

RESOLUTION 11-84 Adopted August 22, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN A LEASE AGREEMENT WITH MONSANTO, INC. FOR PURPOSES OF PAINTING THE DEKALB FLYING EAR OF CORN SYMBOL ON THE CITY WATER TOWER ON DRESSER ROAD.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute a Lease Agreement with Monsanto, Incorporated, to lease space on the City water tower on Dresser Road for purposes of Monsanto painting the trademarked "Flying Ear of Corn" on two sides of said water tower, a copy of which is attached hereto and made a part thereof as Exhibit "A".

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 22nd day of August, 2011 and approved by me a Mayor on the same day. Adopted on the Consent Agenda by unanimous roll call vote: 8-0. Aye: Jacobson, Teresinski, Lash, Gallagher, Naylor, Baker, O' Leary, Povlsen.

ATTEST:



STEVE KAPITAN, City Clerk



KRIS POVlsen, Mayor



AGREEMENT BETWEEN THE CITY OF DEKALB AND OSBORN-BARR FOR PLACEMENT OF TWO DEKALB AG LOGOS ON THE CITY'S NORTH WATER TOWER

THIS AGREEMENT, made this 22ND day of August, 2011, between the City of DeKalb, a municipal corporation, of DeKalb, Illinois ("DEKALB") and Osborn Barr, a _____, of St. Louis, Missouri ("OSBORN BARR"), as agent for Monsanto Company ("MONSANTO").

WHEREAS MONSANTO, desires to place two DEKALB AG logos on DEKALB'S North Water Tower to commemorate the 100 year anniversary of DEKALB AG.

WHEREAS, DEKALB desires to permit MONSANTO to place two DEKALB AG logos on its North Water Tower to commemorate the 100 year anniversary of DEKALB AG

NOW THEREFORE, DEKALB and MONSANTO, for good and valuable consideration, agree as follows:

1. DEKALB agrees to allow MOSANTO and its agents to install two DEKALB AG "flying ear" logos, each approximately 20 feet high by 27 feet wide, on the north and south side of DEKALB'S North Water Tower.
2. MONSANTO shall have the right to install the two logos commencing on September 1, 2011 and shall remove the logos on or before December 31, 2012.
3. MONSANTO agrees to pay the City of DeKalb \$2,000 per month for the 16 month term of this Agreement.
4. MONSANTO further agrees to pay all costs associated with the creation, placement and removal of the DEKALB AG "flying ear" logos.
5. MONSANTO agrees to repair any damage to the water tower or surrounding area that may occur due to the placement or removal of the logos.
6. Should DEKALB note any problems or defects with the DEKALB AG "flying ear" logos over the term of this Agreement (i.e.: logo adhesion loss, fading, cracking etc.), the DEKALB will notify MONSANTO in writing identifying the problem and MONSANTO agrees to correct the problem promptly and in a timely manner. If the problem requires extensive costs to correct or a workable solution to correct the problem cannot be found, MONSANTO agrees to remove the said logos at their cost before the end of the term of this Agreement, at which time this Agreement will terminate without further notice to either party.
7. DEKALB reserves the right to remove the DEKALB AG "flying ear" logos at any time if DEKALB determines that the logos pose an immediate threat to public

safety and MONSANTO will pay the costs associated with removing the said logos.

8. MONSANTO or its agents shall provide the specifications of the DEKALB AG “flying ear” logos to DEKALB for review prior to placing the logos on the water tower, including without limiting, picture/drawing of the logo, logo material type and thickness, approximate weight of each logo, type/Method of adhesion, method of placement onto water tower and name and number of contractor responsible for placement, method of removal of logos, please be advised that the logos must be designed and adhered to the tower in a manner which will withstand a variety of weather conditions including extreme heat, cold, rain and wind.

9. General Terms.

a. **Oral Amendments.** No covenant, promise, or undertaking shall be effective to modify or amend this Agreement or to waive or relinquish any right provided by the terms and provisions hereof, unless said covenant, promise, or undertaking shall be reduced to a writing which is duly executed by both parties.

b. **Paragraph Headings.** The paragraph captions contained in this Agreement are for convenience only and shall not limit, amplify or otherwise constitute a part of this Agreement nor be considered in the construction or interpretation of any provision hereof.

c. **Severability and Court Amendment.** If any provision of this Agreement shall be held to be invalid or unenforceable by reason of the operation of any applicable law, or by reason of the interpretation placed hereon by any court or other governmental body, (i) this Agreement shall be construed as not containing such provision and a substitute provision shall be inserted therefor by such court or other governmental body which effectuates to the maximum extent permitted by law the intent of this Agreement, and (ii) any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

d. **No Waiver.** The waiver of any term or provision of this Agreement shall not constitute a waiver of any other term or provision of this Agreement nor shall the right to require any enforcement of any term or provision of this Agreement be permanently waived, if a continuing breach of any such term or provision arises.

e. **Binding on Assigns.** Except as otherwise limited, all terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, successors and assigns.

d. **Litigation.** If any action at law or in equity, including an action for declaratory relief, is brought by a party hereto in connection with this Agreement

or a breach hereof, the prevailing party in any final judgment or the non-dismissed party in the event of a dismissal shall be entitled to the full amount of all reasonable expenses, including all court costs and actual attorneys' fees paid or incurred in good faith, incurred in connection with such action.

e. **Indemnity.** MONSANTO agrees to indemnify, hold harmless and defend DEKALB against (a) any and all liability, loss, cost and damage ("Loss") and (b) reasonable attorneys' fees and expenses, court costs and all other reasonable out-of-pocket expenses ("Expenses") incurred by DEKALB, to the extent caused by Monsanto or its agents in connection with or arising out of: a third party claim relating to (i) the installation and operation of the DEKALB AG "flying ear" logos on the North Water Tower and (ii) any material breach by MONSANTO of, or any other failure of MONSANTO to perform, any of its obligations under this Agreement or under any instrument contemplated hereby. MONSANTO shall have the right to assume and control the defense or settlement of any claim, suit, action or proceeding in respect of which indemnity may be sought hereunder; provided, that DEKALB may nonetheless participate in the defense of any such claim, suit, action or proceeding at its own expense.- Provided further that DEKALB shall provide prompt notice and cooperation in the defense of any such claim.

f. **Counterparts; Execution via Facsimile.** This Agreement may be executed in multiple counterparts, each of which shall be deemed enforceable without production of the others. Execution and exchange of documents via facsimile, against acknowledgement of receipt thereof, shall be permitted; provided, that the party executing or sending documents via facsimile shall deliver to the party to whom such documents are sent the originally signed or the original documents within a reasonable period of time after facsimile transmission.

WHEREFORE, DEKALB and OSBORN BARR, as agent for MONSANTO COMPANY, have hereunto set their hands and seals this 22nd day of August, 2011.

CITY OF DEKALB:

By: [Signature]
Its: MAYOR, Duly Authorized KRIS POVLSEN

ATTEST:

By: [Signature]
Its: CITY CLERK, Duly Authorized STEVE KAPITAN

OSBORN BARR as agent for MONSANTO COMPANY:



By: B 8-12-11
Its: _____, Duly Authorized

ATTEST:

By: Michael Tully
Its: _____, Duly Authorized