

ORDINANCE NO. 2019-11-062

AN ORDINANCE AUTHORIZING THE LEASE OF CERTAIN REAL ESTATE

**(Real Estate Parcels with Permanent Index Numbers 25-15-29-400-023 and 25-15-29-400-024,
Located in Champaign County, Illinois, to Prairie Fruits Farm, LLC)**

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Illinois Constitution, 1970; and

WHEREAS, Urbana City Code Section 2-118(b) provides that real estate owned by the City may be leased in any manner prescribed by the City Council in an ordinance authorizing such lease; and

WHEREAS, the City owns certain real estate parcels having permanent index numbers 25-15-29-400-023 and 25-15-29-400-024, located in unincorporated Champaign County, Illinois; and

WHEREAS, Prairie Fruits Farm & Creamery, LLC desires to lease such parcels for five years at annual rent of \$350; and

WHEREAS, the City Council expressly finds and declares that such real estate parcels are not needed for governmental purposes or proprietary activity of the City during the term of the proposed lease, except as otherwise provided in such lease; and

WHEREAS, the Committee of the Whole, a regular standing committee of the City Council, held a public hearing on the question of the lease at 7:00 p.m. on Tuesday, November 12, 2019, after due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days prior to the time of the public hearing; and

WHEREAS, the City Council, after due consideration, finds that the lease of the real estate parcels described below to Prairie Fruits Farm & Creamery, LLC, as herein provided, is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1. The lease of the real estate parcels having permanent index numbers 25-15-29-400-023 and 25-15-29-400-024, located in unincorporated Champaign County, Illinois, and legally described below, substantially on such terms as contained in the lease attached hereto and incorporated herein, is hereby authorized and approved:

PIN: 25-15-29-400-023

PART OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS; THENCE SOUTH 89 DEGREES 41 MINUTES 23 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 1,203.87 FEET; THENCE NORTH 00 DEGREES 41 MINUTES 59 SECONDS WEST ALONG A LINE PARALLEL WITH THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 188.62 FEET; THENCE NORTH 73 DEGREES 34 MINUTES 08 SECONDS EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 23 SECONDS EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 954.73 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 59 SECONDS EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 260.49 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 6.99 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

PIN: 25-15-29-400-024

PART OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARENT TRACT:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD

PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, THENCE NORTH ALONG THE HALF SECTION LINE A DISTANCE OF 988 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH A DISTANCE OF 162 FEET; THENCE EAST 160 FEET; THENCE SOUTH 162 FEET; THENCE WEST 160 FEET MORE OR LESS TO THE HALF SECTION LINE BEING THE TRUE POINT OF BEGINNING.

AND ALSO EXCEPT:

JAMESTOWN SUBDIVISION NO. 1 RECORDED JANUARY 2, 2003 AS DOCUMENT 2003R00014.

AND ALSO EXCEPT:

MIDDLEFORK SUBDIVISION NO. 1 RECORDED OCTOBER 19, 2000 AS DOCUMENT 2000R24369.

AND ALSO EXCEPT:

ILLINOIS FARM TO TABLE SUBDIVISION RECORDED SEPTEMBER 23, 2008 AS DOCUMENT 2008R24978.

AND ALSO EXCEPT:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS; THENCE SOUTH 89 DEGREES 41 MINUTES 23 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 1,203.87 FEET; THENCE NORTH 00 DEGREES 41 MINUTES 59 SECONDS WEST ALONG A LINE PARALLEL WITH THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 188.62 FEET; THENCE NORTH 73 DEGREES 34 MINUTES 08 SECONDS EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 23 SECONDS EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 954.73 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 59 SECONDS EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 260.49 FEET TO THE POINT OF BEGINNING.

SAID NET TRACT CONTAINS 9.77 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

Section 2. The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver a Lease of Real Estate Parcels with Permanent Index Numbers 25-15-29-400-023 and 25-15-29-400-024, in substantially the form of the copy of the lease attached hereto and hereby incorporated by reference, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to the execution of such lease, as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

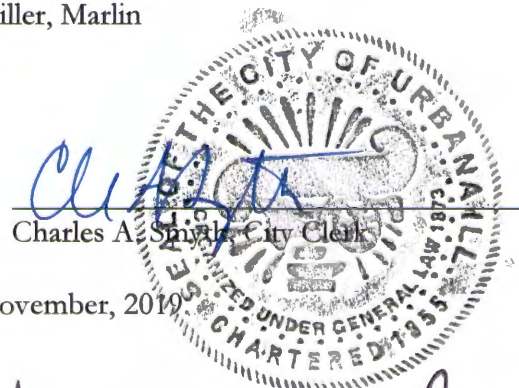
Section 4. This Ordinance shall be in full force and effect from and after its passage. This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of three-fourths of all the alderpersons then holding office and the Mayor (6 of 8 votes) of the City of Urbana, Illinois, at a meeting of the City Council.

PASSED BY THE CITY COUNCIL this 18th day of November, 2019.

AYES: Brown, Hazen, Hursey, Jakobsson, Miller, Marlin

NAYS:

ABSTENTIONS:



Charles A. Smyth
Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this 19th day of November, 2019.

Diane Wolfe Marlin
Diane Wolfe Marlin, Mayor

**LEASE OF REAL ESTATE PARCELS WITH PERMANENT INDEX NUMBERS
25-15-29-400-023 AND 25-15-29-400-024**

This lease is made between the City of Urbana, an Illinois municipal corporation (the "Owner"), and Prairie Fruits Farm & Creamery, LLC, an Illinois limited liability company (the "Tenant"), each a "party" and together the "parties."

The Tenant operates a farm, goat dairy, and farmstead creamery known as the Prairie Fruits Farm & Creamery, located at 4410 N. Lincoln Avenue, Champaign, Illinois. The Owner owns real property located immediately south of the Tenant's farm. The Tenant desires to lease the Owner's real property having permanent index number ("PIN") 25-15-29-400-023 for growing crops. The Tenant desires to lease the Owner's real property having PIN 25-15-29-400-024 for use as a parking lot for the Tenant's customers annually from April 1 through November 30 and as a water source for irrigating the Tenant's crops. The parties desire to establish an agreement to provide for such lease. Therefore, the parties agree as follows:

1. **Premises.** The Owner leases to the Tenant and the Tenant leases from the Owner two real estate parcels located at North Lincoln Avenue and Olympian Drive in Somer Township in unincorporated Champaign County. One parcel has PIN 25-15-29-400-023 and consists of 6.9 acres, more or less. The other parcel has PIN 25-15-29-400-024 and consists of 9.68 acres, more or less. Collectively, the two parcels are the "Premises." The Premises consist of 16.58 acres, more or less. The Premises are shown on Exhibit A. If the Tenant is unsure of the dimensions of the Premises, it shall verify in field before occupying.
2. **Term; renewal.** This lease will take effect on the last date signed by a party hereto. The term of this lease is five years, unless the parties terminate it sooner as provided in this lease. The parties may extend such term for an additional year or years upon their mutual written consent. The parties shall construe any holding over after the expiration of the term hereof, with the consent of the Owner, as a tenancy from month to month at the rent and upon the terms and conditions specified in this lease.
3. **Use; surrender.** The Tenant shall use the portion of the Premises having PIN 25-15-29-400-023 for agricultural purposes only, specifically for growing small grains, food-grade corn, and vegetables, all for human consumption, and cover crops for increasing soil health. The Tenant may grow other crops, grow crops for other purposes, or raise livestock all only with the Owner's prior written consent. The Tenant shall use the portion of the Premises having PIN 25-15-29-400-024 only as follows: (i) the Tenant may use the land as a parking lot for the Tenant's customers from April 1 through November 30; and (ii) the Tenant may use the detention pond to irrigate the Tenant's crops grown on the parcel having PIN 25-15-29-400-023 on condition that the Tenant's use of such pond does not impair its function as a stormwater basin. The Tenant shall not use the parcel having PIN 25-15-29-400-024 for any other purposes without the Owner's prior written consent.

- A. The Tenant's use of the Premises is subject to all zoning regulations, restrictions, encumbrances, covenants, rules, ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction.
- B. The Owner, in cooperation with Champaign County, intends to use the Premises for future expansion of a roadway known as FAP Route 813 on Olympian Drive. The Owner shall provide written notice to the Tenant no fewer than six months in advance of the date the Owner will require possession of the Premises for construction. The Owner's determination of the date it will require possession of the Premises is final, binding, and conclusive. The Tenant shall surrender possession of the Premises on or before the date the Owner designates on such written notice.

4. **Condition of Premises.** THE TENANT ACCEPTS THE PREMISES IN THEIR "AS-IS" CONDITION. THE OWNER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE PREMISES.

5. **Rent.** In consideration of the possession, continued use, and occupancy of the Premises, the Tenant shall pay the Owner \$350 in annual rent. The Tenant's first rent payment is due on the effective date of this lease. The Tenant shall make subsequent rent payments in advance, without demand, not later than on each anniversary of the effective date of this lease. The Tenant shall pay all rent by cash, valid check, credit card, or money order at City of Urbana Accounting, 400 S. Vine Street, Urbana, Illinois 61801. If the Tenant surrenders possession of the Premises for construction of the roadway before the end of the term of this lease, or any extension or renewal term of this lease, the Tenant will not receive a rent adjustment.

6. **Taxes and assessments.** The Tenant shall pay before delinquency all real estate taxes, special assessments, drainage assessments, sewer use charges, stormwater utility fees, and recycling taxes assessed against the Premises that become payable during the term of this lease or any extension or renewal term of this lease. If the Tenant fails to make such payments, the Owner may, at its option, make payment without prejudice to any of its rights. The parties shall apportion any taxes or assessments for any fraction of a tax year at the commencement or expiration of this lease. The Tenant may institute any administrative or legal proceedings challenging the tax rate, assessed value, or other factors influencing the amount of taxes.

7. **Repairs; maintenance; utilities.** The Owner is not required to make any improvements or repairs upon the Premises. The Tenant shall make all improvements and repairs at its sole cost and shall keep the Premises safe and in good order and condition at all times during the term of this lease or any extension or renewal term of this lease. The Tenant shall leave the Premises free from all nuisances, including without limitation litter and

dangerous and defective conditions. From April 1 through October 31, the Tenant shall provide for monthly mowing of the land portion of the Premises having PIN 25-15-29-400-024, as needed to maintain high aesthetic standards. The Tenant shall replace or restore any soil, grass, trees, or other vegetation damaged, destroyed, or removed as a result of the Tenant's use of the Premises with that of at least equal quality. Upon expiration of this lease, or at any sooner termination, the Tenant shall quit and surrender possession of the Premises peaceably and in good order and condition, except for reasonable wear, tear, and damage by the elements. The Tenant shall not cause or allow any undue waste on the Premises and shall contract and pay for all utilities used on the Premises.

8. **Conservation.** The Tenant shall do what is reasonably necessary to control soil erosion including, maintenance of existing watercourses, waterways, ditches, drainage areas, terraces, and tile drains, and shall refrain from any practice that will cause damage to the Premises.

9. **Construction.** At its sole cost and upon the Owner's issuance of any applicable permits, the Tenant may construct or install any equipment, improvements, and facilities, and any additions to those items, on all or any part of the Premises for the uses authorized in section 3. Before commencing any construction or installation, the Tenant shall submit complete plans, drawings, and designs of such improvements to the Owner for the Owner's approval. The Tenant shall not commence any construction or installation of any equipment, improvements, facilities, or additions thereto without first having received the Owner's written consent.

- A. The Tenant shall construct all equipment, improvements, and facilities in a good, substantial, and competent manner. In constructing such equipment, improvements, and facilities, the Tenant shall do as little damage as possible to the Premises and shall repair at its own expense any such damage. The Tenant shall maintain all equipment, improvements, and facilities constructed or installed by it in good condition and repair, reasonable wear and tear excepted.
- B. All equipment, improvements, and facilities that the Tenant installs will remain the Tenant's property. The Tenant shall remove such equipment, improvements, and facilities upon termination of this lease. The Tenant shall complete all removal of equipment, improvements, and facilities in such a manner as not to injure or damage the Premises. If the Tenant fails to remove the equipment, improvements, and facilities, the Owner may remove them and dispose of them as it sees fit, and the Tenant shall sell, assign, transfer, and set over to the Owner all of the Tenant's right, title, and interest in the equipment, improvements, and facilities, and any personal property not removed by the Tenant, for the sum of \$1. If the Owner removes the equipment, improvements, and facilities, the Tenant shall pay the Owner upon demand the cost of that removal, plus the cost of transportation and disposal of the property removed. This subsection will survive the termination of this lease.

10. **Right of entry.** The Owner reserves the right of its agents, employees, or assigns to enter the Premises at any reasonable time to consult with the Tenant, its agents, employees, or assigns, or to make repairs, improvements, surveys, or inspections. None of the foregoing is to interfere with the Tenant in carrying out its business operations.

11. **Default.** Either party may terminate this lease at any time for cause if the other party breaches any term of this lease and does not cure such breach by the tenth day after written notice is given. The party giving notice shall specify the reason or reasons for such termination and shall state the effective date of such termination if the breach is not fully corrected. In the event of the Tenant's default, the Owner may enter upon the Premises and remove all persons and property, and the Tenant will not be entitled to any money paid. If either party defaults in any of its obligations under this lease, the party not in default will be entitled to recover its costs and reasonable attorneys' fees caused by the other's default from the defaulting party. The foregoing remedies in the event of default are not intended to be exclusive, and the parties have the right to all other lawful remedies, including specific performance.

12. **Holdover.** If the Owner allows the Tenant to remain in possession of the Premises after the lease expires or terminates, a new tenancy from month to month will be created at a monthly rental of \$750, payable on the tenth of each month during the tenancy. Either party may terminate the tenancy by giving the other party written notice of intention to terminate at least 30 days before the desired termination date. This provision does not give the Tenant any right to holdover at the expiration of the lease. All other terms and conditions of this lease will remain in full force during any tenancy created under this lease.

13. **Indemnification.** The Tenant shall indemnify and defend the Owner, its officers, employees, and agents against all claims, liability, or damage, including without limitation reasonable attorney's fees and costs, arising from or in any way related to the Tenant's use of the Premises, except to the extent caused by the gross negligence or willful misconduct of the Owner, its officers, employees, or agents. This section will survive the termination of this lease.

14. **Insurance.** The Tenant assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy, and use of the Premises. The Owner is not responsible for insuring the Tenant or the Tenant's agents, employees, invitees, licensees, or guests against any loss or damage.

15. **Subrogation waiver.** The Owner and Tenant each waive all claims or rights to recovery against the other party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by insurance as required under this lease. The Owner and Tenant will cause each insurance policy carried by either relating to the Premises to include or allow a full waiver of any subrogation claims.

16. **Assignment.** The Tenant shall not assign this lease, mortgage, or sublet the Premises without the Owner's prior express written consent. Any attempted assignment, mortgage, or sublease without the Owner's consent will be void and will constitute a material breach of this lease.

17. **Liens.** The Tenant shall keep the Premises free and clear of all liens arising out of any work performed, materials furnished, or obligations incurred by the Tenant or its assignees.

18. **Entire agreement.** This lease constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this lease, and may not be modified except by a writing signed by both parties.

19. **Notices.** The parties shall give all notices required or permitted by this lease in writing. All notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier service (e.g., FedEx or UPS). A notice delivered by email will be deemed given when the recipient acknowledges having received the email by an email sent to the sender's email address, as stated in this section, or by a notice delivered by another method in accordance with this section. An automatic "read receipt" will not constitute acknowledgment of an email for purposes of this section. Each party's address is stated below and may be changed to such other address as the party may hereafter designate by notice.

Tenant: Prairie Fruits Farm & Creamery, LLC, Attention Wes Jarrell or Leslie Cooperband, 4410 N. Lincoln Avenue, Champaign, Illinois 61822-9455; prairiefruitsinfo@gmail.com.

Owner: City of Urbana Public Works Department, Attention Vince Gustafson, Deputy Director of Operations, 706 S. Glover Avenue, Urbana, Illinois 61802-4427; vhgustafson@urbanaininois.us.

20. **Compliance with governmental requirements.** The Tenant shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, including without limitation the applicable provisions of the Urbana City Code and the Americans with Disabilities Act, all of which as may be amended from time to time.

21. **Interpretation.** The parties shall construe this lease according to its fair meaning and not strictly for or against either party.

22. **Waiver.** No waiver by either party of any default or breach of any term, condition, or covenant of this lease will be a waiver of any other breach of any other term, condition, or covenant.

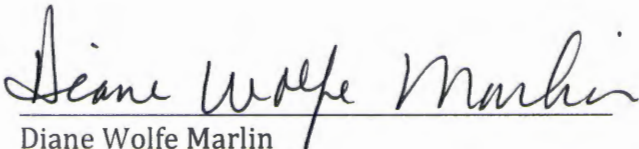
23. **Counterparts.** The parties may sign this lease in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) will be deemed original signatures for all purposes.

The parties are signing this lease on the dates indicated opposite their signatures.

Prairie Fruits Farm & Creamery, LLC:


By: <u></u> Wesley Jarrell A Manager	By: <u></u> Leslie Cooperband A Manager
Date: <u>Oct. 18</u> , 2019	Date: <u>Oct 18</u> , 2019

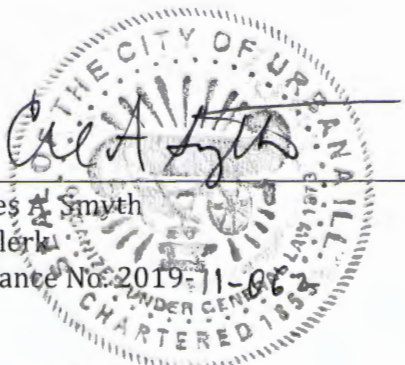
City of Urbana:

By: 
Diane Wolfe Marlin
Mayor

Date: December 17, 2019, 2019

Attest:


Charles A. Smyth
City Clerk
Ordinance No. 2019-11-063



Attachment: Exhibit A (Map)

Exhibit A



110



This map was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGIS), or other CCGISC member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this map is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this map and information contained herein. The use of this map constitutes acknowledgement of this disclaimer.

