

RESOLUTION No. 582-23

A RESOLUTION EXTENDING THE LEASE OF CITY PROPERTY TO ERNST FARMS FOR AN ADDITIONAL FIVE-YEAR TERM.

WHEREAS, by Agricultural Lease Agreement (“the Lease”) dated September 27, 2018 the City of Donald leases City Property to Ernst Farms for the propagation of crops and the necessary discharge as irrigation of wastewater generated by the City sewer plant, on the terms and conditions set forth in Exhibit “A,” which is attached hereto and incorporated by reference herein; and

WHEREAS, the lease terminates on September 15, 2023 unless extended by mutual agreement of the parties for an additional five (5) year term; and

WHEREAS, Ernst Farms as Lessee, and the City of Donald as Lessor, desire to extend the Lease, retroactive to September 15, 2023, for an additional five-year term, which term will end on September 15, 2028 unless terminated sooner or extended as set forth in the Lease.

NOW, THEREFORE, THE CITY OF DONALD RESOLVES AS FOLLOWS:

By the City Council of Donald that the Agricultural Lease attached hereto as Exhibit “A” shall be retroactively extended for a renewal term ending on September 15, 2028.

PASSED and ADOPTED by the City Council of the City of Donald at their regular meeting on this 10th day of October, 2023 by the vote of 16 ayes and 0 nays.

DATE: October 10, 2023

REDACTED FOR SECURITY
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PURPOSES

Rick Olmsted, Mayor

ATTEST by the City Manager this 10th day of October, 2023.

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PURPOSES

Eric Underwood, City Manager

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CITY OF DONALD

10710 Main Street N.E. • P.O. Box 388 • Donald, OR 97020-0388
Phone 503-678-5543 • Fax 503-678-2750
www.donaldoregon.gov

IRRIGATION WATER USE AGREEMENT

Date:

Irrigation Water Provider	CITY OF DONALD, a municipal corporation ("City") PO Box 388 Donald, Oregon 97020
Lessor	MARK P. KEIRNES ("Keirnes") 32130 81 st Drive NW Stanwood, Washington 98292
Lessee/Water User	ERNST NURSERY AND FARMS, LLC ("Ernst") 61800 Gearin Road NE P O Box 460 St. Paul, Oregon 97137

WHEREAS:

- A. By Lease Agreement dated September 27, 2018, City, as Lessor, and Ernst, as Lessee, entered into that certain Agricultural Lease Agreement in the form and pursuant to the terms and conditions set forth on Exhibit "A", hereto (hereinafter "Agreement"), by which Ernst leased real property from City for the purpose of growing crops and irrigated by treated effluent (Irrigation Water) from City's sewage lagoons; and
- B. By separate agreement dated December 1, 2019 ("Keirnes Lease, Exhibit "B" hereto) Ernst leases real property from Keirnes commonly known as 10634 Ehlen Road, NE, Aurora, Oregon 97002-8763, and more particularly described on Exhibit "C", hereto (hereinafter "the Premises"); and
- C. Ernst desires to apply Irrigation Water received from the City in connection with the Agreement to the Premises described on Exhibit "C", hereto and subject to the Keirnes Lease (Exhibit "B"); and
- D. City, Ernst, and Keirnes wish to enter into this Irrigation Water Agreement on the terms and conditions set forth herein, and subject to the requirements of the City's DEQ permit and with all regulations associated with the City's Class C recycled water permit.

NOW THEREFORE:

Upon the mutual covenants herein, it is agreed as follows:

1. Premises

The Premises irrigated hereby are approximately 15.58 acres in Marion County, Oregon, belonging to Keirnes more particularly described on Exhibit "C", hereto.

2. Term and Consideration

(a) The term of this Irrigation Water Use Agreement ("Agreement") shall begin on September 15, 2023 and terminate completely unless renewed on or before December 1, 2025, or termination of Ernst's lease with Keirnes, whichever occurs first.

(b) The consideration given for the rights conferred by this Agreement shall be the mutual beneficial use of City's Irrigation Water, the adequacy and receipt of which is acknowledged by the Parties.

3. Use of Premises

(a) Ernst shall use the Premises solely for authorized farm activities. Lessee shall till, cultivate, care for, harvest, fertilize and farm the Premises and crops thereon in a good and workmanlike manner at Lessee's own expense.

(b) Ernst acknowledges that certain crops may be prohibited or their cultivation affected because the City reserves the unqualified right to discharge its sewage after treatment onto the Premises for irrigation. In the event that there is any conflict between Ernst's rights under this Agreement, and City's right to discharge sewage water after treatment, City's rights shall prevail. Ernst shall comply with all DEQ regulations associated with City's Class C recycled water permit classification which affect the Premises, and will conform its use of the Premises as required.

(c) Ernst shall conform to all applicable laws and regulations of any public authority affecting the Premises and its use, and correct at Ernst's expense any failure of compliance created by reason of Ernst's use. Ernst has been informed of regulations pertaining to the Premises, and to the extent Ernst has deemed necessary, Ernst has secured information from the Federal Environmental Protection Agency, the Oregon Department of Environmental Quality and other agencies and government bodies regarding the use of the Premises.

(d) In deference to the City's use of its sewage treatment facilities, Ernst agrees that it will reasonably cooperate in tilling, cultivating, caring, harvesting and fertilizing in such a manner so as to facilitate City's irrigation or other and spreading of its treatment waters after treatment. Such use by City may be made without notice to Ernst and without liability for damage to Ernst's crops or machinery, except for damage due, caused or resulting from City's gross negligence. Nevertheless, City shall endeavor to notify Ernst two weeks in advance but not less than as may be reasonable under the circumstances of its intention to irrigate.

(e) City shall have the discretion, consistent with the requirements of City's DEQ permit, to regulate the times and duration of City's release of irrigation water under this Agreement. Subject to the foregoing, City agrees to suspend release of irrigation water to accommodate Ernst's harvest, provided Ernst gives seven (7) days' advance actual notice to City of request to suspend, and limits such suspension for a reasonable period of time to conduct Ernst's farming activities.

(f) Ernst understands that the City does not guarantee crops grown on the Premises, and makes no guarantees as to the amount or timing of any irrigation from disposal of effluent. Ernst further understands that City's need for irrigation disposal of effluent takes precedence over Ernst's interests, and City therefore shall have sole control over the amount and timing of the disposal of effluent. If any disposal of effluent is made, City agrees to reasonably cooperate with Ernst in discharging the effluent by a disposal pattern consistent with Ernst's direction; however, City reserves the right to employ a disposal pattern in its irrigation of the Premises consistent with the requirements and needs of City's sewage treatment plant and the public interest. The disposal pattern established shall not discharge any effluent into state waters. All waste water shall be distributed on land for dissipation by evapotranspiration and controlled seepage, and shall observe sound irrigation practices so as to prevent 1) prolonged ponding of waste on the ground surface; 2) surface runoff or subsurface drainage through drainage tile; 3) creating of odors, fly and mosquito breeding and other nuisance conditions; and 4) overloading of land with nutrients or organics.

(g) Ernst agrees to notify the Oregon Department of Environmental Quality of the use to which it will put the Premises.

(h) Ernst shall not make any improvements to or erect any structures on the Premises without first obtaining the written consent of Keirnes.

(i) Ernst shall refrain from any use which would reasonably be offensive to neighboring premises or which would tend to create a nuisance, or to damage the reputation of the Premises.

(j) Possession. Ernst shall be entitled to possession as provided herein so long as it shall not be in default of this Lease.

4. Liability to Third Persons

(a) Ernst shall pay, indemnify and defend City on account of any claim, loss or liability arising out of or related to any activity of Ernst in the Premises or any condition in the possession or control of Ernst.

5. Default.

The following shall be events of default:

(a) Failure of Ernst to comply with any terms or condition or fulfill any obligation of this Agreement;

(b) Insolvency or assignment by Ernst for the benefit of creditors, or the filing of bankruptcy or the appointment of a receiver of Ernst's properties;

(c) City shall notify Ernst in writing of its intent to find Ernst in default of this Agreement and Ernst shall have thirty (30) days after Ernst is notified in writing by City to cure the default or if such default is of a nature that it cannot be cured within the thirty (30) day period for such time period as is reasonably required to cure the default. Ernst shall not be deemed in default under this Agreement unless City has provided Ernst with thirty (30) days written notice of its intent to take a default and Ernst has not cured the default within the shorter of thirty (30) days or the reasonable time necessary to cure the default.

6. Remedies.

(a) Termination. In the event of default, this Agreement may be terminated at the option of the City.

(b) Damages. The City may be entitled to damages for breach whether or not it elects to terminate this Agreement. If this Agreement is terminated.

7. Non- Wa i v e r .

Waiver by any party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

8. Attorney Fees.

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney's fees on trial or appeal.

9. Notices.

Any notice hereunder shall be deemed given when actually delivered or deposited in the U.S. Mail as certified mail addressed as follows:

City
Richard Olmsted, Mayor
City of Donald
PO Box 388
10710 Main Street NE
Donald, OR 97020

Ernst
Bruce Ernst
Ernst Nursery and Farms, LLC
PO Box 460
61800 Gearin Road, NE
St. Paul, OR 97137

Keirnes
Mark P. Keirnes
32180 81st Dr. NW

STATE OF OREGON)
) ss.
County of Marion)

On the 3 day of November, 2023, personally appeared the above-named Bruce Erast, and that said Irrigation Water Agreement was signed and he acknowledged said instrument to be his voluntary act and deed.



REDACTED FOR SECURITY
REDACTED FOR SECURITY

Notary Public for Oregon

STATE OF Oregon)
) ss.
County of Marion)

On the 3 day of November, 2023, personally appeared the above-named Mack Keines, and that said Irrigation Water Agreement was signed and he acknowledged said instrument to be his voluntary act and deed.



REDACTED FOR SECURITY
REDACTED FOR SECURITY

Notary Public for Oregon