds, inoculations, disease treatment materials, fertilizers, herbicides and insecticides.

e. Plowing.

f. Insurance on equipment and employees as provided in Section 14 of this lease.

g. Real estate taxes that may be assessed on the Demised Premises during the term of this lease.

h. Any other materials or work expended during the term of this lease, except as otherwise agreed to.

9. **MANGERS' DUTIES:** In addition to the prompt payment of all rent, Mangers agrees to perform the following required activities:

a. To cultivate the farm faithfully and in a timely, thorough and businesslike manner.

b. Follow farming practices that are generally recommended for this type of farm and its locality unless other practices are agreed to by the City and the Mangers.

c. Keep the Demised Premises neat and orderly.

d. Prevent all unnecessary waste, loss or damage to the Demised Premises and all other real or personal property of the City.

e. Practice fire prevention, follow safety rules, and comply with all pollution control and environmental protection requirements and implement erosion control practices that are prudent and otherwise in accord with all applicable government standards.

f. Keep all vehicles and other equipment located on the Demised Premises locked with keys removed when not attended. The Mangers shall be solely responsible for all equipment.

g. Maintain a record of soil treatment and provide a supplier's statement which includes the amounts of fertilizers, pesticides, herbicides and other chemicals and similar substances purchased and the date of purchase.

h. Use chemicals and pesticides in accordance with labeled directions; prevent chemical and pesticide drift onto adjacent properties and other non-target lands and animals.

i. Use prudence and care in transporting, storing, handling and applying all fertilizers, pesticides, herbicides and other chemicals and similar substances.

j. Use the Demised Premises without site contamination such as, but not limited to, chemicals, oil spills, hydrocarbons or any other waste materials.

k. Keep ditches, tile drains, tile outlets, grass waterways, and established watercourses in good repair and otherwise protect and preserve the same.

l. Use due care in farming around existing manholes, sanitary sewers and telephone poles. Mangers shall be solely responsible for any damage to any manholes, sanitary sewer pipe or telephone poles.

m. Allow the City access to all roads and trails on the Demised Premises. The Mangers agree to maintain all roads and trails on the Demised Premises in a condition equal to or exceeding the condition of such roads or trails on the date Mangers took possession of Demised Premises.

n. Prior to termination of this lease, the Mangers agree to allow their successor access to the Demised Premises for the purpose of field preparation, following the removal of the Mangers' crop on a field by field basis.

10. Farm Chemicals and Hazardous Substances: The Lessor and the Mangers agree to the following:

a. The Mangers hereby warrant that they have received training and information that includes emphasis on safe storage, mixing, application, and rinsate disposal for farm-use pesticides and chemicals. The Mangers assume all responsibility for providing this information to family, employees, and other persons used for fulfilling the Mangers' responsibilities under this lease.

b. All chemicals used by the Mangers on the Demised Premises shall be applied by a licensed operator (whenever such is required by the laws of the State of Illinois) in a prudent and proper manner, including the use of equipment that is in good working order, and at levels that do not exceed the manufacturer's recommendation. The application of any chemicals on the Demised Premises shall at all times be in a manner that is generally consistent with prudent farming practices, any rules and regulations of the Environmental Protection Agency, and any guidelines and recommendations provided by the chemical manufacturer. Each chemical container shall be used and stored in a manner that minimizes the risk of an accidental spill and discharge.

c. No chemicals shall be stored on the Demised Premises for more than one (1) year from the purchase date. Any chemicals or petroleum products stored or maintained on the Demised Premises shall be in clearly marked, closed-tight containers located above the ground.

d. No excess chemicals or chemical containers shall be disposed of on the Demised Premises. All excess chemicals, chemical containers, or other hazardous waste shall be removed in a timely, prudent manner by the Mangers at their sole cost and expense, and under no circumstances shall such remain after the expiration or termination of this lease.

e. During the life of this lease, the Mangers shall record all applications of chemicals and fertilizer by field, including the name and source of each item applied, the quantity applied, and the date of the application. The Mangers shall furnish a copy of this record to the City within twenty-one (21) days following the City's request for it. The Mangers agrees to make such record available for inspection at any reasonable time during the year.

f. The Mangers shall pay for the cleanup of any hazardous chemical spill occurring on the Demises Premises when the spill is the direct or indirect result of the Mangers' farming activities and operations. The Mangers shall keep the City safe, harmless and indemnified as to any losses, claims, fees, damages, legal fees, causes of action, including all costs of cleanup, and other costs and expenses resulting from any such spill or contamination.

11. OPERATIONS TO BE CONDUCTED WITHIN THE DEMISED PREMISES:

All farming, plowing, turning, crop removal and other operations shall be within the confines of land actually rented and not on adjoining lawns, yards, fields or other areas including areas planted in grass surrounding the Demised Premises and running along highways.

12. CITY'S RIGHT OF ENTRY: City shall have the right to enter at any time to inspect fields, ditches, tile outlets, fences or any other part of the Demised Premises, and to repair or do any other work that the City considers necessary or desirable

13. RELEASE AND INDEMNITY: The Mangers agree to assume all risk of loss and to indemnify and hold the City, their respective officers, employees or agents harmless from and against all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including injuries to persons (including death) and for the loss of, damage to, or destruction of property because of the Mangers' acts or omissions. In the event that any demand or claim is made or suit is commenced against the City, the City shall give prompt notice thereof to the Mangers and the Mangers shall have the right to compromise or defend the same to the extent of their own interest.

14. INSURANCE: For the term of the lease, the Mangers shall maintain insurance with a carrier acceptable to the City, insuring Mangers for the following types and in state minimum amounts:

Commercial General Liability:	\$1,000,000 per occurrence
	\$2,000,000 general aggregate
Umbrella Liability:	\$2,000,000 limit
Workers Compensation:	\$500,000 per accident

The Mangers shall furnish a Certificate of Insurance and agrees that all applicable insurance policies be amended to name the City as an additional insured and to receive notice of termination of coverage which shall require 30 days notice.

15. LANDLORD'S LIEN FOR RENT AND PERFORMANCE: The City is entitled to the Landlord's lien provided by law on crops grown or growing on the Demised Premises as additional security for the specified rent and for the faithful performance of the terms of the lease by the Mangers.

In the event that the Mangers fail to pay the rent due or to keep any other term or condition of this lease, all costs and attorneys' fees of the City in enforcing collection or performance shall be added to and become a part of the obligations payable by the Mangers under this lease.

The City's decision to exercise its rights under this section shall not preclude the City from pursuing any other legal remedies available to the City.

16. SURRENDER OF THE DEMISED PREMISES: The Mangers agree to surrender possession of the Demised Premises upon the termination of this lease without further demand on part of City.

17. **TERMS BINDING:** The terms of this lease are binding on the heirs, executors, administrators and assigns of both of the parties.

18. **AMENDMENTS:** Amendments and alterations to this lease may be made only upon mutual agreement of the parties.

19. **BRIBERY CLAUSE:** The Mangers certify that they have not bribed or attempted to bribe an officer or employee of the City.

20. **ADDITIONAL AGREEMENTS:**

a. The Mangers agree not to pasture, graze animals or grow products that violate the IEPA biosolids permit on any land subject to this lease.

b. The City shall manage the soil analysis required by the IEPA and IEMA for biosolids operations. The City shall supply the Mangers with a copy of the soil analysis report on a per year basis. The City will not manage or incur additional cost for soil analysis beyond the IEPA and IEMA requirements.

c. The Mangers agree to provide soil PH adjustment required by IEPA soil analysis and biosolids permit. The full cost of soil PH adjustment will be incurred by Mangers.

21. **REOPENER CLAUSE:** The City or the Mangers may initiate good faith negotiations to modify or extend this lease. Any modification or extension shall be agreed upon, in writing, by both parties.

22. **BENEFICIAL REUSE OF BIOSOLIDS:**

a. The Mangers agree to accept, that the City may deposit stabilized biosolids on the Demised Premises for the purpose of beneficial reuse of biosolids as a soil enhancement. There shall be no obligation by the City to deposit biosolids on said Demised Premises or off site locations.

b. The City shall provide delivery of biosolids to stock pile location for the deposit of biosolids. Stock pile locations on off-site farm fields will be predetermined by Mangers and agreed upon by the City. Stock piles must conform to conditions contained in the IEPA land application permit.

c. The Mangers agree to provide services to spread and incorporate the biosolids on the Demised Premises and suitable off-site locations farmed by Mangers during the term defined previously. The Mangers agree to spread and incorporate the biosolids at agronomic rates consistent with the conditions contained in the IEPA permit issued to the City. The Mangers acknowledge they understand the conditions contained in the IEPA land application permit.

d. The Mangers are an independent contractor, are not employees of the City and this lease shall not be construed as establishing a joint venture.

e. The City makes no expressed or implied warranties regarding the impact of biosolids on the Demised Premises.

f. The Lease shall be binding upon and inure to the benefit of both parties, their personal representatives, successors and assigns and shall not be assigned nor shall a representative or successor of Mangers have any rights hereunder without the consent of the City.

g. During the below-referenced period, the City shall pay the Mangers for spreading and application of biosolids on site & off site:

- i. January 1, 2020 – December 31, 2020: \$9.80 / cubic yard
- ii. January 1, 2021 – December 31, 2021: \$10.00 / cubic yard
- iii. January 1, 2022 – December 31, 2022: \$10.20 / cubic yard

THE UNDERSIGNED PARTIES mutually agree to the above lease, including all terms and conditions thereof:

CITY
CITY OF ST. CHARLES, ILLINOIS

MANGERS

By: _____
Raymond P. Rogina, Mayor

Roger Mangers

William Mangers

ATTEST:

ADDRESS:

Charles Amenta, City Clerk

DATE: _____

DATE: _____

c:cw\mangers

City of St. Charles, Illinois
Resolution No. _____

**Recommendation to approve a Resolution Authorizing the 2020
Farm Land Lease and Biosolids Application Agreement with
Managers Brothers Farms**

**Presented & Passed by the
City Council on _____, 2020**

WHEREAS, the Main Wastewater Treatment Plant generates approximately 4,000 cubic yards of biosolids annually;

WHEREAS, the City owns and leases 37.50 acres of farmland at the West Side Treatment Plant on Route 38;

WHEREAS, the current Lease and Biosolids Agreement is with Bill and Roger Mangers with whom the City has built a good working relationship;

THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the 2020 Farm Land Lease and Biosolids Application Agreement with Mangers Brothers Farms be approved.

PRESENTED to the City Council of the City of St. Charles, Illinois, this__day of May, 2020

PASSED by the City Council of the City of St. Charles, Illinois, this__day of May, 2020

APPROVED by the Mayor of the City of St. Charles, Illinois, this__day of May 2020

Raymond P. Rogina, Mayor

ATTEST:

City Clerk
COUNCIL VOTE:
Ayes:
Nays:
Absent:
Abstain: