

**REGULAR CITY COUNCIL MEETING
FARMER CITY, ILLINOIS
MONDAY, AUGUST 3, 2020
6:00 P.M.
AGENDA**

PRELIMINARY MATTERS

1. Call to order
2. Roll call
3. Pledge of allegiance to the flag
4. Proclamations/presentations/recognitions
5. Public Comment –

SECTION I CONSENT AGENDA

The following items will be adopted on a single motion without discussion unless a council member requests separate consideration:

- A. Approval of the minutes of the July 20, 2020 council minutes
- B. Fund Warrant List

SECTION II: UNFINISHED BUSINESS--Ordinances or resolutions previously tabled.

SECTION III: NEW BUSINESS--Ordinances and resolutions for initial consideration

- A. Approval of payout #2 to Spear Corporation in the amount of \$139,908.60.
- B. Approval of payout #4 to Leander Construction in the amount of \$15,336.22.
- C. Approval of payout #5 to Leander Construction in the amount of \$100,452.66.
- D. ORDINANCE 1052 An Ordinance Approving a Redevelopment Agreement by and Between the City of Farmer City, DeWitt County, Illinois and Richard Koch in Connection with the Redevelopment Project Area.
- E. ORDINANCE 1053 An Ordinance Amending Chapter 110: Alcoholic Liquor; establishing outdoor garden requirements.
- F. Approval on License Agreement between the City of Farmer City and Farmer City BMX.
- G. Approve appointment of Sandy Shaw to council.

SECTION IV: EXECUTIVE SESSION

SECTION V: OTHER ITEMS

1. City manager report
2. Non-agenda items and other business

ADJOURNMENT

NOTE: Anyone planning to attend the meeting who has need of special assistance under the Americans with Disabilities Act (ADA) is asked to contact the city clerk's office at (309) 928-2842, 48 hours before the meeting. Staff will be pleased to make the necessary arrangements.

**MINUTES OF THE FARMER CITY, ILLINOIS
CITY COUNCIL
REGULAR MEETING OF
JULY 21, 2020 6 p.m.**

Roll call

Present: Councilmembers Shelley Friedrich, Willard McKinley, Ben Burden, Scott Kelley and Mayor Scott Testory.
Also, in attendance: City Manager Sue McLaughlin, City Clerk Angie Wanserski, City Attorney Joe Chamley.

Pledge of allegiance to the flag

Proclamations/presentations

Public Comment

SECTION I:

CONSENT AGENDA

- A. Approval of the minutes of the July 06, 2020 council meeting
- B. Fund Warrant List

MOTION by Kelley to approve consent agenda. Seconded by Burden. Voted unanimously. Motion carried.

SECTION II:

UNFINISHED BUSINESS Ordinances or resolutions previously tabled

SECTION III:

NEW BUSINESS – Ordinances and resolutions for initial consideration

- 1. Resolution 2020-50 Resolution for Maintenance Under the Illinois Highway Code

This is the yearly MFT budget that gets submitted to IDOT. There have been minor changes including increasing tree removal and paying to restripe downtown.

MOTION by McKinley to approve Resolution 2020-50 Resolution for Maintenance Under the Illinois Highway Code. Seconded by Burden. Voted unanimously. Motion carried.

- 2. Approval on License Agreement with Knights Baseball for use of South Park. There have been no changes to the contract since the last council meeting. The city will mow and remove garbage.

MOTION by McKinley to approve License Agreement with Knights Baseball for use of South Park. Seconded by Burden. Voted unanimously. Motion carried.

- 3. Resolution 2020-51 Resolution Authorizing the Refund of City of Farmer City Corporate and City of Farmer City Library Taxes to Jerry L. Wright and Betty L. Wright for Ten Years Beginning with Those Taxes Due and Payable June 2020.

This property is located on west Depot Road. The city entered into an agreement in 2001 in exchange for annexation of the property, it expired in 2011. The council agreed that we should extend the rebate of city and library taxes as long as the property remains agricultural and in the Wright family.

MOTION by McKinley to approve Resolution 2020-51 Resolution

Authorizing the Refund of City of Farmer City Corporate and City of Farmer City Library Taxes to Jerry L. Wright and Betty L. Wright for Ten Years Beginning with Those Taxes Due and Payable June 2020. Seconded by Burden. Voted unanimously. Motion carried.

4. **ORDINANCE 1052** An Ordinance Approving a Redevelopment Agreement by and Between the City of Farmer City, DeWitt County, Illinois and Richard Koch in Connection with the Redevelopment Project Area.

REMOVED FROM AGENDA

5. Discussion regarding Farmer City Haunted Forest.

Angela Testory was in attendance to discuss moving the Haunted Forest event to the city owned square and 2 vacant lots located across from city hall making it a drive-thru event. They are doing this due to COVID and don't want to skip a year and lose momentum. The Haunted Forest is a committee of the chamber so they would coordinate Trunk or Treat with them. Businesses and residents will be asked to participate.

SECTION IV: EXECUTIVE SESSION –

SECTION V: OTHER ITEMS

1. **City manager report**

City Manager McLaughlin states that the pool is scheduled to be substantially completed by the end of November. Walls will be poured in two weeks. McLaughlin has sent a letter to Area Disposal regarding poor service. Area is working on the situation and they promise service will improve. They ask for residents to please have their garbage and recycling out on curb by 6am. The trucks are now equipped with cameras to confirm/deny any further issues with service.

2. **Non-agenda items and other business.**

Councilman Ben Burden read his resignation letter to council effective immediately.

MOTION by McKinley to accept Ben Burden's resignation letter. Seconded by Kelley. Voted unanimously. Motion carried.

ADJOURNMENT

MOTION by McKinley to adjourn meeting. Seconded by Kelley. Voted unanimously. Motion carried.

Angie Wanserski, City Clerk

Vendor Name	Net Invoice Amount	
100		
MIDWEST MAILING AND SHIPPI	102.55	FOLDER SEALER AND MAINT
WATTS COPY SYSTEMS INC	44.86	ADM COPIER
U.S. BANK	10.63	ADM SUPPLIES
U.S. BANK	67.97	ADM SUPPLIES
U.S. BANK	46.99	ADM SUPPLIES
U.S. BANK	44.95	ADM SUPPLIES
U.S. BANK	35.39	ADM SUPPLIES
U.S. BANK	33.99	ADM SUPPLIES
U.S. BANK	44.95	ADM SUPPLIES
U.S. BANK	44.95	ADM SUPPLIES
U.S. BANK	211.89	ADM SUPPLIES
U.S. BANK	24.56	ADM SUPPLIES
BILLIE COOPER	300.00	CLEANING SERVICE
FRONTIER	85.52	ADM
City of Farmer City	380.39	ADM
U.S. BANK	82.05	ADM SUPPLIES
U.S. BANK	3.98	ADM SUPPLIES
WRIGHT, JERRY AND BETTY	402.97	ADM - REIMBURSE PROPERTY TAX
WRIGHT, JERRY AND BETTY	559.69	ADM - REIMBURSE PROPERTY TAX
U.S. BANK	163.45	COUNCIL SUPPLIES
U.S. BANK	6.02	COUNCIL SUPPLIES
U.S. BANK	39.95	LEGIS SUPPLIES
U.S. BANK	10.90	POL SUPPLIES
U.S. BANK	55.00	POL SUPPLIES
U.S. BANK	561.23	POL SUPPLIES
City of Farmer City	115.30	POLICE
U.S. BANK	18.06	LEGIS SUPPLIES
City of Farmer City	569.18	STREET
NORTHERN TOOL & EQUIPMEN	84.99	STR - SUPPLIES
U.S. BANK	6.49	STREET
U.S. BANK	43.67	STREET
U.S. BANK	563.56	STREET
City of Farmer City	346.71	PARK
Progressive Chemical	113.71	white marker paint
City of Farmer City	78.69	POOL
Total 100:	5,305.19	
150		
MCLEAN COUNTY ASPHALT IN	1,798.26	STR - ASPHALT
MITCHELL'S TRUCKING	160.00	TRUCKING
Total 150:	1,958.26	
250		
WRIGHT, JERRY AND BETTY	35.01	ADM - REIMBURSE PROPERTY TAX
WRIGHT, JERRY AND BETTY	48.63	ADM - REIMBURSE PROPERTY TAX
Total 250:	83.64	
510		
U.S. BANK	7.75	WATER
City of Farmer City	1,047.75	WATER
WATER SOLUTIONS UNLIMITED	2,540.00	CHLORINE
G.A. RICH & SONS	5,333.00	CLEAN Reaction tank

Vendor Name	Net Invoice Amount	
Total 510:	<u>8,928.50</u>	
520		
PDC Laboratories Inc.	567.83	SEW-CHEM SUPPLIES
City of Farmer City	7,640.14	SEWER
WATER SOLUTIONS UNLIMITED	<u>2,487.06</u>	SEWER CHEMICALS
Total 520:	<u>10,695.03</u>	
530		
U.S. BANK	182.74	ELEC SUPPLIES
U.S. BANK	21.81	ELEC SUPPLIES
U.S. BANK	862.00	ELEC SUPPLIES
U.S. BANK	<u>511.62</u>	ELEC SUPPLIES
Total 530:	<u>1,578.17</u>	
Grand Totals:	<u><u>28,548.79</u></u>	

SPEAR

CORPORATION

12966 North CR 50 West
Roachdale, IN 46172
765-522-1126

ar@spearcorp.com

170-833

Invoice

Date	7/15/2020
Customer #	FAR004-C
Invoice #	19026-2

Bill To
Farmer City Swimming Pool 605 John Street Farmer City, IL 61842

Ship To

Terms Net 30	PO Number	Ship Via	Salesperson BJ
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Description	Extended
LESS RETAINAGE	142,287.00 13,167.00 -15,545.40

Thank you for your business!	Sales Tax	\$0.00
	Total	\$139,908.60

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF TWO

PAGES

OWNER:
Farmer City
105 South Main Street
Farmer City, IL 61842

PROJECT:
Farmer City Swimming Pool
605 John Street
Farmer City, IL 61842

FROM CONTRACTOR:
Spear Corporation
12966 North 50 West
Roachdale, IN 46172

ARCHITECT:
Fehr Graham
1610 Broadmoor Drive
Champaign, IL 61821

CONTRACT FOR:
Pool Construction

APPLICATION NO: 2

PERIOD TO: 7/31/2020

PROJECT NOS:

CONTRACT DATE: 10/18/2019

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM \$ 726,000.00
2. Net change by Change Orders \$
3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 726,000.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 314,447.00
5. RETAINAGE:
 - a. 10 % of Completed Work (Column D + E on G703) \$ 31444.7
 - b. % of Stored Material (Column F on G703) \$
 - Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 31,444.70
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 283,002.30
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 143,093.70
8. CURRENT PAYMENT DUE \$ 139,908.60
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 442,997.70

CONTRACTOR:

By: 7/26 E. Fahl Date: 7-18-2020

State of: Indiana County of: Putnam
 Subscribed and sworn to before me this 18th day of JULY 2020
 Notary Public: [Signature] TAYLOR SPEAR
 My Commission expires: 10-24-26 Commission # NP0716490

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA - ©1992
 Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

Note: Items in RED FONT are automatically calculated from the G703 form or from items within this G702 Form. Do NOT hand enter these items on this sheet.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE TWO OF TWO PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 7/15/2020
 PERIOD TO: 7/31/2020
 PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	% (G ÷ C)					
1	Mobilization	\$34,884.00	\$34,884.00		\$142,287.00		\$34,884.00	\$35,467.00	\$3,488.40
2	Stainless Steel Gutter System	\$142,287.00					\$142,287.00	\$17,489.00	\$14,228.70
3	Stainless Steel Gutter Labor	\$35,467.00						\$17,488.00	\$0.00
4	Pipe and Fittings	\$34,977.00	\$17,488.00				\$17,488.00	\$21,945.00	\$1,748.80
5	Piping Labor	\$43,890.00	\$8,778.00		\$13,167.00		\$21,945.00	\$49,639.00	\$2,194.50
6	Deck, Maintenance and Safety Equipment	\$49,639.00						\$8,800.00	\$0.00
7	Deck Equipment Labor	\$8,800.00						\$8,800.00	\$0.00
8	Mechanical Room Equipment	\$195,686.00	\$97,843.00				\$97,843.00	\$97,843.00	\$9,784.30
9	Mechanical Room Labor	\$35,200.00						\$35,200.00	\$0.00
10	Waterfeatures	\$7,800.00						\$7,800.00	\$0.00
11	Waterfeature Labor	\$8,800.00						\$8,800.00	\$0.00
12	Finishes	\$128,570.00						\$128,570.00	\$0.00
	GRAND TOTALS	\$726,000.00	\$158,993.00		\$155,454.00	\$0.00	\$314,447.00	\$411,553.00	\$31,444.70

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

ENCLOSURE
 1. Application for Payment
 2. Change Order Summary

Contractor's Application for Payment No. 4

Application Period:	From: 04/23/20	Thru: 06/22/20	Application Date: 06/22/20
To (Owner):	City of Farmer City		
Project:	Farmer City Pool Addition		
Contract:	Leander Construction Inc		
Contractor's Project No.:	19013		
Engineer's Project No.:	18-657		
Via (Engineer):	Fehl Graham		

**Application For Payment
Change Order Summary**

Approved Change Orders	Number	Additions	Deductions
	1	\$6,139.57	
	2	\$280.50	
	3	\$545.69	
TOTALS		\$6,965.76	
NET CHANGE BY CHANGE ORDERS		\$6,965.76	

1. ORIGINAL CONTRACT PRICE..... \$ 733,350.00
2. Net change by Change Orders..... \$ 6,965.76
3. Current Contract Price (Line 1 ± 2)..... \$ 740,315.76
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)..... \$ 186,196.72
5. RETAINAGE:
 - a. 5% X \$179,539.77 Work Completed..... \$ 88,976.99
 - b. 5% X \$6,656.95 Stored Material..... \$ 332.85
 - c. Total Retainage (Line 5a + Line 5b)..... \$ 93,009.84
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$ 176,886.88
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ 161,550.66
8. AMOUNT DUE THIS APPLICATION..... \$ 15,336.22
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)..... \$ 5562,602.69

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By: David A. Ghent Date: 6-23-20

Payment of: \$ 15,336.22
 (Line 8 or other - attach explanation of the other amount)

is recommended by: David A. Ghent (Engineer) 7-23-20 (Date)

Payment of: \$ _____
 (Line 8 or other - attach explanation of the other amount)

is approved by: _____ (Owner) _____ (Date)

Approved by: _____ Funding Agency (if applicable) _____ (Date)

Progress Estimate - Lump Sum Work

Contractor's Application

Specification Section No	Description	Contractor	Scheduled Value (\$)	Work Completed			Materials Presently Stored (net in C or D)	Total Completed and Stored to Date (C + D + E)	% (F - I)	Balance to Finish (H - F)
				C From Previous Application (C + D)	D This Period	E				
Farmer City Pool Addition										
Application Number 4										
Application Date: 6/27/2020										
From 04/23/20										
Thru 06/22/20										
A.										
DIV 01 CONCRETE										
	Saw Cutting	Celtra Concrete Cutting	\$8,500.00	\$8,500.00			\$8,500.00	100%		
	Saw Cutting Layout and Assistance	Leander Construction	\$3,000.00		\$3,000.00		\$3,000.00	100%		
	Main Pool Cast In Place Concrete - Labor	Leander Construction	\$49,654.57	\$10,255.73			\$10,255.73	21%	\$19,198.84	
	Main Pool Cast In Place Concrete - Material	Leander Construction	\$34,387.00	\$1,703.00			\$1,703.00	5%	\$32,684.00	
	Small Pool Cast In Place Concrete - Labor	Leander Construction	\$14,645.00						\$14,645.00	
	Small Pool Cast In Place Concrete - Material	Leander Construction	\$17,859.35						\$17,859.35	
	Deck Cast In Place Concrete - Labor	Leander Construction	\$34,050.00						\$34,050.00	
	Deck Cast In Place Concrete - Material	Leander Construction	\$10,784.35						\$10,784.35	
	Rebar Installation - Labor	Nelson Rebar Inc	\$13,200.00						\$13,200.00	
	Rebar - Material	Leander Construction	\$12,927.00						\$12,927.00	
	Grout/Seal and Gutter System - Labor	Leander Construction	\$14,223.00						\$14,223.00	
	Grout/Seal and Gutter System - Material	Leander Construction	\$3,000.00						\$3,000.00	
	Concrete Steps - Labor	Leander Construction	\$3,000.00						\$3,000.00	
	Concrete Steps - Material	Leander Construction	\$1,500.00						\$1,500.00	
DIV 07 ROOFING										
	Roofing Material	Advance Commercial	\$12,116.00	\$5,855.00			\$5,855.00	48%	\$6,261.00	
	Roofing Labor	Advance Commercial	\$17,741.00						\$17,741.00	
	Sheet Metal - Material	Advance Commercial	\$5,145.00	\$3,070.00			\$3,070.00	60%	\$2,075.00	
	Sheet Metal - Labor	Advance Commercial	\$10,677.00						\$10,677.00	
DIV 08 DOORS										
	Doors, Framing & Hardware - Labor	Leander Construction	\$3,530.00						\$3,530.00	
	Doors, Framing & Hardware - Materials	Leander Construction	\$5,621.95				\$5,621.15	98%	\$109.80	
DIV 09 FINISHES										
	Interior Bathroom Wall Cut Off - Labor	Leander Construction	\$1,200.00	\$600.00			\$600.00	100%		
	Interior Bathroom Wall Cut Off - Material	Leander Construction	\$300.00				\$300.00	100%		
	Finishing - Finishing - Labor	Leander Construction	\$4,999.95						\$4,999.95	
	Finishing - Finishing - Materials	Leander Construction	\$5,600.00						\$5,600.00	
	Interior Bathroom Painting - Labor	Leander Construction	\$2,500.00						\$2,500.00	
	Interior Bathroom Painting - Material	Leander Construction	\$2,000.00						\$2,000.00	
DIV 10 SPECIALTIES										
	Pool Depth Storage - Labor	Leander Construction	\$2,560.00						\$2,560.00	
	Pool Depth Storage - Materials	Leander Construction	\$1,500.00						\$1,500.00	
	Surge Tank - Labor	Leander Construction	\$11,910.00						\$11,910.00	
	Surge Tank - Materials	Crest Construction	\$21,400.00						\$21,400.00	
DIV 22 PLUMBING										
	French Drain - Labor	Leander Construction	\$5,258.84						\$5,258.84	
	French Drain - Material	Leander Construction	\$4,977.15						\$4,977.15	
	Change Order #1	Leander Construction	\$6,139.57				\$6,139.57	19%	\$4,994.77	
	Change Order #2	Leander Construction	\$380.50						\$380.50	
	Change Order #3	Leander Construction	\$545.69						\$545.69	
Page Total										
			\$368,748.92	\$29,983.73	\$4,100.00	\$6,656.95	\$340,740.68		\$327,182.05	
Total of all Pages			\$740,315.76	\$163,396.38	\$16,143.39	\$6,656.95	\$186,196.72	25%	\$553,292.86	

**CONTRACTOR'S RECEIPT FOR PAYMENT
AND WAIVER OF LIEN TO DATE**

The undersigned **Leander Construction, Inc.** has been employed by **City of Farmer City** (Owner) for the construction of the building or buildings known as **Pool Addition** on the following described premises:

605 N. John
Farmer City, IL 61842

situate, lying and being in the City of Farmer City, County of DeWitt and State of Illinois.

The undersigned does hereby acknowledge receipt from the Owner the sum of: *fifteen thousand, three hundred thirty-six dollars and twenty-two cents (\$15,336.22)* and does hereby waive and release any and all lien, or claims, or right to lien, under the statutes of the State of Illinois relating to mechanic's liens, on the above described building or buildings and premises and on any money, bonds, or warrants due or to become due to Contractor from Owner on account of any labor or materials, or both, furnished by the undersigned to or on account of the Contractor or the Owner for the above described premises through the date of the Waiver.

EXECUTED THIS 23rd day of June 2020.

SIGNATURE 
TITLE: Vice President

Subscribed and sworn to before me
this 23rd day of June 2020.


Notary Public



Contractor's Application for Payment No. 5

Application Period	From: 06/23/20	To: 07/21/20	
	Thru: 07/21/20		
To (Owner)	City of Farmer City		
Project	Farmer City Pool Addition		
Owner's Contract No.	1901.3		
From (Contractor)	Leander Construction Inc		
Contract	Via (Engineer) Feltz Grahham		
Contractor's Project No.	18-657		
Engineer's Project No.			


Application for Payment Change Order Summary

Approved Change Orders	Additions	Deductions
1	\$6,139.57	
2	\$280.50	
3	\$545.69	
4	\$12,742.97	
TOTALS	\$19,708.73	
NET CHANGE BY CHANGE ORDERS	\$19,708.73	


1. ORIGINAL CONTRACT PRICE..... \$ 5733,350.00
2. Net change by Change Orders..... \$ 19,708.73
3. Current Contract Price (Line 1 + 2)..... \$ 5753,058.73
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)..... \$ 2291,956.36
5. RETAINAGE:
 - a. 5% N \$290,791.56 Work Completed..... \$ 14,539.58
 - b. 5% N \$1,144.80 Stored Material..... \$ 57.24
 - c. Total Retainage (Line 5a + Line 5b)..... \$ 14,596.82
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$ 2277,339.54
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ 176,886.88
8. AMOUNT DUE THIS APPLICATION..... \$ 100,452.66
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)..... \$ 475,719.19

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge, (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:  Date: 7.21.20

Payment of: \$ 100,452.66
(Line 8 or other - attach explanation of the other amount)

is recommended by:  7-23-20
(Engineer) (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____
(Owner) (Date)

Approved by: _____
Funding Agency (if applicable) (Date)

Progress Estimate - Lump Sum Work

Contractor's Application

Project Information		Application Number		Application Date		Application Number		Application Date	
Farmer City Pool Addition		5		7/21/2020		5		7/21/2020	
Specification	Description	Contractor	Subcontract Value (\$)	From Previous Application (C + D)	Work Completed (E + F)	Materials Presently Stored (on a.c. or D)	Total Completed and Stored to Date (C + D + E)	% Complete (F / B)	Materials to Finish (B - F)
DIV 03 CONCRETE									
Saw Cutting	Saw Cutting - Layout and Marking	Leander Construction	\$8,500.00	\$8,500.00			\$8,500.00	100%	
		Leander Construction	\$3,000.00	\$3,000.00			\$3,000.00	100%	
		Leander Construction	\$49,454.59	\$49,454.59			\$49,454.59	21%	\$19,198.84
		Leander Construction	\$31,387.00	\$1,703.00			\$1,703.00	5%	\$32,684.00
		Leander Construction	\$34,645.00						\$34,645.00
		Leander Construction	\$17,856.48						\$17,856.48
		Leander Construction	\$34,050.00						\$34,050.00
		Leander Construction	\$107,884.35						\$107,884.35
		Solex Rebar Inc	\$17,200.00						\$17,200.00
		Leander Construction	\$12,927.00						\$12,927.00
		Leander Construction	\$14,223.00						\$14,223.00
		Leander Construction	\$3,000.00						\$3,000.00
		Leander Construction	\$3,000.00						\$3,000.00
		Leander Construction	\$1,500.00						\$1,500.00
DIV 07 ROOFING									
Roofing Material	Roofing Material	Advance Commercial	\$12,116.00	\$5,855.00		\$6,261.00	\$12,116.00	100%	
Roofing Labor	Roofing Labor	Advance Commercial	\$17,741.00		\$16,853.95		\$16,853.95	95%	\$87.05
Sheet Metal - Material	Sheet Metal - Material	Advance Commercial	\$5,145.00	\$3,070.00		\$2,075.00	\$5,145.00	100%	
Sheet Metal - Labor	Sheet Metal - Labor	Advance Commercial	\$10,673.00						\$10,673.00
DIV 08 DOORS									
Doors, Frames & Hardware - Labor	Doors, Frames & Hardware - Labor	Leander Construction	\$3,350.00			\$3,350.00	\$3,350.00	100%	
Doors, Frames & Hardware - Materials	Doors, Frames & Hardware - Materials	Leander Construction	\$5,621.95	\$5,512.15		\$109.80	\$5,621.95	100%	
DIV 09 FINISHES									
Interior Balhouse Wall Cut Off - Labor	Interior Balhouse Wall Cut Off - Labor	Leander Construction	\$1,200.00	\$1,200.00			\$1,200.00	100%	
Interior Balhouse Wall Cut Off - Material	Interior Balhouse Wall Cut Off - Material	Leander Construction	\$500.00	\$500.00			\$500.00	100%	
Flooring - Finishing - Materials	Flooring - Finishing - Materials	Leander Construction	\$4,999.95						\$4,999.95
Flooring - Finishing - Labor	Flooring - Finishing - Labor	Leander Construction	\$5,600.00						\$5,600.00
Interior Balhouse Painting - Labor	Interior Balhouse Painting - Labor	Leander Construction	\$2,500.00						\$2,500.00
Interior Balhouse Painting - Material	Interior Balhouse Painting - Material	Leander Construction	\$2,000.00						\$2,000.00
DIV 10 SPECIALTIES									
Pool Depth Storage - Labor	Pool Depth Storage - Labor	Leander Construction	\$2,500.00						\$2,500.00
Pool Depth Storage - Material	Pool Depth Storage - Material	Leander Construction	\$1,500.00						\$1,500.00
Surge Tank - Labor	Surge Tank - Labor	Leander Construction	\$1,910.00		\$13,210.00		\$13,210.00	100%	
Surge Tank - Materials	Surge Tank - Materials	Crest Construction	\$21,400.00		\$21,400.00		\$21,400.00	100%	
DIV 23 PLUMBING									
French Drain - Labor	French Drain - Labor	Leander Construction	\$5,358.84						\$5,358.84
French Drain - Material	French Drain - Material	Leander Construction	\$4,973.15						\$4,973.15
Change Order #1	Change Order #1	Leander Construction	\$6,159.57			\$1,144.80	\$1,144.80	19%	\$1,994.77
Change Order #2	Change Order #2	Leander Construction	\$280.50						\$280.50
Change Order #3	Change Order #3	Leander Construction	\$515.69		\$515.69		\$515.69	100%	
Change Order #4	Change Order #4	Leander Construction	\$12,742.97		\$12,742.97		\$12,742.97	100%	
Page Total			\$381,491.89	\$39,595.88	\$77,448.41	\$1,144.80	\$118,189.09	39%	\$263,302.80
Total of all Pages			\$753,058.73	\$185,051.92	\$105,739.64	\$1,144.80	\$291,936.36		\$461,122.38

**CONTRACTOR'S RECEIPT FOR PAYMENT
AND WAIVER OF LIEN TO DATE**

The undersigned **Leander Construction, Inc.** has been employed by **City of Farmer City** (Owner) for the construction of the building or buildings known as **Pool Addition** on the following described premises:

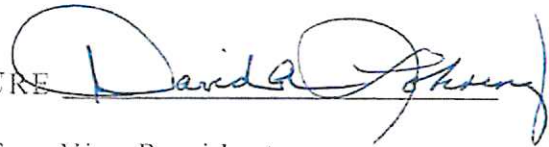
605 N. John
Farmer City, IL 61842

situate, lying and being in the City of Farmer City, County of DeWitt and State of Illinois.

The undersigned does hereby acknowledge receipt from the Owner the sum of: *one hundred thousand, four hundred fifty-two dollars and sixty-six cents* (\$100,452.66) and does hereby waive and release any and all lien, or claims, or right to lien, under the statutes of the State of Illinois relating to mechanic's liens, on the above described building or buildings and premises and on any money, bonds, or warrants due or to become due to Contractor from Owner on account of any labor or materials, or both, furnished by the undersigned to or on account of the Contractor or the Owner for the above described premises through the date of the Waiver.

EXECUTED THIS 22nd day of July 2020.

SIGNATURE



TITLE: Vice President

Subscribed and sworn to before me
this 22nd day of July 2020.


Notary Public



TAX INCREMENT FINANCING ASSISTANCE APPLICATION

Note that applications must be reviewed and approved before the project begins. Any costs incurred before the project is approved are not eligible for TIF funds. Also, if there is a significant change in the scope of the project after the application has been approved, the applicant must reapply with the scope of the new project.)

Applicant Information

Applicant name Richard D. Koch

Business name KO CUSTOMS & AUTOMOTIVE

Mailing address 405 Depot Rd. Farmer City IL. 61842

Applicant phone number 309-928-3600 ^{Cell} number 309-222-5254 ^{Fax} number 309-222-5254

E-mail address Koch_SILE@yahoo.com

Grant recipient's name Richard D. Koch

Grant recipient's Social Security number OR Federal employer identification number (FEIN) 85-1348650

Type of business entity
 individual corporation
 partnership other

Building information (please attach a copy of the deed to the property)

Building name KO CUSTOMS & AUTOMOTIVE

Building address 405 Depot Rd. Farmer City IL. 61842

How is the title to the property held?
 individual corporation land trust
 partnership limited liability company other

Same as grantee? yes no

Name(s) of property owner(s) Richard D. Koch Betty L. Koch

(NOTE: All beneficial owners of a land trust, members of a limited liability company and partners in a partnership must be listed.)

Owner(s) telephonenumber 309-222-5254 , 217-621-5544

Property information

Property index number(s) 05-28101-010

Project information

Current use(s): ~~Heavy All Ate Storage~~
AUTOMOTIVE ALL DETAIL REPAIR SHOP

General project description:
PAINTING OF BUILDING
DRIVE WAY REDONE

Project financing
___ bank ___ private other None

Bank name _____

Bank address _____

Bank contact _____

Contact's telephone number _____

Escrow agent (if applicable) _____

Escrow institution _____

Escrow institution's address _____

Escrow agent's telephone number _____

Received (date) 7-2-20

Applicant's signature Richard D. Koch

TRENCHING
EXCAVATING
CONCRETE CONSTRUCTION
GENERAL CONSTRUCTION
FOUNDATIONS
DEMOLITIONS

TED REYNOLDS, JR
REYNOLDS EXCAVATING
610 WEST CLINTON
FARMER CITY, ILLINOIS 61842
217-377-4461

PROPOSAL

SUBMITTED TO <i>K & Customs & Autom.</i> <i>Rick Koch</i>		PHONE <i>304 222 5254</i>	DATE <i>July 2020</i>
ADDRESS <i>405 Depot Rd</i> <i>FARMER CITY IL</i>		JOB NAME <i>NEW SHOP</i>	
DATE OF PLANS		JOB LOCATION <i>Depot Rd.</i>	
		JOB PHONE	

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR

<i>MACHINE, LABOR, 30 yd Rolloff</i>	
<i>Misc Cleanup</i>	<i>1200.00</i>
<i>1681 sq ft Concrete Flatwork, Walks, Drive</i>	
<i>4" Concrete, w/ Fiber mesh Reinforce, Broom Finish</i>	<i>10,800.00</i>
<i>1 Commercial Door w/ Window</i>	
<i>LABOR MATERIALS to Install</i>	<i>3,050.00</i>
<i>45 TON CAG Road Pak for Driveway</i>	
<i>TRUCKING, Machine, LABOR</i>	<i>5070.00</i>
	<i>20,120.00</i>

WE PROPOSE HEREBY TO FURNISH MATERIAL AND LABOR - COMPLETE IN ACCORDANCE WITH ABOVE SPECIFICATIONS, FOR THE SUM OF

_____ DOLLARS (\$ _____)

PAYMENT TO BE MADE AS FOLLOWS _____

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED. ALL WORK TO BE COMPLETED IN A WORKMAN LIKE MANNER ACCORDING TO STANDARD PRACTICES. ANY ALTERATION OR DEVIATION FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDERS, AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THE ESTIMATE. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENTS OR DELAYS BEYOND OUR CONTROL. OWNER TO CARRY FIRE, TORNADO AND OTHER NECESSARY INSURANCE. OUR WORKERS ARE FULLY COVERED BY WORKMEN'S COMPENSATION INSURANCE.

AUTHORIZED SIGNATURE _____

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN _____ DAYS

ACCEPTANCE OF PROPOSAL — THE ABOVE PRICES, SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.

SIGNATURE _____

SIGNATURE _____

DATE OF ACCEPTANCE _____

HALL'S PAINTING

INVOICE 16245

309-825-5414

812 DeVille St
Bloomington,IL
61704

Attention: KOCA

KO Customs&Automotive
405 depot rd
Farmer City,IL 61842
Date: 7/10/20

Project Title: Paint Exterior of Building
Project Description: Labor and Materials
P.O. Number: 1535
Invoice Number: 16245
Terms: 30 Days

Description	Quantity	Unit Price	Cost
prep and paint entire exterior of building	1	US\$ 5,000	US\$ 5,000
materials	1	US\$ 2,500	US\$ 2,500
	0	US\$ 0	US\$ 0
		Subtotal	US\$ 7,500
	Tax	0.00%	US\$ 0
		Total	US\$ 7,500

7/28/2020

Invoice 1839 Nafziger Designs

Nafziger Designs
403 bunn st
Bloomington, IL
61704

INVOICE

KOCA
405 depot rd
Farmer City,IL
61842

Invoice # 1839

Invoice Date 07/14/2020

Due Date 07/31/2020

Item	Description	Unit Price	Quantity	Amount
	base black	200.00	1.00	200.00
	clear	300.00	1.00	300.00
	clean and prep	150.00	2.00	300.00
	designing	135.00	3.00	405.00
	airbrushing	120.00	8.00	960.00
	airbrush paint	200.00	1.00	200.00
	paint stencil	125.00	1.00	125.00
	tape	40.00	1.00	40.00
NOTES: 4x8 sign black, green, and metallic ghost flames from bottom up KO Customs custom font				
Subtotal				2,530.00
Total				2,530.00
Amount Paid				0.00
Balance Due				\$2,530.00

ORDINANCE NO. 1052

**AN ORDINANCE
APPROVING A REDEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS AND RICHARD KOCH IN CONNECTION
WITH THE REDEVELOPMENT PROJECT AREA**

WHEREAS, Richard Koch (the “**Developer**”), has submitted a proposal to the City of Farmer City, DeWitt County, Illinois (the “**Municipality**”) for redevelopment within the Municipality’s Redevelopment Project Area (the “**Redevelopment Project Area**”); and, thereafter, the Municipality and the Developer have engaged in negotiations related to a Redevelopment Agreement (including all exhibits and attachments in connection therewith, the “**Redevelopment Agreement**”) concerning redevelopment incentives and assistance related to the development and redevelopment of a part of the Redevelopment Project Area.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FARMER CITY, DEWITT COUNTY, ILLINOIS, as follows:

Section 1. Approval. The Redevelopment Agreement, in substantially the form thereof presented before the meeting of the Mayor and City Council at which this ordinance is adopted, shall be and is hereby ratified, confirmed and approved, and the Mayor and City Clerk are authorized to execute and deliver the Redevelopment Agreement for and on behalf of the Municipality with such changes therein as such officers shall approve; and upon the execution thereof by the Municipality and the Developer, the appropriate officers, agents, attorneys, consultants and employees of the Municipality are authorized to take all supplemental actions, including the execution and delivery of related supplemental opinions, certificates, agreements and instruments authorized by the Redevelopment Agreement, not inconsistent with the Redevelopment Agreement, desirable or necessary to implement and otherwise give full effect to the Redevelopment Agreement.

Section 2. Bid Waiver. Pursuant to the Municipality’s power and authority as a unit of local government of the State of Illinois, applicable bidding requirements, if any, related to the Redevelopment Agreement and related documents and related contracts entered into or to be entered into shall be and are hereby waived. The Developer shall be responsible for compliance with applicable law related to the Redevelopment Agreement, including without limitation the Prevailing Wage Act (820 ILCS 130/0.01 et seq.).

Section 3. Effective. This ordinance shall be in full force and effect immediately upon its passage and approval in the manner provided by law.

Upon motion by _____, seconded by _____, adopted at a regular meeting this 3rd day of August 2020, by roll call vote, as follows:

AYES (Names): _____

NAYS (Names): _____

ABSENT (Names): _____

PASSED this 3rd day of August 2020.

City Clerk

APPROVED this 3rd day of August 2020.

Mayor

STATE OF ILLINOIS)
THE COUNTY OF DEWITT) SS.
CITY OF FARMER CITY)

CERTIFICATION OF ORDINANCE

I, Angie Wanserski, do hereby certify that I am the duly selected, qualified and acting City Clerk of the City of Farmer City, DeWitt County, Illinois (the “**Municipality**”), and as such official I am the keeper of the records and files of the Municipality and of its Mayor and City Council (the “**Corporate Authorities**”).

I do further certify that the attached ordinance constitutes a full, true and correct excerpt from the proceedings of the regular meeting of the Municipality’s Corporate Authorities on August 3, 2020 insofar as same relates to the adoption of Ordinance No. 1052, entitled:

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS, AND RICHARD KOCH IN CONNECTION WITH THE
REDEVELOPMENT PROJECT AREA,**

a true, correct and complete copy of which ordinance as adopted at such meeting appears in the minutes of such meeting and is hereto attached. Such ordinance was adopted and approved on the date thereon set forth by not less than an affirmative vote of a majority of the Corporate Authorities and approved by the Mayor on the date indicated thereon.

I do further certify that the deliberations of the Corporate Authorities on the adoption of the above ordinance were taken openly, that the vote on the adoption of such ordinance was taken openly and was preceded by a public recital of the nature of the matter being considered and such other information as would inform the public of the business being conducted, that such meeting was held at a specified time and place convenient to the public, that the agenda for the meeting was duly posted on the Municipality’s website and at the City Hall at least 48 hours before the meeting, that notice of such meeting was duly given to all of the news media requesting such notice, that such meeting was called and held in strict compliance with the provisions of the Illinois Municipal Code, as amended, and that the Corporate Authorities have complied with all of the applicable provisions of such laws and such Code and their procedural rules in the adoption of such ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of the City of Farmer City, DeWitt County, Illinois, this 3rd day of August 2020.

City Clerk

(SEAL)

REDEVELOPMENT AGREEMENT

by and between the

CITY OF FARMER CITY, ILLINOIS

and

RICHARD KOCH

Dated as of August 3, 2020

Document Prepared By:

**Joseph P. Chamley
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
Champaign, IL 61820**

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EXHIBIT LIST

EXHIBIT A	Description of Property
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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of February 3, 2020, but actually executed by each of the parties on the dates set forth beneath each of their respective signatures below, by and between the **City of Farmer City, DeWitt County, Illinois**, an Illinois municipal corporation (the “**City**”), and **Richard Koch** of Farmer City, Illinois (the “**Developer**”). This Agreement shall become effective upon the last of the City and the Developer to so execute and deliver this Agreement to the other (the “**Effective Date**”).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et seq.*), as supplemented and amended (the “**TIF Act**”), the Mayor and City Council of the City (the “**Corporate Authorities**”) adopted certain ordinances (Ordinance Nos. 1018, 1019 and 1020 on December 10, 2018, collectively, the “**TIF Ordinances**”); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinance, the City designated the Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved the related redevelopment plan, as supplemented and amended (the “**Redevelopment Plan**”), including the redevelopment projects described in the Redevelopment Plan (collectively, the “**Redevelopment Projects**”); and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below) upon the Property (as defined below); and

WHEREAS, the Property (as defined below) is within the Redevelopment Project Area; and

WHEREAS, the Developer is unwilling to undertake (or cause to be undertaken) the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

WHEREAS, the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

“**Building**” means the existing building located upon the Property.

“Corporate Authorities” means the Mayor and City Council of the City.

“Eligible Redevelopment Project Costs” means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including costs of renovations, repairs and facade improvements of an existing private building upon the Property and other Project Costs.

“Fund” means, collectively, the “Special Tax Allocation Fund” for the Redevelopment Project Area established under Section 5/11-74.8 of the TIF Act and the TIF Ordinance.

“Incremental Property Taxes” means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Redevelopment Project Area and any adjacent TIF redevelopment project area by taxing districts that is attributable to the increase in the equalized assessed value of the Redevelopment Project Area and any adjacent TIF redevelopment project area over the initial equalized assessed value of the Redevelopment Project Area and any adjacent TIF redevelopment project area as assigned by the DeWitt County Clerk which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the Treasurer for deposit by the Treasurer into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

“Prevailing Wage Act” means the Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work for any “public body” (as therein defined) or on any “public works” (as therein defined) no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is located and to perform certain notice and recordkeeping duties.

“Project” means the renovations, repairs and facade improvements of the Building upon the Property.

“Project Completion Date” means the date which occurs no later than twelve (12) months from and after the date this Agreement is executed by the City.

“Property” means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

“Reimbursement Amounts” means, collectively, amounts to be reimbursed or paid to or as directed by the Developer from the Fund by the City under and pursuant to Section 4.1 of this Agreement.

“Requisition” means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article VI of this Agreement.

“TIF Financing” means financing arrangements to or for the benefit of the Developer

arising out of the TIF Act which pay or reimburse redevelopment project costs in whole or in part.

“**Treasurer**” means the City Treasurer of the City, or his or her designee.

Section 1.2. Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II **REPRESENTATIONS AND WARRANTIES**

Section 2.1. Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **Organization and Standing.** The City is a municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City’s Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors’ or creditors’ rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City’s agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) **Governmental Consents and Approvals.** No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this

Agreement or the performance by the City of its obligations hereunder.

Section 2.2. Representations and Warranties of the Developer. In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

(a) **Organization.** The Developer is a natural person.

(b) **Power and Authority.** The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder and thereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) **Consents and Approvals.** No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 2.3. Disclaimer of Warranties. The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III

**CONDITIONS PRECEDENT TO THE UNDERTAKINGS
ON THE PART OF THE DEVELOPER AND THE CITY**

Section 3.1. Conditions Precedent. The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon each of the following:

- (1) The Developer and owner of the Property shall have entered into a binding, written agreement for Developer to acquire fee simple title to the Property within seventy-five (75) months and a memorandum of said agreement shall have been recorded with the DeWitt County, Illinois Recorder.
- (2) The Developer shall have obtained approval of the Project in accordance with all applicable laws, codes, rules, regulations and ordinances of the City, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use regulations (collectively, the “**City Codes**”), it being understood that the City in its capacity as a municipal corporation has discretion to approve the Project; and
- (3) The Developer shall have substantially completed the Project on or before the Project Completion Date.

Section 3.2. Reasonable Efforts and Notice of Termination. The Developer shall use due diligence to timely satisfy the conditions set forth in Section 3.1 above on or before the Project Completion Date, but if such conditions are not so satisfied or waived by the City, then the City may terminate this Agreement by giving written notice thereof to the Developer. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

**ARTICLE IV
CITY’S COVENANTS AND AGREEMENTS**

Section 4.1. City’s TIF Funded Financial Obligations. The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid by or on behalf of the Developer and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund such amounts (the “**Reimbursement Amounts**”) related to Project upon the Property as follows:

Such Reimbursement Amounts in connection with the Project shall be in an amount up to \$_____ for eligible Redevelopment Project Costs subject to the further terms and limitations of this Agreement.

Section 4.2. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payments of any Reimbursement Amounts to be paid or reimbursed by the City is contrary to law, or in the event that

the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

ARTICLE IV **DEVELOPER'S COVENANTS**

Section 5.1. Commitment to Undertake and Complete Project. The Developer covenants and agrees to undertake and complete the Project on or before the Project Completion Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of any required permits, and any failure on the part of the City to grant or issue any such required permit shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

Section 5.2. Compliance with Agreement and Laws During Project. The Developer shall at all times undertake the Project, including any related activities in connection therewith, in conformance with this Agreement and all applicable City Codes.

Section 5.3. Prevailing Wages. The Developer acknowledges that the Illinois Department of Labor currently takes the position as a matter of its enforcement policy that the TIF financing of the Project under this Agreement does not subject the Project to the Prevailing Wage Act unless the Project also receives funding from another public source. The City makes no representation as to any such application of the Prevailing Wage Act to the Project, and any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent subsequently found to be applicable by any legal authority having jurisdiction, shall not be deemed a "Default" under this Agreement. Notwithstanding the foregoing sentence, the Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

Section 5.4. Continuing Compliance with Laws. The Developer agrees that in the continued use, occupation, operation and maintenance of the Building, the Developer will comply with all applicable federal and state laws, rules, regulations and all applicable City Codes and other ordinances.

Section 5.5. Tax and Related Payment Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general ad valorem real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and

the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Property upon which the Project is undertaken and shall be in full force and effect until December 31, 2039, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 5.4 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of taxes, assessments, charges or other impositions levied or imposed upon Property or any part thereof.

ARTICLE VI

PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

Section 6.1. Payment Procedures. The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts shall be disbursed by the City Manager for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the City Manager of the City as its representative to coordinate the authorization of disbursement of any Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer at any time with respect to Eligible Redevelopment Project Costs incurred and paid but not previously submitted. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ affidavits or lien waivers.

Section 6.2. Approval and Resubmission of Requisitions. The City Manager shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; or (ii) a “Default” under this Agreement as described in Section 6.1 hereof has occurred and is continuing. If a Requisition is disapproved by such City Manager, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 6.3. Time of Payment. Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay each of the applicable Reimbursement Amounts which are approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after the approval of any such applicable Requisition.

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.1. Events of Default. The occurrence of any one or more of the events specified in this Section 6.1 shall constitute a “**Default**” under this Agreement.

By the Developer:

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement or any of the Related Agreements that is false or misleading in any material respect;

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement or any of the Related Agreements;

By the City:

(1) The failure by the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of this Agreement; and

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

Section 7.2. Rights to Cure. The party claiming a Default under Section 6.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as provided above shall constitute a “**Breach**” under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

Section 7.3. Remedies. Upon the occurrence of a Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the

Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of a Breach under this Agreement by the Defaulting Party shall be to institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to proceedings to compel any legal action for specific performance or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of a Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

Section 7.4. Costs, Expenses and Fees. Upon the occurrence of a Default or a Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

ARTICLE VIII

RELEASE, DEFENSE AND INDEMNIFICATION OF CITY

Section 8.1. Declaration of Invalidity. Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any, in the event of a Breach of this Agreement by the City.

Section 8.2. Damage, Injury or Death Resulting from Project. The Developer releases from and covenants and agrees that the City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction or installation of the Project,

except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

Section 8.3. Damage or Injury to Developer and Others. The City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

Section 8.4. No Personal Liability. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Reimbursement Amounts which may become due and payable under the terms of this Agreement.

Section 8.5. City Not Liable for Developer Obligations. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts in the event of a Breach of this Agreement by the City.

Section 8.6. Actions or Obligations of Developer. The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the construction or installation of the Project, **(iii)** the Developer's compliance with the Prevailing Wage Act if, as and when applicable to the Project, and **(iv)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the management, development, redevelopment, construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

Section 8.7. Environmental Covenants. To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from

the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (ii) (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this section, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Section 8.8. Notification of Claims. Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

ARTICLE IX **MISCELLANEOUS PROVISIONS**

Section 9.1 Entire Agreement and Amendments. This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, including in particular the Letter of Understanding, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 9.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 9.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 9.4. Special and Limited Obligation. This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not otherwise.

Section 9.5. Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

Section 9.6. Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 9.7. Cooperation and Further Assurances. The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 9.8. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered or (c) sent by a nationally recognized overnight courier, delivery charge prepaid, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:
RICHARD KOCH
405 Depot Road
Farmer City, IL 61842
Tel:
- (ii) In the case of the City, to:
CITY OF FARMER CITY, ILLINOIS
105 S. Main Street
Farmer City, IL 61842-0049
Attn: City Manager
Tel: (309) 928-3412

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 9.9. Assignment. The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of the City, except that: (i) any assignment of this Agreement as collateral, or (ii) any related sale, assignment or transfer of this Agreement in whole to a legal entity having common ownership with the Developer, may be made without the prior written consent of the City. Except as authorized in this Section above, any other assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable parties thereto.

Section 9.10. Successors in Interest. Subject to Section 9.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

Section 9.11. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 9.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in DeWitt County, Illinois.

Section 9.13. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate on December 31 of the second (2nd) calendar year following the calendar year in which the City executes this Agreement; provided, however, that anything to the contrary notwithstanding, the

Developer's obligations under Section 5.5 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

Section 9.14. Construction of Agreement. This Agreement has been jointly negotiated by the parties. The parties acknowledge that each has either been represented by or has had the opportunity to consult with legal counsel and that accordingly the terms of this Agreement are not to be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement or because that party failed to understand the legal effect of any provision of this Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Date: _____

RICHARD KOCH

By: _____

Date: _____

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

EXHIBIT A

Description of Property

Legal: SEC 28 T21 R5, SUB OF N 52 A W 1/2 NW SEC 28-21-5, LT 3 (EX E 20 & EX W.52)

Address: 405 Depot Road, Farmer City, IL 61842 (located in TIF #3-Forward TIF)

PIN: 05-28-101-010

Ordinance No. 1053

An Ordinance Amending Chapter 110: Alcoholic Liquor

Whereas, the City of Farmer City supports allowing outdoor gardens for certain classes of liquor license holders; and

Whereas, the Illinois Municipal Code (65 ILCS 5/11-5-9) authorizes corporate authorities of any municipality to adopt ordinances to regulate the sale of alcoholic liquor within its city limits; and

NOW, Therefore, be it ordained by the Mayor and City Council of the City of Farmer City as follows, to-wit:

Section 1. Sub - Section 110.16(A)(4) of Section 110.16 entitled “Retailer’s Licenses; Classes and Fees” of Chapter 110, entitled “Alcoholic Liquors”, of the Farmer City Code, is hereby added as set forth below:

§110.16(A)(4)

(A)(4) Class A3 license is an outdoor garden license that may be issued to holders of existing Class A or Class A1 licenses wishing to have an outdoor garden for the sale of all alcohol, for consumption on the premises only.

- (a) For purposes of this section, an outdoor garden is an area generally open and subject to the direct influence of the outdoor environment.
- (b) Only the current holder of a Class A or A1 liquor license under this Chapter 110 may apply for and receive a license to establish and operate an outdoor garden, which must be located immediately adjacent to a totally enclosed permanent structure which is the site of a dram shop lawfully operating under such Class A/A1 liquor license.
- (c) All applicants for a license to operate an outdoor garden shall submit to the Liquor Control commissioner a written application which accurately and completely describes the proposed outdoor garden, its proposed hours of operation and any other pertinent information, along with plans, specifications and drawings which demonstrate that the proposed outdoor garden will comply with the terms and conditions of this Sub-Section 110.16(A)(4) and with any other applicable provisions of local, state and federal law.
- (d) The area of an outdoor garden shall be considered to be a portion of the immediately adjacent dram shop operated by the holder of the underlying Class A/A1 liquor license for purposes of establishing any applicable parking requirements.
- (e) An outdoor garden shall be constructed, maintained and operated in accordance with

the descriptions, conditions, plans, specifications and drawings submitted with the application for the license to construct and operate the outdoor garden.

- (f) Except for emergency entrances and exits which shall be used only in the case of a bona fide emergency, no access to the outdoor garden is allowed except through that portion of the attached totally enclosed permanent structure from which the holder of the underlying Class A/A1 liquor license operates a dram shop.
- (g) An outdoor garden shall be completely enclosed by a fence, wall or other similar barricade having a height of not less than six feet, which shall be constructed in such a fashion as to prevent the passage of glasses, bottles or other similar containers used for the consumption of alcoholic beverages from a location inside the outdoor garden through the fence, wall or other barricade to persons outside of the outdoor garden.
- (h) The outdoor garden premises shall be kept free of litter, cans, bottles and spills at all times. The licensee shall promptly collect and dispose of all litter, trash and other waste materials associated with the service of alcoholic liquor. The licensee shall dispose of this waste in his/her own trash containers only.
- (i) No alcoholic beverages may be served or consumed within an outdoor garden except between the hours of 11 AM and 1 AM Sunday through Saturday.
- (j) An outdoor garden shall not be accessible to any portion of the building to which it is adjacent other than that portion of the building used as a location for a dram shop by the holder of the underlying Class A/A1 liquor license.
- (k) The Liquor Control Commissioner may, as a condition to issuance of a license to operate an outdoor garden, restrict or prohibit the use of sound-amplifying devices within the outdoor garden; provided that such restrictions are noted on the license issued by the Liquor Control Commissioner authorizing the operation of the outdoor garden.
- (l) No outdoor garden shall be occupied by any number of persons in excess of the maximum established by any other applicable law or regulation.
- (m) An outdoor garden is a place of employment within the meaning of the Smoke Free Illinois Act. Accordingly, smoking is prohibited within the confines of an outdoor garden to the same extent as smoking is prohibited within the attached totally enclosed permanent structure from which the licensee operates a dram shop under authority of the qualifying Class A/A1 liquor license.
- (n) A license authorizing the operation of an outdoor garden does not authorize the sale or consumption of alcoholic beverages at any location other than within the confines of the outdoor garden or within the confines of the attached totally enclosed permanent structure from the licensee operating the qualifying Class A/A1 liquor license.

- (o) It is unlawful for any person to transfer, pass or deliver alcoholic liquor from a location within an outdoor garden through or over a fence, wall or other barricade to a person located outside of the outdoor garden.
- (p) The annual license fee for an outdoor garden license shall be \$100. An outdoor garden license shall be subject to expiration and renewal on the same terms as its companion Class A/A1 liquor license.

Section 3. Effective Date. The provisions of this Ordinance shall become effective immediately following its passage, approval and publication as required by law.

Section 4. Conflict. All other ordinances or parts of ordinances which are in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby superseded.

Section 5. Publication. The City Clerk is hereby authorized and directed to cause this Ordinance to be published in pamphlet form immediately after passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMER CITY,
COUNTY OF DEWITT, ILLINOIS THIS 3RD DAY OF AUGUST, 2020.

AYES: ___ NAYES: ___ ABSTAIN: ___ ABSENT: ___

ATTESTED:

Scott Testory, Mayor

Angie Wanserski, City Clerk

LICENSE AGREEMENT

BY AND BETWEEN THE

**CITY OF FARMER CITY, DEWITT COUNTY, ILLINOIS,
as Licensor**

AND

**Farmer City BMX,
as Licensee**

DATED AS OF _____, _____

LICENSE AGREEMENT FOR USE OF PROPERTY

THIS LICENSE AGREEMENT, including any Exhibit and any Addendum hereto as set forth in Section 1 of this instrument (collectively, the “**License**”), is made and entered into as of the Date of License as set forth in Section 1 of this License, by and between the City of Farmer City, Dewitt County, Illinois, as the Licensor (the “**City**”), and the undersigned party or parties set forth in Section 1 of this License, as the Licensee (the “**Licensee**”).

WITNESSETH:

RECITALS:

The City owns or controls and is the governing authority for certain real estate and improvements thereon generally used for public recreation and sporting facilities for the general use of residents of Farmer City.

The Licensee desires to use and occupy certain premises more particularly described in Section 1 of this License as the “**Premises**”, under such terms and conditions as are more particularly set forth in this License, said license being to use the Premises to the exclusion of others at times as detailed herein.

— **NOW, THEREFORE**, for and in consideration of the payments, covenants and agreements on the part of the Licensee to be paid, kept and performed, the City hereby grants to the Licensee a license to use and occupy the premises more particularly described in Section 1 of this License as the “**Premises**” for the “**Term**” as set forth in Section 1 of this License, unless sooner terminated under other terms and provisions contained in this License, subject, however, to all conditions, covenants and restrictions of the Application and the Airport Lease.

— **Section 1. General Definitions; Variable Terms.** Unless the context hereof clearly indicates otherwise, the capitalized words, terms and phrases defined in the Recitals hereto and otherwise herein shall have the same meanings for all purposes of this License. In addition, in all cases the singular includes the plural, the plural includes the singular and a reference to any gender includes both genders and the neuter, as the case may be. Certain further terms for all purposes of this License are defined as follows:

"Date of License": _____

"City Representative": City Manager of the City of Farmer City

"City's Address": _____ 105 S. Main Street
_____ Farmer City, IL 61842-0049
_____ Tel: (309) 928-3412

"License Fee": \$0.00, payable in advance as specified in Section 4 of this License.

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"Licensee": _____, Farmer City BMX, a non-profit organization, engaged in organizing and providing specific recreational opportunities including but not limited to primarily for the residents of Farmer City.

"Licensee's Representative": _____ -Rene
Dunnam

"Licensee's Address": _____ -12853 Royal Road
_____ -Farmer City, _____ IL
61842
_____ Tel: (217-) 778-7293
Fax: () _____

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"Permitted Use" means BMX racing and similar sporting activities and auxiliary activities.

"Premises" means the premises, the boundaries and location of which are outlined in yellow on the Site Plan as set forth on Exhibit I, which are located in the area or in the building structure on the real estate commonly known as South Park.

"Public Liability Insurance Amounts" means not less than \$1,000,000 for bodily injury or death to any number of persons in any one accident and not less than \$250,000 for property damage.

"Term":
The _____ term of this license agreement will be for a period of five (5) years from the date of execution of this agreement and will be renewed automatically for a like period, unless sooner terminated in accordance with Section 7 of this License.

"License Fee": \$0.00, payable in advance as specified in Section 4 of this License.

"Utility Services" means the utility services to be supplied by the City for use in connection with existing utility facilities on or in the Premises under this License, if any, more specifically described

as follows: electricity and water.

~~“Permitted Use”: BMX racing (non-motorized) and similar sporting activities and auxiliary activities.~~

~~“Public Liability Insurance Amounts” means not less than \$1,000,000 for bodily injury or death to any number of persons in any one accident and not less than \$250,000 for property damage.~~

— **Section 2. Condition of Premises.** The Licensee acknowledges having inspected and knowing the condition and state of repair of the Premises. It is expressly understood and agreed by and between the City and the Licensee that the Premises are provided by the City to the Licensee in an “as is”, “where is” condition without any representation or warranty by the City concerning its condition. The Licensee acknowledges that the City has made no representation or warranty concerning the condition and state of repair of the Premises, nor any agreement or promise to alter, improve, adapt, repair, remove, redecorate or clean the Premises unless the same is otherwise expressly stated herein or made a part hereof.

— **Section 3. Authorized Representative.** Whenever under the provisions of this License, the approval of the City or Licensee is required, or the City or the Licensee is required to take some action at the request of the other, such approval or such request shall be given to the City Representative for the City and to the Licensee Representative for the Licensee, and such respective representative shall be authorized to act for and on behalf of such applicable party on any such approval or request made by the other party.

— **Section 4. Payment of License Fee.** All payments of the License Fee as set forth in Section 1 of this License shall be made at the office of the City Representative on or before the date or dates specified in Section 1 of this License.

— **Section 5. Other Terms and Conditions.**

— A. **Operation of a concession stand.** Licensee does ~~not~~ operate a concession stand during BMX events. Licensee is responsible for obtaining any necessary food permits and food handling licenses if required.

— B. **Bathrooms.** If Licensee rents provides portable bathrooms (commonly known as “Porta Potties”), then Licensee is responsible for maintaining, cleaning, securing and removing said portable bathrooms. All members of the public may use City owned bathrooms that are open to the general public, subject to general City regulations and control.

— C. **Storage.** There shall be no placement or usage of any additional storage units or any modifications to the park or park equipment without prior written City approval. The Licensee may repair or replace any current storage unit on the premises and will be responsible for any license or fees that may be charged by DeWitt County. Licensee is solely responsible for the placement, care and protection of any and all equipment placed, stored or used on the property. The City is not responsible for lost, stolen or damaged equipment and supplies stored in or on City facilities. The City does not assume any responsibility, care, custody or control of any third party’s property or equipment brought upon or stored upon City property. Such third party is solely responsible for safety and/or security of any property or equipment brought upon or stored on City

property. Any third party using City property shall adhere to all applicable facility and City ordinances, rules, regulations, policies and procedures.

D. Clean Up. Licensee is responsible for cleaning the track area after each use. The City shall cause garbage cans to be provided at the location. Licensee shall be responsible for assuring that all garbage, equipment and supplies are picked up after every event and practice.

E. Track Maintenance, Repair and Upkeep.

Licensee shall be responsible for the following maintenance, repair and upkeep on an annual basis for their season at their own cost:

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- 1) Maintain, repair and/or replace dirt levels as needed to operate the facility.
- 2) CCut grass inside of the fenced in area & weed whack;
- 3) Water when necessary (City will provide reasonable amounts of water, subject to __ volume used);
- 4) RLicensee shall repair and maintain the portion of the aeration system which is above ground as long as City provides water;
- 5) Repair and maintain the Sstartinger gate and shaft; and tower

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Licensee shall be responsible for the following maintenance, repair and upkeep on an annual basis at their cost:

- 1) Cut grass on the perimeter of the BMX track and outside of the fenced in area directly adjacent to the premises;
- 2) Repair or replace outdoor lighting;
- 3) Repair or replace current fencing on the premises;
- 4) Repair and maintain the portion of the aeration system which is below the ground, only if replaced with a new system during the term of this agreement, as well as the hydrant and backflow connection attached as part of the aeration system—.
- 5) Repair and maintain the parking area for use of Licensee and the general public

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F. Inspection and Notice to City. Licensee and all users of the Premises are solely responsible for determining if the any track is safe and appropriate for any intended use and are expected to inspect any track/facility prior and subsequent to each use to identify any unsafe condition and shall promptly advise the City in writing of any perceived unsafe or dangerous condition.

G. Utilities. The City shall provide the Utility Services specified in Section I of this License for Licensee's use of the existing utility facilities on or in the Premises, but the City does not warrant that any such Utility Services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God or the enemy or government action, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability of the City to obtain fuel or supplies, or any other cause or causes beyond the City's reasonable control. Any such interruption of Utility Services shall never be deemed an eviction (actual or constructive) or a disturbance of the Licensee's use and occupation of the Premises or any part of that Premises and shall never render the City liable to the Licensee for damages or relieve the Licensee from

performance of the Licensee's obligations under this License.

H. Conduct and Use. The Licensee shall use the Premises only for the purposes of conducting thereon the Permitted Use and for incidental purposes related thereto and no other purpose. Licensee may not change Licensee's Permitted Use of the Premises without the City's prior written consent. In connection with any substance, material, waste, pollutant or contaminant, in solid, liquid or gaseous form, including, without limitation, radioactive substances, radon, asbestos, urea formaldehyde, polychlorinated biphenyls, natural or synthetic gas or mixtures thereof, and petroleum or petroleum products (including crude oil and any fractions thereof), or every such thing classified or regulated as "hazardous", "toxic" or "dangerous" under any federal, state or local law, (collectively, a "**Hazardous Material**"), Licensee shall not possess, use, handle, release, dispose of or otherwise engage in any activity involving any Hazardous Material (collectively, a "**Hazardous Material Activity**") on or within the Premises or the building, if any, of which the Premises are a part except in the ordinary course of its Permitted Use and in de minimus amounts without the prior written consent of the City. Licensee shall remove any such Hazardous Material and any related equipment or containers used by the Licensee in connection therewith from the Premises at Licensee's sole cost and expense on or before the expiration or earlier termination of this License. The Licensee further agrees that the Licensee's use of the Premises shall in no way interfere with the use by any other party of any other portion of the building, if any, of which the Premises are a part and that the Licensee will not in any way place any item or material outside the Premises. Licensee shall not use or do any act within, or permit any use of or the doing of any act within, the Premises or the building, if any, of which the Premises are a part, in any manner which may be prohibited by the standard form of any all risk property and casualty insurance policy carried or maintained by the City in connection therewith.

I. Compliance with Applicable Laws. Licensee covenants and agrees that in the use and occupation of the Premises and in the prosecution or conduct of the Permitted Use therein, the Licensee shall comply with all material requirements of all applicable laws, ordinances, orders, regulations and standards of the federal, state and local authorities and with any directive, permit, license or certificate of occupancy issued pursuant thereto by any public officer or officers, including, but not limited to, those relating to occupational safety and health, to Hazardous Material and to the proper undertaking of any Hazardous Material Activity and Licensee shall take all reasonable steps and measures to ensure that all members, participants, guests and invitees and other persons who will be using or occupying the use area shall comply with all laws, rules, regulations ordinances and policies of the City and State of Illinois. Licensee covenants that it will not use or permit to be used any part of the Premises for any dangerous, noxious, or offensive trade or business and will not cause or maintain any nuisance in, at, or on the Premises or the building, if any, of which the Premises are a part. The Licensee shall be solely responsible for obtaining at the Licensee's sole cost and expense any and all licenses and permits required for its use and occupancy of the Premises and its Permitted Use under this License.

J. Access and Inspection. The City and any other governmental agency, together with their respective officers, employees, agents and contractors, may enter upon the Premises at any time for any purposes not inconsistent with the use and occupation of the Premises under this License, including but not limited to the purpose of inspection. In addition, the City shall have the right at any time to show the Premises to any other prospective lessee or licensee and to prepare the Premises for any other use and occupation thereof. The Licensee shall have no claim on account of any such entries or showings against the City, or any other governmental agency or any of their respective

officers, employees, agents or contractors.

K. Maintenance and Surrender of Premises. The Licensee shall, at its own cost and expense, keep the Premises in sanitary, clean and neat order and at the expiration or earlier termination of this License, the Licensee shall surrender the Premises in the same condition as that existing as of the commencement of the Term of this License, reasonable wear and tear excepted. The Licensee shall make no alterations, improvements or other changes to the Premises or any part thereof without the prior written consent of the City.

Section 6. Liability, Indemnification and Insurance.

A. Liability and Indemnification.

(i) The City shall not be responsible for any loss of or damages to the property of the Licensee, or for damages to thea property or injuries to or death of any person of the Licensee's officers, agents, or employees, or others who may be on the Premises at their invitation or the invitation of any one of them, which may arise from or be attributable or incident to the condition or state of repair of the Premises, including latent or patent defects therein.

(ii) To the fullest extent permitted by law, the Licensee agrees to assume all risks of loss of or damage to property of Licensee, including the Premises and the building and improvements, if any, of which the Premises are a part, and injury to or death of persons by reason of or incident to the possession and/or use of the Premises by Licensee, or any of the activities conducted by Licensee under this License. The Licensee expressly waives all claims against the City for any such loss, damage, personal injury or death caused by or occurring as a consequence of such possession and/or use of the Premises by Licensee or the conduct of activities or the performance of responsibilities by Licensee under this License. To the fullest extent permitted by law, the Licensee further agrees to indemnify, save, hold harmless, and defend the City, their respective officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of the Premises by Licensee or any activities conducted or services furnished by Licensee in connection with or pursuant to this License, whether such loss, damages, injuries or death shall be caused by or in any way result from or arise out of any act, omission or negligence of Licensee or any occupant, visitor or user of any portion of the Premises. The agreements contained in the preceding sentence do not extend to claims for damages caused solely by the gross negligence or willful misconduct of the City, their respective officers, agents or employees, without contributory fault on the part of any person, firm or corporation. Anything to the contrary notwithstanding, the provisions of this Section 6.A.(ii) shall not apply to bar any claims, demands or causes of action by the Licensee resulting from any negligent act or omission of the City, their respective officers, agents or employees, unless such claim, demand or cause of action arises out of any activities conducted or services performed by the City on the Premises for and on behalf of the Licensee.

(iii) To the fullest extent permitted by law, the Licensee shall indemnify, hold harmless and hereby waives any claim for contribution against the City, their respective

officers, agents and employees, for any damages, expenses, liabilities, fines, costs, attorneys' fees or penalties resulting from any Hazardous Material Activity or any other acts or omissions of the Licensee, or any of its officers, agents, employees, contractors or the invitees of any of them, which gives rise to any liability, civil or criminal, or responsibility, of the City, under any applicable federal, state or local environmental laws in connection with the Licensee's use and occupation of the Premises under this License. The provisions of this Section 6.B.(iii) shall survive the expiration or earlier termination of this License and the Licensee's obligations hereunder shall apply whenever the City incurs any cost or liability for any of the Licensee's Hazardous Material Activity or other acts or omissions of the types described in this Section 6.A.(iii).

B. Insurance Required of Licensee. During the entire period that this License shall be in effect, the Licensee, at its sole cost and expense, shall carry and maintain:

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(i) Comprehensive general liability insurance, including but not limited to insurance against claims or causes of action for personal injury (including without limitation bodily injury or death) or for property damage arising in connection with the Licensee's use and occupation of the Premises and the building, if any, of which the Premises are a part, including any improvements therein, to provide protection as of the commencement of the Term of this License and at all times during the period that this License shall be in effect, with limits of liability in amounts not less than the respective Public Liability Insurance Amounts as specified in Section 1 of this License. Such insurance shall also include coverage against liability for personal injury (including without limitation bodily injury or death) and for property damage arising out of the acts or omissions of others who may be on the Premises at the invitation of the Licensee, or involving any owned, hired and nonowned automotive or other motor vehicle equipment in connection with any of the Licensee's activities under this License, and any such policies shall not be endorsed to exclude claims arising from athletic participation; and

(ii) Property insurance, including but not limited to insurance protecting and indemnifying the Licensee against any and all damages to and loss of any of the equipment, furnishings, furniture, fixtures, inventory or contents of the Licensee or others which may be located or stored in the Premises (collectively, "**Licensee's Personal Property**"), and all claims and liabilities related thereto, in such form and amounts, if any, as the Licensee shall deem necessary or appropriate.

C. Policy Provisions. All insurance which this License requires the Licensee to carry and maintain or cause to be carried or maintained in Section 6.B.(i) above shall be in such form, for such period of time, and with such insurers having a Best rating of "A" or better and licensed to do business in the State of Illinois as the City shall approve. All policies or certificates issued by any insurer of the comprehensive general liability insurance specified in Section 6.B.(i) will name the City as additional insureds, provide that any losses shall be paid notwithstanding any act, omission or negligence of the Licensee, the City, or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the City of written notice thereof, provide that the insurer shall have no right of subrogation against either the City, and be reasonably satisfactory to the City in all other respects. In no circumstances will the Licensee be entitled to assign to any third party rights of action which the Licensee may have against the City. The types and limits of insurance may be changed from time to

time as determined by the City.

D. Reliance Upon Property Insurance. The Licensee understands that the City, in reliance upon Section 6.B.(ii) above, will not carry insurance of any kind on any of the Licensee's Personal Property which may be located or stored in the Premises and that the City shall not be liable for any damage thereto or loss thereof. The Licensee hereby releases the City from any and all responsibility whatsoever in connection with the Licensee's Personal Property and acknowledges that any location or storage of the Licensee's Personal Property in connection with the Licensee's occupation and use of the Premises shall be solely at the Licensee's risk. In the event of any damage to or loss of any of the Licensee's Personal Property, the Licensee shall look solely to the Licensee's insurance coverage as specified by Section 6.B.(ii) above and shall make no claim whatsoever against the City.

E. Delivery of Policies. The Licensee shall deliver or cause to be delivered to the City on or before the commencement of the Term of this License certificates or policies of insurance evidencing the insurance required by Section 6.B.(i) of this License.

~~Section 7. Termination; Violations.~~ The City may terminate this License and repossess the Premises in the event any of the terms, covenants and conditions of this License have been violated by the Licensee, and all the rights of the Licensee hereunder shall terminate immediately upon the date or time specified in any written notice of such termination given by the City to the Licensee. In the event of any such termination, the Licensee shall surrender possession of and vacate the Premises immediately and deliver possession thereof to the City. The Licensee further agrees to pay to the City upon demand all of the City's costs, charges and expenses, including reasonable fees of attorneys, agents and others retained by the City, paid or incurred by the City in terminating this License prior to the expiration of its Term or in otherwise enforcing any of the Licensee's obligations under this License. No waiver by the City of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Licensee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Licensee. The right of the City to terminate this License as provided for herein shall not be deemed to be exclusive of any other right or remedy as may be conferred by law, including specific performance or any other equitable action.

~~Section 8. Assignment.~~ The Licensee shall not assign this License or any right or interest of the Licensee therein, in whole or in part, without the prior written consent of the City.

~~Section 9. Notices.~~ Any notice or communication to be made or given by the City to the Licensee under this License shall be deemed sufficiently made or given if the same be in writing and sent: (i) by first class mail, postage prepaid; (ii) by courier for next day delivery; (iii) by telephone facsimile telephonically confirmed as actually received; or (iv) personally delivered, in each case to the attention of the Licensee's Representative at the Premises or at the Licensee's Address as set forth in Section 1 of this License (or such other address as the Licensee shall hereafter designate by notice to the City). Any notice from the Licensee to the City shall be sufficiently given if sent in any manner as specified above in this Section 9 for notices or communications to be made or given by the City to the attention of the City's Representative at the City's Address as set forth in Section 1 of this License (or such other address as the City shall hereafter designate by notice to the Licensee). The time of making or giving any such notice or communication shall be deemed to be the time when the same is mailed, deposited with a courier, telefaxed or personally delivered as herein

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provided.

~~Section 10.~~ **Section 10. Entire Agreement.** This License constitutes the entire agreement of the City and the Licensee on the subject matter hereof and may not be changed, modified, discharged or extended except by written endorsement duly executed on behalf of the City and the Licensee and attached hereto. The Licensee represents, warrants, covenants and agrees that no representations or warranties shall be binding upon the City unless expressed in writing herein.

DRAFT

IN WITNESS WHEREOF, each of the parties hereto have executed or caused this License to be executed by proper officers duly authorized to execute the same as of the Date of License set forth herein.

LICENSOR:

CITY OF FARMER CITY,
DEWITT COUNTY, ILLINOIS

LICENSEE:

a

By: _____
Scott Testory Kelley
Mayor

By: _____
(Name) _____
(Title) _____

(SEAL)

(SEAL)

ATTEST:

ATTEST:

Sandra Shaw
(Name)
City Clerk

(Title) _____

STATE OF ILLINOIS)
)
COUNTY OF DEWITT) SS.

I, the undersigned, a notary in and for said County and State aforesaid, DO HEREBY CERTIFY, that ~~Scott Testory~~ Scott Kelley, personally known to me to be the Mayor of the City Clerk, Illinois, and ~~Sandra Shaw~~, personally known to me to be the City Clerk of the City of Farmer City, Illinois, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledge that as such Mayor and City Clerk, respectively, they signed and delivered the said instrument of writing as Mayor and as City Clerk of said City of Farmer City, and caused the seal of said City of Farmer City to be affixed thereto, pursuant to the authority given by the City Council of said City of Farmer City, as their free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this ___ day of _____, _____.

Notary Public

STATE OF _____)
)
COUNTY OF _____) SS.

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY, that RENE DUNNAM,

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personally known to me to be the Farmer City BMX _____ President of the non-profit organization ~~corporation~~ who is the Licensee, and BROOKE COOPER

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_____, personally known to me to be the Farmer City BMX _____ Secretary of said non-profit organization ~~corporation~~, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ President and _____ Secretary of said non-profit organization ~~corporation~~, they signed and delivered the said instrument of writing as _____ ~~PP~~ President and _____ Secretary of said non-profit organization ~~corporation~~, and caused the ~~corporate seal of said corporation to be affixed thereto~~, pursuant to authority given by the Board of Directors of said non-profit organization ~~corporation~~, as their free and voluntary act, and as the free and voluntary act and deed of said non-profit organization ~~corporation~~, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this ___ day of _____, _____.

Notary Public

Exhibit 1

Outline Showing the Boundaries and Location of the Premises