

**October 21, 2013**

**To: Mayor Bemrich and City Council**  
**From: David Fierke, City Manager**  
**Subject: Approve Development Agreement  
Kemna Properties, LLC**

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**ACTION: For Vote Monday, October 28, 2013**

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**Brief History**

Kemna Properties, LLC is proposing to demolish their existing buildings at 10 South 25<sup>th</sup> Street and 2504 1<sup>st</sup> Avenue South and to construct new facilities for Kemna Auto, Auto Smart and Valvoline at the NW and NE corners of the intersection of 1<sup>st</sup> Avenue South and South 25<sup>th</sup> Street. A total investment of \$5,000,000 will be made into the sites.

Concurrently with this project, the City will begin Phase I of the storm sewer project along 1<sup>st</sup> Avenue South.

**Analysis of Issue**

As part of the storm sewer project, the City will need to acquire property through fee title, permanent and temporary easements from Kemna Properties, Llc, which is valued at approximately \$120,000. In addition, the City encourages redevelopment of existing brownfield and greyfield sites in order to promote infill development. As part of the redevelopment of these sites, Kemna will incur costs for environmental assessment/clean-up, demolition and site preparation, at an estimated cost of \$240,000. In the past, the City has provided assistance for these additional costs to developers who choose a brownfield or greyfield site over a greenfield site.

**Budget Impact**

\$120,000 would be paid to Kemna for the acquisition of property for the storm sewer project out of the project construction fund. In addition, the remaining \$240,000 would be paid out over 3 years using the increment produced from the project. It is estimated the project will generate approximately \$111,000 annually in increment.

**Strategic Plan Impact**

Policy C.1.5: The rehabilitation, reuse, or removal of currently unused or underutilized structures, sites and infrastructure shall be accomplished.

Policy C.1.7: Economic development efforts shall protect, enhance and encourage a high quality of life, image and cultural amenities as critical factors in business retention, recruitment and economic growth.

Policy D.4.2: Advanced planning for all infrastructure facilities shall be supported and routinely updated. Facilities benefited by advanced planning shall include, at minimum, schools, health care, residential areas, roads, water, sewer, storm water management, parks, recreation and greenways.

**Existing Plan Impact**

Consistent with the City's Envision 2030 Plan.

**Subcommittee or Commission Review / Recommendation**

None

**Staff Conclusions / Recommendations**

Staff recommends approval of the attached agreement with Kemna Properties, LLC.

**Alternatives**

The only alternative would be to not approve the agreement, which would prohibit the City from using tax increment financing to assist with this project.

**Implementation and Accountability**

If approved, the agreement will be executed.

Signed



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Vickie Reeck  
Community Development Manager

Approved

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David R. Fierke, City Manager

RESOLUTION \_\_\_\_\_

Approving Development Agreement with Kemna Properties, LLC, Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Fort Dodge, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Center City and Industrial Park Urban Renewal Areas (the "Urban Renewal Areas"); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Areas pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Areas; and

WHEREAS, an agreement (the "Agreement") between the City and Kemna Properties, LLC (the "Developers") has been prepared, pursuant to which the Developers would undertake the acquisition of property in the Urban Renewal Areas, the demolition of existing structures and the remediation of environmental issues on such property, and the preparation of such property for future development (collectively hereinafter the "Kemna Project"), and the City would provide annual appropriation tax increment payments in a total amount not exceeding \$240,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on October 28, 2013, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa ("Chapter 15A") declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Fort Dodge, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Kemna Project will add diversity and generate new opportunities for the Fort Dodge and Iowa economies;

(b) The Kemna Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed financial incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Developers.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or

deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "Kemna Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

*Certain real property situated in the City of Fort Dodge, County of Webster, State of Iowa bearing the following Webster County Property Tax Identification Parcel Numbers:*

0721302011; 0721302012; 0721302013; 0721302014; 0721326006; and 0721326007.

Section 5. The City hereby pledges to the payment of the Agreement the Kemna Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Kemna Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Webster County to evidence the continuing pledging of the Kemna Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this 28th day of October, 2013.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Other: \_\_\_\_\_

CITY OF FORT DODGE, IOWA

\_\_\_\_\_  
Matt Bemrich, Mayor

Attest:

\_\_\_\_\_  
Jeff Nemmers, City Clerk

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Fort Dodge, Iowa (the “City”) and Kemna Properties, LLC, (the “Company”) as of the \_\_\_ day of \_\_\_\_\_, 2013 (the “Commencement Date”).

WHEREAS, the City has established the Center City and Industrial Park Urban Renewal Areas (the “Urban Renewal Areas”), and has adopted a tax increment ordinance for the Urban Renewal Areas; and

WHEREAS, the Company owns certain real property which is situated in the City and lies within the Urban Renewal Areas and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Company has proposed to undertake the demolition of existing structures and the remediation of environmental issues (the “Private Project”) on the Property; and

WHEREAS, the City has undertaken the East Region Storm Sewer Infrastructure Project (the “Storm Sewer Project”), which will, in part serve the Property; and

WHEREAS, the City has proposed to acquire certain easement rights from the Company in connection with the Storm Sewer Project; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in defraying the costs of carrying out the Private Project; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

### **A. Company’ Covenants**

**1. Private Project.** The Company agrees to complete the Private Project on the Property and to subsequently promote the maintenance, development and highest and best use of the Property throughout the Term, as hereinafter defined. The Company has submitted a detailed site plan (the “Site Plan”) for the development of the Property to the City which was approved on August 19, 2013. The Company agrees to develop the Property in accordance with the Site Plan and to substantially complete such construction by no later than July 1, 2014. The Company agrees to demonstrate, to the satisfaction of the City, the costs incurred in carrying out the Private Project.

**2. Property Taxes.** The Company agrees to cause timely payment of all property taxes as they come due with respect to the Property throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

**3. Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2014, an amount (the “Company’ Estimate”) equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. The City reserves the right to review and request revisions to each such Company’ Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

Upon request, the City staff shall provide reasonable assistance to the Company in formulating the annual estimates required under this Section A.3.

**4. Easement.** The Company agrees to convey easement rights in the real property described on Exhibit B hereto to the City for the purchase price of \$120,000. The conveyance of the easement rights shall be documented and completed under separate documents to be negotiated and drafted in good faith between the parties hereto,

**5. Remedy.** The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion, until such time as the Company have demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

**B. City’s Obligations**

**1. Payments.** In recognition of the Company’ obligations set out above, the City agrees to make six (6) semiannual economic development tax increment payments (the “Payments”) to the Company in each fiscal year during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$240,000, and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Webster County Treasurer attributable to the taxable valuation of the Property.

It is assumed that a portion of the new valuation from the Private Project will go on the tax rolls as of January 1, 2014. Accordingly, the Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1, 2015 and continuing to, and including, June 1, 2018, or until such earlier date upon which total Payments equal to \$240,000 have been made.

**2. Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the

“Appropriated Amount”) of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company’ Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year’s Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company’ Estimate as called for in Section A.3 above, provided however that no Payment shall be made after June 1, 2018.

**3. Payment Amounts.** Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2016 and on June 1, 2017, the aggregate amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2015), provided, however, that no Payment shall exceed the amount of Incremental Property Tax Revenues received by the City from the Webster County Treasurer attributable to the taxable valuation of the Property.

**4. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Webster County Auditor an amount equal to the most recently obligated Appropriated Amount.

**5. Easement Payment.** The City agrees to make a payment to the Company in the amount of \$120,000 as consideration for the easement rights to be conveyed in accordance with Section A.4 above.

**C. Administrative Provisions**

**1. Amendment and Assignment.** This Agreement may not be amended or assigned by either party without the written consent of the other party. However, the City hereby gives its permission that the Company’ rights to receive the Payments hereunder may be assigned by the Company to a private lender, as security on a credit facility taken with respect to the Private Project and the Infrastructure Project, without further action on the part of the City.

**2. Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**3. Term.** The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on June 1, 2018 or on such earlier date upon which the aggregate sum of Payments made to the Company equals \$240,000.

**4. Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Company have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF FORT DODGE, IOWA

By: \_\_\_\_\_  
Matt Bemrich, Mayor

Attest:

\_\_\_\_\_  
Jeff Nemmers, City Clerk

KEMNA PROPERTIES, LLC

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



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

*Certain real property situated in the City of Fort Dodge, County of Webster, State of Iowa more particularly described follows:*

[Insert Legal Description Here]

**EXHIBIT B**

**LEGAL DESCRIPTION OF EASEMENT PROPERTY**