

CITY OF STOUGHTON, 381 E. MAIN STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to approve the license of Outlot 1 CSM 13030 at the end of Eighth Street to Brittany Romine d/b/a "Tiger Lily Seeds" to plant wetland species and harvest the seeds.

Committee Action: Public Works Committee

Fiscal Impact: None.

File Number: R-101-2014

Date Introduced: August 26, 2014

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

WHEREAS, the City owns property at the end of Eighth Street for stormwater management purposes, and

WHEREAS, the Developers of the adjacent Elven Sted have secured an individual to plant wetland vegetation and harvest the seeds, and

WHEREAS, the licensee is responsible for basic mowing maintenance of the parcel, and

WHEREAS, the wetland vegetation will be on display for public viewing from the paved path and adjacent Yahara River, and

WHEREAS, your Public Works Committee met on August 19, 2014 to consider this request and recommends approval, now therefore

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into a license agreement with Brittany Zimmerman to license Outlot 1 of CSM 13030 for the purpose of planting wetland vegetation and harvesting the seeds in exchange for basic mowing maintenance of the property for \$0 annually for 5 years.

Council Action: Adopted Failed Vote _____

Mayoral Action: Accept Veto

Donna Olson, Mayor Date

Council Action: _____ Override Vote _____

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is effective as of the ____th day of _____ 2014, by and between BRITTANY ZIMMERMAN, d/b/a TIGER LILY SEEDS, ("Licensee") and CITY OF STOUGHTON, a Wisconsin municipal corporation ("City").

1. GRANT; TERM

- A. *Premises.* In consideration of the terms and covenants to be performed and observed by Licensee, as hereinafter set forth, City grants to Licensee a license to use Outlot 1 of CSM 13030 on Eighth Street, City of Stoughton, Dane County, Wisconsin (the "Premises") for the purposes and pursuant to the terms described herein.
- B. *Term.* The term of this Agreement shall begin on March 28, 2015 and run through March 27, 2020 unless terminated sooner as provided in this Agreement.
- C. *Removal from Premises.* At the expiration or any termination of this Agreement, Licensee shall leave the Premises in the same condition as at the commencement of the term, normal wear and tear excepted.

2. LICENSEE OBLIGATIONS

- A. *Maintenance.* In exchange for the license to use the Premises, the Licensee shall provide maintenance services that include mowing of the grass around the retention pond, maintaining the planted wetland plants, and general upkeep of the Premises. The Licensee is not responsible for cleaning or dredging the stormwater facility on the Premises or taking any other action to ensure its proper function or operation.

3. USE AND ENTRY

- A. *Use.* Licensee shall use the Premises solely for the purpose of growing wetland plants, the seeds of which will be hand harvested and sold, and for no other use, except with City's prior written approval. No use shall be permitted, or acts done, that will cause cancellation of any insurance policy covering the Premises. Licensee shall not use any chemical treatment unless it is suitable for application in this location and subject to the product application requirements. All areas not planted with wetland plants shall be kept free of weeds and shall be mowed and maintained to a height less than 8 inches.

- B. *Stormwater Facility.* The Licensee's use of the Premises shall not interfere with or alter the proper function or operation of the stormwater facility on the Premises.
- C. *No Interest In Real Property Granted.* This Agreement does not grant to the Licensee any interest in the real property of the Premises, nor does it alter any real property interest City holds in the Premises.
- D. *Laws and Waste.* Licensee shall comply with all applicable laws, ordinances, regulations and/or recorded easements and restrictions affecting the use of the Premises. Licensee shall not commit, or permit to be committed, any waste or nuisance on the Premises. Licensee agrees to comply strictly with all and any rules and requirements of the insurers of the Premises; not to remove any timber, sand, gravel, marl, minerals, or other materials from the Premises without written consent of City; and to conform to all city, county, and state laws, regulations and ordinances that may affect the use of the Premises.
- E. *Signs.* Licensee shall not install or place signs on the Premises without the written consent of City. Signs limiting public access into the area of wetland plantings and public information signs describing the wetland vegetation are anticipated but shall be approved by City.
- F. *Right of Entry.* City retains the full right to access and enter the Premises, and to allow others, including the public, to access and enter the Premises, at any time for any purpose without notice to the Licensee, except that City shall not interfere with nor allow interference with the Licensee's planted wetland vegetation operation.
- G. *No Alterations and Additions.* Licensee may not make any alterations or improvements to the Premises without first obtaining City's written consent. City's decision prohibiting such alterations or improvements shall be final.

4. INSURANCE; INDEMNITIES; DAMAGE AND DESTRUCTION

- A. *Insurance.* During the term of this Agreement or any renewals or extension thereof, Licensee shall, at Licensee's sole expense, keep in full force and effect a policy of general liability insurance with limits of liability coverage of not less than \$500,000 per occurrence, \$1,000,000 general aggregate, and property damage liability insurance in an amount of not less than \$500,000. These policies shall name City as an additional insured.
- B. *Other Insurance Requirements.* Licensee shall carry and pay premiums for workers' compensation insurance and any other kind of insurance that may be required by law in connection with the use of the Premises by Licensee.

- C. *Certificates of Insurance.* Licensee shall with respect to any insurance coverage required in this Agreement, furnish City with certificates of insurance showing such compliance and stating that City will be notified in writing thirty (30) days prior to cancellation, change or non-renewal of insurance. All insurance obtained and maintained by Licensee pursuant to the requirements of this Agreement shall be written with responsible and reputable insurance companies licensed to do business in the State of Wisconsin.
- D. *Licensee's Loss and Damage.* Licensee shall be solely responsible for carrying personal property insurance sufficient to cover loss of all its personal property located on the Premises. City shall not be liable for any damage to or loss of property of Licensee or others located on the Premises. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, gas, electricity, water, rain, snow, Licensee's operations, or leaks from any part of the Premises caused by Licensee's use of the Premises.
- E. *Indemnification.* Licensee agrees to indemnify City and to save City harmless from and against any and all claims, losses, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises related to Licensee's use of the Premises or caused by Licensee's activities and the activities of Licensee's employees, agents, guests and invitees. In case City shall, without fault on its part, be made a party to any litigation commenced by or against Licensee, then Licensee shall protect and hold City harmless and shall pay all costs, expenses, and reasonable attorneys' fees incurred or paid by City in connection with such claim or litigation.

5. ASSIGNMENT

- A. *Assignment.* Licensee shall not voluntarily or by operation of law assign or transfer this Agreement except with advance written permission and consent of City (references elsewhere herein to assignees notwithstanding), which consent may be withheld for any reason at City's sole discretion. Any such assignment or transfer of the Premises by Licensee pursuant to this Agreement, even with the approval of City, shall not relieve Licensee from its primary liability under this Agreement.

6. DEFAULT

- A. *Licensee's Default.* The occurrence of any of the following shall constitute an Event of Default by Licensee:

- (1) **Other Obligations.** Licensee fails or refuses to keep and perform any of the other terms, covenants, or conditions herein required of Licensee, and such default is not cured within thirty (30) days after City gives Licensee written notice of such default.
 - (2) **Abandonment.** Licensee's failure to use the Premises for twenty (20) consecutive calendar days may, at the option of City, be deemed an abandonment of the license.
 - (3) **Damages.** Licensee intentionally, willfully or maliciously damages the Premises.
 - (4) **Going Concern or Assignment.** Licensee shall cease doing business as a going concern or make an assignment for the benefit of creditors.
 - (5) **Bankruptcy.** Licensee shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator shall be appointed of it or of all or a substantial part of its assets.
- B. *Remedies.* Following an Event of Default by Licensee, City, in addition to any other rights or remedies it may have, shall have the immediate right to terminate this Agreement and remove all persons and property from the Premises. All rights and remedies of City shall be cumulative and none shall exclude any other right or remedy allowed by law; rights and remedies may be exercised and enforced concurrently and whenever and as often as necessary.
- C. *Expenses and Fees.* Upon any Event of Default, in addition to any other rights herein stated, City shall be entitled to recover from Licensee City's costs, expenses and reasonable attorneys' fees incurred in exercising City's rights hereunder.
- D. *City's Default.* City shall not be deemed to be in default with respect to any of the terms, covenants or conditions of this Agreement unless Licensee shall first give to City written notice of such default, and City fails to cure the default within thirty (30) days. Provided, however, if the default cannot reasonably be cured within thirty (30) days, then City shall be deemed to have complied with such notice so long as it has commenced to comply with the notice within the period set forth in the

notice and thereafter is proceeding to cure the default with all possible diligence.

- E. *Condemnation.* If the Premises or such part of the Premises as will render the remainder unusable are appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Agreement shall terminate and expire as of the date of the taking. Upon a condemnation or taking, Licensee shall not be entitled to any part of the award paid for such condemnation and City shall receive the full amount of such award. Licensee expressly waives any rights or claim to any award for the Premises.

7. RIGHT OF CANCELLATION FOR CONVENIENCE

- A. Either party may cancel this Agreement for that party's convenience at any time upon sixty (60) day written notice to the other party.
- B. If City cancels the Agreement for its convenience and Licensee has planted crops on the land, then City and Licensee shall agree upon damages, if any, and City shall be obligated to pay Licensee for said damage to crops or costs incurred by Licensee to prepare the land for planting. If all crops have been removed from the area requested to be released from this Agreement, then Licensee shall not be due any damages. If City and Licensee cannot agree on the amount of damages, then a third party shall be retained to determine the amount of damages. Any costs or fees for a third party shall be shared equally between City and Licensee.

8. MORTGAGES

- A. *Mortgage Subordination.* Upon written request by City, Licensee agrees to subordinate its rights under this Agreement to the liens of any mortgages or security agreements that are presently or may hereafter be placed upon the Premises and to any and all advances to be made thereunder, and all renewals, replacements and extensions thereof, provided that the mortgagee or secured party shall agree in writing to recognize this Agreement and Licensee's rights hereunder in the event of foreclosure if Licensee is not in default.

9. MISCELLANEOUS

- A. *Notice.* Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be given by personal delivery or mailed to the address designated below by registered or certified mail, return receipt requested, with postage prepaid, or such other address as they may designate in writing. Notices shall be deemed effective when

personally delivered or when deposited in the United States mail in the manner described above.

If to City: Rodney Scheel
 City of Stoughton
 381 East Main Street
 Stoughton, WI 53589

If to Licensee: Brittany Zimmerman
 317 W Main Street
 Stoughton, WI 53589

- B. *Binding Effect.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties to this Agreement and their respective successors and permitted assigns.
- C. *Law.* This Agreement shall be governed by and enforced under the laws of the State of Wisconsin.
- D. *Waiver.* The waiver by City or Licensee of the breach of any term or covenant herein shall be limited to the specific instance and shall not be deemed a waiver of the term or covenant. No term or covenant of this Agreement shall be waived by City or Licensee, unless the waiver is in writing.
- E. *Entire Agreement.* This Agreement sets forth all of the covenants, conditions and understandings between City and Licensee concerning the Premises, and supersedes any prior agreements, arrangements or discussions between City and Licensee. The parties acknowledge that they have not relied on the representations of the other party in executing this Agreement. No subsequent change or addition to this Agreement shall be binding upon City or Licensee unless reduced to writing and signed by them.
- F. *Partial Invalidity.* If any provision of this Agreement or any specific application shall be invalid or unenforceable, the remainder of this Agreement, or the application of the provision in other circumstances, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- G. *No Partnership.* City does not in any way become a partner, joint venturer or member of a joint enterprise with Licensee.
- H. *Effect of Sale.* If City sells, transfers or conveys its interest in the Premises, City shall cease to be liable under any covenant, condition or obligation imposed upon it by this Agreement; provided, however, that any sale, transfer or conveyance shall be subject to this Agreement and that all

of City's covenants and obligations shall be binding upon the subsequent owner or owners and the transferee assumes those obligations in writing.

IN WITNESS WHEREOF, this Agreement has been signed and delivered as of the date first above written.

CITY:
CITY OF STOUGHTON

Date

By _____
Mayor Donna Olson

LICENSEE:
BRITTANY ZIMMERMAN, d/b/a
TIGER LILY SEEDS

Date

By _____
Brittany Zimmerman