

To: Mayor and Members of Council

March 21, 2011

Re: Irrigation Agreement Compensation – Mark Kelsch

### **Background**

The Town of White City entered into an agreement with Mark Kelsch in 2009 to farm the land known as SE 07-17-17W2 and to accept effluent irrigation from our lagoon. The agreement is for 8 years, 2009 - 2015.

In 2010 the contractor, Mark Kelsch, made an agreement with the Town Administration to plant navy beans on the land for the 2010 crop year. The decision to plant the beans was made due to the high amounts of effluent release expected in 2010. The beans that were planted served two purposes, the crop is able to take more moisture than normal cereal crops, and the beans will provide nitrogen to the soil for future crops.

The 2010 summer provided record amounts of rain as well the Town of White City released record amounts of effluent, approximately 15M gallons.

### **Discussion**

Mark Kelsch provided me with a list of expenses he incurred to seed the navy bean crop which total \$18,576.76, please find attached. Due to the nature of the irrigation of effluent the farmer is unable to sell the grain from this quarter for human consumption. The farmer is not able to insure this quarter through Crop Insurance either.

The total revenue from this crop was \$2,700.

The farmer is requesting compensation for his expenses in the amount of 50%.

The 2011 crop year could be a repeat of 2010. The Town lagoons are filling up, and we will need to start releasing effluent as soon as the temperature is warm enough for there to be no damage to the pivot. This poses another risk to the farmer, being that the agreement states "For years 2011, 2012, 2013, 2014, 2015 and 2016 if Council wishes, the Contractor will pay \$18.00 per acre for 110 acres for each of the years described above." The contractor is requesting Council to waive the 2011 rental fees of \$18/acre.

### **Budget Implications**

This will be an expense for the Lagoon Utility, which will be included in the 2011 Budget.

## **Conclusion**

We received record amounts of precipitation in 2010, and along with the release of approximately 15 million gallons of effluent onto the SE 07-17-17 W2, there was little opportunity for a crop to grow. The intent from the farmer is definitely recognized. Unfortunately the farmer is unable to insure against the possibility of loss on this quarter.

If the Town was not able to release the effluent from the lagoons onto this quarter, we would have been faced with applying for a permit to release effluent down the creek along with exorbitant costs for pumping that effluent. To compensate the farmer for 50% of his expenses is reasonable and fair.

Given the uncertainty of the 2011 crop year, and the need of the Town to release a large amount of effluent onto the land again, it would be reasonable to waive the fees for rent on the land for 2011.

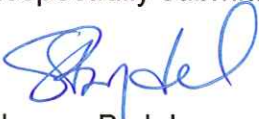
## **Recommendation**

Administration recommends Council pass the following motion:

THAT Mark Kelsch be reimbursed \$8,000, 50% of his net loss, for inputs for cropping the SE 07-17-17 W2 in 2010;

AND THAT Council waives the \$18/acre rental fee for the 2011 crop year on the SE 07-17-17 W2.

Respectfully submitted,



Shauna Bzdel,  
Town Manager

December 10, 2010

Town of White City

Attention: Town Manager  
Shauna Bzdel

From: Mark Kelsch - 771-2829 (h.m.)  
Box 540 White City 530-6150 (cell).  
SOG 5B0  
Irrigator for the Town of White City

This summer, Brian asked me to meet with him and Darryl at the irrigation pivot. The meeting was to discuss the enormous volume of water that still needed to be pumped from the second cell of the lagoon system. Brian knew that volume of water would damage the crop and he offered me "fair compensation" for my losses.

I have compiled the costs to seed the field as follows:

Seed (navy bean Skyline)	\$4,680.00
Seed treatment (Tagteam Inoculants)	770.91
Fertilizer	3,549.25
Herbicide	5,976.60
Custom spreading (Edge herbicide)	840.00
Seeding (custom rate \$15.00/ acre)	1,800.00
Fuel (estimate only: \$9.00 acre)	840.00
Pre working the field (cultivating) (Custom rate \$8.00 acre)	960.00
Total Expenses	\$18,576.76
Revenues	<u>2,700</u>

I was able to combine some of the outside areas of the field and recover 125 bushels of beans. The value of the beans is \$9.00 per bushel making the total \$1,125.00.

This crop, in a good year, will provide 50 bushels per acre (about 3,000 lbs/acre).

As I tried to combine the beans, the combine continually got stuck, and finally did so, up to the front axles and a track hoe was rented to dig the combine out. This did some damage to the combine, so I stopped to avoid any further damage.

The field has been left in poor condition, and will require a tandem disc to smooth out the ruts that have been left in the field from constantly pulling out the stuck pivot system. This would have to be done prior to seeding.

During the summer, the main switch failed at the pivot control box. This resulted in two sections of the pivot folding into itself. The Town of White City made an insurance claim and was successful in recovering some losses. I also submitted a cost account of the damage done to the crop as a result of this, however, no one has spoke to me about my claim.

I wish to meet with you to discuss these issues and try to plan for the 2011 irrigation year.

Respectfully submitted,



Mark Kelsch.

**DRAFT**  
**AGREEMENT MADE IN DUPLICATE THIS 5<sup>th</sup> DAY OF SEPTEMBER, 2008.**

**BETWEEN:**

**MARK KELSCH**  
**(Hereinafter called "the Contractor")**  
**OF THE FIRST PART**

**-and-**

**THE TOWN OF WHITE CITY**  
**(Hereinafter called "the TOWN")**  
**OF THE SECOND PART**

The Contractor and the Town agree with each other as follows:

1. The Contractor will complete the work described in paragraph 2 of this Agreement in a workmanlike manner and to the satisfaction of the Town.
2. The work shall consist of the scope on the "Lands" described as SE7-17-17-W2M, outlined as follows:
  - a) The Contractor shall take on responsibility for maintenance and operation of the irrigation system under the guidance and direction of the Town including repairing non-electrical items, greasing, oil changes, cleaning, winterizing and any other activities found necessary that are non-electrical in nature.
  - b) The Contractor shall take on responsibility for the Lands including supply and install of fencing the easterly border, maintenance of all fences, harrowing the field to knock down dirt mounds and lumps, rock picking, supply/spray of any undesirable growth, ie.) Leafy Spurge, and supply fertilization of the alfalfa field.
  - c) The Contractor shall apply effluent irrigation at the schedule and rules specified by the Town and shall keep and provide to the Town other records as specified by the Town as advised by the appropriate agencies, in addition to times and dates the irrigation systems run. As well, hour meter readings and fluid deposit of lagoon cell #2 readings will be completed by SaskWater.
  - d) The Contractor shall at the appropriate times, cut and bale forage crops, and remove bales from the alfalfa field.
  - e) The Town and Contractor will cost share 50/50 the cost to prepare and reseed 110 acres of land to alfalfa, at the custom rate, for the year of 2011.

3.) Basis of Payment:

Giving consideration that the Contractor is prepared to carry out the scope of work at his cost and time, the contractor agrees to pay the Town:

a) No payment made by the Contractor to the Town in years 2009 and 2010. In lieu of payment, the land will be sprayed with glyphosate (Roundup), worked up and smoothed out to prepare for the seeding of an annual crop of alfalfa in 2011. The Contractor may seed an annual crop to offset his costs. The annual crop may be oats, barley, canary seed, etc.

b) For years 2011, 2012, 2013, 2014, 2015, and 2016 if Council wishes, the Contractor will pay \$18.00 per acre for 110 acres for each of the years described above.

4.) The following terms and conditions shall apply to the within Agreement and the parties agree;

a) TERM:

This Agreement shall be in place for the calendar years 2009-2015.

b) WORKER'S COMPENSATION:

The Contractor agrees to comply in all respects with the requirements of *The Workers' Compensation Act* of the Province of Saskatchewan with respect to this contract and make all contributions to the Workers' Compensation Board as therein required to be made by any subcontractor of employees. In the event of the Town being responsible for contributions to the Workers' Compensation Board, which should properly be made by the Contractor or a subcontractor, the Town may deduct the amount of any such contributions from monies payable hereunder by the Town to the Contractor.

c) CONTRACTOR'S LIABILITY INSURANCE:

The Contractor shall protect himself and indemnify and save the Town harmless from any and all claims, which arise from the Contractor's operation under the Contract where bodily injury, death, or property damage is caused and for this purpose shall, without restricting the generality of the foregoing, maintain insurance acceptable to the Town, in the amount of \$1,000,000.00 all inclusive risk policy covering Public Liability and Property Damage to Town property, and the contractor's property.

4.) Cont'd

d) DECLARATION:

- i) The Contractor shall prior to December 31<sup>st</sup> of each year provide to the Town that all labor, equipment, and subcontract claims incurred, directly or indirectly on account of the work have been fully paid by the Contractor.
- ii) A Certificate from the Workers' Compensation Board certifying that all assessments due by the Contractor have been paid.
- iii) A statement that all claims and demands for extra work or otherwise under or in accordance with this contract have been presented to the Town.
- iv) Certification that all individuals employed in the execution of the work have been paid.

e) ASSIGNMENTS OF CONTRACTS:

The Contractor shall not, without the written consent of the Town, make any assignment of this contract or any monies payable there under or enter into any subcontract for execution of any of the work hereby contracted for, and no assignment of subcontract, even though duly consented to, shall exonerate the contractor from liability under this contract for the due fulfillment of any other term or terms of the contract. In such case, the Contractor shall be responsible for all acts, defaults, neglects, and delays of any assignee or subcontractor, his servants, agents, and employees, to the same extent as if no such assignment of subcontract has been made or entered into.

f) TOWN RIGHT OF ACCESS:

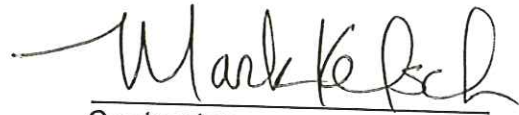
The Contractor agrees that the Town or its representatives may enter the Lands for reasons of testing, inspections, repair or maintenance, and as a result the Contractor will be compensated for any loss as a result of the access.

5.) The Town will review the Contractor's performance under this Agreement and provide the Contractor with notice of any improper work uncompleted work, and inadequate or proper irrigation system maintenance, which requires remedying. Upon receipt of notice from the Town, the contractor shall remedy any defect in the work or improperly completed work. If the Contractor fails to remedy the defective work within the 30 day period, the Town may terminate this Agreement

by written notice, at the Town's option, by registered mail forwarded to the Contractor's address as set forth in this Agreement.

- 6.) Should both persons and their immediate families (spouses, sons, and daughters) named as the Contractor discontinue their personnel practice of cutting and baling hay or forage, this contract shall terminate at the calendar year end of that occurrence.
- 7.) The Contractor shall have a right of first refusal with respect to any lease relating to the land commencing in 2015 or 2016. The terms of such right are:
  - a.) If the Town elects to tender a Lease, tenders shall be requested and the Contractor shall have the right to meet and match the tender the Town is prepared to accept;
  - b.) The Contractor shall receive a copy of the tender the Town is prepared to accept and the Contractor shall have ten days after receipt by registered mail or personal delivery to accept or reject the least contract on the terms set forth in the tender the Town has presented;
  - c.) If the Contractor accepts the tender offered, the tender shall be awarded to the contractor; if the Contractor rejects the tender or fails to respond, the Town may proceed to contract with the tender it has received; and
  - d.) The Contractor's right of first refusal shall survive the termination of this contract, subject, however, to the following paragraph.
- 8.) In the even the Town shall terminate this Agreement pursuant to either paragraph 5 or 6 hereof, the Contractor's right of first refusal under paragraph 7 hereof, shall terminate.
- 9.) The Contractor shall not be required to post a bond to complete the work; however, the Contractor covenants and agrees to complete the work as required.
- 10.) This Agreement shall be binding upon the assigns and successors of the Contractor and the Town.
- 11.) The Town shall be responsible for payment of municipal and school taxes charged upon the Land.


IN WITNESS WHEREOF the Town has executed this Agreement under the hand of the Administrator and Mayor and the Contractor has affixed its seal under the hand of its proper officers in that behalf.

  
Contractor

(Seal)



TOWN OF WHITE CITY

  
Mayor

  
Administrator

September 11, 2008