

Committee-of-the-Whole Agenda

6:30 p.m.

Tuesday, August 25, 2015

Mayor's Board Appointments

Mayor's appointment of Laura Ford to the Board of Fire and Police Commissioners to fill the expired term of Scott Lohman to expire May 31, 2018.

Proclamation

A Proclamation from the Metropolitan Community Church to declare Sunday, August 30, 2015, as "Standing United Against Hate Day."

Presentation

2015 Upper Mississippi River Conference presentation. (Jeff Anderson, City Planner; Dr. Norm Moline, River Action)

Informational

Utility Billing Fixed Charges – New/Old Customers (Michael Waldron, Director of Public Works)

Questions on the Agenda

Agenda Items

1. **Friends of Riverside Lease** (Michael P. Waldron, Interim Parks Director)
2. **Other**
3. **Public Comment**

Work Session

Biannual Fee Review

Explanation

1. **A Special Ordinance authorizing the Mayor and City Clerk to execute a lease agreement with the Friends of Riverside for the purpose of maintaining and beautifying the Riverside Park Gardens, for a lease term of August 1, 2015 through December 31, 2020.** (Michael Waldron, Interim Parks Recreation Director)

Explanation: The Friends of Riverside group desires a lease agreement for the purpose of maintaining and beautifying the Riverside Park Gardens. The Park and Recreation Board supports the agreement and believes that this agreement will enhance services for residents and visitors utilizing Riverside Park and the Garden Center. The Friends of Riverside group has been maintaining these gardens for over 35 years. Additional documentation attached.

Staff Recommendation: Approval
Fiscal Impact: City of Moline will receive \$250.00 per year for the lease term.
Public Notice/Recording: N/A
Goals Impacted: Upgrade City Infrastructure & Facilities, A Great Place to Live

WATER AND SEWERS

charges shall be charged to the customer and shall apply to work performed in transferring the billing outside of regular business hours.

- (2) Overtime charges in the minimum amount of eighty-five dollars (\$85.00) for each occurrence shall be charged to turn on a water service outside of the normal business hours of the accounts and finance office.
- (3) A service charge of twenty-five dollars (\$25.00) shall be charged to collect a meter reading at a time that does not coincide with the routine meter reading cycle.

(g) **Coliform test charges.** A fee of fifteen dollars (\$15.00) shall be charged for each coliform test that is performed by the City for construction contractors, private individuals and other non-City entities.

(h) **Collection of Service Charges.**

- (1) In the case only water or only sewer service is provided, to the fund providing the service;
- (2) When both water and sewer service is provided, fifty-five percent (55%) to the water fund and forty-five percent (45%) to the water pollution control fund.
- (3) When overtime charges are collected and if the water field representative did the turn-on and installation of meter, then the percentages of above apply; and otherwise, all to the water fund.

(i) **Delayed billing.** Whenever application for service is made twenty (20) days or less before the end of a billing cycle, no bill will be rendered for that quarterly cycle and usage shall be charged to the next succeeding quarterly billing cycle.

Sec. 34-2121 Amendments:

- Sub (a): (Ord. No. 3079-2004; Sec. 34-2121(a) repealed; new Sec. 34-2121(a) enacted; 10/05/04; Ord. No. 3047-2006; Sec. 34-2121(a) repealed; new Sec. 34-2121(a) enacted; 11/07/06; Ord. No. 3022-2008; Sec. 34-2121(a)(1) repealed; new Sec. 34-2121(a)(1) enacted; 03/25/08; Ord. No. 3035-2008; Sec. 34-2121(a) repealed; new Sec. 34-2121(a) enacted; 05/27/08; Ord. 3047-2011; Sec. 34-2121(a) repealed; new Sec. 34-2121(a) enacted; 11/22/11)
- Sub (b): Ord. 3047-2011; Sec. 34-2121(b) repealed; new Sec. 34-2121(b) enacted; 11/22/11)
- Sub (c) or (d): (Ord. No. 3017-2006; Sec. 34-2121(d) repealed; new Sec. 34-2121(d) enacted; 04/04/06; Ord. No. 3021-2008; Sec. 34-2121(c) and (d) repealed; new Sec. 34-2121(c) and (d) enacted; 03/18/08; Ord. 3047-2011; Sec. 34-2121(c)(d) repealed; new Sec. 34-2121(c)(d) enacted; 11/22/11; Ord. No. 3033-2013; Sec. 34-2121(c) and (d) repealed; new Sec. 34-2121(c) and (d) enacted; 10/08/13)
- Sub (f): (Ord. No. 3017-2006; Sec. 34-2121(f) repealed in its entirety; new Sec. 34-2121(f) enacted; 04/04/06; Ord. No. 3027-2008; Sec. 34-2121(f)(3), (4) and (6) repealed; new Sec. 34-2121(f)(3) and (4) enacted; 03/25/08; Ord. No. 3045-2011; Sec. 34-2121(f)(1), (f)(2) repealed; new Sec. 34-2121(f)(1)(f)(2) enacted; 11/22/11; Ord. No. 3032-2013; Sec. 34-2121(f)(1) repealed; new Sec. 34-2121(f)(1) enacted; 10/08/13)
- Sub (g): (Ord. No. 3017-2006; Sec. 34-2119(g) repealed; new Sec. 34-2119 enacted; 04/04/06)
- Other: (Ord. No. 3072-2004; Sec. 34-2121(e through h) repealed; new Sec. 34-2121 (e through i) enacted; 09/14/04)

SEC. 34-2122. RESPONSIBILITY IN TURNING ON WATER.

In turning on water, the City or the public works department shall not be responsible for any damage whatsoever, whether occurring by reason of improper fixtures, open or improper connections, or for any other reasons or by another causes.

SEC. 34-2123. WATER METERS.

(a) All water supplied from the City water distribution system shall be metered and no article, method or device of any substance or nature shall be used to bypass a water meter or in any other manner to obtain unmetered water from the City water supply. All meters shall be furnished and set by the City public works department but the owner of the premises upon which it is to be set must provide a suitable location in the piping system for same. The owner shall also provide a suitable location for the remote reading device and connecting wiring. The owner of a new building shall be responsible for the installation of the wire from the water meter location to the remote reading device location on the outside of the building. The property owner of an existing

Supplement No. 12

**CITY OF MOLINE
AND
FRIENDS OF RIVERSIDE PARK GARDENS, INC.
LEASE AGREEMENT**

Prepared by:

**City of Moline
619 16th Street
Moline, Illinois 61265**

**After recording return to:
Tracy Koranda
City Clerk
619 16th Street
Moline, Illinois 61265**

**MOLINE PARK AND RECREATION BOARD
AND
FRIENDS OF RIVERSIDE PARK GARDENS, INC.
LEASE AGREEMENT**

THIS LEASE AGREEMENT made this _____ day of _____, 2015, (hereinafter “Lease” or “Agreement”) by and between the Moline Park and Recreation Board, a Department of the City of Moline, Illinois, a municipal corporation for the State of Illinois, as Lessor (hereinafter “Lessor”) and the Friends of Riverside Park Gardens, Inc., as Lessee (hereinafter “Lessee”) (hereinafter collectively “Parties”).

WITNESSETH

That Lessor, for and in consideration of the rent hereinafter specified to be paid by Lessee, and the covenants and agreements hereinafter contained, by the Lessee to be kept and performed, does hereby demise, lease, and let unto said Lessee those certain Premises in the City of Moline, County of Rock Island, State of Illinois, as hereinafter set forth, subject to all such conditions, promises and agreements incorporated herein.

Section 1: DEFINITIONS

For the purpose of this Agreement the following definitions shall apply:

- (a) **Park:** Riverside Park, Moline, Illinois, Parcel MO-3807-2, including but not limited to all land, buildings, and appurtenances thereto, being more particularly described herein at **Exhibit “A,”** attached hereto and incorporated herein by this reference.
- (b) **Greenhouse:** The building identified as number “1,” on **Exhibit “B,”** attached hereto and incorporated herein by this reference, contained within Riverside Park.
- (c) **Gardens:** The gardens identified as number “2” – “15” on **Exhibit “B,”** attached hereto and incorporated herein by this reference, shall include the “2” Children’s Garden, “3” Accessible Garden, “4” Rose Garden, “5” Hosta Garden, “6” Greenhouse Gardens, “7” Day Lily/Penoy Garden, “8” Shade Garden, “9” Native Garden, “10” Flower Garden, “11” Fountain Gardens, “12” Herb Garden, “13” Cut Flower Garden, “14” 34th Street Entrance Garden, and “15” 5th Avenue Entrance Garden, contained within Riverside Park.

Section 2: TERM

- (a) **Primary:** The term of this Lease shall be five (5) years, commencing on the first (1st) day of August, 2015, and terminating on the last (31st) day of December, 2020.

- (b) **Renewal:** Lessor, at its sole discretion, may renew said Lease for an additional five-year term, upon Lessee's written renewal request. The written renewal request must be presented to Lessor by November 1, 2020.

Section 3: TERMINATION FOR CAUSE

In the event of any material breach of this Lease Agreement by the Lessee, the Lessor shall have the right to terminate this Lease according to the terms and conditions of default, remedies and notice herein provided.

Section 4: TERMINATION WITH NINETY (90) DAYS' NOTICE

Both parties shall have the right to terminate this Lease before the end of the primary term or at the end of any renewal term, upon giving a ninety (90) day written notice of such termination. Such termination may be without cause and without liability.

Section 5: TERMINATION FOR CHANGE IN CIRCUMSTANCES

Section 3 notwithstanding, commencing January, 2016, and annually thereafter, either party may request a review of the Lease pursuant to a change in circumstance resulting in a hardship for the party seeking review. Any request for review must be submitted by the party seeking relief to the other party, in writing, prior to the last day of January in a given year. Lessor, in its sole discretion, shall determine whether any change in circumstance constitutes a hardship. Lessor shall notify Lessee, in writing, of its determination. If Lessor determines a change in circumstances exists resulting in a hardship for the party seeking review, then the Lease shall terminate thirty (30) days from the date of City's determination. Nothing herein shall require or prohibit the parties from renegotiating the Lease terms to alleviate the hardship.

Section 6: RENT

Rent payable hereunder shall be two hundred and fifty dollars (\$250.00) per year, payable on January 1 of each year of the lease.

Section 7: THE PREMISES

Lessor shall lease to Lessee the Greenhouse identified as number "1" on **Exhibit "B"** and grant a right of access and use of the Gardens (hereinafter collectively referred to as the "Premises").

Section 8: USE OF PREMISES

- (a) Said Premises shall be used only for the following purposes and for no other purpose whatsoever: propagation of plants and plant species; growing, sale and delivery of plants and plant materials to the general public; design, planting and display of plants, shrubs, trees and flower beds; establish and conduct educational programs consistent with promoting knowledge of gardening and nature; provide a demonstration area for community beautification projects; solicitation of volunteers interested in horticulture; and gardening support of lawn maintenance

and garden and shrub maintenance in the Gardens identified in Section 1. Any other uses shall be deemed a material breach of this Lease, unless authorized in writing by the Lessor prior to the actual use of the Premises in such manner.

- (b) Lessee shall be responsible for obtaining Lessor approval of all activities occurring on the Premises. Lessor shall, in its sole discretion, determine what activities may occur on the Premises and when they may occur. The intent of this paragraph is to assure activities of Lessee do not interfere with other scheduled events including, but not limited to, the use of the Garden Center or Park. Lessee shall not allow any other organizations, clubs, or not-for-profits to utilize the Premises without the permission of the Lessor.

Section 9: LESSOR'S DUTY TO MAINTAIN PREMISES

- (a) It shall be the duty of the Lessor to maintain and repair the Greenhouse structure, mechanical equipment and garden areas, except that Lessee shall maintain the Greenhouse in a condition that is clean and safe for public use.
- (b) The Lessor shall provide a trash receptacle and complete trash removal.
- (c) The Lessor shall complete snow and ice removal in the parking area and on the sidewalks providing access to the structure.

Section 10: LESSEE'S DUTIES TO REPAIR AND MAINTAIN PREMISES

- (a) Lessee represents that it has inspected and examined the demised Premises, accepts them in their present condition, and agrees that Lessor shall not be required to make any improvements or repairs whatsoever in or upon the Premises demised or any part thereof.
- (b) Lessee agrees to keep said Premises safe and in good order and condition at all times during the term hereof, and upon expiration of this Lease, or any sooner termination thereof, Lessee will quit and surrender possession of said Premises quietly and peaceably and in as good of an order and condition as the Premises were at the commencement hereof; reasonable wear, tear and damage by the elements excepted.
- (c) Lessee further agrees to keep and leave said Premises free from all nuisance and dangerous and defective conditions.
- (d) Lessee shall support lawn maintenance and garden and shrub maintenance in the Gardens identified in Section 1. Lessee's duty shall include, but is not limited to, maintaining an inventory of gardening supplies, including chemicals for plant treatment.
- (e) Lessee shall at all times keep the Premises clean and compliant with all municipal health ordinances, rules and regulations.

- (f) Lessee shall share in the cost of replacement of materials used by mechanical equipment. Lessee shall contribute 50% to the cost of replacing these items within twenty (20) days' written notice of an invoice for same.
- (g) Lessee, at its sole expense, shall provide janitorial services and replace all expendable items, including, but not limited to, light bulbs.
- (h) Lessor shall, in its sole discretion, have the right to determine if Lessee is fulfilling the requirements of this section.

Section 11: ASSIGNMENT, SUBLEASE AND MORTGAGE

Lessee may not sublease or assign said Premises to another organization.

Section 12: FIRE, CATASTROPHE, DISASTER INSURANCE

- (a) The Lessor shall insure any buildings or structures by carrying insurance for Fire, Theft, Vandalism and Extended coverage. Said coverage shall meet the standard requirements as set forth by the Moline Park and Recreation Board and/or the City of Moline. Lessor shall insure all improvements therein.
- (b) Lessor shall have NO DUTY to insure Lessee's possessions or to replace same in the event of fire or any other damage or loss caused by calamity, disaster, vandalism or theft.

Section 13: LIABILITY INSURANCE AND INDEMNIFICATION BY LESSEE.

- (a) Lessee shall, throughout the term of this Agreement and at Lessee's expense, carry and keep in full force and effect general liability insurance with respect to its activities on the Premises and in the Park, Gardens, and Greenhouse, with a carrier and in a form satisfactory to Lessor, which policy or policies shall:
 - (i) Have limits of \$1,000,000.00 per occurrence of personal injury and \$1,000,000.00 property damage, or \$1,000,000.00 per occurrence personal injury and property damage, combined single limit;
 - (ii) Name Lessor as an additional insured party;
 - (iii) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving Lessor thirty (30) days' written notice;
 - (iv) Contain fire and extended perils insurance covering Lessee's own property and insuring Lessee's possessions on the Premises; Lessor shall have no duty to insure Lessee's possessions, the possessions of Lessee's guests, invitees or permittees, or replace same in the event of a any calamity or other disaster;
 - (v) To the extent possible, each such policy of insurance shall contain a waiver of subrogation provision;
 - (vi) Not extend to acts or occurrences occurring outside the Premises, Gardens, Greenhouse, or which were unrelated to Lessee's actions or business.

- (b) Lessee agrees to indemnify and hold harmless Lessor, its agents, employees, assigns or beneficiaries from and against any and all losses, damages, expenses, liabilities, demands and causes of action and any expense (including reasonable attorney fees) incidental to the defense thereof by the Lessor due to or arising out of:
 - (i) Any violation or non-performance of any covenant, condition or agreement to be fulfilled, kept or observed and performed, by Lessee;
 - (ii) Any damage to the property occasioned by Lessee or one of Lessee's agents or employees negligence; and
 - (iii) Any injury, including death, to person or persons arising out of or in the course of the use and occupancy of the Premises, Gardens, Greenhouse, or any thereof claimed to have been caused by the negligence of Lessee, its officers, agents, or employees, on the officers, agents, or employees of a subcontractor, whether arising directly or indirectly out of the use and occupancy of the Premises, Gardens, or Greenhouse.

- (c) Lessee shall not be liable for, other than for payment of insurance premiums for policy or policies described above, nor shall Lessee indemnify, defend and hold harmless Lessor, its agents, employees, assigns, beneficiaries from any and all loss, damage, expense, liabilities, demands or causes of action and any and all expenses (including reasonable attorney fees) incidental to the defense thereof by Lessor, resulting from consequences of a tortuous or negligent act of Lessor or its agents, employees, assigns or beneficiaries.

Section 14: OBSERVANCE OF LAWS AND CODES

The Premises shall not be used in any manner where the use would violate federal or state law, municipal ordinance or any rule or regulation enacted pursuant to any of the above. The Premises shall not be used in any way which would increase the insurance coverage rates. Breach of the conditions in this Article shall be construed as a material breach of this Lease. Any construction connected with utilities must be granted approval by City inspector and work be completed by licensed and bonded contractors. Permits, if required, must be obtained for any work to be completed.

Section 15: MECHANICS' LIENS

- (a) Lessee agrees not to make any contract for the construction, repair or improvement on, in, of, or to the Premises, or any part thereof, or for any work to be done or materials to be furnished on or to the Premises, or any part thereof, without providing in such contract or agreement that no lien of mechanics or materialism or other lien shall be created or shall arise against the above-described land or improvements at any time located therein. All persons furnishing any work, labor or materials, as well as all other persons whatsoever, shall be bound by this provision and notice thereof from and after the date of this Lease, and notice is hereby given that no mechanic's lien, material men's lien or any other lien or encumbrance of any sort whatsoever, made, or obtained against the Lessee, or his interest in said land and/or the building or improvements thereon, shall in any manner or degree effect the title or interest of the Lessor in said land or improvements thereon.

- (b) The parties agree this Agreement or a memorandum thereof shall be filed in the office of the Recorder of Deeds of Rock Island County, Illinois, at Lessor's expense.

- (c) Lessee further agrees that said Lessee will not make any contract or agreement, either oral or written, for any labor, services, fixtures, materials or supplies in connection with altering, repairing or improving the demised Premises without providing in such contract or agreement that the contractor or subcontractors waive all right to a mechanic's lien, and waive all right of any subcontractor or subcontractors to mechanics' liens, by reason of furnishing any labor, services and/or material under such contract or contracts, whether written or oral, and that such contract or contracts shall, upon execution, a copy thereof be lodged with the Lessor.

Section 16: RIGHTS IN THE EVENT OF FIRE, CALAMITY OR OTHER DISASTER

In the event that the Premises in question are destroyed or rendered untenable by calamity, disaster or condemnation; the Lessor may immediately terminate this Lease by serving written notice on Lessee. In lieu thereof, the Lessor may choose to repair. In the event that it is reasonably estimated that the repairs cannot be accomplished within four months, the Lessee shall have the right to terminate the Lease upon delivery of a written notice to the Lessor. Rent shall abate during the time when the Premises are untenable. If only a portion of the leased Premises becomes untenable, rent shall abate only on that portion of the Premises. In the event of calamity, disaster, or condemnation, the Lessor shall have the right to demand that the Lessee advise in writing within thirty (30) days whether Lessee intends to terminate Lease under the terms of this section.

Section 17: UTILITIES

The Lessor shall pay for the utilities used on Premises, including gas, electricity, water and sewage. Lessor to pay exterior perimeter lighting of the leased area. Lessor to provide a proper waste disposal container and will remove trash from the site.

Section 18: TAXES

Lessor shall pay any and all taxes, including property taxes, levied and assessed upon any personal property, buildings, fixtures and improvements belonging to Lessor and located upon said demised Premises, as well as all leasehold and possessory interest taxes levied or assessed by any proper taxing authority. Lessee shall be obligated, at its sole cost and expense, to determine the availability of and apply for any exemptions to abate taxes against the Premises resulting from Lessee's lease of same.

Section 19: OTHER OBLIGATIONS OF LESSEE

Lessee further agrees not to commit or suffer any waste in or upon said Premises, and to comply strictly and literally with any and all rules, regulations and requirements that may be at any time imposed by virtue of any policy of insurance or enactment of state, federal or local law.

Section 20: DEFAULT

In the event that Lessee shall be in default of any payment of any rent or in the performance of any terms or conditions herein agreed and to be kept and performed by Lessee, Lessor may terminate and

end this Lease, notwithstanding any other requirements for termination, and Lessor may enter upon said Premises and remove all persons and property there from, and Lessee shall not be entitled to any money paid hereunder or any part thereof, in the event Lessor shall bring a legal action to enforce any of the terms hereof, or to obtain possession of said Premises by reason of any default of Lessee, Lessee agrees to pay Lessor all costs of such legal action, including reasonable attorney fees.

Section 21: REMEDIES

- (a) All rights and remedies of Lessor herein enumerated shall be cumulative, and shall include all other rights or remedies allowed by law or equity.
- (b) If the rent above reserved, or any part thereof, shall be behind or unpaid on the day whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants and agreements herein contained, to be kept by Lessee, and if said default shall be permitted by Lessee to continue ten (10) days after receipt by Lessee from Lessor of a written notice of said default, it shall be lawful for Lessor to sue for said overdue rent or for damages due to said default, or at Lessor's election to declare said term ended, and enter the said Premises, or any part thereof, in the name of the whole to re-enter, and the Lessee, or any other person or persons occupying in or upon the same, to expel, remove and put out and the said Premises again repossessed and enjoyed as in the first and former estate by the Lessor; and in such case, or in the case of termination of this Lease in any way, the Lessee does hereby covenant and agree to surrender and deliver up said above-described Premises and property, peaceably, to Lessor immediately upon the termination of said term as aforesaid, and if Lessee shall remain in possession of the same after default, or after the termination of this Lease in any of the ways above named, Lessee shall be deemed guilty of a forcible detainer of said Premises under the statute, and shall be subject to all of the conditions and provisions above named, including without limitation, eviction pursuant to the statute, and to eviction and removal as above stated.
- (c) In the event the Lessee shall fail to pay rent, or otherwise default in any of the covenants or agreements of this Lease as above provided, and if said default shall continue ten (10) days after receipt by Lessee from Lessor of a written notice of said default, such action shall constitute a material breach of the Lease and it shall and may be lawful for the Lessor, in addition to other remedies herein provided for, either (1.) to re-lease the Premises as an agent of the Lessee, applying all net rent received after necessary expenses to the rent to be paid and in that event Lessee shall remain liable to the Lessor for the excess of rent, if any, which is due pursuant to this Lease; or (2.) to recover damages for such breach in an amount equal to the amount of the rent reserved for this Lease for the remainder of the term thereof, less a fair rental value of the Premises for the remainder of said term.
- (d) In addition to any other remedies provided hereinabove, when a breach of a covenant, condition or agreement constitutes a material breach by Lessee of the terms herein, or any of them, the Lessor may elect immediately to declare the term ended and evict the Lessee immediately upon written notice of this remedy.
- (e) In any action for breach of a covenant, condition or other obligation contained within this Agreement, Lessee shall be responsible to Lessor for any and all loss, damage, expense,

liabilities, including reasonable attorney fees, resulting directly or indirectly from Lessee's conduct.

Section 22: HOLDING OVER

In the event that Lessee shall hold over and remain in possession of the demised Premises, such holding over shall be deemed to be from month-to-month only and not an extension of the Lease for a similar term and upon all of the same rents, terms, covenants and conditions as contained herein. Additionally, rent during any hold over period shall be Five Hundred and No/100ths Dollars (\$500.00) per month. Any unpaid rent shall accrue interest at the rate of Eight Percent (8%) per annum until paid.

Section 23: OTHER AGREEMENTS OF LESSEE

- (a) Lessee agrees, in addition to all the terms and conditions of the Lease set forth above, as follows:
- (i) To pay all reasonable costs, including reasonable attorney fees and other expenses, made and incurred by the Lessor in enforcing the terms of this Agreement;
 - (ii) To permit Lessor and its agents and employees without limitation to enter on the Premises or any part thereof, at all reasonable hours, for purpose of examining the same or making such repairs or alterations as may be necessary for the safety or preservation thereof;
 - (iii) That no representation as to the condition of repair of the Premises has been made by Lessor or its agent, prior to, or at the execution of, this Lease other than is herein expressed or endorsed hereon, and Lessee relies upon no representations other than those set forth herein in entering into this Lease;
 - (iv) Lessor shall have a lien on all of the property of the Lessee used or situated on the demised Premises, to secure payment of the rent (and other indebtedness owing from Lessee to Lessor at any time during the existence of this lease) to become due under this lease, and in default of payment may take possession of and sell such of said property as may be sufficient to pay the delinquent rent or indebtedness;
 - (iv) Lessor shall have the right to sell the Premises, provided notice of such contemplated sale shall be given in writing to the Lessee at least sixty (60) days prior to the time fixed for vacation of the Premises by the Lessee, and provided that during such period, the Lessee shall have the option to buy the Premises at the price and on the terms of such contemplated sale. In the event of a sale of the Premises by the Lessor after such notice and the failure of the Lessee's option to purchase, Lessee agrees to vacate and give possession of the Premises within sixty (60) days after written notice of sale, given by Lessor to Lessee;
 - (v) Lessor shall not be liable for injury to Lessee or damage to Lessee's property from failure to keep Premises in repair or from any act, omission or negligence of Lessee or other persons;
 - (vi) To assist financially in completing additional improvements to the Greenhouse and support facilities. Previous contributions or completed improvements become the property of the Moline Park and Recreation Board;

- (vii) To assist the Lessor in developing a schedule for use by both parties, including bi-annual plant sales, manning the Greenhouse for public access, and developing a recurring schedule for community educational classes;
- (viii) To provide educational class instructors and to share in the revenues derived from such classes, less program operational expenses;
- (ix) To provide assistance, when requested, in the design/planning of garden areas and future uses of the Riverside Park East Property;
- (x) Annually report to the Moline Park and Recreation Board at a regularly scheduled meeting the status and condition of the Greenhouse and Gardens.

(b) With regard to subsection (a) above, determining whether Lessee's conduct fulfills the obligations established by this Agreement shall be in Lessor's sole discretion.

Section 24: FAILURE TO INSIST ON STRICT PERFORMANCE NOT WAIVER

Failure of the Lessor or Lessee to insist on the strict performance of the term, agreements and conditions herein contained or any part of them, whether in whole or in part, shall not constitute or be construed as a waiver or relinquishment of the Lessor's or Lessee's right thereafter to enforce any such term, agreement or condition, but the same shall instead continue in full force and effect.

Section 25: NOTICE

All notices required under this Lease shall be deemed to be properly served if delivered in writing personally or sent by certified mail to Lessor at the office of the Park and Recreation Board, 3635 4th Avenue, Moline, IL 61265, with a copy to the City Attorney, 619 16th Street, Moline, IL, 61265, or to the Lessee in writing personally or sent by certified mail to Lessee at the address of the President of the Friends of Riverside Park, Inc.. Date of any notice served by mail shall be the date on which such notice is deposited, postage prepaid, in a post office of the United States Postal Service.

Section 26: APPLICATION TO SUCCESSORS IN INTEREST

All the agreements and conditions herein contained shall extend to and be binding on the representatives, heirs, executors, administrators, successors and assigns of the respective parties hereto as if they were in all cases named herein.

Section 27: GARDENS, BUILDINGS AND PARKING LOT CONSTRUCTION

- (a) Lessee shall submit to the Moline Park and Recreation Board a master plan to serve as a guide for plantings and landscaping in the Gardens for the period of the lease (hereinafter "Master Plan"). This Master Plan shall be approved by the Moline Park and Recreation Board prior to implementation of any changes, including planting new plants or removal of plants, in any of the Gardens. The Master Plan shall be drafted and presented to the Moline Park and Recreation Board within ninety (90) days after the lease is executed by both parties. During the term of the lease, Moline Park and Recreation Board must approve:
 - (i) All new construction, additions, remodeling, and improvements to existing structures, gardens and parking lots; and

(ii) Any improvements or changes to the greenhouse or garden areas of a physical or structural nature.

Any proposed work must be in accordance with the Master Plan on file with Moline Park and Recreation Board.

(b) Lessor shall pave the parking lots and support roadway construction.

(c) All revisions or new construction shall become the property of the City of Moline Park and Recreation Board upon installation.

Section 28: PERSONAL PROPERTY

All personal property of the Lessee located on said property or Premises shall remain the property of Lessee under its sole and exclusive possession and control at all times during the period of this Lease and any extension thereof, and said property shall remain the property of the Lessee, regardless of the termination of this Lease.

Section 29: ENTIRE AGREEMENT

This Lease contains the entire Agreement between Lessor and Lessee, and any Amendments made to such Lease must be made and approved in writing, signed by both parties.

Section 30: APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the appropriate venue. A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

Section 31: 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 all parties, their respective heirs and assigns, as to such remaining terms.

IN WITNESS THEREOF, the Lessor and Lessee hereunto set their hands and seals and have caused these presents to be signed.

**CITY OF MOLINE, ILLINOIS
(LESSOR)**

**THE FRIENDS OF RIVERSIDE GARDENS, INC.
(LESSEE)**

BY: _____
Scott Raes, Mayor

BY: _____
Jane Arensdorf, President

BY: _____

Don Welvaert, President
Parks and Recreation Board

ATTEST:

Tracy Koranda, City Clerk

DATE: _____

Approved as to Form:

City Attorney

Prepared by:
Amy L. Keys
Deputy City Attorney
City of Moline
619 16th Street
Moline, IL 61265

EXHIBIT "A"

LEGAL DESCRIPTION

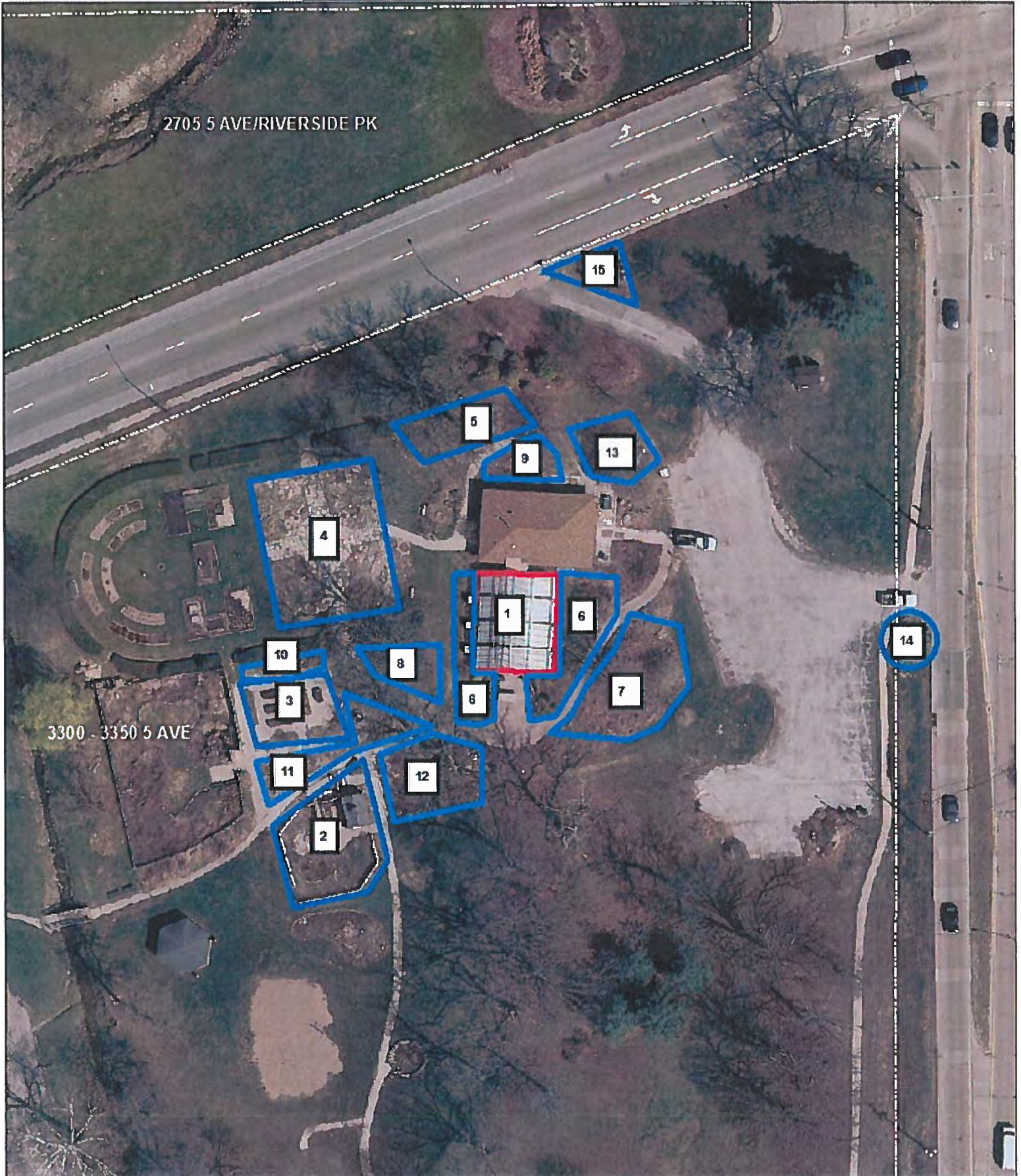
Facility Address: 3300 5th Avenue, Moline, Illinois 61265
Facility Parcel Number: 08-3807-2

Legal Description:

The North East fractional quarter of Section Thirty-three (33) in Township Eighteen (18) North, of Range One (1) West of the fourth Principal Meridian, except five (5) acres heretofore sold by Samuel Bell, in his life, twice for the purpose of a cemetery for the Town of Moline, said tract hereby conveyed containing Seventy-five and Eighty-four one hundredths (75 84/100) acres more or less.

EXHIBIT "B"
AERIAL PHOTO IDENTIFYING BUILDINGS & GARDENS
(ATTACHED)

EXHIBIT "B"



2016 License Policy and Fee Review
SUMMARY OF RECOMMENDATIONS

Department	Division	Schedule of Fees	Recommendations	Revenue Impact	Presenter
Finance	Finance	Lease Parking Fees	Increase	\$ 17,500	Verbeke
Finance	Finance	Parking Ordinance	Language Change	\$ 3,000	Verbeke
Fire	Fire	HazMat Inspection Fees	Increase	\$ 4,425	Hankins
Fire	Fire	Motion Picture Theater License Fee	Eliminate	\$ (800)	Hankins
Public Works	Municipal Services	Yard Waste Sticker (per yard bag)	Increase	\$ 41,575	Waldron
Planning	Planning	Development Review Fees	Decrease	\$ (1,200)	Forsythe

TOTAL IMPACT	\$ 64,500
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**CITY OF MOLINE
2016 LICENSING POLICY AND FEE REVIEW**

Fee Description: Lease Parking Fees	Department Reviewing: Finance
Fee Structure: Section 20-5106 \$ 10.00 per month - Underutilized lots T. W. & 4 th floor of Midtowne (first come, first serve) \$ 30.00 per month - most open-air lots (first come, first serve) \$ 40.00 per month – Midtowne - 2 nd & 3 rd floor (first come, first serve) \$ 55.00 per month – Midtowne - 2 nd & 3 rd floor (reserved space) \$ 3.00 per day - One Day Parking Permit \$ 30.00 per month - Resident Parking Permit \$ 80.00 per month - Rover Parking Permit \$ 5.00 replacement cost for parking tag	
Justification to Continue/Eliminate Fee: Fees are necessary to cover the costs associated with providing lease parking; lot maintenance and operation, police enforcement, billing and collection.	
Cost to Regulate/Enforce Issue: Hourly wages of police and finance department staff to process and enforce lease parking. Annual operation and maintenance costs of City owned parking lots.	
Does the current fee structure capture the cost? If no, please recommend new fee structure: No, true costs recovery would have negative implications with the development of downtown businesses. However, the underutilized lots should be more in line with the cost to maintain and enforce the area. Staff recommends raising lease rate to \$ 30.00 per month - Lots T. W. & 4 th floor of Midtowne Ramp.	

SEC. 20-5109. PARKING TIME LIMITS/RESTRICTIONS ESTABLISHED.

New version:

(d) Re-parking of vehicles prohibited. It shall be unlawful for any person to re-park any vehicle from any time-restricted parking space to any other time-restricted parking space within a two city block area between the hours of 8:00 a.m. and 5:00 p.m.; Saturdays, Sundays, and legal holidays excepted. Upon observance of or detection of such offense in accordance with any provision of this Section 20-5109, the operator of the vehicle shall be issued a notice of violation and shall pay a fee of twenty dollars (\$20.00).

**CITY OF MOLINE
2016 LICENSING POLICY AND FEE REVIEW**

Fee Description:	Department Reviewing:
Haz Mat Inspection	Fire

Fee Structure:	Section 11-1101
\$ 50.00 - range 1	
\$75.00 - range 2 or greater	

Justification to Continue/Eliminate Fee:

The purpose of this fee is to recover costs associated with the hazardous materials inspections.

Cost to Regulate/Enforce Issue:

Hourly wages of finance and fire department staff to process permit and inspect storage site.

Does the current fee structure capture the cost? If no, please recommend new fee structure:

No. Staff recommends adopting new fee structure below;

Quantity Ranges:	
Range #1 = permit fee of \$50.00	Up to and including 500 pounds for solids, 55 gallons for liquids and 200 cubic feet at NTP for compressive gasses.
Range #2 = permit fee of \$100.00	Between 500 and 5,000 pounds for solids, 55 and 550 gallons for liquids and 200 to 2,000 cubic feet at NTP for compressed gasses.
Range #3 = permit fee of \$150.00	Between 5,000 and 25,000 pounds for solids, 550 and 2,750 gallons for liquids and 2,000 to 10,000 cubic feet at NTP for compressed gasses.
Range #4 = permit fee of \$150.00	Between 25,000 and 50,000 pounds for solids, 2,750 and 5,500 gallons for liquids and 10,000 to 20,000 cubic feet at NTP for compressed gasses.
Range #5 = permit fee of \$150.00	More than 50,000 pounds for solids, 5,500 gallons for liquids and 20,000 cubic feet at NTP for compressed gasses

**CITY OF MOLINE
2016 LICENSING POLICY AND FEE REVIEW**

Fee Description: Motion Picture Theater	Department Reviewing: Fire
Fee Structure: \$100.00 plus \$ 50.00 per screen; Section 5-2102	
Justification to Continue/Eliminate Fee: To ensure public safety by regulating, inspecting, and enforcing ordinance codes.	
Cost to Regulate/Enforce Issue: <u>No longer inspected by the State Fire Marshall. Moline Fire does annual inspection of all commercial building and no additional inspections is needed.</u>	
Does the current fee structure capture the cost? If no, please recommend new fee structure: Eliminate the annual license. <u>No longer inspected by the State Fire Marshall. Moline Fire does annual inspection of all commercial building and no additional inspections is needed.</u>	

**CITY OF MOLINE
2016 LICENSING POLICY AND FEE REVIEW**

Description	Department Reviewing
Lawn/Yard Waste Sticker Fee	Public Works
<p>Fee Structure</p> <p>Structure is based on one sticker per each 30-gallon paper yard waste bag placed for weekly curbside pick-up. Our service level is based on same day collection as solid waste cart put out.</p>	
<p>Justification to Continue/Eliminate Fee:</p> <p>The separation of the yard waste stream from the solid waste stream in landfills is a State of Illinois mandate. The original idea behind the separation from the solid waste stream is to save landfill space. The fee for yard waste stickers and the subsequent need to purchase lawn waste bags is to encourage property owners to compost and/or mulch their yard waste. How each collection agency accomplishes this separation is entirely up to each yard waste collector. This would include how charges and fees are collected, if any. The City's approach has been to pass some of the costs on to the individual users.</p>	
<p>Cost to Regulate/Enforce Issue:</p> <p>Yard waste bags are collected beginning April 1 of each year and ends on December 15. Last year (2014) the actual cost of the program was \$107,845. Revenue from sticker sales generated approximately \$66,520 at \$2.00 per sticker. The Sanitation Fund is subsidizing this service at an approximate amount of \$41,325. This Sanitation Fund subsidization includes the two months (October 15 to December 15) when stickers are NOT required on the yard waste bags. If stickers were required during these two months, this number would decrease proportionately.</p>	
<p>Does the current fee structure capture the cost? If no, recommended new fee structure:</p> <p>No. It is the recommendation of the Public Works Department is to raise the sticker fee per bag to \$3.25 and continue to encourage no charge bagging in the fall. If this proposal is adopted, the Sanitation Fund would no longer need to subsidize the yard waste collection program.</p>	

**CITY OF MOLINE
2016 LICENSING POLICY AND FEE REVIEW**

Fee Description:	Department Reviewing:
Development Review Fees	Planning & Development
Existing Fee Structure:	
Annexation	No charge
Comprehensive Plan amendment	\$500.00
Easement Vacation/Dedication application fee	\$360.00
Final Plat (>12 months from Preliminary Plat approval)	\$400.00
Final PUD	\$400.00
Preliminary PUD	\$1,000.00
Rezoning	\$650.00
R-O-W Licensing Agreements - Application fee	\$150.00
R-O-W Licensing Agreements - Renewal fee	\$30.00
Sidewalk Variance/ Appeal -Application fee	\$400.00
Sign Variance/Appeal	\$360.00
Site Plan review	No charge
Special Use	\$650.00
Subdivision & Flood Bldg Inspections Variance/Appeal	\$360.00
Subdivision (major)	\$900.00
Subdivision (minor)	\$650.00
Zoning Confirmation Fee	\$30.00
Zoning Variance/Appeal	\$650.00
Justification to Continue/Eliminate Fee:	
To recover cost of staff time and expenses associated with processing and reviewing plans and applications.	
Cost to Regulate/Enforce Issue:	
Hourly wages of staff members to review plans, arrange hearing, and attend meetings with applicants.	
Does the current fee structure capture the cost? If no, please recommend new fee structure:	
Yes, except for Subdivision (minor) should be lower to \$250.00.	