

**Memorandum
Department**

To: Randall Tweet, City Manager
Subject: P & J Tender Care TIF Agreement Proposal
Date: May 18, 2020



Paquita and James Richardson operate P & J Tender Care at 2201 11th Street as a childcare facility. The Richardsons have asked for assistance in making some needed repairs to the HVAC system and doors at the facility.

City Staff has been in correspondence with the Richardsons in regard to the project. It is estimated that the entire project, including the purchase of the building, will be approximately \$127,000. In response to the Richardson's request for assistance, City Staff proposes an incentive agreement not to exceed \$30,000.

These funds will come from the North 11th Street TIF and the incentive amount will be paid once the Richardsons have submitted documentation supporting the request.

ACCOUNT CODES:	Fund	203	TIF
	Department	312	Economic Development
	Cost Center	801	General Development
	Object Code	54101	Contributions
	Project Code		

VENDOR NUMBER: We do not yet have a vendor number set up for this project.

REQUISITION NUMBER: There is not yet a requisition number for this project.

RECOMMENDATION:

That Council approves the attached development agreement subject to minor attorney modifications; authorize execution of the development agreement by the City Manager; and consider, suspend the rules, and pass the attached ordinance.

Submitted by: Tarah Sipes, Economic Development Manager

Approved by: Randall Tweet, City Manager

**REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ROCK ISLAND
AND P&J TENDER CARE, INC.**

THIS REDEVELOPMENT AGREEMENT (“*Agreement*”) is entered into as of the _____ day of April, 2020 (“*Effective Date*”) by and between the City of Rock Island, Rock Island County, Illinois, a home rule municipality of the State of Illinois (“*City*”), and P&J Tender Care, Inc., an Illinois corporation (the “*Developer*”). The City and the Developer sometimes are referred to individually as a “*Party*” and collectively as the “*Parties*”.

In consideration of the mutual covenants and agreements set forth in this Agreement, the City and the Developer hereby agree as follows:

ARTICLE 1: RECITALS

1.1 The City is engaged in the revitalization of certain properties located along some of its commercial corridors including the property commonly known as 2201 11th Street, identified as parcel number 16-023-000-30 (the “*Subject Property*”).

1.2 The City has the authority pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third Parties for the purpose of achieving these purposes.

1.3 Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the Mayor and City Council of the City (collectively, the “*Corporate Authorities*”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “blighted area”, or a “conservation area” as such terms are defined in the TIF Act.

1.4 To stimulate and induce redevelopment pursuant to the TIF Act, the Corporate Authorities, after giving all required notices, conducting a public hearing and making all findings required by law, on the 24th day of July, 2000, pursuant to Ordinance Nos. 53-00, 54-00 and 55-00 approved a Redevelopment Plan and Project (the “*Redevelopment Plan*”) for an area designated as the Rock Island North 11th Street Redevelopment Project Area (the “*Project Area*”) which Project Area included the Subject Property, and adopted tax increment financing for the payment and financing of “redevelopment project costs” incurred within the Project Area as authorized by the TIF Act.

1.5 The Developer operates a child-care facility at the Subject Property and has submitted a proposal to the City to renovate the interior and exterior of the Subject Property for a total estimated cost of \$126,500 which shall include rehabilitation of the parking lot, rehabilitation of the playground, replacement of the flooring in classrooms, remodeling of private and public restrooms. In addition, the Developer also proposes to replace all gutters, siding, soffits, front windows and update signage as a part of the City’s Façade Improvements Program and, in furtherance of the Redevelopment Plan, replace front and rear doors and central and east HVAC units (collectively, the “*Project*”).

1.6 The Developer has advised the City that it is not economically feasible for the Developer to undertake the Project without financial assistance and the City is prepared to financially assist the Developer in an amount not to exceed \$36,773.00 in order to accomplish the improvements to the Subject Property from funds available from the City's Façade Improvement Program and from Incremental Taxes, as hereinafter defined, available to the City as the result of its adoption of the TIF Act as applicable to the Project Area.

1.7 The City desires the Developer to proceed with the Project in accordance with this Agreement in order to eliminate the blight factors and characteristics found at the Subject Property and provide an important service to the City and, therefore, is prepared to reimburse the Developer for certain eligible costs of the Project, subject to the terms of this Agreement, the TIF Act, the Façade Improvement Program of the City and all other applicable provisions of law.

ARTICLE 2: DEVELOPER'S OBLIGATIONS

2.1 The City's obligation to pay certain eligible redevelopment costs incurred by the Developer in connection with the Project is contingent upon satisfaction of the following by the Developer:

- (a) The Developer has executed into a long-term lease for the Subject Property, subject only to such liens and encumbrances as shall not limit the Developer's ability to construct and complete the Project; and,
- (b) The Developer shall have resurfaced the parking lot, rehabilitated the playground, replaced flooring in four classrooms and remodeled bathrooms; and,
- (c) As a part of the City's Façade Improvement Program, the Developer shall have replaced gutters, soffits, siding, front windows and updated signage for an estimated cost of \$33,655; and,
- (d) As a part of improvements to the building at the Subject Property, the Developer shall undertake the replacement of the front and rear doors and replace the central HVAC unit and the east HVAC unit at an estimated cost of \$29,273.00 which are hereby designated as "TIF Eligible Costs".

2.2 The Project shall be constructed pursuant to and in accordance with the following:

- (a) This Agreement;
- (b) The City's Building Code;
- (c) All other applicable provisions of the Rock Island Code of Ordinances; and,
- (d) All applicable federal, State of Illinois, and all local laws, resolutions, orders rules and regulations.

2.3 Upon execution of this Agreement, the Developer shall commence construction of the Project and shall have completed the Project in accordance with the requirements of Section 2.2 above, on or before August 1, 2020.

ARTICLE 3: CITY'S OBLIGATION'S

3.1 The City has established a Special Tax Allocation Fund (the "*STAF Account*") pursuant to Ordinance No. 54-00 into which the City annually deposits all "Incremental Taxes", as hereinafter defined, derived from the Project Area. For purposes of this Agreement, "Incremental Taxes" shall mean the amount in the STAF Account equal to the amount of ad valorem taxes, if any, paid in respect of the Project Area which amount is attributable to the increase in the equalized assessed value of the Project Area and its improvements over the initial equalized assessed value of the Project Area as of the date of the adoption of Ordinance No. 54-00 adopting tax increment financing pursuant to the TIF Act. The City shall reimburse the Developer for TIF Eligible Costs from the STAF Account in an amount not to exceed \$29,273.00 in accordance with the procedures set forth in Article 4.

3.2 THE CITY'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE STAF ACCOUNT AS HEREINAFTER PROVIDED AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE CITY.

3.3 The City shall reimburse the Developer in accordance with the procedures set forth in Article 4 below, the maximum amount of \$7,500.00 from the Façade Improvement Program Fund, for the improvements to the Subject Property pursuant to the City's Façade Improvement Program upon evidence of that the total costs incurred therefore being an amount not less than \$33,655.00.

ARTICLE 4: PAYMENT OF PROJECT COSTS

In consideration of the improvements to the Subject Property and the construction and completion of the Project in accordance with the requirements of Section 2.2 of this Agreement, so long as no event described in Section 5 hereof shall have occurred and be continuing, the City shall pay a total of \$36,773.00 the costs of the Project from the funds as provided in Article 3 above (the STAF and the Façade Improvement Program Fund), upon verification of the completion of the Project and submission of all paid invoices or invoices for each cost incurred for the Project.

ARTICLE 5: ENFORCEMENT AND REMEDIES

5.1 The Parties may enforce or compel the performance of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance. Notwithstanding the foregoing, the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement other than payments due to the Developer under Article 4 hereof.

5.2 In the event of a breach of this Agreement, the Parties agree that the Party alleged to be in default shall have thirty (30) days after notice of any breach delivered in accordance with Article 8 hereof to correct the same prior to the non-defaulting Party's pursuit of any remedy provided for in Section 5.3; provided, however, that the 30-day period shall be extended, but only

(i) if the alleged default is not reasonably susceptible to being cured within the 30-day period, and (ii) if the defaulting Party has promptly initiated the cure of the default, and (iii) if the defaulting Party diligently and continuously pursues the cure of the breach until its completion. If any Party shall fail to perform any of its obligations under this Agreement, and if the Party affected by the default shall have given written notice of the default to the defaulting Party, and if the defaulting Party shall have failed to cure the default as provided in this Section 5.2, then, except as specifically provided otherwise in the following Sections of this Article 5 and in addition to any and all other remedies that may be available either in law or equity, the Party affected by the default shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be deemed necessary to cure the default. In any event, the defaulting Party hereby agrees to pay and reimburse the Party affected by the default for all costs and expenses reasonably incurred by it in connection with any action taken to cure the default.

5.3 Any of the following events or circumstances shall be an event of default by the Developer with respect to this Agreement:

- (a) If any material representation made by the Developer in this Agreement, or in any certificate; notice, demand to the City; or request made by the City in connection with any of documents, shall prove to be untrue or incorrect in any material respect as of the date made.
- (b) The Developer's default in the performance or breach of any material covenant, warranty, or obligation contained in this Agreement.
- (c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order un-stayed and in effect for a period of 60 consecutive days. There shall be no cure period for this event of default.
- (d) The commencement by the Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by the Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of the Developer or of any substantial part of the Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by the Developer in furtherance of any of the foregoing. There shall be no cure period for this event of default.
- (e) The Developer's failure to pay all permit fees, fines, taxes (including real estate taxes), licenses, water bill or any other amount due and owing to the City.

- (f) The Developer ceases to continue the full operation of its childcare facility at the Subject Property.

5.4 In the event of default by the Developer, the City may:

- (a) Subject to the provisions of this Agreement, in the case of an event of default by the Developer, the City, pursuant to Section 5.3, may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including proceedings to compel specific performance of the Developer of its obligations under this Agreement.
- (b) In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the City, then, and in every such case, the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

ARTICLE 6: MUTUAL UNDERSTANDINGS

6.1 The Developer agrees to indemnify the City, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such persons in connection with or as a result of (i) the Developer's development, construction, maintenance, or use the Project (ii) the Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the City or any of the aforesaid persons in connection with or as a result of: (i) the performance of the City's obligations under this Agreement; or, (ii) the act, omission, negligence or misconduct of the City or any of the aforesaid persons. If the Developer shall commit an event of default and the City should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer, on the City's demand, shall pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

6.2 The Developer shall maintain the Subject Property in reasonably good and clean condition at all times during the construction of the Project by the Developer.

6.3 The Developer acknowledges and agrees that (i) the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Subject Property or the improvements and (ii) the City's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third Party, against violations or damage or injury of any kind at any time. In addition:

- (a) The Developer shall hold harmless the City, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may asserted at any time against any of such Parties in connection with (i) the City's review and approval of any plans or improvements; or, (ii) the City's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the City as a result of a City event of default under this Agreement and claims that the City, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.
- (b) The Developer shall pay all expenses, including legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the claims identified in the first sentence of Subsection (a) above.

6.4 Time is of the essence in the performance of all terms and provisions of this Agreement. However, the time for a Party's performance of any obligation hereunder shall be extended on a day-for-day basis by reason of Force Majeure, as hereinafter provided, and the time for performance of any obligation hereunder the Developer may be extended without having to amend this Agreement. The Parties shall cooperate with one another on an ongoing basis and make every reasonable effort (including, with respect to the City, the convening of meetings and, when necessary, public hearings, within reasonable periods, and the adoption of ordinances) to further the implementation of the provisions of this Agreement and the intentions of the Parties as reflected by those Provisions. Each Party agrees to execute such application and other documents and to otherwise cooperate as may be necessary, proper and appropriate to obtain approvals and authorizations from other government and administrative entities. Whenever a Party is required to obtain the approval or consent of the other Party, or of any of its employees, agents, or attorneys, under the provisions of this Agreement, such approval or consent shall not be unreasonably withheld or delayed.

6.5 Notwithstanding that time is of the essence; provided a party shall not be deemed in material default of this Agreement with respect to any obligations of this Agreement on such Party's part to be performed if such Party fails to timely perform the same and such failure is due in whole or in part to any civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other Party (or the other Party's agents, employees or invitees) or similar causes beyond the reasonable control of such Party ("Force Majeure"). If one of the foregoing events shall occur or either Party shall claim that such an event shall have occurred, the Party to whom such claim is made shall investigate the same and consult with the Party making such claim regarding the same and the Party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

6.6 The Developer may not assign its rights or obligations under this Agreement without the express written consent of the City.

6.7 The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. To the fullest extent permitted by law, the Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin or ancestry in the construction of the Project. Neither the Developer nor any person claiming under or through the Developer shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

ARTICLE 7. TERM

This Agreement shall be in full force and effect upon its execution by the Parties and terminate upon the first to occur: (i) receipt by the Developer of \$36,773.00 (Thirty-Six Thousand Seven Hundred Seventy-Three Dollars); or, (ii) December 31, 2023 (the “Term”).

ARTICLE 8. NOTICES

8.1 All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to either the facsimile telephone number or email address set forth below, when actually received.

Notices and communications to the Developer shall be addressed to, and delivered at, the following addresses:

P&J Tender Care, Inc.
2201 11th Street
Rock Island, Illinois 61201
Attn: Paquita and James Richardson

Notices and communications to the City shall be addressed to and delivered at these addresses:

City of Rock Island
1528 Third Avenue
Rock Island, Illinois 61201
Attn: City Manager

With a copy to:

Kathleen Field Orr
2504 Hickory Road
Suite 205
Homewood, Illinois 60430

By notice complying with the requirements of this Section, each Party shall have the right to change the address or addressee, or both, for all future notices and communications to such Party, but no notice of a change of address or addressee shall be effective until actually received.

8.2 No modification, addition, deletion, revision, alteration, amendment or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the City and the Developer. No term or condition of this Agreement shall be deemed waived by any Party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such Party. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

8.3 No claim as a third Party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the City or the Developer.

8.4 This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

8.5 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at Rock Island, Illinois.

City of Rock Island, an Illinois municipal corporation

By: _____
City Manager

Attest:

City Clerk

P&J Tender Care, Inc., an Illinois corporation

By: James Richardson

Attest:

Paquita Richardson

**AN ORDINANCE OF THE CITY OF ROCK ISLAND, ROCK ISLAND COUNTY, ILLINOIS,
APPROVING A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
ROCK ISLAND AND P&J TENDER CARE, INC.**

WHEREAS, the City of Rock Island, Rock Island County, Illinois (the “*City*”) is a home-rule community pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and, as such, has authority to exercise any power and perform any function pertaining to its government and affairs; and,

WHEREAS, the City is engaged in the revitalization of certain commercial properties located along some of the City’s commercial corridors including the property commonly known as 2201 11th Street (the “*Subject Property*”); and,

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the Mayor and City Council of the City (collectively, the “*Corporate Authorities*”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “blighted area”, or a “conservation area” as such terms are defined in the TIF Act; and,

WHEREAS, to stimulate and induce redevelopment pursuant to the TIF Act, the Corporate Authorities, after giving all required notices, conducting a public hearing and making all findings required by law, on the 24th day of July, 2000, pursuant to Ordinance Nos. 53-00, 54-00 and 55-00 approved a Redevelopment Plan and Project (the “*Redevelopment Plan*”) for an area designated as the North 11th Street Redevelopment Project Area (the “*Project Area*”) which Project Area included the Subject Property, and adopted tax increment financing for the payment

and financing of “redevelopment project costs” incurred within the Project Area as authorized by the TIF Act; and,

WHEREAS, P&J Tender Care, Inc., an Illinois corporation (the “*Developer*”) operates a child-care facility and has submitted a proposal to the City to make substantial improvements to both the exterior and the interior of the Subject Property (the “*Project*”); and,

WHEREAS, the Developer has advised the City that it is not economically feasible for the Developer to undertake the Project without financial assistance and the City is prepared to financially assist the Developer subject to certain terms and conditions as set out in the Redevelopment Agreement attached hereto and made a part hereof.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Rock Island, Rock Island County, Illinois, as follows:

Section 1. That the Redevelopment Agreement by and between the City of Rock Island, Rock Island County, Illinois and P&J Tender Care, Inc., attached hereto and made a part hereof, is hereby approved and the Mayor, City Manager and City Clerk are hereby authorized to execute and deliver and undertake any and all actions as may be required to implement its terms.

Section 2. This Ordinance shall be in full force and effect immediately upon its passage by the Mayor and City Council and approval as provided by law.

PASSED this ____ day of _____, 2020.

APPROVED:

Mayor

AYES: _____

NAYS: _____

ABSENT: _____

Attest:

City Clerk