RESOLUTION NO. 18-0412

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF EDGEWOOD, PIERCE COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A PASTURE
LEASE WITH GREG PILE FOR MUTUAL BENEFIT OF
PASTURE USE AND VEGETATION MAINTENANCE

WHEREAS, the City Council has been in favor of the mutual relationship between the City and Mr. Greg Pile, wherein his goats pasture at the Nelson Farm while keeping the vegetation under control; and

WHEREAS, the City Council understands the benefits to the community for the enjoyment the animals bring to the rural nature of the Nelson Farm and that Mr. Pile’s costs for insurance to meet the City’s insurance requirements have increased considerably over time; and

WHEREAS, the City believes the cost of providing City personnel or contract labor to provide pasture maintenance would be in excess of the fee provided Mr. Pile to provide goat maintenance and meet the increased cost of insurance as required by the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute a multi-year pasture lease, attached hereto and incorporated herein.


Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk
REAL PROPERTY LEASE AGREEMENT

This Lease is made and entered into by and between the CITY OF EDGEOWOOD, An optional code, municipal corporation organized and existing under the laws of the State of Washington, herein referred to as Lessor or the City, and the GREG PILE, whose address is 12608 48th St. E., Edgewood, WA 98372, herein referred to as Lessee. This lease supersedes the March 27, 2015 Pasturing and Vegetation Management Agreement which expired on March 27, 2016 and the March 27, 2016 First Addendum to Pasturing and Vegetation Management, that expired on March 27, 2017.

WHEREAS, the City owns the real property commonly known as the Nelson Farm, 11912 - 18th Street East in Edgewood (Pierce County Assessor’s Parcel No. 0420112082) (hereinafter the “Property”); and

WHEREAS, the Property is improved with a farmhouse and water has been piped onto the Property; and

WHEREAS, the Property is currently, and has historically been, at least partially overgrown with native and non-native grasses and other vegetation; and

WHEREAS, Lessee owns a small flock of Hampshire and Dorset sheep, the natural habits of which have been proven effective in controlling vegetation; and

WHEREAS, the Lessee desires to lease a portion of the Property for the purpose of allowing the sheep to graze, which would control the vegetation to the benefit of the City; and

NOW, THEREFORE, in consideration of the mutual benefits accruing to both parties, the Lessor and Lessee agree as follows:

Section 1 - PREMISES

For and in consideration of the mutual covenants hereinafter contained, Lessor does hereby agree to lease the following real property to the Lessee:

That portion of Exhibit A denoted as fenced and marked with an “X” at 11912 18th Street East,

Section 2 - TERM AND TERMINATION

The Lessee is currently in possession of the Property. The term of the lease shall be for three (3) years commencing on July 24, 2018 and ending on June 30, 2021, if not sooner terminated in the manner provided in Section 5 or 8.

Either party may terminate this lease, with or without cause, upon 30 days written notice to the other party.
Section 3 - RENT

A. The rent shall be One Dollar ($1.00) per year payable in full without deduction or offset, to the Clerk of the City of Edgewood on or before June 30 of each year during this lease. Real property taxes and assessments shall be the responsibility of the City. All other taxes, including leasehold taxes shall be paid by the Lessee.

B. The City shall pay the lessee $300 per year to help offset the cost of housing the animals on-site on the Property, in exchange for the animals keeping the vegetation at a level that does not require additional City maintenance costs.

Section 4 - CONDITIONS OF USE

A. It is understood and agreed between the parties that the Lessee shall not use or occupy any portion of the Property other than the Premises described in Section 1, without the Lessor’s written permission, which may be withheld for any reason by the City.

B. The purpose of this Lease is for the temporary pasturing of the Lessee’s Hampshire and Dorset sheep, together with one or more miniature donkeys or alpacas, to provide predator deterrence (each an “Animal” and collectively referred to as the “Animals”).

C. It is specifically agreed and understood that the Lessee shall not call on the Lessor to make any improvements or repairs to the Premises. Lessee agrees to maintain the above-described real property and the Premises during the term of this Lease and shall be responsible for the maintenance and upkeep of said real property and Premises at all times, including but not limited to the pasture area and portions of the existing barn for animal shelter and storage of supplies. The Lessee agrees to inspect the fences not less than once per year; furnish labor and materials for repair of fences, supervise supply of water to Animals, return stray Animals to Premises, Call veterinarian in case of emergency, pay veterinary expenses, furnish feed to Animals.

D. The Lessee shall be and remain exclusively responsible for the transportation, care, feeding watering, monitoring, supervision, control and removal of the Animals, and the Lessor shall have no responsibility or liability whatsoever regarding the same. The Lessee shall ensure that the Animals are treated and maintained in a humane and safe manner at all times. It is expressly understood that the Lessee’s performance of the activities authorized in this Lease are undertaken at the Lessee’s sole risk, and that the Lessee assumes the responsibility and risk of all loss injury, illness, and/or death of the Animals.

E. No more than twenty (20) Animals may be pastured on the Premises at any time.

F. The Lessee shall not install any improvements at all on the Premises, temporary or permanent, unless allowed by this Lease. The Lessee is specifically prohibited from subjecting the Premises or the Lessor’s assets to any liens or claims of lien. Lessee shall keep the Premises free from any liens created by or through Lessee. If a lien is filed against the
Premises by any person claiming by, through or under the Lessee, then Lessee shall, within ten (10) days after the Lessor's demand, at Lessee's expense, either remove the lien or furnish to the Lessee a bond issued by a surety, approved in form by the City Attorney, and in an amount satisfactory to the Lessor, indemnifying the Lessor and the Premises against all liabilities, costs and expenses, including attorney's fees, which the Lessor could reasonably incur as a result of such lien.

G. The Lessee accepts the condition of the Premises in its present condition on the terms described in this Lease. The Lessee accepts the Premises "AS IS" and with all faults, and the City makes no warranty of any kind, express or implied, as to the condition of the Premises. As the Lessee is the current occupant of the Premises, it is fully familiar with the physical condition of the Premises and accepts the Premises in its current condition as satisfactory to the Lessee's needs.

Section 5 - ABANDONMENT OF PREMISES

Lessee shall not vacate or abandon the Premises during the term hereof except upon thirty (30) days written notice sent by certified mail to Lessor. Upon expiration or termination of this Lease, the Lessee shall promptly remove the Animals from the Premises and restore the Premises to its original condition prior to the Lessee's entry thereon, except for normal wear and tear reasonably associated with the Lessee's use.

Section 6 - INDEMNIFICATION; INSURANCE.

A. Lessee shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions or liabilities, including costs, reasonable attorneys' fees and expenses, for injury or death of any person, or for loss or damage to property, which arises out of Lessee's use of the Premises or from the conduct of Lessee's operations, or from any activity, work or thing done, permitted or suffered by Lessee in or about the Premises, except only injury or damage as shall have been occasioned by the sole negligence of the City. The provisions of this Section shall survive the termination or expiration of the Lease.

B. The Lessee shall procure and maintain, for the duration of this Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the leased Premises. Lessee's maintenance of insurance as required by this Lease shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance or otherwise to limit the City's recourse to any remedy available at law or equity.

Lessee shall obtain insurance of the types described below:

1. Commercial General Liability insurance which shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability
insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

2. Property insurance shall be written on an all risk basis. The property insurance shall be written covering the full value of Lessee’s property and improvements with no coinsurance provisions.

The Lessee’s Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Lessee’s insurance and shall not contribute with it.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.

Lessee and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

City shall purchase and maintain during the term of the Lease all-risk property insurance covering the Building for its full replacement value without any coinsurance provisions.

The Lessee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of the Lease, upon which the City may, after giving five business days’ notice to the Lessee to correct the breach, terminate the Lease or at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand. The language in this Section 6(A) relating to indemnification shall survive the expiration or termination of this Agreement.

Section 7 - ASSIGNMENT

Lessee shall not assign or transfer this lease or any interest therein, without the prior written consent of Lessor. Any such assignment without Lessor’s consent shall be void, and shall at the option of the Lessor, constitute cause for termination of this Lease.
Section 8 - DEFAULT

In the event the Lessee shall fail to keep and perform any of the covenants and agreements herein contained including the payment of rent, Lessor may terminate this lease by giving written notice to Lessee. Lessee shall not be deemed to be in default of the covenants and agreements hereunder unless Lessor shall first give to Lessee five (5) days written notice of such default and Lessee fails to cure such default(s) within five (5) days after receipt of written notice. In the event of any such lease termination, Lessor, in addition to the other rights and remedies it may have, shall have the immediate right of re-entry and may remove all Animals from the Premises.

Section 9 - WAIVER

Lessor’s waiver of one or more covenants or conditions by either party shall not be construed as a waiver of a subsequent breach of the same or other covenants or conditions.

Section 10 - PARTIES BOUND

The covenants and conditions herein contained shall, subject to the provisions as to assignment and transfer, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto.

Section 11 – NOTICE

Any notice required to be given to the parties under this Lease shall be in writing and effective either when delivered in person or via overnight mail to the other party, or three (3) days after being sent by registered or certified mail to the other party, at the addresses set forth below:

City of Edgewood
Attn: City Clerk
2224 - 104th Ave. E.
Edgewood, WA 98371
(253)952-3299
rachel@cityofedgewood.org

Greg Pile
12608 48th St. E.,
Edgewood, WA 98372
(253) 820-0623
gpile@comcast.net

Section 12 -- LESSOR’S RESERVATION

Lessor, as well as agents and employees of the Lessor, reserve the right to enter the Premises at any reasonable time for purposes of: (a) consultation with the Lessee; (b) making repairs, improvements and inspections; and (c) after termination of the Lease is given, of performing seasonal work, none of which is to interfere with the Lessee in carrying out regular operations.
Section 13 - ENTIRE AGREEMENT

This lease sets forth the entire agreement between the parties and it shall not be modified in any manner except by an instrument in writing executed by the duly authorized representative of the parties.

Section 14 - JURISDICTION, VENUE AND ATTORNEY FEES

Any action for claims arising out of or relating to this Lease shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court. In any suit or action instituted to enforce any right or obligation granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney’s fees from the other party.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this lease the 26th day of June 2018.

LESSOR:
City of Edgewood

By: [Signature]
Daryl, Eidinger
Mayor

LESSEE:

By: [Signature]
Greg Pile
I think that one million in coverage would suffice for having the sheep there controlling the vegetation.

Regards,

Carlene Brown
Carlene Brown
Risk Management Representative

WA cities Insurance Authority

P.O. Box 88030
Tukwila, WA 98138

Office Phone: 206-575-6046
Desk Phone: 206-687-7908
Fax: 206-575-7426
Email: CarleneB@wciapool.org

Understood. Mr. Pile is able to secure a million dollar aggregate on his homeowners policy in which he can produce a certificate of insurance naming the City. This is only half of what our current contract calls out (one million per and two aggregate). I'm going to have to tell the Council we cannot execute the agreement with Mr. Pile as he is not able to meet the insurance needs. They may be unhappy and ask me specifics about what assuming a higher level of risk to the City means. That is what I'm attempting to quantify, if possible. Thanks.

Dave
7/12/2018

INSURANCE DECLARATION

Effective Date: 4/23/2018
Renewal Date: 04/23/2019 automatic renewal
Policy Type: Homeowners
Policy # 47-CP-4621-9
Coverage afforded by the policy is provided by the Company indicated below:
(X) State Farm Fire & Casualty Company, A Stock Company, Bloomington, IL.
( ) State Farm General Insurance Company, A Stock Company, Bloomington, IL.

Insured’s Name & Mailing Address:
Gregory & Melissa Pile
12608 48th St E
Edgewood, WA 98372

LIMITS OF LIABILITY
Personal Liability - $1,000,000
Medical Payments- $1,000

LOSS OF USE – Actual Loss Sustained

DEDUCTIBLE - $2,212 In case of loss, we cover only that part of the loss over the deductible.

Additional Insured:
City of Edgewood
2224 104th Ave E
Edgewood, WA 98372

Dated, signed this 12th day of July, 2018

Agent’s signature: Tiffany Hougaard