



Kendall County Board Agenda
Adjourned September Meeting
Kendall County Office Building, 111 W. Fox Street
County Board Room 209, Yorkville, IL 60560
Tuesday May 7, 2024, at 6:00 PM

1. Call to Order
2. Pledge of Allegiance
3. Invocation
4. Roll Call
5. Determination of a Quorum
6. Approval of Agenda
7. Special Recognition
 - A. Approval of Proclamation Declaring May Historic Preservation Month in Kendall County
8. Public Comment
9. Consent Agenda
 - A. Approval of County Board Meeting Minutes from April 2, 2024
 - B. Approval of Standing Committee Meeting Minutes
 - C. Approval of Claims in the amount of \$5,100,707.73 from April 30, 2024
 - D. Approval of Intergovernmental Agreement for Geographic Information System (GIS) System with the Village of Newark
 - E. Approval of Resolution for the Kendall Area Transit Program on Behalf of Kendall County, Illinois Granting Signature Authority to the County Administrator or the Deputy County Administrator in the Administrator's Absence
 - F. Approval of a Purchase Order in the amount of \$214,506 for the Kendall Area Transit (KAT) - Consolidated Vehicle Procurement Program (CVP)
10. Old Business
11. New Business
12. Standing Committee Reports
13. Special Committee Reports
 - A. Connect Kendall Commission –
 - a. Approval of a Predevelopment Agreement with Pivot Tech Development LLC including project expenditures not to exceed \$1,306,000.
 - b. Approval of a Letter of Engagement with Taft, Stettinius & Hollister for broadband legal services.
14. Liaison Reports
15. Other Business
16. Chairman's Report
17. Public Comment
18. Questions from the press
19. Executive Session
20. Adjournment

If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time

A PROCLAMATION
Declaring Historic Preservation Month in Kendall County, Illinois



WHEREAS, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, “*People Saving Places*” is a theme adopted by the National Trust for Historic Preservation and embraced by Kendall County as we celebrate our historic built environment and work to preserve the places that matter to the citizens of our County; and

THEREFORE, the Board of Kendall County do proclaim May as National Preservation Month, and call upon the people of Kendall County to join their fellow citizens across the United States in recognizing and participating in this special observance.

ADOPTED BY THE COUNTY BOARD THIS 7TH DAY OF MAY, 2024.

Attest:

Matt Kellogg
County Board Chairman

Debbie Gillette
County Clerk

**KENDALL COUNTY BOARD
ADJOURNED SEPTEMBER MEETING
April 2, 2024**

STATE OF ILLINOIS)
) SS
COUNTY OF KENDALL)

The Kendall County Board Meeting was held at the Kendall County Office Building, Rooms 209 & 210, in the City of Yorkville on Tuesday, April 2, 2024, at 6:00 p.m. The Clerk called the roll. Members present: Chairman Matt Kellogg, Zach Bachmann, Brian DeBolt, Scott Gengler, Dan Koukol, Ruben Rodriguez, and Seth Wormley. Member(s) absent: Elizabeth Flowers, Jason Peterson and Brooke Shanley.

The Clerk reported to the Chairman that a quorum was present to conduct business.

PLEDGE OF ALLEGIANCE

Chairman Kellogg led the Pledge of Allegiance.

INVOCATION

Seth Wheeler from Abundant Life Family Church gave the invocation.

THE AGENDA

Member DeBolt moved to approve the agenda. Member Rodriguez seconded the motion. Chairman Kellogg asked for a voice vote on the motion. All members present voting aye. **Motion carried.**

PUBLIC COMMENT

Margaret Sheehan spoke about Elections.

CONSENT AGENDA

Member Gengler moved to approve the consent agenda. Member Rodriguez seconded the motion. Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. **Motion Carried.**

- A. Approval of County Board Meeting Minutes from March 20, 2024
- B. Approval of Standing Committee Meeting Minutes
- C. Approval of Claims in the amount of \$2,676,728.95
- D. Approval of the release of the HR & INS Committee Executive Session Review of minutes dated October 17, 2023, and March 4, 2024
- E. Approval of the release of the Committee of the Whole Executive Session Review of minutes dated September 14, 2023, and March 14, 2024
- F. Approval of release of the Economic Development & Administration Executive Session Review of minutes dated September 20, 2023 & March 20, 2024
- G. Approval of release of the Finance & Budget Executive Session Review of minutes dated September 28, 2023 & March 28, 2024
- H. Approval of Resolution Granting the Kendall County Circuit Clerk authority to enter into agreements with OCV, LLC on behalf of Kendall County, Illinois

C) COMBINED CLAIMS: ADMIN \$9,517.75; ANML CNTRL WRDN \$2,018.76; ASSMNTS \$198.62; CIR CLK \$1,268.41; CIR CRT JDG \$14,972.89; CMB CRT SERVS \$30.76; CRNR \$50.00; CORR \$189.36; CNTY BRD \$1,683,903.93; CNTY CLK \$5,438.77; HIGHWAY \$468,493.02; CNTY TRSR \$5,756.24; ELECTION \$21,148.09; EMA \$88.99; FCLT MGMT \$14,019.61; GIS COORD \$1,042.28; HLTH & HMN SRV \$13,329.05; HR \$306.25; MRT COM \$600.00; PBZ \$697.04; PRSDNG JDG \$4,128.06; PROB SPVSR \$3,651.59; PUB DEF \$602.05; ROE \$751.23; SHRF \$263,837.63; ST ATTY \$3,364.84; TECH \$31,448.25; UTIL \$7,863.39; VET \$2,260.74; FP \$13,200.33; SHF \$20,460.59; SHF \$27,695.04 EVJDGS \$7,548.75; GPCLJDGS \$60,046.97

H) A complete copy of Resolution 24-11 is available in the Office of the County Clerk.

STANDING COMMITTEES

Finance and Budget

Senior Citizen Social Services Levy

Member DeBolt moved to approve the Resolution Establishing Distribution of Grants from the 2023 Payable 2024 Senior Citizen Social Services Levy. Member Wormley seconded the motion.

Members discussed that the agencies requested an increase in funding, they have chosen to keep the amounts the same as last year.

Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. **Motion Carried.**

A complete copy of Resolution 24-12 is available in the Office of the County Clerk.

Pivot Tech

Member Bachmann moved to approve the amendment to the Pivot Tech Services Agreement. Member DeBolt seconded the motion.

Members discussed the need for immediate expenditures for a smaller dollar amount. They are seeking to secure revenue bonds which would be a cheaper option for the County.

Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. **Motion Carried.**

A complete copy of IGAM 24-10 is available in the Office of the County Clerk.

Chairman's Report

Chairman Kellogg spoke about his meeting with Dr. Khelghatii from Oswego School District 308.

EXECUTIVE SESSION

Member DeBolt made a motion to go into Executive Session for (1) the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity, (2) collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.. Member Bachmann seconded the motion. Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

ADJOURNMENT

Member Gengler moved to adjourn the County Board Meeting until the next scheduled meeting. Member Rodriguez seconded the motion. Chairman Kellogg asked for a voice vote on the motion. All members present voting aye. **Motion carried.**

Approved and submitted this 5th day of April 2024.

Respectfully submitted by,
Debbie Gillette
Kendall County Clerk

KENDALL COUNTY PLANNING, BUILDING & ZONING COMMITTEE
Kendall County Office Building
Rooms 209 and 210
111 W. Fox Street, Yorkville, Illinois
6:30 p.m.
Meeting Minutes of March 11, 2024

CALL TO ORDER

The meeting was called to order by Chairman Wormley at 6:30 p.m.

ROLL CALL

Committee Members Present: Elizabeth Flowers, Ruben Rodriguez, Brooke Shanley, and Seth, Wormley

Committee Members Absent: Dan Koukol

Also Present: Matt Asselmeier, Wanda A. Rolf, Mike Cook, and Carlos Moreno

APPROVAL OF AGENDA

Chairman Wormley requested modification to the agenda to move the first item of Old Business, Update on Stormwater Permit at 13039 McKanna Road (Pin: 09-09-100-002) in Seward Township, to after the Expenditure Report.

Member Flowers made a motion, seconded by Member Shanley, to approve the modification of the agenda as proposed by Chairman Wormley.

The votes were as follows:

Yeas (4): Flowers, Rodriguez, Shanley, and Wormley

Nays (0): None

Abstain (0): None

Absent (1) Koukol

APPROVAL OF MINUTES

Member Rodriguez made a motion, seconded by Member Flowers, to approve the minutes of the February 13, 2024, meeting. With a voice vote of four (4) ayes, the motion carried.

PUBLIC COMMENT

None

EXPENDITURE REPORT

The Committee reviewed the Expenditure Report from February 2024.

The Committee also reviewed the end of Fiscal Year 2023-2024 Expenditure Report.

OLD BUSINESS

Update on Stormwater Permit at 13039 McKanna Road (Pin: 09-09-100-002) in Seward Township

Mr. Asselmeier stated that the Petitioner received feedback from WBK Engineering. The Engineer of the Petitioner was working on a revised site plan. Carlos Moreno stated that the

plan is to excavate on the northeast side of the parking lot. Mr. Moreno does not have an updated site plan at this time. They responded to the letter from WBK Engineering.

Mr. Asselmeier asked Mr. Moreno if he was aware of obtaining a permit from the State of Illinois. Mr. Moreno responded that he was aware of the permit and will go through the Illinois Department of Natural Resources for the applicable permits.

An update will be provided at the April Planning, Building and Zoning Committee meeting.

PETITIONS

Petitions 24-01 and 24-02 Deb Chow on Behalf of Jade Restorations, Inc.

Mr. Asselmeier summarized the request.

On February 18, 2020, the County Board approved Ordinance 2020-01, granting a special use permit for a kennel and veterinary at the northeast corner of Ridge Road and Bell Road, now addressed as 949 Bell Road, Minooka. On February 21, 2023, the County Board approved Ordinance 2023-05, amending the site plan, landscaping plan, and photometric plan for the special use at the subject property.

The site plan attached to Ordinance 2020-01 showed a driveway extending from the northern end of the northeastern parking lot to the northern end of the special use permit area of the property. This driveway was not included in the site plan attached to Ordinance 2023-05. The Petitioner would like to add this twenty-four foot (24') wide driveway back into the site plan.

In addition to the driveway, the Petitioner would like to rezone the eastern approximately two point one more or less (2.1 +/-) acres of the special use permit area of the property to B-3 Highway Business District and rezone the northern approximately thirteen acres (13), which was not included in the special use permit area, to B-3 (see Petition 24-02). This map amendment would reduce the special use permit area from approximately eight point five (8.5) acres to approximately six point three (6.3) acres and will cause the site plan, landscaping plan, and photometric plan for the special use permit area to change to reflect the removal of the eastern portion of the special use area to the new zoning classification.

No specific information was provided, other than compliance with the Land Resource Management Plan, was given regarding the reason for the map amendment. The Petitioner likely will either pursue selling the property or pursue some type of commercial endeavor that is allowed in the B-3 District.

The application materials, aerial showing the proposed changes, topographic survey, plat showing the proposed rezoning, the proposed site plan, Ordinance 2020-01, and Ordinance 2023-05 were provided.

No changes are proposed to any of the business related conditions imposed by the previously approved ordinances. No changes are proposed to the landscaping or photometrics for the property that will retain the special use permit. Other than the addition of the proposed driveway addition, no other changes are proposed to site layout for the area that will retain the special use permit.

The property is located at 949 Bell Road, Minooka.

The property is approximately twenty (20) acres in total with approximately eight point five (8.5) acres in the original special use area and approximately six point three (6.3) acres in the proposed special use area.

The property is currently used as a kennel, veterinary, and agricultural.

The property is zoned A-1 with a special use permit.

The County's future land use map calls for the property to be Commercial. The Village of Shorewood's future land use map calls for the property to be Community Commercial.

Ridge Road is a County Road classified as an Arterial Road. Bell Road is a Township Road classified as a Minor Collector.

Minooka has a trail planned along Ridge Road. Shorewood has a trail planned along Bell Road.

There are no floodplains or wetlands on the property.

The kennel is located beyond the required setback to neighboring properties as defined in the Zoning Ordinance.

The adjacent land uses are agricultural, farmstead, and a landscaping business.

The adjacent properties are zoned A-1 and A-1 SU.

The County's future land use map calls for the area to be Commercial. The Village of Shorewood's future land use map calls for the area to be a mix of single- and multi-family residential.

Properties within one half (1/2) mile are zoned A-1, A-1 SU, and R-1.

There are approximately twelve (12) homes located within one half (1/2) mile of the subject property.

The special uses to the north and south are landing strips. The special use to the east is for natural gas compression. The special use to the west is for a landscaping business.

EcoCat submitted on December 13, 2022, and consultation was terminated.

A NRI application was submitted as part of the map amendment request. A NRI was prepared for the original special use permit. The LESA Score was 207 indicating a medium level of protection. NRI information was provided. A revised NRI was prepared for the proposed map amendment request showing a LESA Score of 180 indicating a low level of protection. This report was provided.

Seward Township was emailed information on January 26, 2024. The Seward Township Planning Commission met on February 5, 2024, and recommended approval of the proposal by a vote of three (3) in favor and zero (0) in opposition, with two (2) members absent. The Seward Township Board recommended approval of the proposal.

The Minooka Fire Protection District was emailed information on January 26, 2024. To date, no comments have been received.

The Village of Shorewood was emailed information on January 26, 2024. The Village of Shorewood submitted an email indicating they would like to annex the property when it becomes contiguous and wanted a restriction preventing uses not allowed in their B-3 Zoning District from occurring at the property. This email was included with the minutes from the ZPAC meeting. The Village of Shorewood submitted a second email on February 28, 2024, stating they would not object to the map amendment and no annexation agreement had been negotiated, but they were concerned about auto and truck repair businesses operating on the B-3 zoned portion of the property. This email was provided.

ZPAC reviewed the proposal at their meeting on February 6, 2024. ZPAC reviewed this proposal at their meeting on February 6, 2024. The Petitioner's Engineer was agreeable to working the Highway Department regarding access from Ridge Road for the northern portion of the property. No additional points of access would come from Bell Road. The Petitioner's Engineer wanted to evaluate Shorewood's request for an annexation agreement. A letter was placed into the record from WBK Engineering noting no objections to the proposed driveway extension in the special use permit amendment application. ZPAC recommended approval of the proposal by a vote of nine (9) in favor and zero (0) in opposition, with one (1) member absent. The minutes of this meeting were provided.

The Kendall County Regional Planning Commission reviewed this proposal at their meeting on February 28, 2024. The Petitioner's Engineer explained the history of the property. He noted that the County granted access from Ridge Road approximately one quarter (1/4) of a mile north of Bell Road. He discussed the potential of annexation with Shorewood; he noted that Shorewood had no services available to the subject property. No end user had been identified for the portion of the property proposed for rezoning. The rezoning was intended to tie into the widening of Ridge Road. He also explained the description of the wet bottom detention ponds and the ponds may need to be evaluated in the future depending on future uses on the portion proposed for rezoning. The Kendall County Regional Planning Commission recommended approval of the proposal by a vote of nine (9) in favor and zero (0) in opposition, with one (1) member absent. The minutes of this meeting were provided.

The Kendall County Zoning Board of Appeals conducted a public hearing on the proposal on March 4, 2024. Other than the Petitioner's Engineer, no other members of the public testified at the public hearing. The Petitioner's Engineer stated there would not be any new road cuts off of Bell Road for the rezoned portion of the property. The Kendall County Zoning Board of Appeals recommended approval of the proposal by a vote of six (6) in favor and zero (0) in opposition, with one (1) member absent. The minutes of the hearing were provided.

The findings of fact for the special use permit amendment were as follows:

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. The kennel and veterinary establishment are already in existence. The proposed driveway extension was originally planned in 2020 when the project was originally proposed. The special use portion of the site will retain the previously approved landscaping and photometric plans.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with

this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. None of the lighting or landscaping installed at the site will be removed as part of this proposal. No evidence has been provided showing that use of the property as a kennel and veterinary establishment has negatively impacted property values or was injurious neighboring land uses.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. This is true. Adequate ingress and egress has been provided off of Bell Road and the new driveway will help with traffic circulation when the northern portion of the property is commercially developed. The development of the site was in compliance with a County issued stormwater permit which included the proposed driveway extension.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. This is true. The Petitioners are not proposing any changes related to the operation of the business allowed by the previously approved special use permit. Other than the driveway addition and rezoning of the land to the east, no other changes are proposed to physical layout of the site.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use is consistent with an objective found on Page 9-21 of the Kendall County Land Resource Management Plan which calls for “a strong base of agricultural, commerce and industry that provides a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents.” The Land Resource Management Plan calls for the subject property to be commercial.

Staff recommended approval of the requested amendments to the existing special use permit for a kennel and veterinary establishment subject to the following conditions and restrictions:

1. Condition 2.A of Ordinance 2020-01 and Condition 2.A of Ordinance 2023-05 are hereby repealed in their entirety and are replaced with the following:

“The site shall be developed substantially in accordance with the attached site plan. The landscaping plan and photometric plan attached to Ordinance 2023-05 shall remain valid except on those portions of the property not zoned A-1.”
2. The remaining conditions and restrictions contained in Ordinance 2020-01 and Ordinance 2023-05 shall remain valid and effective.
3. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
4. If one or more of the above conditions or restrictions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.

5. These major amendments to an existing special use permit shall be treated as covenants running with the land and are binding on the successors, heirs, and assigns as to the same special uses conducted on the property.

Regarding the map amendment, no specific type of business was listed as a proposed use of the site.

No buildings were proposed for the site. Any buildings proposed for the site would have to meet applicable building codes and site plan approval by ZPAC would be required prior to site development.

Applicable permits would be required for a new well and septic system on the site.

The topographic survey shows two (2) wet detention ponds north of the existing kennel and veterinary. Depending on the nature of development, a stormwater permit might be required when the site is developed.

The property fronts Bell Road and Ridge Road.

Parking requirements will be determined by the specific uses of the site.

Lighting will be determined by specific uses of the site.

Signage will be determined by specific uses of the site and the signage requirements for the B-3 District contained in the Zoning Ordinance.

Landscaping will be determined when the site is developed.

Noise control will be determined when the site is developed.

The refuse plan will be determined when the site is developed.

There are two (2) pipeline easements, one (1) eighty feet (80') in width and one (1) seventy-five feet (75') in width located on the subject property. Development of the site will have to take these easements into account.

The findings of fact for the map amendment were as follows:

Existing uses of property within the general area of the property in question. A portion of the property is presently used as a kennel and veterinary with related parking and landscaping while the majority of the property is presently used as an agricultural field. Surrounding properties are used fields, farmsteads, and a landscaping business.

The Zoning classification of property within the general area of the property in question. The surrounding properties are zoned A-1 or A-1 with various special uses including a landscaping business, landing strips, and natural gas compression.

The suitability of the property in question for the uses permitted under the existing zoning classification. The Petitioner did not provide a specific proposed land use. A variety of uses allowed in the proposed B-3 Highway Business District could be placed on the property.

The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was in its

present zoning classification. The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. The Zoning Board of Appeals may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant. For the purpose of this paragraph the R-1 District shall be considered the highest classification and the M-2 District shall be considered the lowest classification. The trend of development in the area is a mix of agricultural, farmstead, retail and service type uses.

Consistency with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. The Future Land Use Map in the Land Resource Management Plan classifies this property as Commercial and the four corners of the intersection of Ridge and Bell Roads as Commercial. The Village of Shorewood's Future Land Use Map calls for the property to be Community Commercial. The requested map amendment is consistent with the Land Resource Management Plan.

Staff recommended approval of the requested map amendment rezoning the area identified as Parcel 2 on the submitted zoning plat to B-3 Highway Business District.

The draft ordinances were provided.

Member Rodriguez made a motion, seconded by Member Flowers, to recommend approval of the major amendment to an existing special use permit with the conditions proposed by Staff and the map amendment.

The votes were as follows:

Yeas (4): Flowers, Rodriguez, Shanley, and Wormley
Nays (0): None
Abstain (0): None
Absent (1) Koukol

The motion carried.

The proposals go to the March 20, 2024, County Board meeting on the consent agenda.

Petition 24-03 Kendall County Regional Planning Commission

Mr. Asselmeier summarized the request.

Due to market conditions, the Kendall County Comprehensive Land Plan and Ordinance Committee considered proposing changes to the Future Land Use Map for properties located south of Yorkville on both sides of Route 47 in Kendall Township.

In particular, the Committee explored the idea of changing the classification of the following properties between 7775 A/B and 8175 Route 47 from Transportation Corridor to Mixed Use Business:

05-09-300-015, 05-09-376-002, 05-09-400-006, 05-09-400-010, 05-09-400-011, 05-16-100-006, 05-16-200-008, 05-16-200-013, 05-16-200-014

The properties connected with 8115 Route 47 were not included in the proposal because the owner and contract purchaser of the property were already going through the reclassification

process. The County Board approved the reclassification of these properties on February 20, 2024.

An aerial showing the subject properties of the original proposal was attached. The subject properties were colored gray in the aerial.

In addition to changing the Future Land Use Map, a table in the Land Resource Management Plan would be updated to reflect the reclassifications.

At their meeting on January 24, 2024, the Comprehensive Land Plan and Ordinance Committee voted to forward the proposal to the Kendall County Regional Planning Commission.

At their meeting on January 24, 2024, the Kendall County Regional Planning Commission voted to initiate the amendment to the Future Land Use Map and text of the Land Resource Management Plan.

Notice of hearing were sent to property owners on January 29, 2024.

Petition information was sent to Kendall Township and the United City of Yorkville on January 26, 2024. The Yorkville City Council met on February 13, 2024, and expressed no concerns regarding the proposal. An email to that effect was provided. The Kendall Township Supervisor submitted an email on February 26, 2024, expressing no objections. This email was provided.

The Kendall County ZPAC reviewed the proposal at their meeting on February 6, 2024. Discussion occurred regarding the definitions of Transportation Corridor and Mixed Use Business. ZPAC recommended approval of the proposal by a vote of nine (9) in favor and zero (0) in opposition, with one (1) member absent. The minutes of the meeting were provided.

The Kendall County Regional Planning Commission held a public hearing on this proposal on February 28, 2024. Gerald Johnson, Property Owner, testified at the hearing and requested that the properties on the east side of Route 47 be removed from the proposal and remain classified as Transportation Corridor. He noted that businesses were presently located on the west side of Route 47 and he did not want to change the residential use of his property. It was noted that the properties on the east side of Route 47 were proposed for reclassification consistency purposes. The Kendall County Regional Planning Commission recommended approval of the proposal with an amendment by removing the properties located on the east side of Route 47 from the proposed reclassification by a vote of nine (9) in favor and zero (0) in opposition, with one (1) member absent. The minutes of the hearing were provided.

If the proposal is approved as recommended by the Kendall County Regional Planning Commission, the parcels on the west side of Route 47 (PINs: 05-09-300-015, 05-09-376-002, and 05-16-100-006) would be reclassified to Mixed Use Business and the parcels on the east side of Route 47 (PINs: 05-09-400-006, 05-09-400-010, 05-09-400-011, 05-16-200-008, 05-16-200-013, and 05-16-200-014) would remain classified as Transportation Corridor.

The Kendall County Zoning Board of Appeals reviewed the proposal at their meeting on March 4, 2024. Discussion occurred regarding the implications of excluding the properties on the east side of Route 47 from the proposal and the reason why the property owner on the east side of Route 47 wanted their properties removed from the proposal. The Kendall County Zoning

Board of Appeals recommended approval of the proposal with the deletion of the properties on the east side of Route 47 from the proposal by a vote of six (6) in favor and zero (0) in opposition, with one (1) member absent. The minutes of the meeting were provided.

Yorkville's Future Land Use Map was provided for reference.

The draft resolution was provided.

Member Flowers requested clarification on the definition of Mixed Use Business. Mr. Asselmeier stated that Mixed Use Business is light manufacturing on a smaller scale and not retail.

It was noted that the property owners on the east side of Route 47 could request a reclassification in the future.

Member Rodriguez made a motion, seconded by Member Flowers, to recommend approval of the amendment with the deletion of the properties on the east side of Route 47.

The votes were as follows:

Yeas (4): Flowers, Rodriguez, Shanley, and Wormley
Nays (0): None
Abstain (0): None
Absent (1) Koukol

The motion carried.

The proposal goes to the March 20, 2024, County Board meeting on the consent agenda.

NEW BUSINESS

Approval of a Refund of an Unused Solar Panel Permit at 90 Longbeach Road in the Amount of \$350.00

Approval of a Refund of an Unused Solar Panel Permit at 1135 Woolley Road in the Amount of \$200.00

Member Rodriguez made a motion, seconded by Member Shanley, to approve both refunds as requested.

It was noted that the County had not expended Staff time regarding these projects.

The Committee reviewed the number of solar permits issued by the County in the current fiscal year.

The votes were as follows:

Yeas (4): Flowers, Rodriguez, Shanley, and Wormley
Nays (0): None
Abstain (0): None
Absent (1) Koukol

The motion carried.

OLD BUSINESS

Short-Term Rental Renewal Update

Mr. Asselmeier provided a list of short-term rentals. Three (3) properties did not renew their licenses for 2024.

REVIEW VIOLATION REPORT

The Committee reviewed the report. Discussion occurred regarding the Department's procedures for taking violations to court.

REVIEW PRE-VIOLATION REPORT

The Committee reviewed the report.

UPDATE FOR HISTORIC PRESERVATION COMMISSION

Follow-Up from the February 21, 2024, Kendall County Historic Preservation Commission Annual Meeting

Mr. Asselmeier reported approximately twenty (20) people attended the meeting.

The application window for the historic preservation awards closed on February 28, 2024. There were five (5) nominees. The Commission will be reviewing those applications at the March meeting.

REVIEW PERMIT REPORT

The Committee reviewed the report.

REVIEW REVENUE REPORT

The Committee reviewed the report.

CORRESPONDENCE

None

COMMENTS FROM THE PRESS

None

EXECUTIVE SESSION

None

ADJOURNMENT

Member Rodriguez made a motion, seconded by Member Flowers, to adjourn. With a voice vote of four (4) ayes, the motion carried.

Chairman Wormley adjourned the meeting at 7:02 p.m.

Minutes prepared by Wanda A. Rolf, Administrative Assistant

Enc.



**KENDALL COUNTY
PLANNING, BUILDING, & ZONING COMMITTEE
MARCH 11, 2024**

IF YOU WOULD LIKE TO BE CONTACTED ON FUTURE MEETINGS REGARDING THIS TOPIC, PLEASE PROVIDE YOUR ADDRESS OR EMAIL ADDRESS

NAME	ADDRESS (OPTIONAL)	EMAIL ADDRESS (OPTIONAL)
Carmel Moreno		
MIKE COOK	24-01/24-02	

**COUNTY OF KENDALL, ILLINOIS
FINANCE & BUDGET COMMITTEE
Meeting Minutes for Thursday, March 28, 2024**

Call to Order – Committee Chair Scott Gengler called the Finance & Budget Committee meeting to order at 4:06 p.m.

Roll Call

Attendee	Status	Arrived	Left Meeting
Scott Gengler	yes		
Brian DeBolt	yes		
Matt Kellogg	absent		
Jason Peterson	absent		
Seth Wormley	yes		

With three (3) members present a quorum was established.

Staff Present – Christina Burns, Latreese Caldwell, Jennifer Karales

Approval of Agenda – Member DeBolt made a motion to approve the agenda, second by Member Wormley. **With three (3) members present voting aye, the motion carried by a vote of 3 - 0.**

Approval of February 29, 2024 Finance & Budget Committee Meeting Minutes – Member Wormley made a motion to approve the minutes, second by Member DeBolt. **With three (3) members present voting aye, the motion carried by a vote of 3 - 0.**

Approval of Claims – Member DeBolt made a motion to forward the approval of the claims to the next County Board meeting, second by Member Wormley. **With three (3) members present voting aye, the motion carried by a vote of 3 - 0.**

Committee Reports and Updates

- A. **Personnel Reports** - Treasurer Jill Ferko provided to the committee the Treasurer’s Employee Status Report and is included in the packet starting on page 5. The Committee members had no questions regarding the report provided.
- B. **FY24-26 ARPA Fund** – Financial Analyst Jennifer Karales provided to the committee the American Rescue Plan overview of outstanding projects for external entities which include the amount awarded, balance remaining and the date that the remaining funds need to be spent. The report can be found on page 7 of the packet. Chair Gengler asked a question concerning the work that has been completed on Rob Roy Drainage District ditch work. Ms. Karales stated that she will have more information from Yorkville in April. All funds must be spent by December 20, 2024.
- C. **Budget Amendment Tracking** – Financial Analyst Jennifer Karales briefed the committee of a fiscal impact from the change in the employment agreement with Veterinarian Dr. Schlapp, an additional \$8500 for the year plus applicable payroll contributions (page 8), this will be a budget amendment.

New Committee Business

A. *DISCUSSION: Opioid Fund

The Coroner's office has requested \$1300 from the Opioid fund for the Drug Take Back Night, which will include public education relating to drug disposal. The application can be found starting on page 9 of the packet.

Member Wormley made a motion for Approval of the Coroner's Opioid Application, second by Member DeBolt. **With three (3) members present voting aye, the motion carried 3 - 0.**

B. *MOTION (Forward to County Board): Approval of 2024-2026 Auditing RFP

Deputy Administrator Latreese Caldwell explained to the committee that the 2024-2026 Auditing RFP does not need to have a motion for approval to forward to the County Board but can be approved here in committee. Kendall County has contracted for auditing services with Mack & Associates through FY 2023. Ms. Caldwell went through the proposed timeline for the auditing RFP process and the dates anticipated to complete the RFP (page 14 of packet). Audit RFP was conducted in 2008, 2015, 2021. The RFP will be posted on our website, ads will run in the newspaper and sent notifications to prior responders and current auditor a copy of the RFP. The RFP can be found starting on page 15 of the packet. A working group made up of the Finance & Budget committee members along with Administration staff will review the applicants using a scoring matrix. Attachments to the RFP include Proposer Guarantees and Warranties (Attachment A -pg. 31), Total All-Inclusive Maximum Price (Attachment B- pg.32), Rates by Partner, Manager, Supervisory, Staff and Specialist (Attachment C- pg. 33).

C. *MOTION (VV): Discussion and Approval of Kendall County Health Department Community Resource Specialist

Financial Analyst Jennifer Karales explained that a request came in from the KC health department to change a position from a Grants Specialist to a Community Resource Specialist. They have staff person in place and would like to use the ARPA funds to be used for this position (page 37 of packet). The Finance Committee had originally approved the Grants Specialist position, so approval is needed on this change. All committee members were in consensus to approve the change, three members voting aye.

D. *MOTION (Forward to County Board): Discussion and Approval of an Ordinance Establishing Salary for the Kendall County Circuit Clerk FY4-FY27

Financial Analyst Jennifer Karales provided to the committee the compensation history for elected officials, and what the County Circuit Clerk and Coroner current salaries are and the projections of a 2%, 2.5%, 3% and 3.5% increase (page 38 of packet). She is asking the committee for their recommendation for the County Circuit Clerk salary going forward for the next four years. State Statute requires the compensation of local government... shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed (50 ILCS 145/2). The deadline for approval of salaries is June 4, 2024. Discussion by the committee continued on the various scenarios for increasing the salaries for Circuit Clerk and County Coroner. The committee has asked staff to research what other counties are paying their Circuit Clerk and Coroner positions and bring back to the April meeting. Ms. Burns stated that UCCI has conducted a study of salaries which include only counties that participated and gave them this information. This information can also be used to help determine the salary recommendations. The comparable counties should be based on geography, population and supervisory (employee staff numbers) responsibilities. Ms. Burns suggested that staff begin work on a methodology for how salaries are set. The approval of an Ordinance Establishing Salary for the Kendall County Circuit Clerk FY24-27 will be tabled until the April meeting.

E. *MOTION (Forward to County Board): Discussion and Approval of an Ordinance Establishing Salary for the Kendall County Coroner FY24-FY27

The discussion for the approval of an Ordinance establishing salary for the Kendall County Coroner has been tabled until the April meeting.

F. *MOTION (Forward to County Board): Review, Discussion and Approval of 2024 Senior Levy

Financial Analyst Jennifer Karales briefed the committee that there is \$363,000 to allocate and request from applicants total \$417,000. All applications were submitted online and emailed to the committee; the summary begins on page 39 of the packet. The discussion centered on the dollar requests from each applicant. A member asked if the amount that Kendall County allocates for the Senior Levy be increased. The Senior Levy is determined in the budget discussion for 2025 in the fall of 2024, which will affect the overall budget. The Finance & Budget committee approved that the seven applicants will each receive the same amount that they received last year.

Community Nutrition Network	\$ 32,500
Fox Valley Older Adult Services	60,000
Kendall Area Transit	45,500
Oswegoland Seniors, Inc.	75,000
Prairie State Legal Services	10,000
Senior Services Associates, Inc.	128,000
VNA Health Care	12,000
Total	\$ 363,000

Member Wormley made a motion for Approval of 2024 Senior Levy to be the same as FY2023 and be forwarded to County Board meeting, second by Member Gengler. **With three (3) members present voting aye, the motion carried 3 - 0.**

G. *MOTION (Forward to County Board): Amendment to Pivot Tech Agreement

County Administrator Christina Burns briefed the committee that the County was awarded \$15 million dollars to build a broadband network. The request is to use \$1.5 million dollars of ARPA funds to pay for the predevelopment costs associated with this project.

Ms. Burns stated that Pivot Tech does need to proceed with some pre-development parts of the project as this project is moving fast. The CKCC committee is looking into possibly turning this into a loan towards the project companies in the hope to recoup some of the costs.

Member Wormley made a motion for Approval of Amendment to Pivot Tech Agreement to be forwarded to County Board meeting, second by Member DeBolt. **With three (3) members present voting aye, the motion carried 3 - 0.**

Old Committee Business – None

Chairman’s Report – None

Public Comment – None

Executive Session - For the purpose of the review of discussion of minutes of meetings lawfully closed under the Open Meetings Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06, 5ILCS 120-2/21.

Member DeBolt made a motion to move into Executive session, second by Member Wormley. With three (3) members voting aye, the motion was carried by a vote of 3-0.

Items for County of the Whole – None

Items for County Board

- Approval of Claims
- Approval of 2024 Senior Levy
- Amendment to Pivot Tech Agreement

Adjournment – Member DeBolt made a motion to adjourn the Finance and Budget Committee meeting, second by Member Wormley. **With three (3) members present voting aye; the meeting was adjourned at 5:15 p.m. by a vote of 3-0.**

Respectfully submitted,
Sally A. Seeger
Administrative Assistant and Recording Clerk

KENDALL COUNTY PLANNING, BUILDING & ZONING COMMITTEE

Kendall County Office Building

Rooms 209 and 210

111 W. Fox Street, Yorkville, Illinois

6:30 p.m.

Meeting Minutes of April 8, 2024 – Unofficial until Approved

CALL TO ORDER

The meeting was called to order by Chairman Wormley at 6:30 p.m.

ROLL CALL

Committee Members Present: Dan Koukol, Ruben Rodriguez, Brooke Shanley, and Seth Wormley

Committee Members Absent: Elizabeth Flowers

Also Present: Sally Seeger, Dan Kramer, Tyler Arbeen, Justin Plohr, and Gordon Plohr

APPROVAL OF AGENDA

Member Shanley made a motion, seconded by Member Rodriguez, to approve the agenda as presented by Chairman Wormley. With a voice vote of four (4) ayes, the motion carried.

APPROVAL OF MINUTES

Member Shanley made a motion, seconded by Member Rodriguez, to approve the minutes of the March 11, 2024, meeting. With a voice vote of four (4) ayes, the motion carried.

PUBLIC COMMENT

None

EXPENDITURE REPORT

The Committee reviewed the Expenditure Report from March 2024.

PETITIONS:

Petition 23-35 Tyler Arbeen on Behalf of Arbeen, LLC

Chairman Wormley summarized the request. He spoke about the original Petition being updated removing accessory structures and parking in the front.

Dan Kramer, Attorney for the Petitioner, stated that the Petitioner found eleven (11') foot solid panels and, with a three foot (3') high berm, he will have a fourteen foot (14') tall screen along the southern boundary line, starting at the front yard setback line.

Member Koukol requested a history of the review process. Mr. Kramer explained the changes to the site related to stormwater control.

Member Koukol asked how many acres was at the site. Mr. Kramer stated that Mr. Arbeen had four (4) acres. Mr. Arbeen owns the property.

Mr. Kramer discussed the reviews of Oswego Township, the Village of Oswego, and the Regional Planning Commission.

Member Koukol asked if four (4) acres would be enough land to run a business since Mr. Arbeen given the setback requirements. Mr. Kramer stated that the Petitioner has enough land to run his business. He will not have hoop houses or a parking lot in front.

Justin Plohr, neighbor of the Petitioner, stated that they reached an agreement with Mr. Arbeen with regards to the fence height.

Chairman Wormley recommended a minor amendment for the Petitioner, if the Petitioner decides to change the site plan in the first one hundred feet (100') he may do so because of ordinance adjustment.

Discussion occurred about the impact of changing the setback on the location of the fourteen foot (14') tall buffer.

Gordon Plohr, who sold the land to Mr. Arbeen, requested the berm run to the ditch. He was concerned about stormwater impacting the property south of the subject property.

Mr. Kramer stated all operations would be behind the fence. The stormwater has been designed by the stormwater engineer and reviewed by the county engineer showing underground pipe from the front of the property, and Stewart Road runs north and south at the west end carrying the water to the detention pond southeast of Mr Plohr's home. There will also be field tiles placed on the property. Matt Asselmeier, Zoning Director, will include the verbiage in the special use permit to have these conditions added.

Member Koukol made a motion, seconded by Member Shanley, to recommend approval of this Petition with the understanding that if the zoning ordinance is modified and the setback is reduced that any auxiliary structures or parking could be amended through a minor amendment in the Planning, Building and Zoning Office instead of a major amendment. This excludes buildings in the one hundred fifty feet (150').

The votes were as follows:

Yeas (4): Koukol, Rodriguez, Shanley, and Wormley
Nays (0): None
Abstain (0): None
Absent (1) Flowers

The proposal will go to the April 16, 2024, Kendall County Board meeting.

Mr. Kramer provided an update from Comed regarding the easement vacation request from George and Heidi Oliver.

NEW BUSINESS:

Approval to Change the May Planning, Building and Zoning Committee Meeting Date and Time
Chairman Wormley requested that Committee change the May meeting date from May 13, 2024, to May 6, 2024, at 6:30 p.m. Without objection, the date was changed.

April 20, 2024, Code Official Open House in Oswego Township

Member Koukol explained the purpose for the Code Official Open House in Oswego Township. Brian Holdiman is in charge of this event. The event is an opportunity for residents to stop by if they have any questions or concerns.

OLD BUSINESS:

Update on Stormwater Permit at 13039 McKanna Road (PIN: 09-09-100-002) in Seward Township

No update. This will be discussed at the May 6, 2024, meeting.

REVIEW VIOLATION REPORT:

The Committee reviewed the report.

REVIEW PRE-VIOLATION REPORT:

The Committee reviewed the report.

UPDATE FROM HISTORIC PRESERVATION COMMISSION:

Recommendation for a Proclamation Declaring May Historic Preservation Month in Kendall County

No vote was taken on this matter.

REVIEW PERMIT REPORT:

The Committee reviewed the report.

REVIEW REVENUE REPORT:

The Committee reviewed the report.

CORRESPONDENCE:

None

COMMENTS FROM THE PRESS:

None

EXECUTIVE SESSION:

Review of Minutes of Meetings Lawfully Closed Under the Illinois Open Meetings Act (5 ILCS 120/2(c)(21))

The Committee did not go into executive session.

ADJOURNMENT

Member Shanley made a motion, seconded by Member Rodriguez, to adjourn. With a voice vote of four (4) ayes, the motion carried.

Chairman Wormley adjourned the meeting at 7:05 p.m.

Minutes prepared by Wanda A. Rolf, Administrative Assistant

**INTERGOVERNMENTAL AGREEMENT FOR
GEOGRAPHIC INFORMATION SYSTEMS (GIS) SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT FOR GEOGRAPHIC INFORMATION SYSTEMS (GIS) SERVICES (*“the Agreement”*) is by and between the County of Kendall, a unit of local government of the State of Illinois (*“Kendall County”*) and the Village of Newark.

WITNESSETH:

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, Kendall County and Village of Newark (the *“parties”*) are units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970 who are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, provides that any county may participate in an intergovernmental agreement under this Act notwithstanding the absence of specific authority under the State law to perform the service involved, provided that the unit of local government contracting with Kendall County has authority to perform the service; and

WHEREAS, in an effort to reduce costs to the taxpayers of Kendall County, the parties hereby enter into this intergovernmental agreement wherein Kendall County agrees to provide certain GIS support services for Village of Newark; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereafter set forth, the parties agree as follows:

1. The foregoing preambles are hereby incorporated into this Agreement as if fully restated in this paragraph 1.

2. Kendall County agrees to provide the following GIS support services to Village of Newark pursuant to the terms of this Agreement, including:

- a. To provide access to GIS portal,
- b. To provide GIS data maintenance to Village of Newark's data,
- c. To update Village of Newark's GIS data throughout Village of Newark's Service Area,
- d. To permit Kendall County GIS staff to attend training for GIS systems, provided Village of Newark and Kendall County pre-approve the training, the training schedule, and all training and related travel expenses.
- e. To provide GIS services outlined in Paragraphs 2a-d above for Village of Newark's special service projects, when requested by Village of Newark, and upon receiving at least 60 calendar days prior notice of the need for Kendall County staff to support any non-emergency special service project.
- f. To track time spent performing services outlined above in Paragraph's 2-a-e and to generate a quarterly invoice for all Village of Newark approved GIS services.

3. As consideration for the services to be performed pursuant to the terms of this Agreement, Village of Newark agrees to the following:

- a. Any GIS support services provided by Kendall County must be pre-approved by Village of Newark and shall be billed to Village of Newark at a rate of \$60

per hour. Village of Newark shall make payments on quarterly invoices prepared by Kendall County staff.

b. To pay for all training and associated travel expenses for Kendall County's employees to attend training about GIS systems, provided the training and associated travel expenses are pre-approved by Village of Newark and Kendall County. Village of Newark agrees to reimburse Kendall County for such expenses.

c. To promptly reimburse Kendall County for all other expenses that Kendall County incurs on Village of Newark's behalf while performing the GIS support services set forth above in this intergovernmental agreement. Village of Newark agrees to reimburse Kendall County for such expenses. Kendall County agrees to notify Village of Newark prior to incurring any billable expense, except in the event of an emergency in which case Kendall County agrees to notify Village of Newark about the billable expense as soon as practicable.

d. To make all payment in accordance with the Illinois Local Government Prompt Payment Act, as amended (50 ILCS 505/1 et seq.)

e. Except as expressly set forth in Paragraphs 3(a) through 3(c) of this this Agreement, the parties agree that Village of Newark shall not be responsible for labor costs and County resources (i.e., computers, networks, telephones, etc.) incurred by the County's employees while the County employees perform the services set forth in this Agreement.

4. Village of Newark understands and agrees that Kendall County maintains sole and absolute discretion whether to provide to Village of Newark the GIS support services listed in Paragraph 2. Village of Newark understands and agrees that Kendall County's ability to provide the GIS services listed in Paragraph 2 is contingent on Kendall County's maintaining sufficient

software, hardware, employees, licenses, subscriptions, services, and equipment. If Kendall County, in its sole discretion, determines it lacks sufficient software, hardware, employees, licenses, subscriptions, services, or equipment to provide any of the GIS services, Kendall County shall not be under any obligation to provide the GIS services nor shall Kendall County be obligated to maintain sufficient software, hardware, employees, license, subscriptions, services, and equipment. Kendall County shall make all decisions regarding the acquisition or hiring of all software, hardware, employees, licenses, subscriptions, services, and equipment.

5. Kendall County does not guarantee the accuracy of any of the GIS support services it may provide to Village of Newark. To the fullest extent permitted by law, Kendall County disclaims all express or implied warranties, including without limitation all implied warranties of merchantability or fitness for a particular purpose.

6. The parties agree to the following terms in order to maintain the security and confidentiality of Kendall County's and Village of Newark's records defined as "confidential information":

a. To the extent permitted by law, if a party to this Agreement is granted access to another party's records (and the data contained in these records) in order to perform the GIS services set forth in this Agreement, either party shall not duplicate and/or disseminate (by publication or otherwise) said records (and the data contained therein) to any other individual, business or entity without the prior written approval of either party.

b. In the event a party to this Agreement receives a request for the records of another party to this Agreement (whether by FOIA request, subpoena, court order, etc.), the party receiving the request shall respond to the request in accordance with the law and shall notify the other party so that it may assert whatever rights it may possess. To the

extent permitted by law, a party to this Agreement shall not release any of either party's records to a third party without the prior written approval of the party or as required pursuant to court order.

c. The parties agree to implement all measures deemed reasonably necessary by agreement of the parties to safeguard the confidentiality of either party's records.

7. This Agreement shall continue for a period of two (2) years after the parties' execution of this Agreement and will automatically renew for successive additional one (1) year terms. Any party may terminate this intergovernmental agreement by providing at least one hundred eighty (180) calendar days advance written notice to all other parties of the then current term.

8. To the extent permitted by law, Village of Newark shall defend, with counsel of Kendall County's own choosing, indemnify and hold harmless Kendall County, including Kendall County's past, present and future board members, elected officials, insurers, employees, and agents (the "Releasees") from and against any and all claims, liabilities, obligations, losses, penalties, fines, damages, and expenses and costs relating thereto, including but not limited to attorneys' fees and other legal expenses, which the Releasees may hereafter sustain, incur or be required to pay relating to, or arising in any manner out of the GIS support services Kendall County provides to Village of Newark. Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this section of the Agreement unless the Kendall County State's Attorney has pre-approved the appointment of the attorney to represent the Releasees. Releasees' participation in their defense shall not remove Village of Newark's duty to indemnify, defend, and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et

seq.) by reason of this indemnification provision. Indemnification shall survive the termination of this Agreement.

9. This Agreement and the rights of the parties hereunder may not be assigned (except by operation of law), and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements.

10. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by certified mail, or courier service and received. As such, all notices required or permitted hereunder shall be in writing and may be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested.

If to the County: Chairman of the Kendall County Board
111 W. Fox Street
Yorkville, Illinois 60560

With copy to:
Kendall County State's Attorney
807 John Street
Yorkville, Illinois, 60560

If to Village of Newark
Village Clerk
111 W. Lions
Newark, Illinois , 60541

With copy to:
Boyd Ingemunson - Village of Newark Attorney
759 John St.
Yorkville, IL 60560

9. This Agreement shall be interpreted and enforced under the laws of the State of Illinois. Any legal proceeding related to enforcement of this Agreement shall be brought in the Circuit Court of Kendall County, Illinois. In case any provision of this Agreement shall be declared and/or found invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall, to the extent possible, be modified by the court in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties, and, if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

10. This Agreement represents the entire agreement between the parties as it relates to GIS support services to be performed by Kendall County, and there are no other promises or conditions in any other agreement whether oral or written related to the GIS support services to be provided by Kendall County to Village of Newark. Except as stated herein, this Agreement supersedes any other prior written or oral agreements between the parties as it relates to GIS support services and may not be further modified except in writing.

11. Kendall County and Village of Newark each hereby warrant and represent that their respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement;

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed by their duly authorized officers as of the date of last signature.

County of Kendall, Illinois

Village of Newark

By: _____
Chair, Kendall County Board

By: _____
Village President

Attest:

Attest:

County Clerk

Village Clerk





Kendall County Agenda Briefing

Meeting Type: Finance
Meeting Date: 4/25/2024
Subject: Signature Authority for Kendall Area Transit
Prepared by: Jennifer Breault, Finance and Budget Analyst
Department: Administration

Action Requested:

Approval of Resolution for the Kendall Area Transit Program on Behalf of Kendall County, Illinois Granting Signature Authority to the County Administrator or the Deputy County Administrator in the Administrator's Absence.

Board/Committee Review:

Motion to County Board

Fiscal impact:

None

Background and Discussion:

Kendall Area Transit has three major grants: 5310,5311 and DOAP. This Resolution will give the County Administrator and the Deputy County Administrator the ability to sign grant documentation on behalf of the County Board Chairman.

Staff Recommendation:

Approval of Resolution for Signature Authority

Attachments:

Resolution for the Kendall Area Transit Program on Behalf of Kendall County, Illinois Granting Signature Authority to the County Administrator or the Deputy County Administrator in the Administrator's Absence.

County Of Kendall, Illinois Resolution 24-

Approval of Resolution for the Kendall Area Transit Program on Behalf of Kendall County, Illinois Granting Signature Authority to the County Administrator or the Deputy County Administrator in the Administrator's Absence.

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, provides that "units of local government and school districts may contract or otherwise associate among themselves . . . [and] with individuals, associations, and corporations in any manner not prohibited by law or by ordinance"; and

WHEREAS, Kendall County has entered into grant agreements to fund Kendall Area Transit ("KAT") since March 22, 2010 and wishes to continue doing so; and

WHEREAS, the Kendall County Board has received, reviewed, and now approves agreements with the Illinois Department of Transportation ("IDOT") for 5311, 5310, and Downstate Operating Assistance Program ("DOAP") funding; and

WHEREAS, the Illinois Department of Transportation ("IDOT") has updated their grant and expenditure approvals to a time sensitive digital process; and

WHEREAS, the Kendall County Board has the authority to delegate certain power and duties to county officers, and 55 ILCS 5/5-1087 provides the Kendall County Board with the authority to "impose additional duties, powers and functions upon county officers"; and

WHEREAS, the Kendall County Board recognizes that the nature of the Kendall Area Transit Program and all of the associated grants is such that the agreements need to be executed promptly and digitally to ensure the program continues to operate; and

WHEREAS, the Kendall County Board recognizes the Kendall County Administrator, or the Deputy County Administrator in the Administrator's absence, as an appointed official by the County Board, is the county officer best situated to determine if and when it is appropriate for Kendall County to seek reimbursement for eligible expenses.

NOW, THEREFORE, BE IT RESOLVED that the Kendall County Board hereby grants the Kendall County Administrator, or the Deputy County Administrator in the Administrator's absence, the authority to seek reimbursement and sign documents under the Kendall Area Transit Program without further action by the Kendall County Board, and the authority to bind the County, provided the agreements executed by the Kendall County Administrator, or the Deputy County Administrator in the Administrator's absence, substantially complies with IDOT's 5311, 5310, and the Downstate Operating Assistance Program,

The authority herein granted to the Kendall County Administrator, or the Deputy County Administrator in the Administrator's absence, will continue for one year after the date of adoption ("Termination Date").

Approved and adopted by the County Board of Kendall County, Illinois, this _____day of _____2024.

Board Chairman Signature:

Attest:

Matt Kellogg, Chairman
County Board

Debbie Gillette
County Clerk



Kendall County Agenda Briefing

Meeting Type: Finance
Meeting Date: 4/25/2024
Subject: **Kendall Area Transit Purchase Order**
Prepared by: **Jennifer Breault, Finance and Budget Analyst**
Department: **Administration**

Action Requested:

Approval of a Purchase Order in the amount of \$214,506 for the Kendall Area Transit (KAT) - Consolidated Vehicle Procurement Program (CVP)

Board/Committee Review:

***MOTION (Forward to County Board):**

Fiscal impact:

None

Background and Discussion:

Kendall County applied for CVP funding in 2022 for the amount of \$225,000. Kendall County was awarded two replacement and one expansion vehicle.

Staff Recommendation:

Approval of a Purchase Order in the amount of \$214,506 for the Kendall Area Transit (KAT) - Consolidated Vehicle Procurement Program (CVP)

Attachments:

Purchase Order



Kendall County
PURCHASE ORDER
 Contract# 23-416CMS-BOSS4-P-60603

P.O. NUMBER
60603

VENDOR
<p>Southern Bus & Mobility 12950 Koch Lane PO BOX 37 Breese, IL 62230 (618)526-4131</p>

SHIP TO:
<p>Kendall County 111 West Fox Street Yorkville, IL 60560</p> <p>Contact Name: Jennifer Breault</p>

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Minivan Rear Entry, Floorplan B	3.00	69,862.00	209,586.00
Option A: Electronically Operated Rear Mobility Aid Securement System (Southern Bus Minivan Spec Sheet)	3.00	1,640.00	4,920.00

Total	\$ 214,506.00
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My authorization certifies that the above items are appropriate for County business and that budgeted funds are available.

SIGNATURE	PRINT NAME	TITLE	DATE
	Matt Kellogg	County Board Chairman	

Net 30 Days For Payment Tax Exempt #E-9995-9003-06 Federal Tax ID #36-6006598

Inquiries concerning invoice payment should be directed to:

Kendall County Administration 111 West Fox Street, Yorkville, IL 60560 PHONE: 630-553-4171



Kendall County Agenda Briefing

Meeting Type: County Board Meeting
Meeting Date: 5/7/2024
Subject: Broadband Predevelopment Agreement
Prepared by: Christina Burns, County Administrator
Department: Administration

Action Requested:

Approval of a Predevelopment Agreement with Pivot Tech Development including expenditures of up to \$1,306,000.

Board/Committee Review:

April 11, 2024: Broadband project update discussion (Committee of the Whole)

April 2, 2024: Approval of the First Amendment to the Service Agreement with Pivot Tech (County Board)

February 6, 2024: Approval of a Services Agreement with Pivot Tech (County Board)

Fiscal impact:

The County has allocated \$1 million in ARPA expenditures for broadband-associated costs. Additional ARPA funds are available to allocate toward the project.

Background and Discussion:

Kendall County has been awarded a \$15 million grant from the State of Illinois for the construction of a broadband network to connect unserved and underserved areas of Kendall County. The State has given the County until June 1 to respond to a number of due diligence items prior to finalizing the grant award. Among these requirements are agreements with the County and its partners for the ongoing operation of the network, financing commitment, and network engineering. Each of these items is a fairly complex undertaking all happening under a tight deadline, however the County continues to work diligently with its partners to meet those requirements.

The proposed predevelopment agreement outlines the responsibilities of both the County and Pivot Tech moving forward. The predevelopment agreement outlines the remaining project-related expenditures. As outlined in the agreement, the project-related expenditures are agreed to be converted to a loan with the project company once it is established. Repayment of these expenses will be subordinate to any debt the project company incurs and necessary project investment, however if the project is generating revenue, the County wants the opportunity to recapture these costs at some point. This concept will be memorialized in the predevelopment

agreement, however the actual expenditure loan will occur with the broadband project operating company that will exist at a later date. The expenditures are outlined as follows:

<u>Service</u>	<u>Provider</u>	<u>Cost</u>
Market Study-Uptake	Pivot/Roland Berger	\$240,000
Market Study Expenses	Pivot/Roland Berger	Up to \$36,000
Customer Acquisition	Marketing Expenditures	\$120,000
Network Survey	LiDAR	\$150,000
Planning	Workshop	\$10,000
Legal Fees	Legal fees	\$300,000
Permitting	Rail/Spectrum	\$200,000
Program Management	Pivot/Alma	\$240,000
Financial Modeling	Pivot/TBD	\$10,000
TOTAL AMOUNT		\$1,306,000

Contract expenditures are pass-through and will be paid in an amount not to exceed the contract price. The broadband team continues to work closely with Pivot Tech to vet vendors and review expenditures to ensure they align with program needs.

Staff Recommendation:

Approval of a Predevelopment Agreement between Kendall County and Pivot Tech with expenditures not to exceed \$1,306,000.

Attachments:

Predevelopment Agreement by and between Kendall County, Illinois and Pivot Tech Development Inc.

PREDEVELOPMENT AGREEMENT
BY AND BETWEEN
KENDALL COUNTY, ILLINOIS
AND
PIVOT TECH DEVELOPMENT INC.
DATED MAY 7, 2024

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PREDEVELOPMENT AGREEMENT

This PREDEVELOPMENT AGREEMENT (this “**Agreement**”), dated as of the ___ day of May, 2024 (the “**Effective Date**”), is entered into between Kendall County, Illinois, a body politic of the State of Illinois (“**County**”), and Pivot Tech Development Inc., a Delaware corporation (“**Developer**” or “**Pivot**”).

RECITALS

WHEREAS, on April 25, 2023, the County issued a Request for Proposal titled “Public-Private Partnership in Providing Fiber to the Home and Internet Services” (the “**Solicitation**”) seeking certain services in connection with a project designed to expand fiber optic connectivity throughout the County (the “**Project**”);

WHEREAS, Pivot, in conjunction with its consortium partners (Aecon Construction US, Inc., Alma Global Infrastructure, Inc., Ciena, Inc., Flexnode, Inc., Mobia, Inc., and Widely, Inc.), successfully responded to the Solicitation with the submission of a proposal dated June 14, 2023 (the “**Proposal**”) and was awarded the Project by the County pursuant to the terms of the Solicitation;

WHEREAS, the County and Pivot previously entered into a Services Agreement, dated January 24, 2024, as amended by that certain First Amendment to the Services Agreement, dated April 19, 2024 (collectively referred to herein as the “**Services Agreement**”) setting forth certain responsibilities and obligations of the County and Pivot for the specified predevelopment services set forth therein, and the County and Pivot desire for that Services Agreement to be superseded and replaced by this Agreement;

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01. Definitions. The following defined terms shall have the meanings set out below:

(a) “**Affiliate**” means, with respect to a person, any other person directly or indirectly controlling, controlled by, or under common control with such first person. As used in this Agreement, the term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy and/or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(b) “**Bankruptcy**” means any of the following: (i) the filing of a voluntary petition under any federal or state law for the relief of debtors; (ii) the filing of an involuntary proceeding under any such law; (iii) the making of a general assignment for the benefit of the assignor’s creditors; (iv) the appointment of a receiver or trustee for a substantial portion of a person’s assets; or (v) the seizure by a sheriff, receiver, or trustee

of a substantial portion of a person's assets; provided, however, that no bankruptcy shall be deemed to have occurred in the case of an event described in clause (ii), (iv), or (v) above until the proceeding, appointment, or seizure has been pending for ninety (90) days.

(c) **Intentionally Omitted.**

(d) **“Event of Default”** means the occurrence and continuance of any one or more of the following events beyond the expiration of any applicable grace and/or cure period:

- (i) any breach or default by either party involving the payment of money under this Agreement; provided, however, that before such breach or default is deemed an Event of Default, the defaulting party shall have: (A) received notice from the non-defaulting party of such breach or default; and (B) failed to cure or remedy such breach or default within thirty (30) days following such notice;
- (ii) any breach or default by either party of any nonmonetary covenant, duty, obligation, representation, or warranty under this Agreement; provided, however, that before such breach or default is deemed an Event of Default, the defaulting party shall have: (A) received notice from the non-breaching party of such breach or default; and (B) failed to cure or remedy such breach or default within sixty (60) days following the date of such notice; provided that if such default is not curable within such sixty (60) day period, it shall not be an Event of Default unless the breaching party fails to commence such cure within such sixty (60) day period and fails to diligently and continuously pursue such a cure or remedy thereafter;
- (iii) a Bankruptcy or dissolution with respect to either party;
- (iv) Developer or County is grossly negligent or engages in fraud, bad faith, or other willful misconduct in connection with their respective obligations under this Agreement.

(e) **“Financial Close”** means the final execution of all documents relating to the Project Financing proposed in Section 3.04.

(f) **“Force Majeure Event”** means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) moratorium on the issuance of governmental approvals; (v) governmental authority, proclamations, orders, laws, actions, or requests; (vi) embargoes or blockades in effect on or after the date of this Agreement; (vii) epidemics, pandemics, or other national or regional public health emergencies; (viii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (ix) shortages of supplies, adequate power, or transportation facilities.

(g) “**Predevelopment Costs**” means the predevelopment costs for the Services included in Exhibit A attached hereto.

(h) “**Project**” is defined in the Recitals hereof.

(i) “**Project Documents**” has the meaning set forth in Section 2.05.

(j) “**Property**” means that certain the real property owned by the County or the County’s designee upon which the Project is proposed be completed by the Developer.

(k) “**Services**” means the predevelopment services to be provided by the Developer and has the meaning set forth in Section 2.01, and as set forth in Exhibit A.

(l) “**Term**” has the meaning set forth in Section 4.01.

ARTICLE II. APPOINTMENT; SERVICES

Section 2.01. Appointment; Services. Pursuant to the Solicitation and award of the Project by the County, the County hereby appoints Developer, and Developer accepts the appointment, to provide the predevelopment services set forth in Exhibit A with respect to the design, development and construction of the Project (the “**Services**”), and to assist County in the planning of the Project in accordance with the terms and conditions of this Agreement. Developer shall perform the Services within the timeframes set forth in Exhibit A. Developer shall provide all administrative, management, accounting, reporting, and other services necessary to provide the Services. Developer shall not incur any costs and expenses to be paid by County in connection with planning the Project or providing the Services unless such costs are provided for in the Predevelopment Costs set forth in Exhibit A or otherwise approved by County in writing, in County’s sole discretion.

Section 2.02. Standard of Care. Developer shall perform the Services in accordance with the degree of professional care, skill, judgment, and diligence ordinarily exercised by project developers regularly developing and operating development projects similar in scope. Developer shall fully and faithfully discharge its obligations and responsibilities hereunder and shall devote sufficient time and attention to ensure the full, prompt, and professional discharge of its duties under this Agreement.

Section 2.03. Relationship of the Parties. Developer acknowledges and agrees that it is acting under this Agreement solely as an independent contractor, and not as a partner, joint venturer, or employee of County. Developer shall have no authority to act for, bind, or obligate County in any manner whatsoever, except to the extent specifically set out in this Agreement or as may be specifically authorized in writing by County.

Section 2.04. Employees. Developer shall assign to the Project such staff, affiliates, partners and subcontractors as may be reasonably required to perform the Services with due diligence. All persons employed or contracted by Developer in connection with the Services will be Developer’s employees, independent contractors or subcontractors and will not be the employees or agents of the County, and the County shall have no liability, responsibility, or

authority regarding them. Developer is solely responsible for the salaries of its employees and any employee benefits to which they may claim to be entitled. Developer will fully comply with all applicable laws and regulations relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related laws.

Section 2.05. Ownership of Documents. All contracts, studies, drawings, plans, specifications, reports, surveys, feasibility studies, zoning analyses, photographs, books and records, projections, and other documents prepared by Developer or under Developer's direction relating to the Project ("**Project Documents**"), and all rights in the Project Documents, shall be the sole property of County.

Section 2.06. Compliance with Laws. Developer shall perform all Services and prepare all Project Documents in compliance with all applicable laws, statutes, rules, regulations, encumbrances, and conditions, covenants, and restrictions that affect the design, development, construction, or use of the Project.

Section 2.07. Books and Records. Developer shall maintain all books and records relating to the Project in accordance with commercially reasonable practices, including: (a) financial records and payment requisitions; and (b) construction contracts, plans and specifications, shop drawings, product data, samples, applicable manuals and handbooks, maintenance and operating manuals and instructions, warranties, and other documents, purchase orders, contracts, agreements, approvals, correspondence, and other writings related to the Project. County shall have the right to review and copy such materials and other documents that relate to the Project. All such records shall be the property of County upon completion of the Services.

Section 2.08. Property Access. Commencing on the Effective Date and continuing through the Term, the Developer and its agents, contractors, subcontractors, consultants, licensees and representatives (collectively, "**Developer's Representatives**") shall have reasonable access to the Property for the purpose of conducting studies, investigations, inspections and tests of the Property as Developer deems reasonably necessary or desirable, including surveys, studies and architectural, engineering, geo-technical and environmental inspections and tests, as applicable. Developer's access to any property not owned or controlled by the County shall be monitored and approved by the County during the Term of this Agreement. It is understood and agreed to by the parties that access, ownership and or control of any real property required to plan and/or develop the Project shall be the responsibility of the Developer to secure.

ARTICLE III.

PREDEVELOPMENT COSTS; PROPOSED PROJECT FINANCING

Section 3.01. Payment of Predevelopment Costs. In full consideration of the Services to be performed by the Developer set forth herein, the County hereby agrees to pay Developer the Predevelopment Costs subject to the completion of the Services, or upon achieving specific milestones set forth in writing by the parties, all to the satisfaction of the County in its sole discretion, in the amounts as set forth in Exhibit A attached hereto. The County shall only be responsible for actual Predevelopment Costs incurred and properly invoiced by the Developer. Should the Developer identify additional expenditures necessary for the Project that are not included in Exhibit A, the Developer shall notify and submit such proposed additional

expenditures to the County for review. Any additional expenditures in excess of the amounts included in Exhibit A must be approved by the County Board in the form of an amendment to this Agreement. The County shall not be responsible for the payment of Predevelopment Cost (including any additional expenditures approved by the County Board) in excess of an aggregate of One Million Five Hundred Thousand Dollars and No Cents (US \$1,500,000.00), and will not seek approval from the County Board for any additional expenditures that would exceed this amount. Except as otherwise expressly set forth in this Agreement, Developer shall not be entitled to any other payments or reimbursements from County in connection with the provision of the Services or any aspect of the predevelopment phase of the Project. County shall pay the amounts due and owing under this Agreement pursuant to the Local Government Prompt Payment Act.

Section 3.02. Developer’s Default. Upon the occurrence of an Event of Default, County shall have no obligation to pay any Predevelopment Cost for any period during such Event of Default. County shall pay such Predevelopment Costs with respect to such period when and if such Event of Default is fully cured.

Section 3.03. Proposed Project Financing. Financing of the Project will be structured and procured by the Developer with cooperation from the County, with the terms required for the financing to be included in the final development agreement or other similar agreement (“**Final Development Agreement**”) that will detail, among other things, the security for the repayment of the Project, and that any financing procured by the Developer shall be nonrecourse to the County or obligate the County to pay any debt service either directly or indirectly. The financing terms will be structured in a manner acceptable to the County and the Developer with respect to timing and the amount paid by the County for the Project. It is anticipated that an investor or lender will provide funds necessary to pay the costs of the Project, repayment of which will be secured by the revenues generated by the Project (the “**Project Financing**”). The County agrees that it will cooperate in the Project Financing and execute any document or agreement required by an investor or lender that acknowledges certain provisions of the Project Financing, including but not limited to acknowledging that the investor or lender has a secured interest in the Developer’s rights and obligations under the Final Development Agreement and has certain remedies in the event the Developer fails to perform its obligations to complete the Project. If an investor or lender exercises a remedy under the Project Financing documents that requires County consent or approval, the County agrees to provide such consent or approval to the extent it is permitted by the laws of the State of Illinois and is consistent with the Final Development Agreement. The County has the right to review and approve the terms of the Project Financing.

Section 3.04. Project Financing Structures. The parties acknowledge that the financing structure for the Project has not yet been finalized, and agree to cooperate to explore, analyze and determine the best financing structure to facilitate the completion of the Project by the Developer. These financing structures including, but are not limited to the following:

- (a) The County has contemplated the establishment and use of a “63-20 Corporation” to assist in the facilitation of the financing of the Project, and if it is determined to be in the best interests of the County, in its sole discretion, the County agrees to take the necessary steps to establish and maintain the “63-20 Corporation” in accordance with Internal Revenue Service Rule 63-20 and Revenue Proclamation 82-26 for the purpose of issuing tax-exempt bonds to pay the costs of the Project that would be secured

by the revenues generated by the Project. Upon its creation, the “63-20 Corporation” would contract with the Developer to design, build, operate, and maintain the Project.

(b) The Developer agrees to analyze the use of tax-exempt private activity bonds for a “qualified broadband project” as defined in 26 U.S. Code §142(n)(1). The County agrees to cooperate with and support the Developer in connection with the analysis and potential use of private activity bonds.

(c) The Developer or the County may pursue an alternative financing structure to those listed in this subsection, so long as the financing structure is procured as set forth in Section 3.04, unless it is determined to be in the best interest of the County, in its sole discretion, and detailed in the Final Development Agreement.

(d) If the County determines it to be in its best interest to pursue an alternative financing structure that requires an underwriter, placement agent, broker-dealer or other similar professional, the County is not obligated to use any subcontractor procured by the Developer in pursuit of such alternative financing structure.

Section 3.05. Grant Award. The County has been notified that it will be awarded Fifteen Million Dollars and No Cents (US \$15,000,000.00) from the Illinois Broadband Office (“**Grant Award**”), and plans to use the full amount the Grant Award to pay a portion of the costs of the Project.

Section 3.06. Reimbursement of Predevelopment Costs. It is the intent of the County to receive reimbursement for the actual expenditures related to the Predevelopment Costs outlined in Exhibit A, in the amount not to exceed One Million Five Hundred Thousand Dollars and No Cents (US \$1,500,000.00). It is understood by the parties that the payment obligation for such reimbursement will be subordinate to any investor or lender providing the Project Financing, and will be paid from revenues generated by the Project remaining after debt service and all other costs relating to the Project Financing are paid.

ARTICLE IV. TERM

Section 4.01. Term. Unless sooner terminated, the term of this Agreement shall commence on the date hereof and shall expire on June 1, 2024, or until the County receives the Grant Award, whichever date is later, unless extended by mutual agreement of the parties or terminated pursuant to the terms hereunder (the “**Term**”).

Section 4.02. Termination. This Agreement may be terminated by the County at any time with prior notice to the Developer. Upon termination of the Agreement for any reason, the County shall pay to Developer, unless otherwise being reasonably disputed, any amounts due and owing by the County for the Services provided through the date of termination.

Section 4.03. Event of Default Termination.

(a) **By County.** Without limiting any other rights or remedies available to County at the time of such termination, this Agreement may be terminated by County upon an Event of Default by Developer.

(b) **By Developer.** Without limiting any other rights or remedies available to Developer at the time of such termination, this Agreement may be terminated by Developer upon an Event of Default by County; provided, County shall have the right to cure such default following written notice of default to County within: (i) thirty (30) days if a monetary default; and (ii) sixty (60) days if a non-monetary default. Developer's performance of its obligations under this Agreement shall be suspended during any period of an uncured Event of Default of County.

Section 4.04. Intentionally Omitted.

Section 4.05. Actions on Termination. On termination of this Agreement, Developer shall within sixty (60) days:

(a) Deliver to County all Project Documents that are in Developer's possession or control.

(b) Deliver to County without offset, diminution, or withholding, all funds held by Developer relating to the Project, with any accrued interest thereon.

(c) Furnish all such information and take all such action as County shall reasonably require (including cooperating with a new developer for such time as may be required by County) to carry out an orderly and systematic transfer of Developer's duties and obligations under this Agreement to a new person designated by County.

This Section 4.05 shall survive the expiration or earlier termination of this Agreement.

Section 4.06. County Event of Default. In the event of an Event of Default by the County, Developer shall be entitled, as its sole remedies, either to (i) elect to terminate this Agreement as provided in Section 4.03, in which case Developer shall be entitled to reimbursement in an amount equal to the remaining balance of the Predevelopment Fee owned under the full Term of the Agreement and Developer's reasonable costs (including attorney's fees) incurred in connection with negotiating this Agreement and any third party costs that were incurred in performing the Services including, without limitation, all architectural, design, and engineering work incurred for the Services, in an amount not to exceed \$75,000, and the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement), or (ii) enforce specific performance of the County's obligations. Developer shall be deemed to have elected to terminate this Agreement if Developer fails to file suit for specific performance against the County in a court having jurisdiction in the county and state in Kendall County, Illinois, on or before thirty days following the date upon which the notice of the Event of Default was sent.

Section 4.07. Developer Event of Default. In the event of an Event of Default by Developer, the County shall be entitled, as its sole remedy, to terminate this Agreement (except for rights or obligations which expressly survive the termination of this Agreement) as provided

in Section 4.03 and to recover all third party costs incurred with respect to the Agreement and the Project, including, but not limited to reasonably incurred attorney and other professional fees, in an amount not to exceed the Predevelopment Fee.

Section 4.08. Attorneys’ Fees. In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party’s reasonable attorneys’ fees and court costs, including the costs of appeal, as may be determined and awarded by the court in which the action is brought. The right to attorneys’ fees shall survive the termination of this Agreement.

**ARTICLE V.
INSURANCE; INDEMNIFICATION**

Section 5.01. Developer’s Insurance. Developer will maintain, at its sole cost and expense, the following insurance coverages throughout the Term of this Agreement:

(a) Developer shall purchase, maintain, and keep in full force, effect, and good standing, such insurance that is further described below, and any other insurance necessary to fully protect Developer from claims of the nature that are detailed below, that may arise out of, or result from, Developer’s operations, performance, or Services, or all of these things, or any of these things in combination (“Developer’s Operations”), whether Developer’s Operations are by Developer, any of its agents or subcontractors, or anyone for whose act or acts it may be liable:

- (i) claims under Worker’s Compensation, disability benefit, or other (similar) employee benefit acts;
- (ii) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- (iii) claims for damages for personal injury; and
- (iv) claims for damages because of injury to or destruction of tangible property, including the loss of property use resulting therefrom.

(b) The insurance shall be written for not less than the limits of liability specified below, or such limits required by law, whichever is greater:

<u>Type of Insurance</u>	<u>Required Coverages</u>
(i) Worker’s Compensation; Employer’s Liability	Illinois statutory limit \$500,000 per accident
(ii) Comprehensive General Liability:	\$1,000,000 per occurrence
Bodily Injury	\$1,000,000 per occurrence

<u>Type of Insurance</u>	<u>Required Coverages</u>
Property Damage	\$1,000,000 per occurrence
Personal Injury	\$1,000,000 per occurrence
Bodily Injury, Personal Injury and Property Damage	\$1,000,000 combined single-limit per occurrence and aggregate
(iii) Business Automobile Liability	\$1,000,000 per occurrence

(c) Developer shall require the architect or engineer of record, as applicable, and other design professionals to purchase, maintain, and keep in full force, effect, and good standing, a professional liability/errors and omissions insurance policy having minimum limits of \$1,000,000, with a maximum deductible of \$100,000.

(d) Insurance certificates, in form and content acceptable to County, evidencing all insurance coverages referred to in this section, shall be delivered to County before Developer commences rendering the Services under this Agreement. The insurance certificates shall provide and specify that the related insurance coverage shall not be cancelled without at least thirty (30) calendar days prior written notice having been given to County. It is also understood and agreed that it is Developer's sole burden and responsibility to coordinate activities between itself, County, and Developer's insurer(s) so that the insurance certificates are acceptable to and accepted by County within the time limits described in this section.

(e) The County and its past, present and future officers, officials, employees and volunteers are to be covered as additionally insured on all insurance coverages required by this Agreement, except Worker's Compensation and Professional Liability errors and omissions insurance. Furthermore, all other insurance policies pertaining to the Services shall memorialize that Developer or Developer's subcontractor's ("**Primary Insureds**") insurance, shall apply on a primary basis, and that any other insurance maintained by County shall be in excess of and shall not contribute to or be commingled with the Primary Insureds' insurance. Where County has been named as an additional insured, Developer shall include the provisions of this subsection in its subcontractors' contracts at all tiers and the Primary Insureds' insurance shall contain a severability of interest provision stating that, except with respect to total limits of liability, all insurance shall apply separately to each Primary Insured or the additional insured in the same manner as if separate policies had been issued to each.

(f) Developer shall, upon thirty (30) days' written request from County, deliver copies to County, or make copies available for County's inspection, of any or all insurance policies that are required in this Agreement. If Developer fails to deliver or make such copies available to County; or, if Developer fails to obtain new insurance or have a previous insurance policy reinstated or renewed; or, if Developer fails in any other regard to obtain coverage sufficient to meet the terms and conditions of this Agreement; then County may, at its sole option and as its sole remedy, terminate this Agreement for cause pursuant to the terms and conditions.

(g) Developer acknowledges, understands, and agrees that it shall give prompt and prior written notice to County that any insurance policy defined or contemplated has lapsed, its limits have been reduced below the amounts required hereunder or such policy has otherwise been terminated.

Section 5.02. Waiver of Claims/Subrogation. To the extent permitted under its policies of insurance and applicable law, Developer agrees that regarding any loss or claim that is covered by insurance then carried by Developer: (a) Developer releases County of and from any and all claims regarding such loss to the extent of the insurance proceeds paid with respect thereto and specifically excepting from such release any deductible required to be paid; and (b) Developer's insurance companies shall have no right of subrogation against the County or County's agents, contractors, employees, licensees, or invitees on account thereof.

Section 5.03. Indemnity. To the full extent permitted by law, Developer shall indemnify, defend, and hold harmless County, and each of County's Affiliates, employees, members, partners, officers, directors, agents, consultants, attorneys, successors, and assigns, from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without limitation, attorneys' fees, costs, and expenses, but specifically excluding any consequential, special, or punitive damages) arising from, relating to, or in connection with, any act or failure to act by Developer which results from: (a) the negligence, fraud, or willful misconduct of Developer; (b) an Event of Default of Developer; or (c) acts by Developer outside the scope of authority granted under this Agreement. This Section 5.03 shall survive the expiration or earlier termination of this Agreement.

ARTICLE VI. FORCE MAJEURE

Section 6.01. Force Majeure.

(a) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any obligation of this Agreement, when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either party to perform its obligations in this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay.

(b) Either party (the "**Noticing Party**") shall give the other party notice as soon as reasonably practical of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use commercially reasonable efforts to minimize the effects of such Force Majeure Event. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the failure or delay remains uncured for a period of one hundred twenty (120) consecutive days following written notice given by the Noticing Party under this Section, the County or Developer may thereafter terminate this Agreement on thirty (30) days' written notice.

**ARTICLE VII.
REPRESENTATIONS AND WARRANTIES**

Section 7.01. Developer Representations. Developer hereby represents, warrants, and covenants to County as follows:

(a) Developer is a Delaware corporation duly formed, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business and is in good standing under the laws of the State of Illinois.

(b) Developer has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of Developer, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

(c) Developer is qualified and has the skill and professional competence, expertise, and experience to undertake the obligations imposed and to perform the Services required by this Agreement and the requirements of a project of the magnitude and scope of the Project.

(d) Developer has and shall at all times during the Term of this Agreement maintain sufficient facilities, expertise, staff, assets, and other resources necessary to perform the Services. The Services shall be performed and rendered by professionals experienced, licensed (if a license is required), and qualified to perform such services in the state in which the Project is located.

(e) Developer holds and shall at all times during the Term of this Agreement maintain all licenses, permits, or other certifications necessary to perform the Services, and is in compliance with and shall continue to comply with all applicable laws.

(f) Neither Developer nor any partner, member, or shareholder of Developer is, and no legal or beneficial interest in a partner, member, or shareholder of Developer is or will be held, directly or indirectly, by a person or entity that appears on a list of individuals and/or entities for which transactions are prohibited by the US Treasury Office of Foreign Assets Control or any similar list maintained by any other governmental authority, with respect to which entering into transactions with such person or entity would violate the USA PATRIOT Act or regulations or any Presidential Executive Order or any other similar applicable law, ordinance, order, rule, or regulation (a "**Prohibited Person**").

Section 7.02. County Representations. County hereby represents and warrants to Developer as follows:

(a) County is a body politic of the State of Illinois.

(b) County has all requisite power and authority and has taken all actions required by applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of County, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

**ARTICLE VIII.
MISCELLANEOUS**

Section 8.01. Notices. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted under this Agreement shall be in writing and delivered to all other parties at the addresses below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered United States Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (facsimile or email) provided that the transmission is sent no later than 5:00 p.m. central time on a business day, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To County: Kendall County, Illinois
504 S. Main Street
Yorkville, Illinois 60560
Attn: Christina Burns, County Administrator
Email: cburns@kendallcountyil.gov

with a copy to: State's Attorney of Kendall County, Illinois
807 West John Street
Yorkville, Illinois 60560
Attn: Eric Weis
Email: eweis@kendallcountyil.gov

To Developer: Pivot-Tech Development LLC.
6674 East 118th Ct.
Thornton, Colorado 80233
Attn: James Cannon, CEO
Email: jim@pivot-tech.io

Any party shall change its address for purposes of this Section 8.01 by giving written notice as provided in this Section 8.01. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 8.01.

Section 8.02. Confidentiality. In providing the Services, Developer may be provided with and may accumulate documentation, data, or other information regarding County (and its partners, members, or shareholders) and the Project that are confidential and proprietary in nature. Developer shall hold and maintain all such documents and other information, including, but not limited to, any plans and specifications, development budgets, feasibility studies, market reports, contracts, and any other reports and data and all components thereof, in the strictest confidence, and shall not disclose any such information to any person or entity without County's prior written approval, except as may be required to perform the Services under this Agreement or as required by law. Confidential information shall not include information which:

(a) Is or becomes generally available to the public other than as a result of a disclosure by Developer or by a breach of Developer of this provision;

(b) Was within the possession of Developer before being furnished to Developer under this Agreement, if the source of such information was not known by Developer to be bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to County regarding such information; or

(c) Becomes available to Developer on a nonconfidential basis from a source other than County, if such source is not bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to County regarding such information.

Section 8.03. Further Assurances. Each party agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any party's obligations hereunder or materially decrease any party's rights hereunder.

Section 8.04. Assignment; Successors and Assigns. Developer may not assign any of its rights or delegate any of its obligations hereunder without the prior approval of the County, which may be withheld in its sole and absolute discretion. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Developer of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 8.05. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.06. Subcontractor Contracts. Developer shall provide a copy of all relevant provisions of this Agreement to all subcontractors hired by it, or for which it may have management responsibilities and shall inform all subcontractors at all tiers that the Services performed hereunder shall strictly comply with this Agreement's terms. Developer shall also furnish County, upon demand, with a copy of all of the subcontractors' at all tiers contracts.

Section 8.07. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois, without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Illinois.

Section 8.08. Illinois Freedom of Information Act. As a government agency, County is subject to the Illinois Freedom of Information Act (Illinois FOIA) or 5 ILCS 140/1, et. seq., as amended. Therefore, the Developer's records and work product are subject to the Illinois FOIA statutes. However, there are various items that may be exempt, which include but are not limited to trade secrets or commercial/financial information that are proprietary, privileged, or confidential, or where disclosure of the same would result in competitive harm. If any such proprietary, privileged, or confidential information or data is included in the Developer's work product, each page that contains this information or data should be marked as such (e.g. "**Proprietary and Competition Sensitive**") in order to indicate Developer's claim to an exemption provided in the Illinois FOIA. Developer shall timely cooperate with the County in complying with Illinois FOIA. It is County's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Illinois FOIA.

Section 8.09. Discrimination. Developer covenants and agrees that, i) in the furnishing of the Services to County hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the grounds of such person's race, color, creed, national origin, disability, sexual orientation, religion or sex; and ii) Developer shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or laws, and as such rules, regulations, or laws may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this section, County shall have the right to terminate this Agreement.

Section 8.10. Public Entity Crime. Any Person or affiliate, as defined in the *Illinois Statutes*, shall not be allowed to contract with County, nor be allowed to enter into a subcontract for work on this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date the Solicitation, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date the Solicitation, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any agreement with County obtained in violation of this section shall be subject to termination for cause. A subcontractor who obtains a subcontract in violation of this section shall be removed from the Project and promptly replaced by a subcontractor acceptable to County.

Section 8.11. Conflict of Interest. Both parties affirm no County officer or elected official has a direct or indirect pecuniary interest in Pivot, the Developer or this Agreement, or, if any County officer or elected official does have a direct or indirect pecuniary interest in Pivot, the Developer or this Agreement, that interest, and the procedure followed to effectuate this Agreement has and will comply with 50 ILCS 105/3.

Section 8.12. Vendor Information Reporting. In accordance with 35 ILCS 200/18-50.2, Developer shall notify County, in writing, (1) whether Developer or any of its subcontractors is a minority-owned, women-owned, or veteran-owned business, as defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/0.01 et seq.); and (2) whether Developer or any of its subcontractors holds any certifications for those categories or if they are self-certifying. If Developer or any of its subcontractors self-certifies, Developer shall notify County in writing whether Developer or any of its subcontractors vendor qualifies as a small business under federal Small Business Administration standards.

Section 8.13. Submission to Jurisdiction. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of, relating to, or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in the federal or state courts of the State of Illinois, so long as such courts shall have subject-matter jurisdiction over such suit, action, or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Illinois. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address set out in Section 8.01 shall be effective service of process for any suit, action, or other proceeding brought in any such court.

Section 8.14. Waiver of Jury Trial. EACH PARTY HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY.

Section 8.15. Interpretation and Construction.

(a) The parties acknowledge that in connection with negotiating and executing this Agreement, each has had its own counsel and advisors and that each has reviewed and participated in drafting this Agreement. The fact that the first draft of this Agreement was prepared by County's counsel as a matter of convenience shall have no import or significance to the construction of this Agreement. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of: (i) this Agreement; (ii) any exhibits to this Agreement; or (iii) any document drafted or delivered in connection with the transactions contemplated by this Agreement.

(b) Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

(c) The singular of any term, including any defined term, shall include the plural and the plural of any term shall include the singular. The use of any pronoun regarding gender shall include the neutral, masculine, feminine, and plural.

(d) All of the recitals hereof are incorporated by this reference and are made a part hereof as though set forth at length herein.

Section 8.16. Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.17. Entire Agreement. This Agreement, together with and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

Section 8.18. Amendments. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

Section 8.19. Services Agreement Superseded. The Services Agreement, as amended, is hereby superseded and replaced by this Agreement, and the County or Pivot have no further obligation of responsibilities thereunder. The scope of services contemplated under the Services Agreement have been including in this Agreement, and are obligations and responsibilities of Pivot. Any obligations of the County to make payment for the Services that have been satisfied pursuant to the Services Agreement are no longer obligations of the County under this Agreement. In the event of any conflict or ambiguity as to the rights, obligations or responsibilities of the County and Pivot under this Agreement and the Services Agreement, the terms of this Agreement shall control and supersede any such conflict or ambiguity.

Section 8.20. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 8.21. Remedies Not Exclusive. Except as may otherwise be expressly provided in this Agreement: (a) the exercise of one or more of the rights and remedies under this Agreement

shall not preclude the exercise of any other right or remedy under this Agreement, at law, or in equity; and (b) damages at law may not be an adequate remedy for a breach or threatened breach of this Agreement and in the event of a breach or threatened breach of any provision hereunder, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

Section 8.22. Days; Performance on a Saturday, Sunday, or Holiday. Whenever the term "**day**" is used in this Agreement, it shall refer to a calendar day unless otherwise specified. A "**business day**" shall mean any weekday except for those weekdays that a banking institution within the State of Illinois is required by said state to be closed (a "**Holiday**"). Should this Agreement require an act to be performed or a notice to be given on a Saturday, Sunday, or Holiday, the act shall be performed or notice given on the following business day.

Section 8.23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.24. Time of the Essence. Time is of the essence in the performance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

COUNTY OF KENDALL, ILLINOIS

By: _____

Name: _____

Its: _____

PIVOT TECH DEVELOPMENT INC.,

a Delaware corporation

By: _____

Name: James Cannon

Title: CEO

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE COUNTY OF KENDALL, ILLINOIS.

_____, 2024

County Board Charmain
Kendall County, Illinois

EXHIBIT A

SERVICES AND PREDEVELOPMENT COSTS

1. **MARKET STUDY: UPTAKE:** County will pay Developer an amount not to exceed Two Hundred Forty Thousand Dollars and No Cents (US \$240,000.00) for research, contracting, marketing, permitting, last mile planning, and feasibility endorsements, all related to the State of Illinois DCEO Grant requirements in part and the overall progress of the Project. The County also agrees to pay necessary and reasonable expenses actually incurred by the Developer (or its subcontractor) in an amount not to exceed fifteen (15%) percent of the cost of the study (US \$240,000.00).

Completion Date: May 31, 2024

2. **CUSTOMER ACQUISITION:** County will pay Developer an amount not to exceed One Hundred and Twenty Thousand Dollars and No Cents (US \$120,000.00) for marketing expenses to secure network customers.

Completion Date: June 30, 2024

3. **NETWORK SURVEY:** County will pay Developer an amount not to exceed of One Hundred and Fifty Thousand Dollars and No Cents (US \$150,000.00) for LiDAR survey work necessary for network design and planning.

Completion Date: June 1, 2024

4. **PLANNING WORKSHOP:** County will pay Developer an amount not to exceed Ten Thousand Dollars and No Cents (US \$10,000.00) to conduct a planning workshop with other development partners on site in Kendall County.

Completion Date: Completed (to be invoiced for payment)

5. **LEGAL FEES:** County will pay Developer an amount not to exceed Three Hundred Thousand Dollars and No Cents (US \$300,000) for actual legal costs incurred by the Developer associated with drafting and finalizing contracts required for the Project. Full descriptive invoices shall be submitted for review and approval by the County, and the County shall, in its sole discretion, agree to accept or deny payment for such invoices.

Completion Date: June 30, 2024

6. **PERMITTING:** The County will pay Developer an amount not to exceed Two Hundred Thousand Dollars and No Cents (US \$200,000.00) for permit fees associated with rail and Spectrum licenses required for the Project.

Completion Date: December 31, 2024

7. **PROGRAM MANAGEMENT:** The County will pay Developer an amount not to exceed Two Hundred and Forty Thousand and No Cents (US \$240,000.00) for program management services. The program management fee shall be invoiced and paid in two installments, One Hundred and Twenty Thousand and No Cents (US \$120,000.00) on or before May 31, 2024, and One Hundred and Twenty Thousand and No Cents (US \$120,000.00) upon financial close.

Completion Date: Financial Close

8. **FINANCIAL MODELING:** The County will pay Developer an amount not to exceed Ten Thousand Dollars and No Cents (US \$10,000.00) for financial modeling fees necessary for the finance, planning or future operations of the network if parties agree such models are necessary.

Completion Date: May 15, 2024

SUMMARY OF PREDEVELOPMENT COSTS

<u>Service</u>	<u>Provider</u>	<u>Cost</u>
Market Study-Uptake	Pivot/Roland Berger	\$240,000
Market Study Expenses	Pivot/Roland Berger	Up to \$36,000
Customer Acquisition	Marketing Exp	\$120,000
Network Survey	LiDAR	\$150,000
Planning	Workshop	\$10,000
Legal Fees	Legal fees	\$300,000
Permitting	Rail/Spectrum	\$200,000
Program Management	Pivot/Alma	\$240,000
Financial Modeling	Pivot/TBD	\$10,000
TOTAL AMOUNT		\$1,306,000



Kendall County Agenda Briefing

Meeting Type: County Board Meeting
Meeting Date: 5/7/2024
Subject: Broadband Legal Services Engagement Letter
Prepared by: Christina Burns, County Administrator
Department: Administration

Action Requested:

Approval of an engagement letter with Taft, Stettinius & Hollister for broadband legal services

Board/Committee Review:

11/16/23 Special County Board Meeting: Approval of an Engagement Letter with Ice Miller for broadband legal services

Fiscal impact:

NA

Background and Discussion:

The County engaged with the law firm Ice Miller to provide legal services related to broadband services in November. The County has been working with several attorneys at the firm, all of whom have expertise in the areas related to the County's broadband project. The County has been satisfied with the project attorneys. The group of attorneys with whom the County has been working recently notified us that they would be transitioning to a new law firm, Taft, Stettinius & Hollister, effective May 1. Staff has recommended and the State's Attorney has concurred with switching to the new firm under a new engagement letter so that we are able to stay with the same attorneys. This ensures that we have both continuity of service and continued quality legal advice. The engagement letter maintains the same fee schedule and fee maximum as the previous engagement letter. If approved by the County Board, the State's Attorney will authorize the transfer of the County's file from Ice Miller to Taft.

Staff Recommendation:

Approval of an engagement letter with Taft, Stettinius & Hollister for broadband legal services.

Attachments:

Engagement Letter dated May 3, 2024



111 East Wacker
Suite 2600
Chicago, IL 60601
T: 312.527.4000
F: 312.527.4011

MATTHEW J. MILLER
312.836.5877
mjmiller@taftlaw.com

May 3, 2024

VIA ELECTRONIC MAIL –
cburns@kendallcountyil.gov
jwebb@kenallcountyil.gov

Kendall County, Illinois
111 West Fox Street
Yorkville, Illinois 60560
Attn: Christina Burns, County Administrator

State's Attorney of Kendall County, Illinois
807 West John Street
Yorkville, Illinois 60560
Attn: James Webb

Re: Legal Representation

Dear Ms. Burns and Mr. Webb:

Thank you for selecting Taft Stettinius & Hollister LLP (“Taft”) to represent you in its broadband expansion efforts (the “Matter”). This letter will serve as our engagement and describe the basis on which our firm will provide legal services to you.

Client. Kendall County, Illinois will be our client in this matter (“You,” the “County” or the “Client”).

Scope of Engagement. We understand that we will be providing legal services relating to the following:

- Assist Kendall County and its other advisors in documentation and negotiation of an agreement with the party selected by the County, for implementation of broadband expansion in Kendall County;
- Attention to the due diligence research regarding the party selected by the County;

- Continuing assistance with issues regarding the broadband expansion process as may be requested by the County,
- Work with the County's legal advisor regarding the ultimate structure and form of any agreement negotiated with the party selected by the County; and
- Assist the County in review any financing proposed with the completion of the broadband expansion project.

We may agree with you to either limit or to expand the scope of our representation from time to time, provided that any such change is confirmed by us in writing. No other party is being represented by us or intended to be benefited by our representation. Please understand that while we cannot, and do not, guarantee the outcome or success of this or any other engagement or professional undertaking, we will earnestly strive to represent and serve your interests in this engagement effectively, efficiently, and responsibly while endeavoring to accomplish your objectives in this engagement..

Client Responsibilities. You agree to pay our statements for services and expenses as provided below. In addition, You agree to be candid and cooperative with us and to keep us informed with complete and accurate factual information, documents, and other communications relevant to the subject matter of our representation or otherwise reasonably requested by us. You agree to be available to attend trial, hearings, depositions and discovery conferences, and other proceedings, and to meet your discovery obligations if any.

Because it is important that we be able to contact You at all times to consult with You regarding your representation, you agree to inform us, in writing, of any changes in the name, address, telephone number, contact person, e-mail address, state of incorporation, or other relevant changes regarding you or your business. Whenever we need your instructions or authorization in order to proceed with legal work on your behalf, we will contact you at the latest business address we have received from you.

Fees. Based upon our work on previous projects, we currently estimate an initial budget for the above-mentioned services to be \$75,000. This initial amount is dependent upon the complexity of negotiation discussions, among other factors. As we perform the services outlined above, should we have invoicing that nears the initial estimated budget of \$75,000, we will contact you and discuss our expectation and the need for additional work and subsequent financial arrangements prior to performing services above the initial estimated budget of \$75,000.

We will invoice you monthly for work performed at our reduced hourly rates that include a courtesy discount for nonprofit/public sector clients. As we perform the services outlined above, should we have invoicing that nears the initial estimated budget of \$75,000, we will contact you and discuss our expectations and the need for additional work and subsequent financial arrangements prior to performing services above the initial estimated budget of \$75,000. Greg Dunn, Christopher Miller and myself will bill at a \$580 hourly rate and Lauren Stenger will be billing at a \$330 hourly rate. Should we need assistance from other professionals at the firm, we will include their time at a similarly reduced hourly rate.

Costs. We will include on our statements separate charges for performing services such as photocopying, messenger and delivery service, computerized research, travel, telephone conferencing and fax charges, and search and filing fees. You also agree to pay the charges for copying documents for retention in our files. You may permit us to retain any investigators, consultants, or experts necessary in our judgment to represent your interests in this matter with prior authorization. The fees and expenses of others generally will not be paid by us, but will be billed directly to you.

Payment of Statements. Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services for you until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses. We reserve the right to impose a carrying charge of 1% per month on any amounts unpaid for more than 30 days.

It is Taft's understanding that you have agreed to pay the legal fees and costs incurred in this Matter. You should be aware that fee statements include information that is subject to the attorney client privilege and attorney work product doctrine.

Retainer and Trust Deposits. New clients of the firm are generally required to deposit a retainer with the firm, however a retainer or trust deposit is not required in connection with this representation.

Conflicts of Interest. You acknowledge and agree that, despite the apparent lack of conflict at this time, it is possible that facts will become known to us which we believe creates a conflict of interest for us. It is also possible that disagreements and other differences may arise between you and among other groups in the future. In that event, we will request that you resolve any such differences between or among yourselves without our involvement or assistance. If you cannot resolve your differences and those differences result in a conflict of interest that would materially limit our ability to provide competent and diligent representation to each of you with respect to this matter or if facts become known to us which we believe creates a conflict of interest, then we may withdraw from the representation of one or more of you as necessary to resolve the conflict of interest. In such event, you agree that we may continue to represent the other, even if, as a result of such withdrawal, we may take positions adverse to your interests in any subsequent negotiation or proceeding relating to this matter.

Our firm is a relatively large law firm and represents many other companies and individuals. Thus, during the time we are representing you, we may also represent other present or future clients in disputes or transactions adverse to you that are unrelated to this representation.

Based on the foregoing, You agree that our representation of you in this matter will not disqualify our firm from opposing you in other matters, that are unrelated to the subject matter of this representation, and you consent to any conflict of interest with respect to those representations. We agree, however, not to use any proprietary or other confidential information of a nonpublic

nature concerning you acquired by us as a result of our representation of you to your material disadvantage in connection with any litigation or other matter in which we are opposed to you.

In part because of the number of clients that Taft represents and the complexity of the matters we become involved in, from time to time issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include, e.g., conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. Under normal circumstances when such issues arise we would seek the advice of our General Counsel, who is a partner in this firm and who is an expert in such matters. Historically, we have considered such consultations to be attorney-client privileged conversations between firm personnel and the counsel for the firm. In recent years, however, there have been judicial decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and the client's firm and that such consultation with firm's counsel may not be privileged, unless the firm either withdraws from the representation of the client or obtain the client's consent to consult with counsel.

We believe that it is in our clients' interest, as well as Taft's interest, that in the event legal ethics or related issues arise during a representation, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation of you, you agree that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with either Taft's internal counsel or, if we choose, outside counsel, we have your consent to do so and that our representation of you shall not, thereby, waive any attorney-client privilege that Taft may have to protect the confidentiality of our communications with counsel.

Advice about Possible Outcomes. Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning various courses of action and the results that might be anticipated. Any such statement made by any lawyer of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

Termination of Engagement. The Client may at any time terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the Clients of the obligation to pay for all services already rendered, including work in progress and remaining incomplete at the time of termination, and to pay for all expenses incurred on behalf of the Clients through the date of termination.

We reserve the right to withdraw from our representation as required or permitted by the applicable rules of professional conduct upon written notice to the Clients. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect the Client's interests in the above matter, and the Clients agrees to take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to perfect our withdrawal. We will be entitled to be paid for all services rendered and costs or expenses incurred on behalf of the Clients through the date of withdrawal. If permission for withdrawal is

required by a court or arbitration panel, we will promptly request such permission, and the Clients agrees not to oppose our request.

Conclusion of Representation; Retention and Disposition of Documents. Unless previously terminated, our representation of the Clients in this matter will terminate upon our sending you our final statement for services rendered in the matter. At your request, your papers and property will be returned to you upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

Please review this letter carefully. If it meets with your approval, sign the enclosed copy of the letter in the space provided below and return it to me. Once we receive the signed letter we will commence work on the matter.

Please call me if you have any questions.

Sincerely,



Matthew J. Miller

mjm/kk

cc:

AGREED TO AND ACCEPTED:

Date: _____