

AGRICULTURAL USE AGREEMENT

This Agricultural Use Agreement (Agreement) is entered into as set forth below between The City of Oklahoma City (City) and Davis Mayberry (Permittee).

WITNESS:

WHEREAS, the City owns Lone Oak Park, 4220 Northwest 164th Street; Route 66 Park; 9901 Northwest 23rd Street; and South Lakes Park, 4210 Southwest 119th Street (collectively, the Sites, see Exhibit A, incorporated herein); and

WHEREAS, the Sites all include areas of open greenspace with no park infrastructure; and

WHEREAS, Permittee requested this Agreement for short-term hay cultivation at designated areas within the Sites; and

WHEREAS, Permittee's interim use of the Sites would benefit the City by reducing maintenance costs and limiting fire danger; and

WHEREAS, the City is willing to enter into this Agreement for the activity described above.

NOW, THEREFORE, the parties agree:

1. GRANT AND PURPOSE

Under this Agreement, Permittee may access and use designated areas of the Sites, as shown in Exhibit A, to harvest one (1) cut of hay per site.

2. ALL ACTIVITIES AT PERMITTEE'S EXPENSE

Unless stated elsewhere herein, Permittee shall conduct all activities under this Agreement at his expense.

3. TERM

This Agreement shall be effective when approved by the City. Unless terminated earlier, as provided for in Sections 16 and 17, it shall end on November 15, 2022, or on the day after Permittee completes the one (1) hay harvest, whichever is first.

4. USE OF SITES

Permittee's use of the Sites shall not violate applicable laws, rules, regulations, guidelines, or policies. Permittee shall comply with all lawful directives of the City's authorized agent(s), who shall be allowed, at any time, to fully enter or inspect the Sites and all activities under this Agreement.

5. NO TRESPASSING

Trespassing on private property is prohibited.

6. TRASH AND DEBRIS

Permittee shall clean up and remove all trash and debris generated, or otherwise occurring, within the Sites as a result of activities under this Agreement. Permittee shall do so before this Agreement expires or within twenty-four (24) hours after it is terminated.

7. NO DAMAGE TO CITY PROPERTY

Permittee shall not cause or allow damage, drilling, or construction on City property unless approved by the City's authorized agent(s). The single hay harvests authorized by this Agreement shall not, by themselves, constitute damage to City property.

8. NO DIGGING OR STAKING OF STRUCTURES

Permittee shall not dig holes or use stakes to secure temporary structures at the Sites without approval of the City's authorized agent(s).

9. CONSIDERATION

A. Permittee shall pay the City four hundred dollars (\$400) for this Agreement. In addition, Permittee shall be responsible for the cost of damage to, or required cleaning of, the Sites due to activities under this Agreement.

B. Permittee shall be entitled to harvest and keep one (1) cut of hay from each of the Sites. Permittee shall notify the City's authorized agent(s) before beginning activities at the Sites and coordinate with them to ensure non-interference with the City's operation and management of the Sites.

C. The consideration due under this Section shall be in addition to Permittee's responsibilities described elsewhere in this Agreement.

10. LOCKS

Permittee shall not install locks on gates to the Sites without obtaining approval from the City's authorized agent(s) and furnishing them with duplicate keys.

11. NO PROPERTY RIGHT

This Agreement grants Permittee no property right in the Sites, except the consideration provided for in Subsection 9.B.

12. SAFETY

Permittee shall ensure that activities under this Agreement are conducted safely, using the least invasive means feasible. Permittee shall use the Sites only for the agricultural purposes described herein and shall take reasonable steps to maintain them in a clean, sanitary condition during authorized periods of use.

13. NO ASSIGNMENT OR SUBLETTING

Permittee shall not assign or sublet this Agreement without City approval.

14. LIAISONS

The City and Permittee shall each designate at least one (1) representative to coordinate Agreement-related issues and serve as liaisons between the parties.

15. INDEMNIFICATION

A. Permittee shall release, defend, indemnify, and hold harmless the City, and its officers, agents, and employees, for any claims or liability arising from any activity under this Agreement. This provision shall survive the expiration or termination of this Agreement and not be limited by any other Agreement provision.

B. The City is constitutionally and statutorily prohibited from indemnifying any third party. This includes, but is not limited to, Permittee, pursuant to Article X, Sections 9, 14, 17, 19, and 26 of the Oklahoma Constitution and the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq., Tort Claims Act), as it may be amended.

16. TERMINATION

A. The City may terminate this Agreement, for any reason and without cost or liability, by giving written notice to Permittee. Upon delivery of such written notice by the City's authorized agent(s), this Agreement shall become void, and Permittee shall immediately cease using the Sites. If he fails to do so, Permittee shall be considered trespassing on public property under Section 30-35 of the Oklahoma City Municipal Code, 2020, as it may be amended (Code), and be subject to enforcement of the Code provisions.

B. If the City terminates this Agreement before Permittee completes the single hay harvest at Lone Oak Park, it shall refund two hundred dollars (\$200) of the Agreement fee, without interest. Likewise, if the City terminates this Agreement before Permittee completes the single hay harvest at either Route 66 Park or at South Lakes Park, it shall refund two hundred dollars (\$200) of the Agreement fee, without interest. Such refund(s) shall be processed according to City policy and may take up to eight (8) weeks.

- C. If, before Permittee conducts the hay harvests, the City receives excessive public complaints about high grass at the Sites, or if the City's authorized agent(s) determine, in good faith, that the high grass is a hazard, they may direct Permittee to complete the hay harvests within seventy-two (72) hours. If Permittee is unable to do so, the City's authorized agents may terminate this Agreement. If so, they shall refund Permittee's Agreement fee, as provided for in Subsection 16.B.

17. BREACH

- A. Permittee shall timely comply with all Agreement terms. Failure to do so shall be an Agreement breach. Upon such breach, the City's authorized agent(s) may give verbal or written notice to Permittee and may terminate this Agreement on behalf of the City. If so, Permittee shall immediately cease occupying and using the Sites or be subject to enforcement for trespassing as provided for in Subsection 16.A.
- B. The City may waive any Agreement breach. However, that shall not constitute a continuing waiver of similar or additional breaches. Also, the City may, at any time, require future compliance with previously waived Agreement provisions. If the City elects to give Permittee the chance to correct a breach before terminating this Agreement, Permittee shall immediately comply with the Agreement terms, as directed by the City's authorized agent(s).

18. RESTORATION OF DAMAGED PROPERTY

Permittee shall protect City property within the Sites. This shall include, but is not limited to, pavement, signs, fences, electrical panels, trees, and other structures. If City property is damaged, Permittee shall timely restore it to pre-Agreement condition or better or otherwise compensate the City for actual losses. This Section excludes normal wear and tear on City property, as determined by the City's authorized agent(s).

19. AMENDMENT

This Agreement may be amended by mutual consent of the parties.

20. OTHER APPROVALS

Permittee shall obtain other approvals required to conduct activities under this Agreement. These may include, but are not limited to, vehicle registrations, commercial driver's licenses, state or federal Agriculture Department authorizations, etc. Misrepresentations by Permittee, or his associates, to obtain other necessary approvals to conduct activities under this Agreement shall be grounds for terminating this Agreement, as provided for in Subsection 17.A.

21. AGREEMENT BINDING ON HEIRS AND ASSIGNS

This Agreement shall be binding upon the parties' heirs, executors, administrators, successors, and assigns.

22. NO COMMERCIAL USE OF HAY

The hay harvested under this Agreement shall be for Permittee's private use. It shall not be sold or offered for any commercial purpose.

23. NO HAZARDOUS CHEMICALS OR MATERIALS

Permittee shall not use or store hazardous chemicals or materials at the Sites without approval of the City authorized agent(s). If such approval is given, Permittee shall comply with applicable laws, rules, and regulations for transporting, storing, using, and disposing of such chemicals or materials.

24. NO ENVIRONMENTAL DAMAGE

Permittee shall cause no environmental damage at the Sites. If such damage occurs, Permittee shall immediately remedy the situation, pursuant to applicable environmental regulations, or otherwise compensate the City for actual damages or losses.

25. SECTION HEADINGS

The Section headings of this Agreement are for convenience only and shall not affect its meaning or interpretation. Permittee acknowledges that he was able to fully review all Agreement terms before signing. This Agreement shall not be construed in favor of (or against) either party based on who drafted it.

26. REPRESENTATIONS

Permittee warrants that he can fulfill his obligations under this Agreement.

27. CITY DESIGNEE

The City Manager of the City or designee is authorized to exercise any right or duty of the City under this Agreement.

28. GOVERNING LAW

This Agreement shall be governed by, and construed according to, Oklahoma law.

29. NO MINORS

Only Permittee and his adult relatives, employees, or associates shall perform tasks under this Agreement. No minors shall do so.

30. RELEASES

Permittee shall ensure that, before performing any tasks at the Sites, all adult volunteers sign an Acknowledgment and General Release (Release, see Exhibit C, incorporated herein). Upon request, Permittee shall provide copies of signed Releases to the City's authorized agent(s).

31. NOTICES

- A. Official communications to the City regarding this Agreement shall be sent to:

The City of Oklahoma City
Parks and Recreation Department
420 W. Main, Suite 210
Oklahoma City, OK 73102
(405) 297-3882
okcparks@okc.gov

and

The City of Oklahoma City
City Clerk
200 North Walker Avenue, 2nd Floor
Oklahoma City, OK 73102
(405) 297-2391
cityclerk@okc.gov

- B. Official communications to Permittee regarding this Agreement shall be sent to:

Davis Mayberry
3800 South Highland Park Drive
Oklahoma City, OK 73129-8541
(405) 550-7904
aandmlogisticsllc@gmail.com

or to such persons and addresses as the parties later designate in writing.

32. PROPERTY "AS-IS"; INSPECTION BEFORE HAY CUTS

- A. Permittee accepts the Sites "as-is" and without warranty. This includes, but is not limited to, the hay growing at the Sites.
- B. Before beginning the hay harvests, Permittee shall inspect each of the Sites to identify and remove hidden debris, or other hazards, that may endanger equipment, property, or persons.

33. INSURANCE

- A. Permittee shall provide a comprehensive general liability insurance policy sufficient to meet the City's maximum liability under the Tort Claims Act, as it may be amended. The current required minimum general liability coverage is one hundred seventy-five thousand dollars (\$175,000) per person for injury or death, twenty-five thousand dollars (\$25,000) per claim for property damage, and one million dollars (\$1,000,000) for all claims arising from a single occurrence, to be effective during the Agreement term. Permittee shall pay required insurance premiums or deductibles.
- B. Permittee's insurance policy shall name the City as additional insured. Permittee shall not cancel, fail to renew, nor decrease the limits by endorsement without thirty (30) calendar days' prior, written notice to the City by certified mail using the contact information contained in Subsection 31.A.
- C. Permittee shall provide employers' liability insurance and workers' compensation insurance as required by state law.
- D. Consistent with the other requirements of this Section, Permittee shall provide a certificate of insurance to the City's authorized agent(s) before this Permit is docketed for City Council action. (See Exhibit B, incorporated herein.)

REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE TO FOLLOW

APPROVED by Davis Mayberry this 19th day of September, 2022.

[Signature]
Davis Mayberry

Oklahoma County)
State of Oklahoma)SS:



This instrument was acknowledged before me on this 19th day of September, 2022.
Notary Public Diane E. McCullough My commission expires 06/03/23

APPROVED by the Council of The City of Oklahoma City this 27th day of September, 2022.

[Signature]
City Clerk



[Signature]
Mayor

REVIEWED for form and legality.

[Signature]
Assistant Municipal Counselor

Exhibit A

Sites

(Attached)

Lone Oak Park



Rt. 66 Park



South Lakes Park



Exhibit B
Certificate of Insurance
(Attached)

Agent # & Name: 01443 - Ryan Smith
 County Office: McClain County Farm Bureau
 Member Number: 09843629

Not a Statement of Premium Due

Policy Number: FRL00267361-02 Version: 5
Policyholder Name: Davis Mayberry

Policyholder Mailing Name & Address: Davis Mayberry
 3800 S Highland Park Dr
 Oklahoma City, OK 73129-8541

This policy includes these Declarations pages and all Coverages and Endorsements identified on these Declarations pages.

Effective Date: 09/22/2022 **Expiration Date:** 09/22/2023 **Amended Date:** 09/22/2022 **Type:** Endorsement

Policy Period: 12:01 AM standard time as to each of said dates at the address shown; and such like terms thereafter as the required premium is paid by the insured on or before expiration of the current term and is accepted by the company.

Amended Reason:
 Additional Insured Added

PROPERTY LOCATION

S:010,T:5N,R:4W, Lindsay, OK 73052
 sec 15 5n 4w n/2
 on sec 10 above s/2
 3800 S Highland Park Dr OKC, OK 10 ac

Coverage Summary

	LIMIT OF LIABILITY	PREMIUM
SECTION II - LIABILITY COVERAGE		
COVERAGE G1 - Personal Liability <i>(Each Occurrence)</i>	\$1,000,000	\$164
COVERAGE G6 - Total Acres <i>Nbr: 640</i>		
COVERAGE H - Medical Payments Coverage <i>(\$25,000 Each Accident)</i>	\$5,000 <i>(Each Person)</i>	\$13
OPTIONAL ADDITIONAL COVERAGES and ENDORSEMENTS	<i>(See Individual Items)</i>	\$53
DISCOUNTS and OTHER CHARGES APPLIED	<i>(See Itemized Schedule)</i>	
	TOTAL ANNUAL PREMIUM	\$230

Signed

Paul Springer

Date 09/16/2022

**Other Coverages, Limits and Exclusions apply
 Refer to your policy**

Agent # & Name: 01443 - Ryan Smith
 County Office: McClain County Farm Bureau
Policy Number: FRL00267361-02 Version: 5
 Policyholder Name: Davis Mayberry

Effective Date: 09/22/2022 **Expiration Date:** 09/22/2023 **Amended Date:** 09/22/2022 **Type:** Endorsement

Optional Additional Coverages and Endorsements

Liability Endorsements - Subject to Coverage G1 Liability Limits

	Premium
SFR-0300 (08-2011) Additional Insured Persons Endrs	\$1,000,000
	\$53

Other Endorsements

SFR-Bk02 (12-2021) Farm and Ranch Policy Book - Broad Form

Discounts and Other Charges Applied

Claims Free Discount	5% Discount
Longevity Discount	0.10% Discount

Schedule of Additional Insureds

Code A1729273 **Name** Swatek Land Tic C/O Optima Commercial
Address 111 S Elgin Ave
 Tulsa, OK 74120-1816

Loan No:

Description:

Applies to:

Code A1696326 **Name** The City of Oklahoma City
Address 420 W Main St Ste 210
 Oklahoma City, OK 73102-4435

Loan No:

Description: Master

Applies to:



Premier Farm and Ranch Additional Insured Persons

This policy amendment applies only to the Additional **Insured Persons** as shown below.

For an additional premium, the policy is amended as follows:

The coverages afforded to the **insured person** on this policy, under **Personal** and **Farm Liability**, are extended to the individual(s) or organization named below, and subject to the following provisions:

1. Under **Personal Liability**, only to **insured premises** as shown on the Declarations page, which an additional **insured person** and the **insured person** on the Declarations page owns, maintains or uses in joint venture or partnership basis.
2. Under **Farm Liability**, as to those employees for which a premium has been charged on the Declarations page, and then only to those employees who are employed by the **insured person**, or the additional **insured person** on a joint venture or partnership basis.
3. This extension of coverage will not increase or extend the limits of liability shown on the Declarations page.

Name of Additional Insured Persons:

The City of Oklahoma City

Exhibit C
ACKNOWLEDGMENT AND GENERAL RELEASE

I acknowledge that I am a volunteer for the “Davis Mayberry Agricultural Use Agreement” (Agreement) at Lone Oak Park, at Route 66 Park, and at South Lakes Park in Oklahoma City (collectively, the Sites). I also acknowledge that I am not employed or contracted by The City of Oklahoma City (City) to perform work or other tasks at the Sites. I further acknowledge that I am at least eighteen (18) years of age and have no impairments that prevent me from performing such work or tasks.

I understand that this activity may involve strenuous physical exertion and carries inherent risks, including, but not limited to, property damage, injury, or death. I also understand that I can avoid these inherent risks by not volunteering. I further understand that factors beyond my control, *including negligence*, may affect my safety. In signing this Acknowledgment and General Release (Release), I affirm that the City cannot guarantee my safety and that I participate willingly. If injured, I will rely solely on my own insurance or resources to cover any medical bills or other expenses or losses. I understand that no workers’ compensation or third-party insurance will be available to me.

I hereby release the City, and its agents, affiliates, successors, and assigns, from all liability related, in any way, to my volunteer activities at the Sites.

Signed this ____ day of _____, 2022.

Print Name: _____ Signature: _____

NOTE: Upon request, Permittee Davis Mayberry shall provide copies of signed Releases to the City.