

# Council/Staff Planning Session

1. Meeting Date And Time

- 1.I. October 12, 2022 6:00 P.m., Council Chambers, 105 Milwaukee Mall Note: Mayor, Council And Staff Will Be Attending This Meeting In Person In The Council Chambers. Public Can Attend In Person Or They Can Attend The Meeting Via Zoom.com: Meeting ID 787 065 8066 Phone Number To Call To Participate Via Telephone: 312-626-6799

2. Call To Order

3. Mayor's Comments

4. Review Lease/Purchase Option With Pure Prairie Farms

Documents:

[AIS -4 MAIN STREET \(PACKET\) PPF LEASE PURCHASE AGREEMENT.PDF](#)

5. Review Possible Sponsored Projects With Dennis Sanvig And Floyd County Conservation

6. City Administrator Report

7. Board, Commission Or Committee Reports

8. Adjourn

## AGENDA ITEM SUMMARY

### **Subject: North Main – Adjacent to Pure Prairie Farms- Consider lease purchase agreement of Main Street; and City purchase of “Lane Street” ROW**

#### **Background Summary:**

Over the course of the last several months we have been working with Pure Prairie Farms (PPF) on the potential acquisition of the portion of Main Street that runs directly in front of the plant at the north end of Main Street. As we've discussed the acquisition of this property is critical to long term sustainability of the plant and there would also be some direct benefit to the city in the terms of traffic flow by better aligning the intersection of Main Street and North Grand.

We have taken measures to redirect traffic and incorporate the last block of Lane Street into Main Street and we have long term plans to reshape and repave Main Street.

Now the discussion has been around lease and or sale of the portion of Main Street in front of the building. At our last workshop PPF asked about acquiring the property now as they need some certainty for their lender that they have rights to use the property. Our discussion led to the idea of doing a lease purchase agreement where we would lease the street to them for an initial three years and then give PPF the option to purchase the property after that term. Over the last few weeks, we have been working with appraisals and draft of an agreement.

Brad Sloter and the attorney for PPF have agreed upon a final version of the lease purchase agreement and we have now entered least amount and purchase amount for the property. PPF has requested that the lease payments be applied to the overall cost of acquisition, which the agreement would permit. Based on lease and sales appraisal as well as the pending sale prices for the adjacent Dana Park from City Improvement Association and the Canadian National Railroad I have proposed the following which PPF is agreeable to.

- Lease/Purchase Terms
  - \$100,000 = Purchase Price of approximately 17,424 sq/ft of adjacent Main Street
  - \$22,000 = Annual Lease Payment
    - Term = three years = \$66,000 total lease payments
  - \$34,000 = Amount due from PPF to city after three-year lease
  - City will retain easements for existing city utilities
  - Agreement also includes City Purchase of that portion of Lane Street previously owned by Railroad = \$8,700

If council is agreeable to this agreement, we will need to set public hearing which we can do at the October 17<sup>th</sup> meeting, and then hold public hearing at 6 p.m. On November 7<sup>th</sup>, before considering approving the Lease/Purchase agreement.

We anticipate the \$100,000 received from Pure Prairie Farms for the lease/purchase agreement to ultimately go towards the Main Street re-alignment project.

## LEASE AGREEMENT WITH OPTION TO PURCHASE REAL ESTATE

This Lease Agreement With Option to Purchase Real Estate (the “Agreement”) is entered into effective as of the date stated herein between the City of Charles City, Iowa (“City”) and Pure Prairie Farms, Inc. (“Pure Prairie”).

### Recitals

- A. Pure Prairie acquired a processing facility at 901 N. Main Street in Charles City, Iowa, which facility abuts North Main Street to the northwest. Pure Prairie is in the process of acquiring certain parcels of real estate owned by third parties, which abut North Main Street to the southeast. Pure Prairie intends to expand the existing facility located at 901 N. Main Street and has expressed interest in utilizing North Main Street for future plant operation.
- B. The City previously vacated by Ordinance the portion of public right of way abutting the Pure Prairie facility at 901 N. Main Street after determining that said right of way was not needed for use of the public, that its maintenance as a street at public expense was no longer justified; and that the vacation of the right-of-way would not deny abutting property owners with street access to their properties.
- C. Following vacation of the public right of way, the City has agreed to lease a certain portion of vacated right of way of North Main Street to Pure Prairie on the terms and conditions set forth herein and has agreed to grant to Pure Prairie an option to purchase said property at the conclusion of the lease period upon the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the foregoing and the promises, undertakings and mutual agreements contained herein, Pure Prairie and the City covenant and agree as follows:

1. LEASE OF PROPERTY. The City does hereby lease to Pure Prairie the real property described as:

*That portion of Main Street lying between Block 149 and Block 150 Lane's Addition lying north of the northerly right-of-way of the Canadian National Railway*

and as further depicted and identified on Exhibit A (“the Property”), which is approximately 17,424 square feet.

2. LEASE TERM. The term of this lease shall commence on November 7, 2022, and shall terminate three years later on November 6, 2025, unless sooner terminated or extended as provided in this lease.
3. USE OF THE PROPERTY. During the term of the lease, Pure Prairie's use of the Property shall be limited to the uses described and depicted on the site plan as set forth in Exhibit B (“Site Plan”). Pure Prairie shall not use the Property in any other manner not specifically depicted in the Site Plan nor make structural

alterations or permanent improvements on the Property, except as set forth on the Site Plan, without the express written consent of the City Engineer of the plans and specifications therefore, which approval shall be at the sole discretion of the City Engineer. The City Engineer's consent shall be deemed given upon issuance of the necessary City permits to construct the improvements. Pure Prairie will conform to and obey all laws, ordinances, rules, regulations and requirements and orders of all federal, state, and local governmental authorities, respecting use of the Property.

4. RENT. Pure Prairie, or its assign, agrees to pay to the City or assigns for the use of the Property during the duration of the lease annual rent as follows: \$22,000.00 payable on November 7, 2022, and \$22,000.00 on each November 7 thereafter during the term of this lease. All rent payments shall be credited towards the purchase price of the Property at Closing under the Option to Purchase set forth in Paragraph 14 herein.
5. CARE AND MAINTENANCE OF PROPERTY. Pure Prairie takes the Property AS IS, WITH ALL FAULTS. Pure Prairie shall, at its own expense, keep all and every part of the Property in good repair and a reasonable safe and clean condition, which shall include but not be limited to snow removal. Upon termination of this lease, Pure Prairie shall be responsible for removing any improvements or alterations on the Property and returning the property to the City in its original condition at its cost, ordinary wear and tear excepted, unless the Option to Purchase in Section 14 is exercised.
6. LIABILITY, INDEMNIFICATION AND HOLD HARMLESS. This lease is made upon the express condition that the City shall be free from all liabilities and claims for damage and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Pure Prairie, its assigns, tenants, agents or employees, or third persons, from any cause or causes whatsoever while in or upon the Property or any part thereof during the term of this lease or occasioned by any occupancy or use of said Property or any activity on the Property, except to the extent those arise due to the City's, its employees', officers', and agents' negligence or intentional misconduct and as provided in Section 11(c). Pure Prairie hereby covenants and agrees to indemnify, defend and hold harmless the City, its employees, officers, and agents from and against all damages, claims, loss or liability (including reasonable attorney fees and incidental and consequential damages) on account of damage to property, bodily injury or death, or personal injury of any person or persons to the extent arising out of or connected with Pure Prairie's presence or use of the Property pursuant to this lease, except to the extent those arise due to the City's, its employees', officers', and agents' negligence or intentional misconduct and as provided in Section 11(c).

Further, Pure Prairie agrees to assume all risk of loss, injury, or damage of any kind or nature whatsoever to any motor vehicle or other personal property belonging to Pure Prairie, its tenants, agents, employees or third persons which

may be now or hereafter placed upon said Property and all risk of loss, injury or damage of any kind or nature whatsoever to the contents of any such vehicle or any other property now or that may hereafter be placed upon said Property, whether belonging to the Pure Prairie or others, and to save and keep harmless the City from all claims and suits growing out of any such loss, injury or damage, except to the extent those arise due to the City's, its employees', officers', and agents' negligence or intentional misconduct and as provided in Section 11(c).

7. **INSURANCE.** Pure Prairie shall carry general liability insurance naming the City as an additional insured in an amount not less than \$5,000,000.00 to cover risks associated with its use of the Property during the lease term and shall provide proof thereof prior to the beginning of the lease term. The City shall be provided with a Certificate of Insurance establishing compliance with this Paragraph 7 prior to the beginning of the lease term.
8. **ASSIGNMENT.** Pure Prairie may not assign or transfer its rights and obligations under this Agreement without the prior written consent of the City, which will not be unreasonably withheld. Notwithstanding the foregoing, the City agrees that Pure Prairie may enter into a leasehold mortgage encumbering its rights under this lease (including the Option to Purchase) and, upon request from Pure Prairie, the City shall issue a landlord estoppel certificate and consent to leasehold mortgage to Pure Prairie's lender on a form reasonable acceptable to Pure Prairie's lender. Among other matters, the consent shall include (a) the City's consent to the leasehold mortgage; and (b) the City's acknowledge that if lender forecloses on Pure Prairie's leasehold interest and option to purchase or obtains such rights through other proceedings brought in lieu of foreclosure, the City will (i) recognize lender as the tenant; and (ii) allow lender to further assign the lease or sublease. The provisions of this Agreement shall be binding on Pure Prairie's successors and/or assigns.
9. **PURE PRAIRIE OBLIGATIONS.** Pure Prairie shall furnish all items necessary for its use of the Property at its sole cost and expenses, including but not limited to utilities, landscaping and lawn mowing, and snow removal. Pure Prairie is responsible for complying with all applicable laws and regulations, including but not limited to the Americans with Disabilities Act, regulations of the Board of Health, applicable City Ordinances and of the State of Iowa and Federal Government. Pure Prairie shall pay all taxes, assessments, or other charges that shall or may during the lease term be imposed on, or arise in connection with, the Property.
10. **SIGNS.** No sign, marking, or other inscription of any kind, unless approved by City in writing, will be put on or attached to any part of the Property. The City shall not be responsible for any costs associated with signs or markings.
11. **CITY'S RIGHT OF ACCESS.** The City may enter the Property after providing at least 24 hours' written notice to Pure Prairie (except in the event of an emergency which shall only require as much notice as possible under the

circumstances) for the purpose of inspecting the Property or for servicing of any utilities located under the Property. In the event the City services utilities on or under the Property, the City shall: (a) work diligently to minimize the impact on Pure Prairie's use of the Property; (b) coordinate with Pure Prairie to ensure that Pure Prairie has adequate ingress and egress to Pure Prairie's building, including loading docks that are adjacent to the Property; and (c) repair the Property and improvements thereon to substantially the same condition that existed prior to servicing the utilities.

## 12. HAZARDOUS WASTE.

- A. Pure Prairie's Duties. Pure Prairie agrees that no activity will be conducted on the Property that will produce or make use of any Hazardous Substances, except as needed in the ordinary course of Pure Prairie's business provided such Hazardous Substances are properly stored in a manner and location meeting all environmental laws. Hazardous Substances shall mean pollutants, contaminants, toxic or hazardous waste, or any other substances, the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any environmental law.
- B. Limitation of Storage. The Property shall not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Pure Prairie's business provided such materials are properly stored in a manner and location meeting all environmental laws. Pure Prairie shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency related to its use or storage of Hazardous Substances.
- C. Clean-up Costs. If at any time during or after the term of the lease, the Property are found to be contaminated or subject to said conditions, due to contamination caused by Pure Prairie, Pure Prairie shall diligently institute proper and thorough cleanup procedures at Pure Prairie's sole cost and expense.

13. TERMINATION OF LEASE. If Pure Prairie does not exercise the Option to Purchase set forth in Section 14, this lease shall terminate upon expiration of the original term unless extended through a written mutual agreement of the parties. If Pure Prairie exercises the Option to Purchase, this lease shall terminate upon the earlier of conveyance of the Property from the City to Pure Prairie and the termination of the Option to Purchase. Additionally, in the event Pure Prairie fails to observe and perform any covenant, condition or obligation created by this lease, the City shall provide written notice to Pure Prairie requesting that the breach/noncompliance be immediately remedied. In the event the breach or noncompliance continues to be evidenced thirty (30) days beyond the date of the written notice, the City may declare this lease to be terminated and provide Pure Prairie with a written notice of such termination. In the event of termination of the lease prior to expiration of the original term, then the Option to Purchase set forth in Paragraph 14 herein shall be null and void and of no force and effect.

14. **OPTION TO PURCHASE.** Pure Prairie, as part of the consideration herein, is granted the exclusive right, option, and privilege of purchasing the Property upon conclusion of the original term of the lease. This option shall terminate if the City terminates the lease for breach or noncompliance under Paragraph 13 prior to expiration of the original term of the lease. If Pure Prairie does not notify the City in writing at least thirty (30) days prior to the expiration of the original term that Pure Prairie will not exercise the option to purchase, Pure Prairie shall be deemed to have automatically exercised the option.

If Pure Prairie exercises its option under this Paragraph, the purchase price to be paid by Pure Prairie to the City shall be \$100,000.00. Pursuant to Paragraph 4 herein, if all rent payments are timely made, the amount due and owing at Closing shall be \$34,000.00. Closing shall occur upon termination of the original lease term or as soon as practical thereafter. The purchase price shall be paid in cash at the time of closing, subject to adjustments for selling/closing expenses.

Upon payment of the purchase price, the City shall convey title by a municipal "Quit Claim Deed" subject to reservation of easements for utilities located on the Property with such easements confined to the actual location of easements that exist as of the Effective Date of the lease.

Pure Prairie may, at Pure Prairie's expense and prior to closing, have the Property surveyed and certified by a Registered Land Surveyor. Pure Prairie shall be responsible for all professional fees and expenses for any engineers, professionals, or consultants employed by Pure Prairie.

Pure Prairie shall be responsible for any abstracting/reports, title examination, title guaranty/insurance premiums, and closing fees and expenses. Pure Prairie acknowledges that Pure Prairie will acquire title to the Property in its present condition "with all faults," and "as is" without representations or warranties, express or implied, as to the condition of the property or the improvements thereon or as to value, fitness for use, state of title, or environmental matters.

15. **NOTICES.** Notices under this lease shall be in writing and delivered to the representative of the party to receive notice at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Lease shall be the date of delivery of such notice with postage prepaid thereon or by recognized overnight delivery service:

If to City:  
City Administrator  
105 Milwaukee Mall  
Charles City, IA 50616

If to Pure Prairie:  
George Peichel  
\_\_\_\_\_  
\_\_\_\_\_

16. **MEMORANDUM.** A memorandum of this Agreement shall be recorded at Pure Prairie's expense in the office of the Recorder of Floyd County, Iowa.

17. CONTINGENCIES. This lease is subject to and conditioned upon the following:
- A. Approval of the City Council of the City of Charles City, Iowa.
  - B. Pure Prairie entering into a written purchase agreement with the City of Charles City, Charles City, Iowa, for the sale of that portion of Lots 2, 3, and 3, Block 132, Lane's Addition, lying south of the southerly right-of-way of the Canadian National Railway for the purchase price of \$8,700.00 upon such other terms and conditions as agreed to by the parties.
18. MISCELLANEOUS.
- A. The parties agree that this Agreement comprises the entire agreement of the parties. This Agreement shall inure to the benefit of and be binding upon the parties and their successors or assigns. The Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to the lease must be fully executed by both parties.
  - B. There are no third party beneficiaries to this Agreement. The Agreement is intended only to benefit Pure Prairie and the City.
  - C. The terms and provisions of this Agreement shall be construed in accordance with the laws of the state of Iowa. Any and all litigation or actions commenced in connection with this lease shall be brought in Floyd County, Iowa, in the Floyd County District Court or in the United States District Court for the Northern District of Iowa, provided that jurisdiction is proper in that forum.
  - D. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind of agent/principal relationship between the parties.
  - E. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the parties incurred or existing under this Agreement as of the date of expiration, termination, or cancellation will survive the termination or conclusion of the lease.
  - F. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this lease shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.
  - G. If any provision of this Agreement is held to be invalid or unenforceable the remainder shall be valid and enforceable.
  - H. This Agreement may be executed in counterparts, which taken together form a complete lease.

[Remainder of Page Intentionally Blank; Signature Page Follows]



Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

CITY OF CHARLES CITY

PURE PRAIRIE FARMS, INC.

\_\_\_\_\_  
Dean Andrews, Mayor

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Trudy O'Donnell, City Clerk

DRAFT