

## **Committee-of-the-Whole Agenda**

**6:30 p.m.**

**Tuesday, July 21, 2015**

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### **Oath of Office**

Oaths of office for promotions of Captain Jeff Snyder to Battalion Chief, Lieutenant Kevin Neff to Captain, and Engineer Travis Noyd to Lieutenant effective July 17, 2015.

### **Presentation**

Distribution of the Police Department 2014 Annual Report (Kim Hankins, Chief of Police/Public Safety Director)

### **Questions on the Agenda**

### **Agenda Items**

- 1. Police Training Agreement** (Kim Hankins, Chief of Police/Public Safety Director)
- 2. Sidewalk Variance** (Shawn Christ, Land Development Manager)
- 3. South Slope Thickener** (Greg Swanson, Utilities General Manager)
- 4. Schroeder Turner Farm Lease** (Maureen Riggs, City Attorney)
- 5. Chapter 2 Amendment - Finance Administration** (Maureen Riggs, City Attorney)
- 6. Jimmy Johns Development Agreement** (Ray Forsythe, Planning & Development Director)
- 7. Health Benefit Consultant** (Alison Fleming, Human Resources Manager)
- 8. Other**
- 9. Public Comment**

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# Explanation

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- 1. A Resolution authorizing the Chief of Police/Public Safety Director to execute a Memorandum of Agreement between the Illinois Department of Military Affairs and the Moline Police Department allowing the police tactical unit to conduct training drills at the Marseilles Training Center in Marseilles, Illinois, and indemnifying the Illinois Department of Military Affairs from any loss or liability that might occur during the training. The agreement term is through September 2015.** (Kim Hankins, Chief of Police/Public Safety Director)

**Explanation:** Each year, the police department's Crisis Containment Unit conducts tactical training at the Marseilles Training Center. The Illinois Department of Military Affairs allows the training only upon receipt of an executed agreement. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goal Impacted:** None Identified

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- 2. A Special Ordinance granting a partial variance to Section 28-3200(a) of the Moline Code of Ordinances to delay installation of a sidewalk for property located at 3709 39<sup>th</sup> Street Court.** (Shawn Christ, Land Development Manager)

**Explanation:** Brian Trapkus, the owner of the property addressed as 3709 39<sup>th</sup> Street Court (parcel #10997) has requested a variance from installing sidewalks. Currently, the neighboring residences do not have existing sidewalks, creating a lack of connectivity to accommodate a public sidewalk, which constitutes a hardship on the subject property. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goals Impacted:** A Great Place to Live

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- 3. A Resolution authorizing the Utilities General Manager to execute an agreement with Strand Associates, Inc. for professional engineering services required for the South Slope Wastewater Treatment Plant waste activated sludge gravity thickener tank and control building roof improvements project, in the amount of \$45,000.** (Greg Swanson, Utilities General Manager)

**Explanation:** The waste activated sludge tank and control building roof at the South Slope Wastewater Treatment Plant have reached the end of their useful lives. Professional engineering services are required to design, permit and bid the improvements needed to address these deficiencies. City staff has determined that Strand Associates, Inc. can best provide the required engineering services in a timely and cost-effective manner, as Strand is familiar with the site conditions and project requirements. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** Funds are budgeted in 320-1839-433.03-22  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Upgrade City Infrastructure & Facilities

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- 4. A Special Ordinance authorizing the Mayor and City Clerk to execute a Sub-Lease Agreement between the City of Moline and David A. Schroeder for Schroeder's lease of approximately 30 acres of the "Turner Farm" property for a five-year term.** (Maureen Riggs, City Attorney)

**Explanation:** In 2010, the City sold the Turner Farm to the Donald R. Bealer Family Limited Partnership, and the City executed a lease agreement with Bealer to lease a portion of the property for grain production and leaf disposal. The Bealer lease agreement expires September 23, 2015, and contains an option to extend

for a five-year term upon written notice. The City has provided written notice to Bealer and the parties have agreed to extend the lease through September 24, 2020. David A. Schroeder leases approximately 30 acres of the Turner Farm from the City for agricultural purposes pursuant to a prior 2009 lease agreement between Schroeder and the City and has remitted his annual \$2,200 rent payment to the City for lease through February 28, 2016. Given the extension of the Bealer master lease, the City has negotiated a new sub-lease agreement with Schroeder for a five-year term, through April 30, 2020. The annual rent payment for years 2016-2020 of the Schroeder sub-lease will be \$2,420, a ten percent increase to the current rent payment. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** Revenue to the City of \$2,200 for lease year 2015-2016 and \$2,420 annually for lease years 2016-2020  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Financially Strong City, A Great Place to Live

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**5. An Ordinance amending Chapter 2, “ADMINISTRATION,” of the Moline Code of Ordinances, Division 6, “ACCOUNTS AND FINANCE OFFICE,” by repealing Section 2-3602(15) in its entirety and consecutively renumbering the remaining subsections of Section 2-3602; and Section 2-2234, “SALE OF MUNICIPAL PROPERTY,” by repealing said section in its entirety and enacting in lieu thereof one new Section 2-2234 dealing with the same subject matter.** (Maureen Riggs, City Attorney)

**Explanation:** Sec. 2-3602(15) of the Code states that the City’s Accounts and Finance Officer (“Finance Officer”) shall serve as manager of all surplus property to be disposed of by the City, its departments, boards, commissions and agencies, and shall supervise the procedures for said disposal. City staff believes this duty was assigned to the Finance Officer when the City used a centralized purchasing system, and the Finance Officer, as purchasing agent, was placed in charge of disposing all surplus personal property through the annual City auction. As the City no longer uses a centralized purchasing system, staff finds this practice to be outdated and wishes to remove the duty of disposal of surplus personal property from the Finance Officer’s position and assign it to department directors. Amendments to Sections 2-3602(15) and 2-2234 will implement these changes to the Code.

**Staff Recommendation:** Approval  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goal Impacted:** None identified

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**6. A Special Ordinance authorizing the Mayor and City Clerk to execute a Performance Based Development Agreement between the City of Moline and M.J. Storm Investments, L.L.C. for the “Jimmy John’s” project and to execute any necessary agreements referenced therein; and authorizing all appropriate City officers and staff to do all things necessary to complete each of the City’s responsibilities pursuant to said agreement.** (Ray Forsythe, Planning & Development Director)

**Explanation:** M.J. Storm Investments, L.L.C. seeks to enter into a Performance Based Development Agreement with the City to facilitate redevelopment of the property located at 1401-1403 5th Avenue, Moline, into one renovated commercial space to house a Jimmy John’s Gourmet Sandwiches franchise, paving of the existing parking area to accommodate at least 12 spaces, and entering into a lease agreement with JJs of Macomb, Inc. to open and operate a Jimmy John’s Gourmet Sandwiches franchise. The City wishes to support the redevelopment by granting certain incentives to include Tax Increment Financing. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Financially Strong City; A Great Place to Live

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**7. A Resolution authorizing the Mayor and City Clerk to enter into an Agreement with R.J. Lee & Associates, LLP of Moline, Illinois, for health benefit consulting services for a period of one year commencing on August 1, 2015.** (Alison Fleming, Human Resources Manager)

**Explanation:** R.J. Lee & Associates, LLP currently provides health benefit consulting services, which includes health plan data analysis, development of a long-term plan, analysis of retiree data and benefits, health plan document revisions and assistance with health care reform compliance. The annual cost is \$22,000, which reflects no increase from the previous year.

**Staff Recommendation:** Approval  
**Fiscal Impact:** Budgeted in the Health Fund  
**Public Notice/Recording:** N/A  
**Goal Impacted:** Financially Strong City

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DEPARTMENT OF THE ARMY AND AIR FORCE  
ILLINOIS ARMY AND AIR NATIONAL GUARD  
1301 N. MACARTHUR BOULEVARD  
SPRINGFIELD, ILLINOIS 62702-2317

MEMORANDUM OF AGREEMENT  
BETWEEN  
ILLINOIS DEPARTMENT OF MILITARY AFFAIRS (IDMA)  
AND  
MOLINE POLICE DEPARTMENT

SUBJECT: Marseilles Training Center Use Agreement, W91SMC15MTA60

1. References.

- a. DMAIL Regulation 350-11, Marseilles Training Center.
- b. NGR 5-1, National Guard Grants and Cooperative Agreements
- c. NGR 5-2, National Guard Support Agreements
- d. DODI 4000.19, Support Agreements

2. Pursuant to Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. the Illinois Department of Military Affairs (IDMA) and Moline Police Department (Moline PD) enter into the following agreement:

3. MOLINE PD will be permitted to use the following training area(s) located at Marseilles Training Center on the date(s) and time(s) indicated:

- a. Training Areas, ranges, housing and other services as requested and approved.
- b. Date(s) and Time(s) of use: 28 July 2015 through 30 September 2015, based on availability and approval of the Marseilles Training Center Range Facility Management Support System (RFMSS) request.
- c. Authorized uses of training area(s): Training/Range Operations.
- d. Restrictions on use of above training area(s) and/or additional support to be furnished by IAW IDMA REGULATION 350-11, Marseilles Training Center.

4. MOLINE PD certifies that all training will be conducted under the supervision of competent instructors, or that all participants themselves are employees of MOLINE PD and are themselves experts, and that proper safety precautions will be strictly adhered to at all times. MOLINE PD further certifies the above training area(s) will be used solely for the purposes authorized herein, and all participants will be restricted to the authorized training area(s).

5. MOLINE PD will thoroughly clean the training area(s) after use, properly dispose of all waste, and leave the premises in the same condition as when occupied by MOLINE PD.

NGIL-ZA

SUBJECT: Intergovernmental Training Use Agreement W91SMC15MTC60

6. MOLINE PD will promptly relinquish the training area(s) upon request of IDMA if said training area(s) are required for Illinois National Guard (NGIL) military instruction or use. MOLINE PD will promptly report any cancellations to MTC Facility Manager.

7. MOLINE PD will comply with all applicable NGIL/IDMA regulations and safety rules when using the training area(s), and IDMA reserves the right to immediately terminate this agreement or order the removal of any person for any violation of proper safety practices or other improper conduct, as determined by authorized IDMA or NGIL personnel.

8. Permission to use the above training area(s) is given as an accommodation to MOLINE PD. The Marseilles Training Center Facility Manager will provide an invoice, after training is completed for direct, indirect, and general administration costs incurred during the training before you leave the facility. (See attached for direct charges. Indirect and general administration processing fees will be \$25 flat rate. If this agreement covers usage of the training facility on multiple dates, an additional \$5 will be charged for each subsequent date the facility is utilized MOLINE PD is required to pay by check or money order (Check/Money Order made payable to the IDMA) at the facility prior to departure. Future use of the facility will be denied until payment is received.

9. The MOLINE PD hereby covenants and agrees that it will comply with all Federal, State and local statutes, ordinances, and regulations, and further covenants that:

a. No gambling will be permitted. No smoking will be permitted inside any building at the MTC.

b. MOLINE PD will not sell or rent floor space, booth space, or exhibitors' space at any time for any event without prior approval of the Adjutant General. Furthermore, the MOLINE PD will not permit any concessionaire, merchant, or vendor to engage in the sale of merchandise or service of any nature upon the premises, nor will the MOLINE PD sell any merchandise or service without the prior written approval of the Adjutant General.

c. The MOLINE PD will not discriminate against any person or group due to race, color, national origin, religion, or handicap.

d. The MOLINE PD shall not sublet the premises nor assign this lease, in whole or in part, to any other person, group, company, corporation or organization without the prior written approval of the Adjutant General.

e. No alcoholic beverages will be possessed, dispensed, consumed, sold on or delivered to the premises without prior written approval of the Adjutant General.

10. MOLINE PD hereby covenants and agrees to provide Liability/Property Loss/Property Damage insurance with the IDMA named as an additional insured, to cover claims for personal injury, including death, sustained by any person, and for damage to or loss of personal property, State property, or Federal property arising out of or in connection with the MOLINE PD management, conduct, or use of the premises.

NGIL-ZA

SUBJECT: Intergovernmental Training Use Agreement W91SMC15MTC60

The MOLINE PD is liable for such damage to State and/or Federal property regardless of whether such damage was caused by the MOLINE PD agents or servants, or by participants, spectators, or others. IDMA shall have the right, but shall not be obligated, to repair such damage, and the MOLINE PD shall be responsible for the costs thereof, which shall be paid by the MOLINE PD within ten (10) days after the receipt of written notice of such costs.

11. MOLINE PD shall indemnify, defend, and hold IDMA and the NGIL, their respective officers, employees and agents (the "indemnified Parties") harmless from and against any and all damages, liabilities, fines, penalties, losses, claims, demands, suits, costs, and expenses (including, without limitation, reasonable attorneys' fees) sustained by the Indemnified parties, and arising out of or resulting from any act(s) or omission of the MOLINE PD (or any entity or person performing on its behalf) inconnection with MOLINE PD's use of the training area(s).

12. Points of Contact for this agreement as follows.

a. Marseilles Training Center: MAJ Joseph Poquette, Facility Manager, 815-750-6507, [joseph.a.poquette.mil@mail.mil](mailto:joseph.a.poquette.mil@mail.mil)

b. Moline Police Department: Jonathan Genisio, 309-524-2134, [jgenisio@moline.il.us](mailto:jgenisio@moline.il.us)

c. United States Property and Fiscal Office (USPFO) for Illinois: Ms. Deborah Parker, 217-761-3548, [deborah.l.parker.civ@mail.mil](mailto:deborah.l.parker.civ@mail.mil).

**IN WITNESS WHEREOF**, the parties hereto have caused this Intergovernmental Agreement to be executed by the proper officers and officials.

Moline Police Department

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME & TITLE (PRINTED): Kim Hankins, Chief of Police

**USPFO FOR ILLINOIS**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME & TITLE: ERIC K. LITTLE  
COL, NGB  
USPFO for Illinois

NGIL-ZA  
SUBJECT: Intergovernmental Training Use Agreement W91SMC15MTC60

**ILLINOIS DEPARTMENT OF MILITARY AFFAIRS**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME & TITLE: CRAIG A. HOLAN  
LTC, EN, IL ARNG  
Construction and Facilities  
Management Officer



APPLICATION
Request for Variance
To Delay Installation of a Public Sidewalk

For Staff Use Only
Date: 7.10.15
Case # SV 15-01
\$400.00 Application Fee (NON-REFUNDABLE)

APPLICANT:

Name: Brian Trapkus Interest in Property: Homeowner
Address: 3709 39th Street Court, Moline, IL 61265
Phone: 563-529-8642 Email: trapkusbuild@gmail.com

LEGAL DESCRIPTION OF PROPERTY (from deed or survey):

Lot #12, Highcliff Addition, Moline, Illinois.

also known as 3709 39th Street Court, Moline, Illinois and zoned Residential
(address)

APPLICANT REQUEST:

The applicant petitions the City Council for a variance to delay construction of a public sidewalk at the above location.

APPROVAL POLICY AND CRITERIA:

Sidewalks are a fundamental component of good land development. Sidewalks provide essential linkages between neighborhoods, allow for the safe movement of the pedestrian public, and contribute to the community's health, safety, and welfare by enhancing those areas of the public realm. The Subdivision Code explicitly states: "Sidewalks shall be installed on both sides of all streets. Sidewalks shall be installed at the time the lot is developed or prior to issuance of the Occupancy Permit."

A request for a variance to the sidewalk requirements of the Subdivision Code is not always permanent, and it may not reduce the expense required to install a sidewalk. The City Council reserves the right to require installation of a sidewalk at a later date as circumstances change, or it may require the developer or property owner to pay an amount equal to the cost of installing the sidewalk for which the variance has been sought.

A variance is not a right. It may be granted to an applicant only if the applicant establishes that strict adherence to this Code will result in undue hardship because of site characteristics that are not applicable to most other properties. Such variances shall be granted only when the applicant establishes that all of the following criteria are satisfied (please respond to each of the following criteria):

- 1. An unnecessary hardship exists that was created by topographical or other conditions peculiar to this site. There are no other residences in this existing neighborhood that have a City Sidewalk. Having our new construction home placed in an existing neighborhood and trying to make it blend in with the other homes in the area is a challenge in itself, but installing a sidewalk in the neighborhood when no other homes have one will make it stand out. We have spoken to the neighbors who agree that aesthetically, it would not be pleasing to the look of the neighborhood.
2. Pedestrian Safety.

Pedestrian safety has not been an issue in this neighborhood as it is basically a dead end/cul-de-sac and does not get much traffic. There is only one entrance/exit to the neighborhood and there is no through-traffic.

3. **The proximity of connection to the existing sidewalk network.**

There would be no connection for this sidewalk as there are no other homes that have City Sidewalk in the neighborhood.

4. **Planned future development or redevelopment of surrounding properties.**

There are no other lots available for building in the cul-de-sac where our home is being built.

5. **The classification of street and its type of construction.**

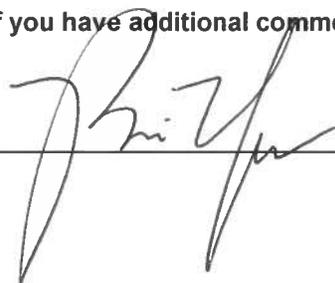
This is a residential street with existing residential homes.

6. **Planned future street improvements.**

We have no way of knowing if any improvements are planned for this street, but if so, any City Sidewalk that we would place would likely be torn out.

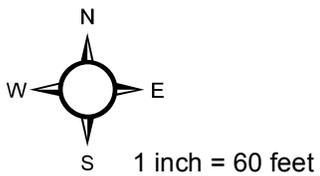
(If you have additional comments, please attach to the application.)

Signature of Applicant:



Date:

6/23/15





**FINAL COPY**

**Strand Associates, Inc.**

910 West Wingra Drive

Madison, WI 53715

(P) 608-251-4843

(F) 608-251-8655

July 9, 2015

City of Moline  
Moline Water Plant  
30 18th Street  
Moline, IL 61265

Attention: Mr. Gregory A. Swanson, Utilities General Manager

Re: Agreement for Design Services and Bidding-Related Services  
South Slope Wastewater Treatment Plant  
Waste Activated Sludge Gravity Thickener Tank and Control Building Roof Improvements

This is an Agreement between the City of Moline, Illinois, hereinafter referred to as OWNER, and Strand Associates, Inc.<sup>®</sup>, hereinafter referred to as ENGINEER, to provide Design Services and Bidding-Related Services (Services) for the South Slope Wastewater Treatment Plant (WWTP) Waste Activated Sludge (WAS) Gravity Thickener Tank and Control Building Roof Improvements project. This Agreement shall be in accordance with the following elements.

### **Scope of Services**

ENGINEER will provide the following Services to OWNER.

#### Design Services

1. Prepare bidding documents using Engineers Joint Contract Documents Committee C-700 Standard General Conditions of the Construction Contract, 2007 edition, technical specifications, and engineering drawings. Design shall include WAS gravity thickener steel tank repair, equipment replacement, piping modifications, and replacement of existing Control Building roof with a membrane roof.
2. Meet with OWNER to obtain input and concurrence with the design. Attend two review meetings at approximately 60 and 90 percent drawing completion.
3. Submit final draft bidding documents to OWNER for review and input.
4. Prepare prebid opinion of probable construction cost for project and submit to OWNER.
5. Review the final draft bidding documents with OWNER, incorporate review comments, as appropriate, and submit two copies of the final bidding documents to OWNER.
6. Submit final drawings and specifications to the Illinois Environmental Protection Agency (IEPA) for approval.

TWS:sme\R\MAD\Documents\Agreements\M\Moline, City of (IL)\SouthSlopeWWTPDgn&BldgWASThcknrTnk.2015\Agr\3676.026.docx

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#### Bidding-Related Services

1. Distribute bidding documents electronically through QuestCDN, available at [www.strand.com](http://www.strand.com) and [www.questcdn.com](http://www.questcdn.com). Submit Advertisement to Bid to OWNER for publishing.
2. Prepare addenda and answer questions during bidding.
3. Tabulate bid opening, tabulate and analyze bid results, and assist OWNER in the award of the Construction Contract.
4. Prepare three sets of Contract Documents for signature.

#### **Service Elements Not Included**

The following services are not included in this Agreement. If such services are required, they will be provided as noted.

1. Additional and Extended Services during construction made necessary by:
  - a. Work damaged by fire or other cause during construction.
  - b. A significant amount of defective or neglected work of any contractor.
  - c. Prolongation of the time of the construction contract.
  - d. Default by contractor under the construction contract.

Any services of this type will be provided through an amendment to this Agreement.

2. Archaeological or Botanical Investigations: ENGINEER will assist OWNER in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review through a separate agreement with OWNER.
3. Construction-Related Services: Construction-related services for the project will require a separate agreement with OWNER.
4. Flood Studies: Any services involved in performing flood and floodway studies, if required, will be provided through an amendment to this Agreement or through a separate agreement with OWNER.
5. Geotechnical Engineering: Geotechnical engineering information will be required and provided through OWNER and OWNER's geotechnical consultant. ENGINEER will assist OWNER with defining initial scope of geotechnical information that is required to allow OWNER to procure geotechnical engineering services.
6. Land and Easement Surveys/Procurement: Any services of this type including, but not limited to, a record search, field work, preparation of legal descriptions, or assistance to OWNER for securing land rights necessary for siting sanitary sewer, tanks, and appurtenances will be provided through a separate agreement with OWNER.
7. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by OWNER.

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8. Preparation for and/or Appearance in Litigation on Behalf of OWNER: This type of service by ENGINEER will be provided through a separate agreement with OWNER.
9. Review of Product Substitutions or Means, Method, Technique, Sequence, or Procedure Substitutions Proposed by Contractor: The terms of the construction Contract (GC 6.05B and GC 6.05E) call for the construction contractor to reimburse OWNER for ENGINEER's cost for evaluating substitute products, means, method, technique, sequence, or procedure of construction. ENGINEER's cost for such evaluations is not included in the scope of this Agreement. Services of this type by ENGINEER will be provided through an amendment to this Agreement.
10. Revising Designs, Drawings, Specifications, and Documents: Any services required after these items have been previously approved by state or federal regulatory agencies, because of a change in project scope or where such revisions are necessary to comply with changed state and federal regulations that are put in force after Services have been partially completed, will be provided through an amendment to this Agreement.
11. Services Furnished During Readvertisement for Bids, if Ordered by OWNER: If a Contract is not awarded pursuant to the original bids, any services of this type will be provided through an amendment to this Agreement.
12. Services Related to Buried Wastes and Contamination: Should buried solid, liquid, or potentially hazardous wastes or subsurface or soil contamination be uncovered at the site, follow-up investigations may be required to identify the nature and extent of such wastes or subsurface soil or groundwater contamination and to determine appropriate methods for managing of such wastes or contamination and for follow-up monitoring. Investigation, design, or construction-related services related to buried solid, liquid, or potentially hazardous wastes or soil or groundwater contamination will be provided through a separate agreement with OWNER.

### Compensation

OWNER shall compensate ENGINEER for Design Services a lump sum of \$40,000.

OWNER shall compensate ENGINEER for Bidding-Related Services a lump sum of \$5,000.

Only sales taxes or other taxes on Services that are in effect at the time this Agreement is executed are included in the Compensation. If the tax laws are subsequently changed by legislation during the life of this Agreement, this Agreement will be adjusted to reflect the net change.

The lump sum for the Services is based on wage scale/hourly billing rates, adjusted annually on July 1, that assumes the Services will be completed as indicated. Should the completion time be extended, it may be cause for an adjustment in the lump sum that reflects any wage scale adjustments made.

The lump sum will not be exceeded without prior notice to and agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the Scope of Services. Any adjustment will be negotiated based on ENGINEER's increase in costs caused by delays, extensions, amendments, or changes.

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## **Schedule**

Services will begin upon execution of this Agreement, which is anticipated on July 21, 2015. Design Services are scheduled for completion on October 30, 2015. Bidding-Related Services are scheduled for completion February 15, 2016.

## **Standard of Care**

The Standard of Care for all Services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's Services.

## **OWNER's Responsibilities**

1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to this project including previous reports, previous drawings and specifications, and any other data relative to the scope of this project.
2. Furnish to ENGINEER, as required by ENGINEER for performance of Services as part of this Agreement, data prepared by or services of others obtained or prepared by OWNER relative to the scope of this project, such as soil borings, probings and subsurface explorations, and laboratory tests and inspections of samples, all of which ENGINEER may rely upon in performing Services under this Agreement.
3. Provide access to the site as required for ENGINEER to perform Services under this Agreement.
4. Guarantee access to and make all provisions for ENGINEER to enter upon public and private lands as required for ENGINEER to perform Services under this Agreement.
5. Examine all reports, sketches, estimates, special provisions, drawings, and other documents presented by ENGINEER and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the performance of ENGINEER.
6. Provide all legal services as may be required for the development of this project.
7. Retain the services of a soils consultant to provide any necessary geotechnical evaluation and recommendations.

## **Opinion of Probable Cost**

Any opinions of probable cost prepared by ENGINEER are supplied for general guidance of OWNER only. ENGINEER has no control over competitive bidding or market conditions and cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to OWNER.

## **Changes**

1. OWNER may make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in ENGINEER's cost or time required

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for performance of any Services under this Agreement, an equitable adjustment will be made and this Agreement will be modified in writing accordingly.

2. No services for which additional compensation will be charged by ENGINEER will be furnished without the written authorization of OWNER. The fee established herein will not be exceeded without agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**.
3. If there is a modification of IEPA requirements relating to the Services to be performed under this Agreement subsequent to the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement will be reflected in an appropriate modification of this Agreement.

### **Extension of Services**

This Agreement may be extended for additional Services upon OWNER's authorization. Extension of Services will be provided for a lump sum or an hourly rate plus expenses.

### **Payment**

OWNER shall make monthly payments to ENGINEER for Services performed in the preceding month based upon monthly invoices. Nonpayment 30 days after the date of receipt of invoice may, at ENGINEER's option, result in assessment of a 1 percent per month carrying charge on the unpaid balance.

Nonpayment 45 days after the date of receipt of invoice may, at ENGINEER's option, result in suspension of Services upon five calendar days' notice to OWNER. ENGINEER will have no liability to OWNER, and OWNER agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by OWNER. Upon receipt of payment in full of all outstanding sums due from OWNER, or curing of such other breach which caused ENGINEER to suspend Services, ENGINEER will resume Services and there will be an equitable adjustment to the remaining project schedule and compensation as a result of the suspension.

### **Data Provided by Others**

ENGINEER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through OWNER, contractor, or others to ENGINEER and where ENGINEER's Services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analyses, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, contractor's marked-up drawings, and topographical surveys.

### **Termination**

This Agreement may be terminated with cause in whole or in part in writing by either party subject to a two-week notice and the right of the party being terminated to meet and discuss the termination before the termination takes place. ENGINEER will be paid for all completed or obligated Services up to the date of termination.



**CITY OF MOLINE**  
**SUB-LEASE AGREEMENT**

THIS SUB-LEASE AGREEMENT, made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF MOLINE, ILLINOIS, a Municipal Corporation (hereinafter "CITY") and David A. Schroeder, 13410 92<sup>nd</sup> Ave., Coal Valley, Illinois 61240 (hereinafter "TENANT").

In consideration of the mutual covenants and agreements set forth herein below, the CITY and TENANT agree as follows:

**SECTION 1 – PREMISES**

The CITY rents and subleases to the TENANT, to occupy and to use for agricultural purposes only, approximately thirty (30) acres of the one hundred fifty-one (151) total acres commonly referred to as the "Turner Farm Property" (hereinafter also referred to as "premises") located in the County of Rock Island, State of Illinois, being more particularly described in Exhibit "A" attached hereto and incorporated herein.

**SECTION 2 – TERM OF AGREEMENT**

- A. THE TERM – The term of this Agreement, hereafter called SUB-LEASE, shall be from March 1, 2015 through April 30, 2020, and the TENANT shall surrender possession of the premises at the end of the term identified above.
- B. RENEWAL – Should the TENANT desire to extend the SUB-LEASE in succeeding years, the term of the SUB-LEASE will be renegotiated at least thirty (30) days prior to the end of the Term of this SUB-LEASE. Any intent to extend the SUB-LEASE beyond the above-stated term shall be placed in writing and delivered to the CITY at least thirty (30) days prior to the end of the current term.
- C. RIGHT TO TERMINATE – The CITY or TENANT shall have the right to terminate this SUB-LEASE before the end of the term upon giving a thirty (30) day written notice of such termination.
- D. DEFAULT – If either party fails to carry out substantially the terms of the SUB-LEASE in due and proper time, the SUB-LEASE may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date of ten (10) days from the date of such notice.
- E. YIELDING POSSESSION – The TENANT agrees at the expiration or termination of this SUB-LEASE to yield possession of the premises to the CITY without further demand or notice, in as good order and condition as when TENANT entered upon the SUB-LEASE, loss by fire, flood, or tornado, and ordinary wear expected. If the TENANT fails to yield possession, the TENANT shall pay to the CITY an amount of rent per day that is equal to the statutory double rent based on payment made during

the prior year for each day the TENANT remains in possession, in addition to court costs and attorneys' fees, and any damages caused by the TENANT to the CITY'S land, improvements, livestock or other related farm personal property. Payments made by the TENANT do not give the TENANT any interest in the land or to land and the improvements.

- F. MASTER LEASE – The TENANT acknowledges that the City is a tenant to the Master Lease between the City and the Donald R. Bealer Family Limited Partnership. Should the Master Lease be terminated by the Donald R. Bealer Family Limited Partnership during the term of this SUB-LEASE, then this SUB-LEASE shall be automatically terminated with no damages to be paid to the TENANT as a result of the termination. The CITY hereby represents to the TENANT that there is no existing default of the Master Lease by any party.

### **SECTION 3 – RENT**

- A. RENT – The TENANT agrees to pay annual cash rent for the above-described premises in the amount of \$2200.00 for 2015 and \$2420.00 for years 2016-2020 (which represents a 10% increase) to the CITY. Said rent shall be due and payable in full to the CITY on or before March 1<sup>st</sup> of each year.
- B. CITY'S LIEN – The CITY shall have a lien by operation of law, statute, and by agreement between the TENANT and CITY (hereinafter referred to as the Parties), on crops grown or growing on the above-described premises as security for rent herein specified and for the faithful performance of the terms of the SUB-LEASE. Within ten days of being requested by the CITY, the TENANT shall provide the CITY with the names of persons or entities to whom TENANT intends to sell crops grown on the above-described premises. Additionally, the TENANT agrees to cooperate fully in enabling the CITY'S timely "perfection" of its interest in any lien that may be provided by law, statute, and agreement such as now exists and as may be altered or amended in the future. The TENANT agrees to provide in a timely manner the CITY or the CITY'S attorney with the information that is considered necessary in order to protect and preserve the CITY'S right as provided by law, statute, and agreement between the Parties. If laws affecting this paragraph are changed in any manner, then the TENANT agrees to cooperate fully with any efforts of CITY to protect its interest.
- C. ACCELERATION CLAUSE – If, during the term of this SUB-LEASE, any of the machinery, equipment, goods, and chattels of the TENANT shall be seized or taken by creditors of the TENANT or if the TENANT becomes bankrupt or insolvent, then the current year's rent shall become due and payable and the term shall immediately be forfeited and void at the option of the CITY, the CITY having full and unrestricted access to the land as though the SUB-LEASE had not been made.

#### **SECTION 4 – USE OF PREMISES**

TENANT may use the premises for agricultural purposes only. Any other use shall be deemed a material breach of this SUB-LEASE, unless authorized in writing by the CITY.

#### **SECTION 5 – CITY’S INVESTMENT AND EXPENSES**

The CITY agrees to provide the property and to pay the items of expense listed below:

1. The CITY will pay for the maintenance of access road and gates.

#### **SECTION 6 – TENANT’S INVESTMENT AND EXPENSES**

The TENANT agrees to furnish the property and to pay the items of expense listed below:

1. All the machinery, equipment, labor, fuel, and power necessary to farm the premises properly.
2. All seed, inoculation, disease-treatment materials, and fertilizers.
3. The labor to repair/maintain gates.

#### **SECTION 7 – TENANT’S DUTIES IN FARM OPERATION**

The TENANT further agrees to perform and carry out the stipulations below:

1. To cultivate the farm faithfully and in a timely, thorough, and businesslike manner.
2. To inoculate all alfalfa and soybean seed sown on land not known to be thoroughly inoculated for the crop planted.
3. To prevent noxious weeds from going to seed on said premises and destroying same and to keep weeds and grass cut.
4. To keep open ditches, tile drains, tile outlets, grass waterways, and terraces in good repair.
5. To preserve established watercourses or ditches and to refrain from an operation that would injure them.
6. To take proper care of all trees, vines and shrubs, and to prevent injury to the same.
7. To keep the farmstead neat and orderly.
8. To prevent all unnecessary waste, or loss, or damage to the property of the CITY.
9. To comply with pollution control and environmental protection requirements, and to implement soil erosion control practices and to comply with soil loss standards mandated by the state.
10. To practice fire protection, follow safety rules, and abide by restrictions in the CITY’S insurance contracts.
11. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances; to

read and follow label instructions for the use of such materials in order to avoid injury or damages to persons or property or both on the sub-leased premises and adjoining areas; and to comply with state pesticide training, licensing, storing and usage.

12. Any chemicals for weed or insect control or other use, when used, should be applied at levels not to exceed the manufacturer's recommendation for the soil types involved. The TENANT agrees to provide to the CITY, annually, a written report indicating the product name, amount, date of application and location of application of all pesticides, fertilizers, and seed used on the farm, within 30 days of a written request.
13. No chemicals will be stored on the property for more than one year. When chemicals or petroleum products are stored on the premises, they will be only those planned to be used for farming purposes and will be in closed, tight containers above ground, clearly marked. No chemicals or chemical containers will be disposed of on the premises.
14. To generally follow Natural Resource Conservation Service and Farm Service Agency recommendations and to maintain all other requirements necessary to qualify current and future farm operators to participate in federal farm programs.
15. Not to assign this SUB-LEASE to any person or persons or sublet any part of the premises herein subleased.
16. Not to erect or permit to be erected any structure or building or to incur any expense to the CITY for such purposes.
17. Not to permit, encourage, or invite other persons to use any part of all of this property for any purpose or activity (including hunting) not directly related to its use for agricultural production.
18. Not to plow any permanent pasture or meadowland.
19. Not to allow any stock on any part of the premises.
20. Not to burn or remove cornstalks, straw, or other crop residues grown upon the farm.
21. Not to cut live trees for resale purposes or personal uses.
22. Not to erect or permit to be erected any commercial advertising signs on the farm.
23. To comply with all state and federal laws, rules and regulations relating to the premises.

## **SECTION 8 – ADDITIONAL PROVISIONS AND AGREEMENTS**

- A. CITY'S RIGHT OF ENTRY – The CITY reserves the right personally or by agents, employees, or assigns, to enter upon the premises at any reasonable time to view the premises, to work or make repairs or improvements thereon, to have access to any portion of the premises or improvements that have been excepted from this SUB-LEASE, to develop mineral resources, or, after notice of termination has been given and following severance of the crops, to prepare the land for next year's crop and for any other operation necessary in good farming by a succeeding operator. Prior to any default by the TENANT, the CITY shall not interfere with the TENANT'S carrying out of the regular farming operation.

- B. MINERAL RIGHTS - Nothing in the SUB-LEASE shall confer upon the TENANT any right to mineral rights underlying the land. All mineral rights and interests, if any, remain the sole property of the CITY.
- C. LEAF DISPOSAL - Throughout the term of the SUB-LEASE, the Parties agree the CITY will utilize the premises for leaf disposal beginning on or about October 1 and continuing through December 1 of each year. TENANT agrees to delay fall tillage of the premises until December 2 of each year of the SUB-LEASE, unless otherwise agreed upon by the Parties in writing. TENANT further agrees to dispose of leaves, brought to the premises by the CITY, through standard agricultural tillage practices, at no cost to CITY. CITY'S right of entry as contained in paragraph 8A above, includes but is not limited to, inspection and remediation for any failure of TENANT to exercise due diligence and good agricultural practice when disposing of leaves. Further, TENANT agrees to defend, indemnify and hold harmless the CITY for any failure of TENANT to exercise due diligence and good agricultural practice.
- D. TREE TRIMMING – TENANT may trim the trees that interfere with farming. Tree harvesting is not permitted, however, and firewood shall not be removed from the premises.
- E. EXTENT OF AGREEMENT – The terms of this SUB-LEASE shall be binding on the heirs, executors, administrators, and assigns of both CITY and TENANT in like manner as upon the original Parties.
- F. CITY LIABILITY – The TENANT takes possession of the sub-leased premises subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in pursuance of farming operations, or in performing repairs on buildings, fences, tile, and other improvements. Furthermore, TENANT shall indemnify and hold the CITY harmless from any and all acts in connection with use or misuse of premises and from any/all accidents on the premises.
- G. INTEGRATION CLAUSE – This document, when fully executed, shall represent the entire agreement between the Parties, and no party may rely upon any other written or oral representation concerning this matter.
- H. ALIENATION CLAUSE – CITY shall have the right to alienate said property during the Term of this SUB-LEASE upon thirty (30) days written notice to TENANT.

#### **SECTION 9 – NOTICE**

All notices required under this SUB-LEASE shall be deemed to be properly served if delivered in writing personally or sent certified mail as follows:

City Attorney  
City of Moline  
619 16<sup>th</sup> Street  
Moline, IL 61265

David A. Schroeder  
13410 92<sup>nd</sup> Avenue  
Coal Valley, IL 61240

IN WITNESS THEREOF, the Parties have hereunto set their hands and seal and have caused these presents to be signed.

TENANT:  
DAVID A. SCHROEDER

CITY:  
CITY OF MOLINE, ILLINOIS

  
\_\_\_\_\_  
David A. Schroeder

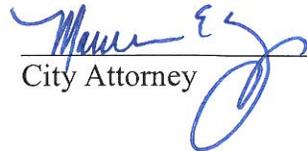
\_\_\_\_\_  
Mayor Scott Raes

7-3-15  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

**Exhibit "A"**  
**Legal Description**

## **DEVELOPMENT AGREEMENT**

Between the

**CITY OF MOLINE**

and

**M.J. STORM INVESTMENTS, L.L.C.**

**“JIMMY JOHNS”**

THIS INDENTURE ("Agreement") made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Moline, an Illinois Municipal Corporation (“City”), and M.J. Storm Investments, L.L.C., an Illinois Limited Liability Company, duly registered to do business in the State of Illinois. (“Developer”).

WITNESSETH:

WHEREAS, the City wishes to engage in certain lawful activities authorized by applicable law to assist private persons and entities in carrying out certain redevelopment activities which are identified in the Project Plan for the City’s Tax Incremental Financing District (TIF) enacted pursuant to the Tax Increment Allocation Redevelopment Act, found generally at 65 ILCS 5/11-74.4-1 et. seq. (the “Act”); and

WHEREAS, the City wishes to enter into this Performance-Based Development Agreement with the Developer in order to facilitate redevelopment of the Property (as defined below) located at 1401-1403 5th Avenue; to be known as the Jimmy John’s; and

WHEREAS, the Redevelopment Project shall consist of the following elements:

- i. Rehabilitation of 1401-1403 5<sup>th</sup> Avenue into 1 renovated commercial space to house a Jimmy John’s Gourmet Sandwiches franchise;
- ii. Paving of the existing gravel parking area to accommodate at least 12 spaces;
- iii. Enter a lease agreement with JJs of Macomb, Inc. to open and operate a Jimmy John’s Gourmet Sandwiches franchise.

The foregoing elements of the Jimmy John’s Project shall hereinafter be collectively referred to as the “Redevelopment Project” unless individually identified; and

WHEREAS, the Redevelopment Project is to take place upon that certain real property described above as parcel number 08-5521, which is more particularly described in Exhibit A, "Legal Description," attached hereto and incorporated herein by this reference thereto; and

WHEREAS, the City has made a commitment to identify and conserve those properties which serve as a visible reminder to the City's architectural and social history, thereby contributing to the cultural and economic vitality and livability of the City through the implementation of sound urban planning and design principles; and

WHEREAS, it is necessary for the successful completion of the Project that the City enter into this Performance-Based Development Agreement with Developer to provide for the redevelopment of the Property, thereby implementing the TIF Plan; and

WHEREAS, but for certain incentives to be provided by the City in accordance with the Act and pursuant to the home rule powers of the City, which the City is willing to provide under the terms and conditions contained herein, the Parties acknowledge and agree that but for the incentives, to be provided by the City as set forth herein, Developer cannot successfully and economically develop the Property substantially in conformance with the Redevelopment Project. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Performance-Based Development Agreement may be supplemented and amended from time to time; and

WHEREAS, the City wishes to assist private developers in carrying out projects that expand housing opportunities and create commercial enterprises in the City; and

WHEREAS, the City believes that the Redevelopment Project to be located on the Property and the fulfillment generally of the terms of this Agreement are in the vital and best interests of the City and its residents, and are in accord with its duty, authority, and the public purposes and conditions arising under the Act and all applicable state and local laws and requirements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby stipulate, covenant, contract and agree as follows, to-wit:

**I. CITY'S AGREEMENT TO PROVIDE ASSISTANCE.**

The following sets forth the intentions, undertakings and contractual obligations and responsibilities of the City under this Agreement in accordance with the Development Timetable contained in Exhibit B, attached hereto and incorporated by reference herein:

- A. Maximum TIF Payment. The City's total payment paid from the net incremental real estate tax generated by the Redevelopment Project under this Section I shall not extend beyond December 31, 2021, which is the expiration of the property tax TIF district.

The estimated total project cost for the Redevelopment Project is Two Hundred Forty One Thousand Nine Hundred Sixty Six Dollars and 20/100 (\$241,966.20). Fifteen percent (15%) of the total project cost equals Thirty Six Thousand Two Hundred Ninety Four Dollars and 93/100 (\$36,294.93). In no event shall the maximum total assistance ever exceed Thirty Six Thousand Two Hundred Ninety Four Dollars and 93/100 distributed from the property tax rebate. In the event that the total project cost is less than the amount shown above, then fifteen percent (15%) of the reduced project cost will be the maximum amount paid to the Developer through the term of this Agreement. If, for example, the total project costs are twenty percent (20%) less than the amount shown above, then the total City rebate distributed from the property tax rebate will be reduced by twenty percent (20%).

Both parties acknowledge that the Tax Increment Financing District expires in 2021 and that there may not be the full increment generated prior to the expiration of the TIF to reach 15% of the total project cost. It is understood that the City is under no obligation to provide additional revenue sources to meet the 15% rebate indicated above.

- B. Property Tax Rebate. The City shall pay through its TIF Fund to Developer the net incremental annual real estate taxes once collected by the City as follows:

100%: 2016 – 2021 or until the final payment is made or the TIF District expires in 2021, it being understood that should the Maximum TIF Payment be paid prior to the dates listed on this schedule than no additional amount will be due or owing from the City. In no event will any payment be made after 2021.

The net incremental annual real estate taxes paid to the City shall be reimbursed to the Developer only to pay for eligible redevelopment expenses allowed under the Act (65 ILCS 5/11-74.4-3) as illustrated in Exhibit C, "TIF Eligible Expenses," attached hereto and incorporated herein by this reference, subject to the maximum identified in I.A. above.

The base year for computation purposes of the net incremental annual real estate taxes is agreed to be 2015, and the base Equalized Assessed Valuation (EAV) for the base year 2015 for parcel 08-5521 is One Hundred Eighteen Thousand Forty One Dollars (\$118,041). The property

tax rebate period will start with assessment year 2016 and payment year 2017. The payment shall be from the incremental property tax generated solely by the Property, and paid to the City's TIF Account; the City shall remit to the Developer within thirty-days (30) after receipt of total annual payment into said City's TIF Account from Rock Island County. The Incremental Real Estate Taxes generated will be paid to the Developer for the particular year in question as set forth above.

Developer agrees to pay property taxes for the Property when due and payable and understands and agrees that failure to pay property taxes for the Property in a timely manner will render the City's rebate obligation null and void. Developer further agrees that the total rebate paid is limited to the increment generated by the project and paid to the City's TIF Account and may not be the amount identified in Section I.A. above. An illustrative example of the payments called for under this paragraph is shown in Exhibit D attached hereto and by this reference made a part hereof. The parties agree that the figures shown in Exhibit D are for illustrative purposes, and the actual payments to be made in any given year may be less than the amount shown or may be \$0 depending upon the actual experience.

- C. Maximum Amount of Property Tax Rebate. Pursuant to 65 ILCS 5/11-74.4-3(q), the maximum amount of rebate shall not exceed the sum of all reasonable or necessary eligible expenses (see Exhibit C) incurred or incidental to the Redevelopment Plan and Redevelopment Project.
- D. Final Payment. Upon final payment of the amount specified in paragraph I.A., above, or upon making the final payment as specified in I.B. above, the City's obligations under this Agreement shall be fully paid and satisfied regardless of the total amount of payments actually received by the Developer.
- E. Interest. There shall be no interest charged to the City or due to the Developer pursuant to this Agreement at any time, and no interest shall ever be paid to the Developer from the City pursuant to this Agreement, irrespective of whether or not the City is delinquent or otherwise tardy in making payments required hereunder.
- F. Enterprise Zone Benefits. The City shall take no action to eliminate the Enterprise Zone while still authorized by statute for the benefit and duration of the Redevelopment Project by which means materials can be purchased for the construction of the Redevelopment Project without the imposition of sales tax and other economic benefits may be obtained under the Enterprise Zone guidelines as are available under the law. The

City will cooperate and assist the Developer in its application for all Enterprise Zone benefits, if any, but the City does not warrant or assure or guarantee that any such benefits will be available to the Developer.

- G. Grants and Loan Applications. The City agrees to use its best efforts to support the Developer in applying to state and federal grant or loan programs that will enhance the Redevelopment Project.
- H. TIF Amendments. The parties expressly understand and agree that all payments provided for in the paragraphs set forth above shall be at all times subject to the requirements and restrictions of the Act.
- I. Garbage Dumpsters. City agrees to provide to Developer an addition to the existing dumpster area in the northern edge of parking lot "U" as long as Developer coordinates with the City's Public Works Department as to the location, size and design, which will need to be consistent with the existing structure. City shall construct the addition at its cost and bill the Developer for the actual amount. It is estimated to cost Six Thousand Four Hundred Forty Dollars (\$6,440) and the proposal plans are attached as Exhibit "E". Developer shall agree, by separate written agreement, to keep its assigned area clean and well-maintained and to assume sole responsibility for the specific area where its dumpster is located. Should the existing dumpster area need to re-located for any reason, City will coordinate with Developer to find an alternative site that is acceptable to both parties.

## **II. DEVELOPER AGREEMENT TO DEVELOP PROPERTY.**

- A. Upon the execution of this Agreement, the Developer shall complete the Redevelopment Project substantially in accordance with the plans and specifications for the Redevelopment Project, which plans and specifications must be approved by the City prior to commencement of the Redevelopment Project (such approval may not unreasonably be withheld), as may be normal, customary or required in order to proceed with the Redevelopment Project, in accordance with all applicable rules, codes, regulations, ordinances and laws.
- B. Developer agrees to complete the following project elements in accordance with the Development Timetable attached hereto and incorporated herein by reference as Exhibit B:
  - i. Rehabilitation of 1401-1403 5<sup>th</sup> Avenue into 1 renovated commercial space to house a Jimmy John's franchise;
  - ii. Paving of the existing gravel parking area to accommodate at least 12 spaces;

- iii. Enter a lease agreement with JJs of Macomb, Inc. to open and operate a Jimmy John's Gourmet Sandwiches franchise.
- C. Code Compliance. To the best of the Developer's knowledge, the Redevelopment Project, as designed, is and shall be in full compliance with all applicable state and local laws and ordinances. Further, Developer warrants that the City Code Compliance Manager or Building Official and City Fire Department shall have approved all building plans submitted and agrees to follow all recommendations and requirements of the City Code and the City Code Compliance Manager or Building Official and Fire Chief.
- D. Assessed Valuation. Developer agrees not to appeal the annual assessed valuation of the Property as determined by the Moline Township Assessor until the expiration of this TIF district, provided that any such assessment is consistent with that of comparable properties within the City's Tax Increment Financing District #1.

### **III. CONDITIONS PRECEDENT TO CITY'S INCENTIVE PAYMENTS HEREUNDER.**

A. The Parties agree that the performance of their respective obligations set forth herein is specifically contingent upon the satisfaction and performance of the Developer having obtained debt and equity financing, or commitments for the same, in such amounts and having such financial terms as are reasonable and related to a fair market financing subject to the exercise of the Developer's discretion within sixty (60) days of the execution of this Agreement.

B. Prior to the disbursement of any TIF rebate payments, Developer shall provide documentation of the actual project cost incurred, which have been independently verified by a third party mutually agreed to by City and Developer, at Developer's expense. Failure to provide an independently verified accounting of project costs for purposes of calculating the TIF rebate payments pursuant to paragraphs I. A and I. B, preceding, shall constitute a breach of this Performance-Based Development Agreement and relieve the City of its obligation to make payments hereunder.

### **IV. WARRANTIES OF THE CITY.**

The City represents and warrants to the Developer that it is empowered and authorized to execute and deliver this Agreement and to lend and deliver the assistance described herein upon proof of eligible "redevelopment project costs" pursuant to Section 5/11-74.4-3(q) of the Act, and to execute and deliver all other agreements and documents, if any, required hereunder to be executed and delivered by the City. This Agreement has been, and each such document at the time it is executed and delivered will be, duly executed and delivered on behalf of the City pursuant to its legal power and

authority to do so. When executed and delivered to the Developer, all such agreements shall constitute a legal, valid, and binding obligation of the City, enforceable in accordance with the terms of all such agreements.

#### **V. WARRANTIES OF THE DEVELOPER.**

A. The Developer represents and warrants to the City that the Developer is an Illinois Limited Liability Company duly organized and existing under the laws of the State of Iowa and duly authorized to do business in the State of Illinois and that all proceedings of the Developer necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with applicable law.

B. The Developer represents and warrants to the City that this Agreement has been duly authorized, executed, and delivered by the Developer, and will be enforceable against the Developer by its terms, except to the extent that such enforceability shall be limited by bankruptcy, or solvency, or similar laws of general application affecting the enforcement of creditor rights, and by equitable principles.

C. The Developer represents and warrants to the City that the execution and delivery of this Agreement, and the consummation of the transactions contemplated in this Agreement will not violate any provision of its operating agreement or any other contract, agreement, court order or decree to which the Developer may be a party or to which the Developer may be subject, or any applicable federal or state law or municipal ordinance.

#### **VI. DEVELOPER'S INDEMNIFICATION.**

The Developer shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise directly or indirectly from the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman, from any default or breach of the terms of this Agreement by the Developer, or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer or Developer's contractor). The Developer shall, at the Developer's sole cost and expense, appear, defend and pay all charges, attorneys' fees, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the City, its agents, officers, officials or employees in any such action, the Developer shall, at the Developer's sole cost and expense, satisfy and discharge the same. This paragraph shall not apply, and the Developer shall have no obligation whatsoever, with respect to any acts of

negligence or reckless or willful misconduct on the part of the City or any of its officers, agents, employees or contractors.

The City makes no representations or warranties as to whether or not the Illinois Prevailing Wage Act applies to this Project. Payment of Prevailing Wage and compliance with the Prevailing Wage Act, if required, is the sole responsibility of Developer, and/or its contractors and subcontractors. Developer agrees to indemnify and hold harmless the City and the agents, officers and employees thereof against all losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise from any claims pertaining to the Illinois Prevailing Wage Act.

#### **VII. ENTIRE AGREEMENT.**

This document and exhibits hereto contain the entire agreement between the Developer and the City as to this Agreement and its burdens and benefits shall inure to the benefit of, and shall be binding upon the parties hereto or a memorandum thereof and their respective heirs, executors, successors, and assigns. This Agreement or a memorandum thereof shall be recorded as set forth below, and may be modified only by written amendment signed by the Developer and the City, which amendment shall become effective upon recording by either party in the Recorder's Office in Rock Island County, Illinois.

#### **VIII. ASSIGNMENT.**

The Developer hereunder may assign the rights, duties, and obligations of the Developer only with the prior written consent of the City (which consent may not unreasonably be withheld). For the purposes of this paragraph, consent shall be deemed given by the City upon execution of this Agreement for any assignment to any person or entity having a verified net worth of not less than Five Million and No/100 Dollars (\$5,000,000.00). If a request for consent is not denied in writing on or before thirty (30) days after written request, such consent shall be deemed given.

#### **IX. SURVIVAL OF WARRANTIES AND REPRESENTATIONS.**

Any warranty, representation, or agreement herein contained shall survive the execution of the Agreement.

#### **X. NOTICE OF DEFAULT.**

In the event either party is in default hereunder (the "Defaulting Party"), the other party (the "Non-Defaulting Party") shall be entitled to take any action allowed by applicable law by virtue of said default provided that the Non-Defaulting Party first gives the Defaulting Party written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same and specifying a time period of not less than thirty (30) days in which the default may be cured by the Defaulting Party.

#### **XI. REMEDIES UPON DEFAULT.**

A. If, in the City's judgment, the Developer is in default of this Agreement, the City shall provide the Developer with a written statement indicating in adequate detail any failure on the Developer's part to fulfill its obligations under this Agreement. Except as required to protect against further damages, the City may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

B. If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the City and any cure periods described in Paragraph A above have expired or if all or a portion of any such agreement is terminated, the City may elect to terminate this Agreement or exercise any right or remedy it may have at law or in equity, including without limitation the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property, the City may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election and with or without entry or other action by the City, to forthwith terminate this Agreement. To effect the City's termination of this Agreement under this Section XI.B., the City's sole obligation shall be to record, in the office of the Rock Island County Recorder, a Certificate of Default executed by the Mayor of the City or such other person as shall be designated by the City, stating that this Agreement is terminated pursuant to the provisions of this Section XI.B., in which event this Agreement by virtue of the recording of such certificate, shall *ipso facto* automatically become null and void and of no further force and effect.

C. If, in the Developer's judgment, the City is in material default of this Agreement, the Developer shall provide the City with a written statement indicating in adequate detail any failure on the City's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be

extended for such time as is reasonably necessary for the curing of the same, so long as the City diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any right or remedy as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

D. In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. Notwithstanding the foregoing, in the event either party shall institute and complete legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the substantially prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

E. The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party.

## **XII. NON-DISCRIMINATION.**

The Developer agrees that neither the Property nor any portion thereof, shall be sold to, leased, or used by the Developer in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, sexual orientation, religion, marital status, age, handicap, or national origin, and that the development of and construction and operations on the Property shall be in compliance with all effective laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds.

## **XIII. NOTICES.**

Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when (a) hand delivered to the party to whom the notice is addressed; (b) mailed by certified mail, return receipt requested, United States mail, postage prepaid; or (c) delivered by overnight courier delivery service (i.e. Federal Express, UPS, etc.) and addressed to the party at the address shown as follows:

TO CITY: City Administrator and City Clerk  
619 16<sup>th</sup> Street  
Moline, IL 61265

WITH A COPY TO: City Attorney  
619 16<sup>th</sup> Street  
Moline, IL 61265

TO DEVELOPER: M.J. Storm Investments, L.L.C.  
100 17<sup>th</sup> Street, Suite 405  
Rock Island, IL 61201

COPY TO: Francis J. Coyle, Jr, Agent  
208 18<sup>th</sup> Street, Suite 204  
Rock Island, IL 61201

Any party may change the address to which notices shall be sent by notice given in accordance with the terms of this paragraph.

**XIV. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

**XV. HEADINGS.**

Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**XVI. APPLICABLE LAW.**

This Agreement and each of its subparts and incorporated items thereto shall be interpreted under the laws of the State of Illinois and any action brought to enforce or interpret any of its provisions or otherwise involving this Agreement must be filed in a Rock Island County, Illinois, court of competent jurisdiction.

**XVII. SEVERABILITY.**

Should any part of this Agreement be determined to be illegal, invalid, or otherwise unenforceable, then all such remaining parts not so affected by such illegality, invalidity, or unenforceability shall continue in full force and effect, fully binding both parties, their respective heirs and assigns, as to such remaining terms.

**XVIII. NO JOINT VENTURE, AGENCY OR PARTNERSHIP CREATED.**

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

**XIX. ASSURANCE OF FURTHER ACTION.**

From time to time hereafter and without further consideration, each of the parties to this Agreement shall execute and deliver, or cause to be executed and delivered, such recordable memoranda, further instruments, and agreements, and shall take such other actions, as any other party may reasonably request, in order to more effectively memorialize, confirm, and effectuate the intentions, undertakings, and obligations contemplated by this Agreement.

**XX. DELAYED EXECUTION.**

After this Agreement is approved by the Moline City Council and duly signed by the Mayor and attested by the City Clerk, the Developer shall have up to ten days (10) from that date to execute this Agreement, and this Agreement shall not be binding on the parties until duly executed by both parties.

**XXI. DISCLAIMER OF THIRD PARTY BENEFITS.**

The intentions, affirmations, authorizations and agreements between the parties hereto as expressed herein are approved solely by and between the parties hereto and no other; and provided further, however, that neither and none of such intentions, affirmations, authorizations or agreements may be relied upon by any person or entity, to such entity or person(s) detriment, or for any reason whatsoever, whether third person or otherwise. Any such reliance or purported reliance as a third party beneficiary to this Agreement or predicated upon any other relationship to any of the parties hereto and each of them, whether real or alleged, is specifically disclaimed by the parties herein.

**XXII. TERM.**

This Agreement shall be in full force and effect from and after execution hereof by the last party to execute same and shall remain in full force and effect to and until the later of (i) December 31, 2021 and (ii) the final net incremental annual real estate property tax payment generated under the TIF Ordinances for TIF eligible Project costs have been received by Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth above their respective signatures.

**THE CITY OF MOLINE, ILLINOIS**

**M.J. Storm Investments, L.L.C.**

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Raes, Mayor

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

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

Attest: \_\_\_\_\_  
Tracy Koranda, City Clerk

Approved as to form:

\_\_\_\_\_  
Maureen E. Riggs, City Attorney

STATE OF ILLINOIS                    )  
  )    SS:  
COUNTY OF ROCK ISLAND        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared **Scott Raes** and **Tracy Koranda** to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the **CITY OF MOLINE**, executing the within and foregoing instrument to which this is attached; that said instrument was signed (and sealed) on behalf of (the seal affixed thereto is the seal of said corporation) as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
  )    SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public in and for said County and State aforesaid, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn (or affirmed) did say that they are the Managers of **M.J. Storm Investments, L.L.C.**, and that said instrument was signed on behalf of the Corporation; \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation, by it and by him voluntarily executed.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**  
**LEGAL DESCRIPTIONS**

The West Forty (40) feet of Lot Number Five (5) in Block Number Twenty-six (26) in the Old Town (now City) of Moline; situated in the City of Moline; situated in the County of Rock Island, in the State of Illinois.

**EXHIBIT B**

**DEVELOPMENT TIMETABLE**

Begin Construction on 1401-1403 5<sup>th</sup> Avenue

Upon approval of  
Performance-Based  
Development  
Agreement by City  
Council

Opening of a Jimmy John's franchise

3 months after  
approval of  
Performance-Based  
Development  
Agreement by City  
Council

**EXHIBIT C**  
**TIF ELIGIBLE EXPENSES**

**Expenses as Permitted Pursuant to Section 5/11-74.4-3(q) of the Act:**

- Acquisition and other Property Assembly Costs
  
- Development Services Design and Engineering Services
  
- Legal/Appraisal
  
- Surveys and Environmental Reports Related to Property Assembly or Reconstruction, Remodeling, Repair, or Rehabilitation
  
- Reconstruction, rehabilitation, repair or remodeling
  
- And other items permitted by the Act

## EXHIBIT D

### ILLUSTRATIVE EXAMPLE OF REBATE

Skinner Block  
ESTIMATED INCREMENT WORKSHEET  
7/2/2015

Total Project Cost	\$	<u>241,966.20</u>	
Current Market Value	\$	118,041.00	
EAV Estimate at Completion	\$	323,712.27	Fair Market Value (85% of project cost+existing Market Value)
	\$	36,294.93	Rebate Amount (15% of Total Project Cost)

ID #	Address		Total Fair Market Value (FMV)	EAV (2015)	"base" EAV (1986)	New EAV	*Project Increment	2015 Tax Rate 9.0085	Development Increment
1	5521 1401-1403 5th Ave	\$	323,712.27	\$ 39,347.00	\$ 15,781.00	\$ 107,904.09	\$ 68,557.09	9.0085	\$ 6,175.97
		\$	323,712.27	\$ 39,347.00	\$ 15,781.00	\$ 107,904.09	\$ 68,557.09		\$ 6,175.97

**REBATE ESTIMATE WITH REVISED SCHEDULE**

No. Of Yrs.	Assmt Yr	Payable Yr	Net Prop. Tax Incr.	Prop. Tax Rebate	% Dev'r. PTX Rebate
1	2016	2017	\$6,175.97	\$6,175.97	100%
2	2017	2018	\$6,299.48	\$6,299.48	100%
3	2018	2019	\$6,425.47	\$6,425.47	100%
4	2019	2020	\$6,553.98	\$6,553.98	100%
5	2020	2021	\$6,685.06	\$6,685.06	100%
6	2021	2022	\$6,818.76	\$4,159.45	61%
<b>Total</b>			<b>\$38,958.74</b>	<b>\$36,299.42</b>	

# EXHIBIT E DUMPSTER ESTIMATE

## L♥VEWELL FENCING, INC.

21060 HOLDEN DRIVE  
DAVENPORT, IOWA 52806  
PHONE (563) 391-7025  
FAX (563) 391-4005

### PROPOSAL AND CONTRACT

Date 7-1-15

To: City of Moline, IL  
3635 4th Ave  
Moline, IL 61265  
Attn: Rodd

Re: Bier Stubbe Lot  
Dumpster Enclosures

SPECIFICATION	1	2	3
FABRIC			
SALVAGE			
FABRIC HEIGHT			
GAUGE			
MESH			
OVERALL HEIGHT			
TOP RAILS			
LINE POSTS			
TERMINAL POST			
GATE POSTS			
BARB WIRE			
CENTER RAIL			
BRACING			
BOTTOM			
GATE FRAME			
HINGES			
TIES			
MISC			

	L.F.	STRETCHES	TERMINAL	GATE POST
1				
2				
3				

\_\_\_\_\_ GATES \_\_\_\_\_ FT. WIDE  
 \_\_\_\_\_ GATES \_\_\_\_\_ FT. WIDE  
 \_\_\_\_\_ GATES \_\_\_\_\_ FT. WIDE  
 \_\_\_\_\_ GATES \_\_\_\_\_ FT. WIDE

Install new addition to dumpster corrals. \$ 6,440.00  
 Add 1 - 20' double swing gate.  
 Install 13' of new 7' high wood fence.

**SCOPE OF WORK:**

This bid includes material and labor to install the above proposed footage of fence and gates

Sales tax is not included in bid.  
 Prevailing Wages are included in bid.  
 All posts & gate frames to be powder coated black.  
 Painting of wood fence by others.

Bond and AGC Dues are NOT included in our bid.

**TERMS AND CONDITIONS**

1. The customer shall furnish space near the site of the fence construction for storage of contractor's equipment and materials.
2. **INSURANCE:** Any special provisions in your contract which requires additional insurance costs, will be added to our bid. Our insurance coverage is:
  - General Liability \$1,000,000 Occurrence
  - Commercial Auto Liability \$1,000,000 Combined Limit
  - Umbrella / Excess Liability \$5,000,000 Occurrence
  - Worker's Compensation / Employers Liability Statutory / \$100,000 / \$500,000 / \$100,000

**NOTICE:** Contracts that contain Waiver of Subrogation, Primary & Noncontributory - Additional insured & Amendment of personal injury language will either be struck from the contract or result in additional contract costs.
3. Work as provided in this contract shall be done during regular working hours unless otherwise specified.
4. The customer shall prevent other workmen from interfering with the contractor.
5. The customer is responsible for the location of any fences constructed and said location shall be clearly marked by the customer. Customer must locate underlying cables and pipes.
6. The customer is solely responsible for any errors, in the location of any fence constructed by the contractor.
7. This offer does not provide for any grading work or other work which is necessary because of the fence installation unless specified in this offer.
8. Contractor reserves the right to charge the customer an amount about the total cost reflected in this offer for any fence post holes were more than 50% of the hole must be cut through solid rock or hard packed rock.
9. No pro rata charge of any kind shall be charged against the contractor unless previously agreed to in writing.
10. Light, heat, power and elevator service shall be furnished by the customer to the contractor without expense.
11. In the event of damage to the premises, whether by theft, fire, water or other disaster, all materials actually erected or stored on the premises are there at the customer's risk.
12. The contractor is not responsible for delays caused in the performance of the work herein which are caused by delays or failures caused by strikes, fires, accidents, car shortages, embargoes or other conditions beyond the control of the contractor.
13. In the event that it becomes necessary for the contractor to enlist the services of an attorney to collect from the customer the amount due under this contract, the customer shall pay reasonable attorney's fees incurred in collecting said amount.
14. The offer herein becomes null and void if not accepted within 30 days of the proposal date. If the completion of the work required in this contract is unreasonably delayed by the customer, the customer will be responsible for any increases in the cost of material and labor incurred by the contractor because of said delay.
15. No fencing inside of building.
16. No electric gate operators unless specified in bid.
17. No electrical work included in bid.
18. If hazardous chemicals are encountered on site this contract is null and void.
19. Payment terms as stated on invoice.

The above proposal is only an estimate of the cost of doing the fencing requested. If this proposal is signed by an agent of Lovewell Fencing, Inc., said proposal shall become an offer to perform the work provided herein for the estimated total cost shown in the proposal. The customer may accept this offer by Lovewell Fencing Inc. by signing his name on this proposal and shall become a binding contract between Lovewell Fencing, Inc. and the customer and shall be given the full legal affect of a binding contract. This written document shall be deemed to contain the entire agreement between the parties and no verbal agreement will be considered valid.

Lovewell Fencing, Inc.

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



Accepted by: \_\_\_\_\_

Bien Stubbe Lot

