

Roadway Construction and Financing Agreement

This **ROADWAY CONSTRUCTION AND FINANCING AGREEMENT**, hereinafter referred to as “**AGREEMENT**”, is made and entered into this ____ day of _____, 2016 by and between the CITY OF AURORA, ILLINOIS, a municipal corporation, (“**CITY**”); and Five H, L.L.C., an Illinois limited liability company, and NGH Farms LLC, an Illinois limited liability company, “**OWNER**”; City and Owner may be referred to herein as “**Party**” or “**Parties.**”

W I T N E S S E T H:

WHEREAS, the City of Aurora regulates the construction, access and usage of roadways, and certain utilities within its jurisdiction as part of its municipal services; and

WHEREAS, the property known as Lincoln Prairie was annexed to the City of Aurora by ordinance O02-161, dated December 10, 2002 and the Parties entered into an Annexation Agreement for said property recorded as Document No. R2003012826, (“**Annexation Agreement**”), and in which Annexation Agreement Section E.2)a “**Heggs/Eola Road/Wikaduke Trail**” set forth the respective obligations of the Parties for Heggs/Eola Road/Wikaduke Trail and Route 30 roadway improvements, rights of way dedication and cost sharing; and

WHEREAS, the Illinois Department of Transportation (IDOT) now has funding available to make intersection improvements at the existing intersection of Heggs Road and Rt 30; and

WHEREAS, CITY desires, for public safety purposes, to immediately have a 3-Lane Roadway Section constructed to connect and re-align Eola Road to U.S. Route 30 with a signalized intersection at that connecting point, closing off from vehicle traffic the remainder of Heggs Road in that vicinity, together with corresponding roadway improvements to Route 30, all as depicted on Exhibit “**A**” attached hereto. All of the improvements as described and depicted in Exhibit “**A**” shall be referred to herein as the “**Roadway Project**”; and

WHEREAS, CITY and OWNER acknowledge that the Annexation Agreement previously approved between the Parties provides that, in the future, this 3-Lane Roadway extension of Eola Road to Route 30 shall become a 5-Lane Roadway Section which shall include, but not be limited to, curb and gutter, street lights in the median, storm sewer, sidewalk and a multi-use path. These improvements are in addition to this Roadway Project, and the Parties agree that these improvements shall be installed in the future by yet unknown developer(s) fully in accord with the provisions of the Annexation Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, CITY and OWNER agree as follows:

Improvement Provisions

1. The preambles hereto and the foregoing statements and recitations are a material part hereof and incorporated herein by reference, and the parties hereto acknowledge their correctness as to the matters and circumstances therein referred to.
2. OWNER hereby agrees to dedicate 100 ft. of right of way along with a 120 ft. flare at Route 30 for the construction of the Eola Road extension and a 60 ft. dedication from the centerline of Route 30, which is consistent with the Annexation Agreement and depicted in Exhibit "A". CITY shall prepare the dedication plats at no charge to the OWNER for OWNER's signature and OWNER agrees to allow access to the property to prepare said plats. CITY agrees to allow OWNER, its tenants and assigns the right, at no charge to continue the agricultural use of any dedicated right of way until such time as the actual construction of the Roadway Project begins. City shall endeavor to provide twelve (12) months notice that the Roadway Project will begin in advance thereof.
3. Upon receipt of State funds after execution of an agreement with IDOT for funding, CITY hereby agrees to construct the Roadway Project within the 100 ft Eola Road right of way as depicted in Exhibit "A", which shall consist of a raised 16 ft grass median, a thru lane in each direction and gravel shoulders. CITY shall construct a signalized intersection and road improvements at Route 30 and Eola Road at no cost to OWNER, its successors or assigns.
4. The Parties acknowledge that the current IDOT funding is not sufficient to construct the entire Roadway Project, therefore CITY agrees to pay for the remaining costs and OWNER agrees that upon completion of the Roadway Project described herein, CITY's 40% cost obligation for a full 5 lane roadway section for Eola Road per the Annexation Agreement will be completely fulfilled.
5. If a funding agreement between IDOT and CITY is not executed, or should the IDOT funding source otherwise not be available to CITY, OWNER agrees that CITY shall have no obligation to complete the Roadway Project, and all roadway improvements per the Annexation Agreement will remain in effect for both Parties.
6. OWNER is obligated per the Annexation Agreement to pay for 30% of the roadway improvement costs along Route 30, the Parties acknowledge that OWNER will have completed that obligation only with respect to the improvements contemplated in this Agreement, therefore OWNER will still have its 30% obligation for the remainder of Route 30 improvements not included in this AGREEMENT.
7. CITY and OWNER agree that the Parties will determine, at the time of the future development of the properties adjacent to the Roadway Project, the

extent of the roadway improvements to be completed at that time or in lieu of the actual improvements, deposit funds, based upon the owners/developers engineers cost estimate, into a deferred revenue account with the CITY. Said funds to be used for the future improvements when the Parties decide that the full Eola Road improvements should be installed. The CITY agrees that the future developer(s) shall be allowed to recapture the street light and storm sewer costs from the opposite side of the road remaining vacant property when said property develops. The recapture cost shall be established by taking the total cost and then dividing by the total centerline distance to establish a cost per lineal foot, which will then be multiplied by 50%.

8. The Parties agree that a future developer shall cause engineering plans for construction of the remaining Eola Road extension improvements set forth in this AGREEMENT to be prepared ("Plans"). Such Plans shall be subject to the reasonable approval of the City Engineer in accordance with written standards for road improvements then in effect in the City.
9. The Parties acknowledge that, at this time, the Roadway Project is at a concept level of design, and the CITY's intention is to provide stormwater management in swales within Route 30 and Eola Road right of way. OWNER agrees, if necessary, to provide a temporary stormwater management easement at location(s) agreed upon by the Parties upon CITY's request. Upon future development of the adjacent properties, the Parties shall determine locations for providing permanent stormwater management for the roadway improvements.
10. CITY and OWNER acknowledge that all estimated amounts are the engineer's best estimates of the costs for said improvements.
11. CITY agrees that OWNER, or any of its/their successors or assigns, who own property adjacent to the Eola Road extension portion of this Project shall not at any time be required to pay any of the costs and expenses for the construction or maintenance of the 3-lane roadway section of the Eola Road extension and that no recapture fees will be charged to such parties for said construction or maintenance.
12. OWNER agrees to grant, free of charge, any reasonably necessary temporary construction easements and permanent rights of way for the construction of the Roadway Project upon request by CITY.
13. The CITY agrees to reimburse the OWNER legal fees not to exceed three thousand and five hundred dollars (\$3,500). Said reimbursement to be paid within thirty (30) days after the execution of this Agreement by the Parties.

General Provisions

14. In the event that any section, subsection or paragraph of this AGREEMENT is held to be invalid, the invalidity of such section, subsection or paragraph shall not affect any of the other provisions of this AGREEMENT.

15. Any notice or demand hereunder from any Party hereto to another Party hereto shall be in writing and shall be deemed served if mailed by prepaid registered or certified mail addressed as follows:

If to the City: Mayor of Aurora
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

With copy to: Aurora Corporation Counsel
City of Aurora
5 East Downer Place
Aurora, Illinois 60507

To Owner: Five H, L.L.C. and NGH Farms LLC
c/o David Hamman
6110 Route 71
Oswego, Illinois 60543

with a copy to: John F. Philipchuck
Dommermuth, Cobine, West, Gensler,
Philipchuck, Corrigan and Bernhard, Ltd.
111 East Jefferson Avenue, Suite 200
Naperville, Illinois 60540

16. Should correspondence to a Party be a notification of violation of any provision of this AGREEMENT, a Party shall have thirty (30) days in which to correct such violation. The thirty-day period shall begin at the time of the mailing of said notice.
17. The Parties hereto agree to cooperate in applying the provisions of this AGREEMENT and to fulfill the intent of the provisions set forth herein.
18. The Parties agree that the Parties or their successors in title may enforce this AGREEMENT in Kane County Circuit Court in an appropriate action at law or in equity, as provided in 65 ILCS 5/11.1-4, as amended, including the right of any of the Parties to seek specific performance of the terms of this AGREEMENT.
19. If the notice in Paragraph 2 is not provided, the City agrees to reimburse the Owner for the value of the turf grass sod grown for sale that is destroyed by the dedication of right of way, roadway construction and drainage improvements. In the event that the City gives the Owner prior notice of construction commencement as provided in Paragraph 2 and the turf grass sod is removed, Owner understands and agrees that any sod areas so removed shall not be replanted without the express consent of the City.

The value of the turf grass sod will be based on maturity of the crop, multiplied by the wholesale market value as follows:

3-6 month maturity - \$0.04 / square foot

6-12 month maturity - \$0.10 / square foot

12+ month maturity - \$0.15 / square foot maximum price

The City shall only be obligated to pay for the turf grass sod damage, one time. In the event Owner or its Lessee replants any areas previously destroyed because the roadway work didn't proceed, no subsequent payments will be required by the City for any further crop damage over the previously paid for areas.

20. City agrees that the execution of this Agreement by the Owner is contingent upon the City approval of an amendment to the Annexation Agreement, reflecting the changes in the construction of the Heggs/Eola Road/Wikaduke and Route 30 roadway improvements.

Executed in Aurora, Illinois.

SIGNED BY OWNER on the 8th day of June, 2016.

Company Name: Five H, L.L.C. an Illinois limited liability company

By: Dave Hamman

Its: Manager

SIGNED BY OWNER on the 8th day of June, 2016.

Company Name: NGH Farms LLC, an Illinois limited liability company

By: Dave Hamman

Its: Manager

SIGNED BY CITY OF AURORA on the ____ day of _____, 2016.

CITY OF AURORA, an Illinois
Municipal Corporation

By: _____
Mayor

Attest: _____
City Clerk