

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

**6:30 p.m.**

**Tuesday, June 5, 2012**

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### **Oaths**

Promotional appointments of David S. Tertipes to the rank of Police Lieutenant and Eli J. Soliz to the rank of Police Sergeant, effective June 3, 2012.

Permanent appointment as Firefighter/Paramedic to Chris Kendall effective June 6, 2012 (hire date June 6, 2011).

### **Mayor's Board Appointments**

Mayor's reappointment of the following to the Plumbing Appeals Board for full, two-year terms to expire April 30, 2014: David Coene & Bob Hartley.

Mayor's appointment of George Cruz to the Plumbing Appeals Board for a full, two-year term to expire April 30, 2014, to fill the expired term of Walter Blondell.

Mayor's appointment of Wayne Smith to the Library Board to fill the unexpired term of Jen McGee to expire May 31, 2013.

### **Questions on the Agenda**

### **Agenda Items**

- 1. Accepting the Comprehensive Annual Financial Report prepared by McGladrey & Pullen, LLP for the Fiscal Year January 1, 2011 through December 31, 2011 for all municipal funds.** (Keith Verbeke, Finance Manager)
- 2. Request from Custom Underground, Inc. for a Licensing Agreement to install fiber-optic cable in right-of-way** (Chris Mathias, Property Management Coordinator)
- 3. Purchase of 100 replacement PCs.** (Nate Scott, Information Technology Manager)
- 4. Tobacco Enforcement Program Grant from IL Department of Revenue - Liquor Control Commission** (Kim Hankins, Interim Public Safety Director)
- 5. A Special Ordinance authorizing the Mayor and City Clerk to execute an Agreement for Sale of Real Estate and do all things necessary to convey the City-owned property at 933 32<sup>nd</sup> Avenue A, Moline, to Red Oak Custom Homes, Inc.** (Maureen Riggs, City Attorney)
- 6. Agreement for Use of Docks for Channel Cat Water Taxi Service** (Maureen Riggs, City Attorney)
- 7. Other**

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# Explanation

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**1. Accepting the Comprehensive Annual Financial Report prepared by McGladrey & Pullen, LLP for the Fiscal Year January 1, 2011 through December 31, 2011 for all municipal funds.** (Keith Verbeke, Finance Manager)

**Explanation:** The Comprehensive Annual Financial Report for the City of Moline for the fiscal year ended December 31, 2011 is submitted for City Council acceptance. The primary objectives of a financial audit are: (1) to express an opinion on the fairness of the financial statements in conformity with generally accepted accounting principles; and (2) to determine whether the City has complied with applicable legal requirements in obtaining and expending public funds.

The audit for Fiscal Year 2011 was performed in accordance with generally accepted auditing standards by the accounting firm of McGladrey & Pullen, LLP. These standards are required to obtain reasonable assurances that the general purpose financial statements are free from material misstatements. The opinion given in the Report on the Independent Auditors states that the general purpose financial statements present fairly, in all material respects, the financial portion of the City of Moline at December 31, 2011 and the results of the City's operations are in accordance with generally accepted accounting principles.

The City of Moline has received the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers' Association for 19 consecutive years and will be submitting the 2011 report for award consideration.

Copies of the CAFR will be made available to the public for reference at the Moline Library, Moline Finance Department, and via the City's web site.

<b>Staff Recommendation:</b>	Accept
<b>Fiscal Impact:</b>	Sound Fiscal Management
<b>Public Notice/Recording:</b>	File with various governmental agencies
<b>Goals Impacted:</b>	Financially Strong City

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**2. Request from Custom Underground, Inc. for a Licensing Agreement to install fiber-optic cable in right-of-way** (Chris Mathias, Property Management Coordinator)

**Explanation:** Custom Underground, Inc. wishes to install fiber-optic facilities in right-of-way at four different locations. The first location will involve boring along the north side of 12<sup>th</sup> avenue from 34<sup>th</sup> Street to 41<sup>st</sup> Street, then north in 41<sup>st</sup> Street right of way to the Moline Housing Authority property at 1150 41<sup>st</sup> Street. The second location is 825 17<sup>th</sup> Street. Another location is near Black Hawk College and runs from the intersection of 60<sup>th</sup> Street and 34<sup>th</sup> Avenue, east along 34<sup>th</sup> Avenue to 70<sup>th</sup> Street, and then south to the intersection of 35<sup>th</sup> Avenue and 70<sup>th</sup> Street. The final location is 3316 Avenue of the Cities. Please see the attachments for more details.

<b>Staff Recommendation:</b>	Approval
<b>Fiscal Impact:</b>	\$560 application fee and \$30 annual fee to the City
<b>Public Notice/Recording:</b>	N/A
<b>Goals Impacted:</b>	Improved City Infrastructure and Facilities

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### 3. Purchase of 100 replacement PCs. (Nate Scott, Information Technology Manager)

**Explanation:** Staff requests Council approval for the purchase of 100 PC workstations. Most of the City's current workstations were purchased in 2007 or before, have fulfilled their useful lifecycle, and are no longer under warranty. Requests for Proposals was published and closed on May 18, 2012. Seven responses were received, with Computers on the Move submitted the most advantageous proposal with a total cost of \$47,385.25 for 100 Lenovo ThinkCentre M71e Mini-towers. Staff budgeted \$60,000 for this purchase and will use remaining funds to supplement the City's stock of monitors and for specific PC upgrades as necessary.

**Staff Recommendation:** Staff recommends approval.  
**Fiscal Impact:** \$47,385.25 from the Information Technology Equipment fund.  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Improved City Infrastructure and Facilities

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### 4. Tobacco Enforcement Program Grant from IL Department of Revenue - Liquor Control Commission (Kim Hankins, Interim Public Safety Director)

**Explanation:** The Illinois Department of Revenue (Liquor Control Commission) has awarded the police department a grant of \$7,040.00 to conduct a retail education and enforcement program with Moline tobacco retailers. The program provides for three compliance checks to be conducted during the term of the agreement, July 1, 2012 through June 30, 2013. Execution of a Contractual Agreement is required for acceptance of the grant. This item will also appear on the formal Council agenda under "Items Not on Consent" for June 5, 2012.

**Staff Recommendation:** Approve acceptance of the grant.  
**Fiscal Impact:** No cost to police budget.  
**Public Notice/Recording:** N/A  
**Goal Impacted:** Financially Strong City

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### 5. A Special Ordinance authorizing the Mayor and City Clerk to execute an Agreement for Sale of Real Estate and do all things necessary to convey the City-owned property at 933 32<sup>nd</sup> Avenue A, Moline, to Red Oak Custom Homes, Inc. (Maureen Riggs, City Attorney)

**Explanation:** The City acquired the property at 933 32<sup>nd</sup> Avenue A as a result of abandoned building proceedings and hoped to repair and restore said property through its community development rehabilitation program. However, there were not enough available community development funds to complete this project. As such, the City published a request for proposals for the purchase and rehabilitation of 933 32<sup>nd</sup> Avenue A on April 19, 2012, and Red Oak Custom Homes, Inc., submitted the proposal most advantageous to the City. Red Oak Custom Homes, Inc., has offered to purchase 933 32<sup>nd</sup> Avenue A for \$52,800.00 and promises to complete interior and exterior repair and restoration of the building on said property within three (3) months of the date of possession of said property. Staff recommends accepting this proposal so this project can begin as soon as possible and result in the repair and restoration of a blighted property.

**Staff Recommendation:** Approve  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Desirable Place to Live & Quality Neighborhoods

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**6. Agreement for Use of Docks for Channel Cat Water Taxi Service** (Maureen Riggs, City Attorney)

**Explanation:** The City took ownership of the docks by the i wireless Center last year from the Illinois Quad City Civic Center Authority pursuant to the Second Amendment to the River Edge Enhancement Agreement. MetroLINK has operated the Channel Cat water shuttle service from the westernmost dock at this location and would like to continue to do so. This Agreement continues the prior arrangement for use of the dock at no cost to MetroLINK but does require MetroLINK to defend, indemnify and hold harmless the City from any claims arising out of the operation of the Channel Cat or MetroLINK's use of the dock.

**Staff Recommendation:** Approval

**Fiscal Impact:** N/A

**Public Notice/Recording:** N/A

**Goals Impacted:** Quality Neighborhoods & Vibrant Downtown; Desirable Place to Live

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## Exhibit "A"

**LICENSEE:** Custom Underground, Inc. – 9907 W. US Highway 150, Edwards, IL 61528

### LICENSING AGREEMENT

**PARTIES:** The LICENSOR is the City of Moline, Illinois, a municipal corporation, hereinafter called the CITY.

The LICENSEE is Custom Underground, Inc., 9907 W. US Highway 150, Edwards, IL 61528, hereinafter called the LICENSEE.

**PREMISES:** In right-of-way at four different locations; (1) 12<sup>th</sup> Ave. right-of-way from 34<sup>th</sup> St. to 41<sup>st</sup> St., then north in 41<sup>st</sup> St. right of way to the Moline Housing Authority property at 1150 41<sup>st</sup> St.; (2) 17<sup>th</sup> St. right-of-way at 825 17<sup>th</sup> St.; (3) 34<sup>th</sup> Ave. right-of-way from 60<sup>th</sup> St. to 70<sup>th</sup> St., and then south in 70<sup>th</sup> St. right-of-way to the Black Hawk College property located at 6600 34<sup>th</sup> Ave.; (4) 34<sup>th</sup> St. right-of-way at 3316 Avenue of the Cities.

**USE:** LICENSEE shall be allowed only to: Install fiber optic cable in the premises.

**INTEREST ACQUIRED:** LICENSEE acquires only the right to: Install fiber optic cable in the premises.

The Licensing Agreement is not assignable without prior written approval of the CITY and the LICENSEE shall give the CITY at least twenty-one (21) days notice in writing of the intention to assign. If assignment is made without notice and approval, the CITY, in addition to any remedies for breach hereof, may hold the LICENSEE responsible for all things to be done, fees to be paid and documents to be filed under the terms hereof. No possessory, possessory, leasehold, ownership, or other property right or interest, except as specifically given herein, is conveyed to or acquired by the LICENSEE and the CITY and LICENSEE specifically disclaim any such acquisition or conveyance.

**TERM:** The first term of this Licensing Agreement is from June 12<sup>th</sup>, 2012 to December 31, 2012. Succeeding years shall be from January 1 to December 31 and shall be automatically renewed, subject to LICENSEE 'S submission of insurance certification and payment of fees. The CITY or the LICENSEE may terminate this Licensing Agreement by giving the other party 30 days written notice.

**FEE:** The annual usage charge is \$30.00.

**CONDITIONS:** LICENSEE shall indemnify and hold the CITY harmless from all acts in connection with use or misuse of the premises, and from any/all accidents on the premises. LICENSEE shall procure a policy of insurance also naming the CITY as additional insured to protect the CITY from all damages to person or property on the premises resulting from accidents on the premises. Said policy or certificate of same shall be deposited with the CITY and shall remain in force or be replaced with one in force prior to the effective date of any cancellation notice.

LICENSEE shall be the primary insured.

LICENSEE shall have the duty and responsibility to maintain the premises in a safe and neat condition, as determined by the CITY.

Upon termination of the Licensing Agreement, LICENSEE shall restore the premises to its condition prior to issuance of Licensing Agreement, or at City ' s sole and exclusive option, said property on the premises shall become the property of the CITY - at the CITY's option.

Construction on the premises shall be done under the direction of the CITY. The CITY and its authorized agents shall have the right to enter upon the premises for municipal purposes.

LICENSEE:

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

Date: \_\_\_\_\_

CITY OF MOLINE, ILLINOIS:

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

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

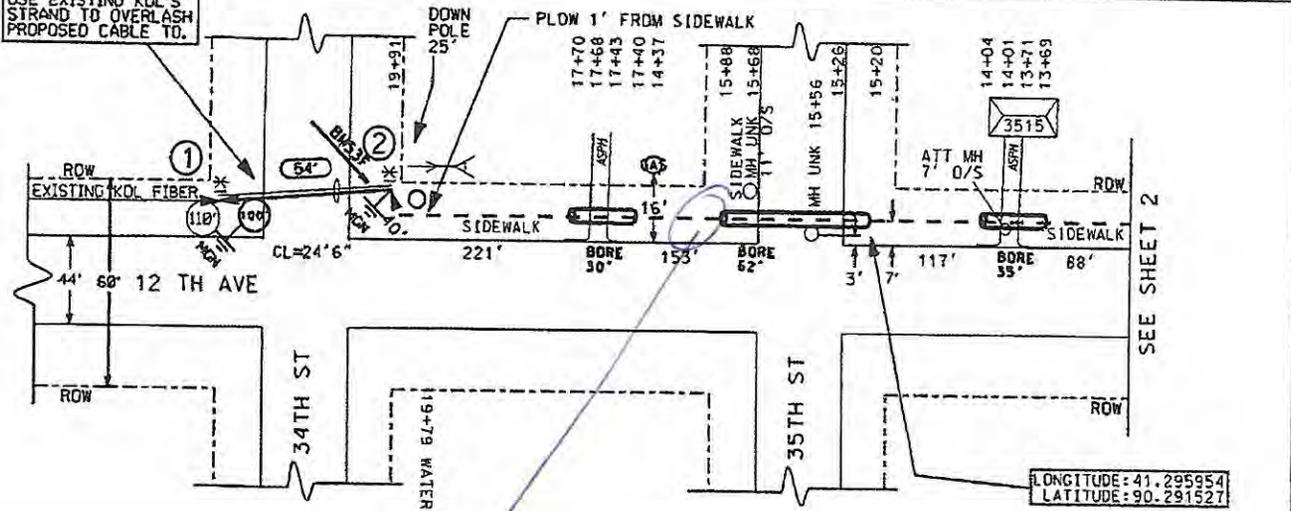
Approved as to Form:

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

① OWNER: PWR CO  
 USAGE: POLE# 123  
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 LONGITUDE: 41.30000  
 LATITUDE: 90.292210  
 LOW PWR:  
 STREET LIGHT:  
 ATTACH1:  
 ATTACH2:  
 ATTACH3:  
 ATTACH4:  
 NEW ATTACH: 24'4"  
 ATTACH ZONE:  
 ANCHOR LEAD:  
 ANCHOR HEIGHT:  
 MAKE READY:  
 HAPO(48)3M-1  
 HO1A-48  
 COMLA-1  
 WCOMLA-1  
 PM2A-1

② OWNER: PWR CO  
 USAGE: POLE# NT  
 ALT#: ALT#: TYPE: CLASS: NC  
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 LATITUDE: 90.292115  
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 STREET LIGHT:  
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 ATTACH3:  
 ATTACH4:  
 NEW ATTACH: 24'9"  
 ATTACH ZONE:  
 ANCHOR LEAD:  
 ANCHOR HEIGHT:  
 MAKE READY:  
 CD48E-154'  
 BM80F-2  
 PM2A-1  
 BM53F-1

USE EXISTING KOL'S STRAND TO OVERLASH PROPOSED CABLE TO.



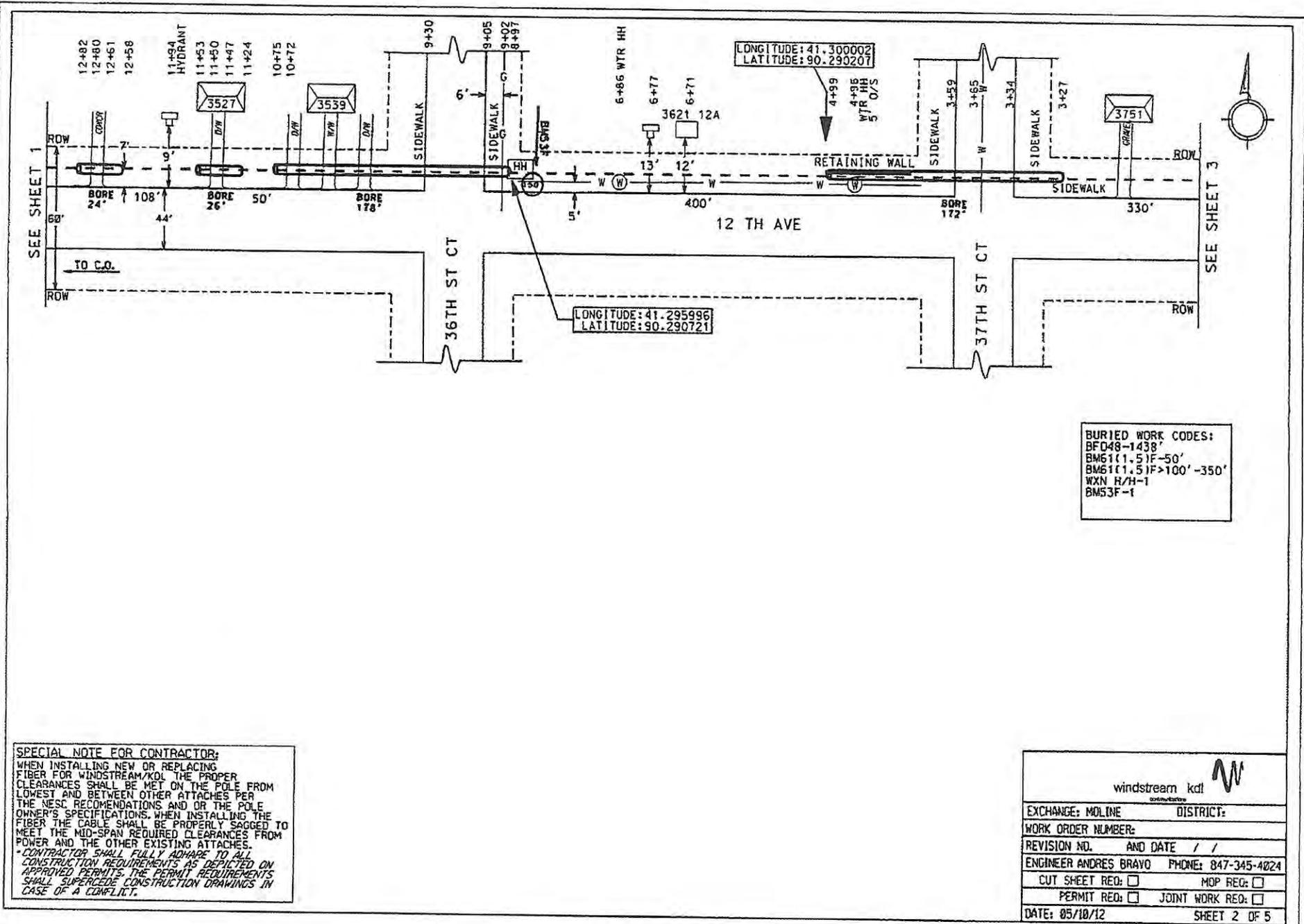
ALL BORE

BURIED WORK CODES:  
 BFD48-771  
 BM61(1.5)F-127'

**SPECIAL NOTE FOR CONTRACTOR:**  
 WHEN INSTALLING NEW OR REPLACING FIBER FOR WINDSTREAM/KOL THE PROPER CLEARANCES SHALL BE MET ON THE POLE FROM LOWEST AND BETWEEN OTHER ATTACHES PER THE NESC RECOMMENDATIONS AND OR THE POLE OWNER'S SPECIFICATIONS. WHEN INSTALLING THE FIBER THE CABLE SHALL BE PROPERLY SAGGED TO MEET THE MID-SPAN REQUIRED CLEARANCES FROM POWER AND THE OTHER EXISTING ATTACHES.  
 \* CONTRACTOR SHALL FULLY ADHERE TO ALL CONSTRUCTION REQUIREMENTS AS DEPICTED ON APPROVED PERMITS. THE PERMIT REQUIREMENTS SHALL SUPERCEDE CONSTRUCTION DRAWINGS IN CASE OF A CONFLICT.

windstream kdi 	
EXCHANGE: MO LINE	DISTRICT:
WORK ORDER NUMBER:	
REVISION NO.	AND DATE / /
ENGINEER ANDRES BRAVO PHONE: 847-345-4024	
CUT SHEET REQ: <input type="checkbox"/>	MDP REQ: <input type="checkbox"/>
PERMIT REQ: <input type="checkbox"/>	JOINT WORK REQ: <input type="checkbox"/>
DATE: 05/10/12	SHEET 1 OF 5

FAX - 309-524-2031



**SPECIAL NOTE FOR CONTRACTOR:**  
 WHEN INSTALLING NEW OR REPLACING FIBER FOR WINDSTREAM/KOL THE PROPER CLEARANCES SHALL BE MET ON THE POLE FROM LOWEST AND BETWEEN OTHER ATTACHES PER THE NESC RECOMMENDATIONS AND OR THE POLE OWNER'S SPECIFICATIONS. WHEN INSTALLING THE FIBER THE CABLE SHALL BE PROPERLY SAGGED TO MEET THE MID-SPAN REQUIRED CLEARANCES FROM POWER AND THE OTHER EXISTING ATTACHES.  
 - CONTRACTOR SHALL FULLY ADHERE TO ALL CONSTRUCTION REQUIREMENTS AS DEPICTED ON APPROVED PERMITS. THE PERMIT REQUIREMENTS SHALL SUPERCEDE CONSTRUCTION DRAWINGS IN CASE OF A CONFLICT.

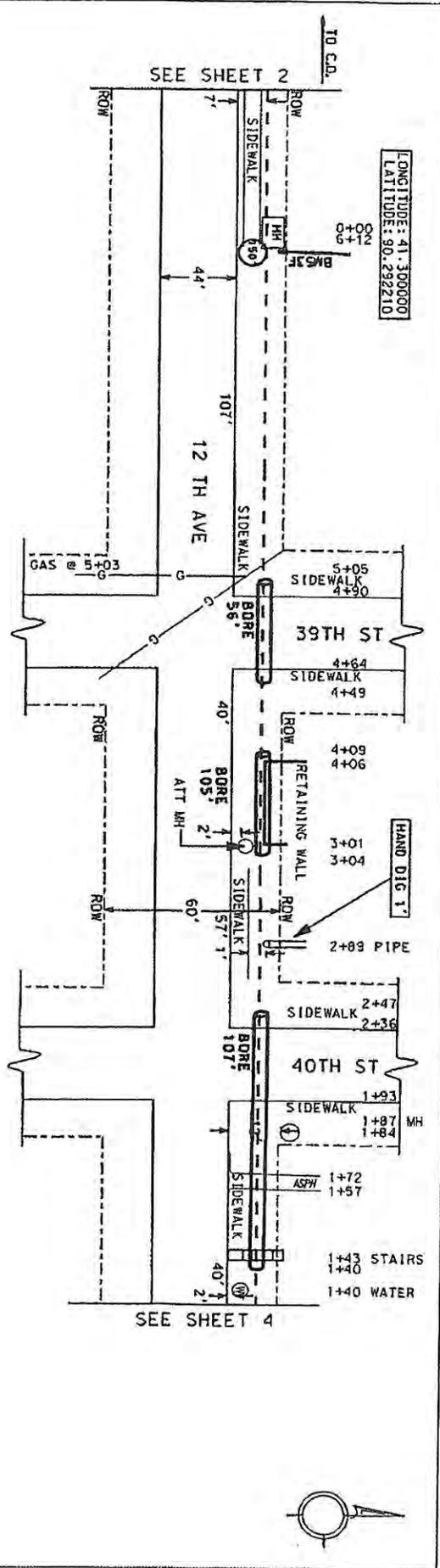
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 BM61(1.5)F>100'-350'  
 WXN H/H-1  
 BM53F-1

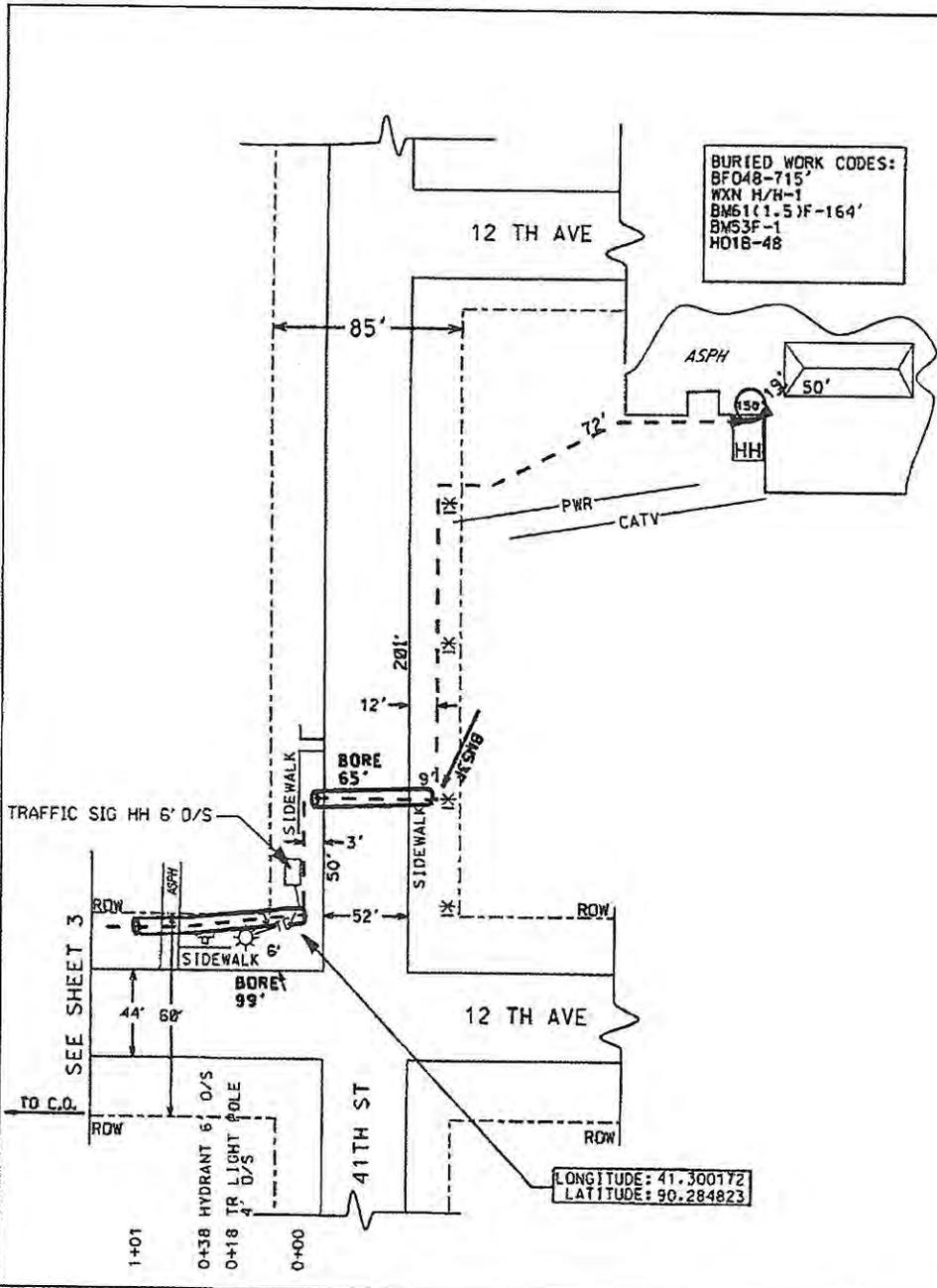
windstream kdt <small>Communications</small>	
EXCHANGE: MOLINE	DISTRICT:
WORK ORDER NUMBER:	
REVISION NO.	AND DATE / /
ENGINEER ANDRES BRAVO PHONE: 847-345-4024	
CUT SHEET REQ: <input type="checkbox"/>	MOP REQ: <input type="checkbox"/>
PERMIT REQ: <input type="checkbox"/>	JOINT WORK REQ: <input type="checkbox"/>
DATE: 05/10/12	SHEET 2 OF 5

**SPECIAL NOTE FOR CONTRACTOR:**  
 FIBER INSTALLING NEW OR REPLACING CLEARANCES SHALL BE MET. THE CLEARANCE FROM THE NEAREST RECOMMENDATIONS AND OR THE OWNER'S SPECIFICATIONS, WHEN INSTALLING THE FIBER THE MID-SPAN REQUIRED CLEARANCES TO POLES AND THE OTHER EXISTING UTILITIES, CONSTRUCTION SHALL BE AS SHOWN. APPROVED PERMITS THE PERMIT REQUIREMENTS SHALL SUPERSEDE CONSTRUCTION DRAWINGS IN CASE OF A CONFLICT.

**BURIED WORK CODES:**  
 BFD48-652  
 BNS111-57F-55'  
 BNS111-51F-100'-212'  
 BNS3F-1

EXCHANGE WOLINE	windstream kel
WORK ORDER NUMBER	
REVISION NO. AND DATE	
ENGINEER ANDRES BRAVO	PHONE: 847-345-4024
CUT SHEET REQ. <input type="checkbox"/>	JOINT WORK REQ. <input type="checkbox"/>
PERMIT REQ. <input type="checkbox"/>	
DATE: 05/10/12	SHEET 3 OF 5





BURIED WORK CODES:  
 BFO48-715'  
 WXN H/H-1  
 BM61(1.5)F-164'  
 BMS3F-1  
 HO1B-48



**SPECIAL NOTE FOR CONTRACTOR:**  
 WHEN INSTALLING NEW OR REPLACING FIBER FOR WINDSTREAM/KDL THE PROPER CLEARANCES SHALL BE MET ON THE POLE FROM LOWEST AND BETWEEN OTHER ATTACHES PER THE NESC RECOMMENDATIONS AND OR THE POLE OWNER'S SPECIFICATIONS. WHEN INSTALLING THE FIBER THE CABLE SHALL BE PROPERLY SADDLED TO MEET THE MID-SPAN REQUIRED CLEARANCES FROM POWER AND THE OTHER EXISTING ATTACHES.  
 \*CONTRACTOR SHALL FULLY ADHERE TO ALL CONSTRUCTION REQUIREMENTS AS DEPICTED ON APPROVED PERMITS. THE PERMIT REQUIREMENTS SHALL SUPERSEDE CONSTRUCTION DRAWINGS IN CASE OF A CONFLICT.

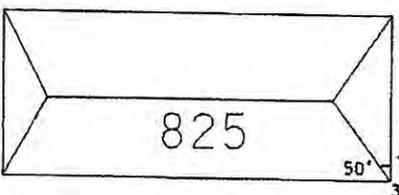
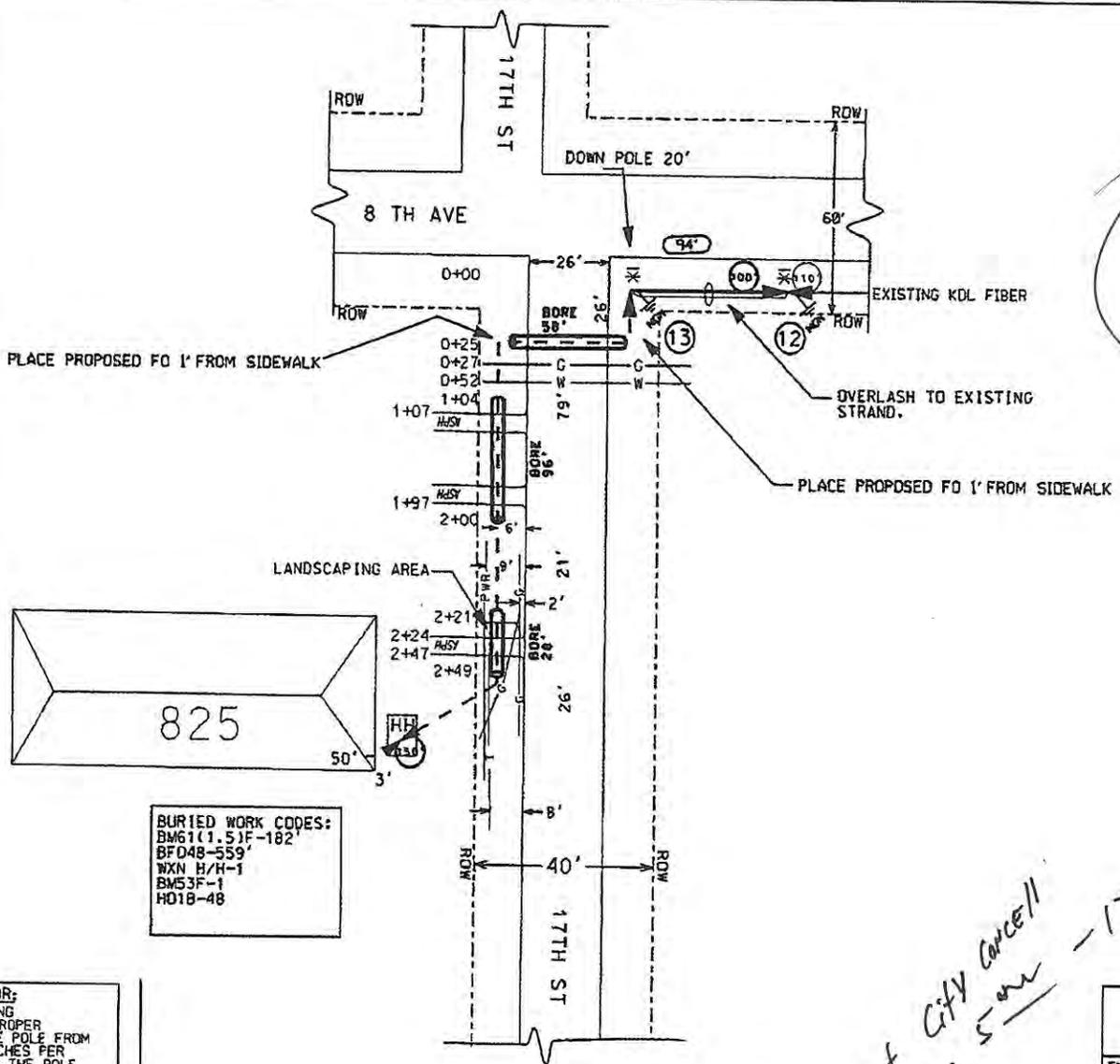
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 LATITUDE: 90.284823

windstream kdl	
EXCHANGE: MOLINE	DISTRICT:
WORK ORDER NUMBER:	
REVISION NO.	AND DATE / /
ENGINEER ANDRES BRAVO PHONE: 847-345-4024	
CUT SHEET REQ: <input type="checkbox"/>	MDP REQ: <input type="checkbox"/>
PERMIT REQ: <input type="checkbox"/>	JOINT WORK REQ: <input type="checkbox"/>
DATE: 05/10/12	SHEET 4 OF 5

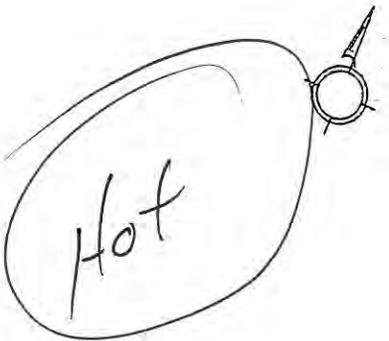
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 POLE#: NT  
 ALT#: NT  
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 HEIGHT:  
 LONGITUDE: 41.301771  
 LATITUDE: 90.304083  
 LOW PWR:  
 STREET LIGHT:  
 ATTACH1:  
 ATTACH2:  
 ATTACH3:  
 ATTACH4:  
 NEW ATTACH: 17'8"  
 ATTACH ZONE:  
 ANCHOR LEAD:  
 ANCHOR HIGHT:  
 MAKE READY:  
 HAPO(48)3M-1  
 HD1A-48  
 CDMLA-1  
 WCDMLA-1  
 PM2A-1

13 OWNER: PWR CD  
 USAGE: NT  
 POLE#: NT  
 ALT#: NT  
 TYPE: NC  
 CLASS:  
 HEIGHT:  
 LONGITUDE: 41.301726  
 LATITUDE: 90.304198  
 LOW PWR:  
 STREET LIGHT:  
 ATTACH1:  
 ATTACH2:  
 ATTACH3:  
 ATTACH4:  
 NEW ATTACH: 18'11"  
 ATTACH ZONE:  
 ANCHOR LEAD:  
 ANCHOR HIGHT:  
 MAKE READY:  
 CD48E-194  
 BMB0F-2  
 PM2A-1

**SPECIAL NOTE FOR CONTRACTOR:**  
 WHEN INSTALLING NEW OR REPLACING FIBER FOR WINDSTREAM/KOI THE PROPER CLEARANCES SHALL BE MET ON THE POLE FROM LOWEST AND BETWEEN OTHER ATTACHES PER THE NESC RECOMMENDATIONS AND OR THE OWNER'S SPECIFICATIONS. WHEN INSTALLING THE FIBER THE CABLE SHALL BE PROPERLY SAGGED TO MEET THE MID-SPAN REQUIRED CLEARANCES FROM POWER AND THE OTHER EXISTING ATTACHES.  
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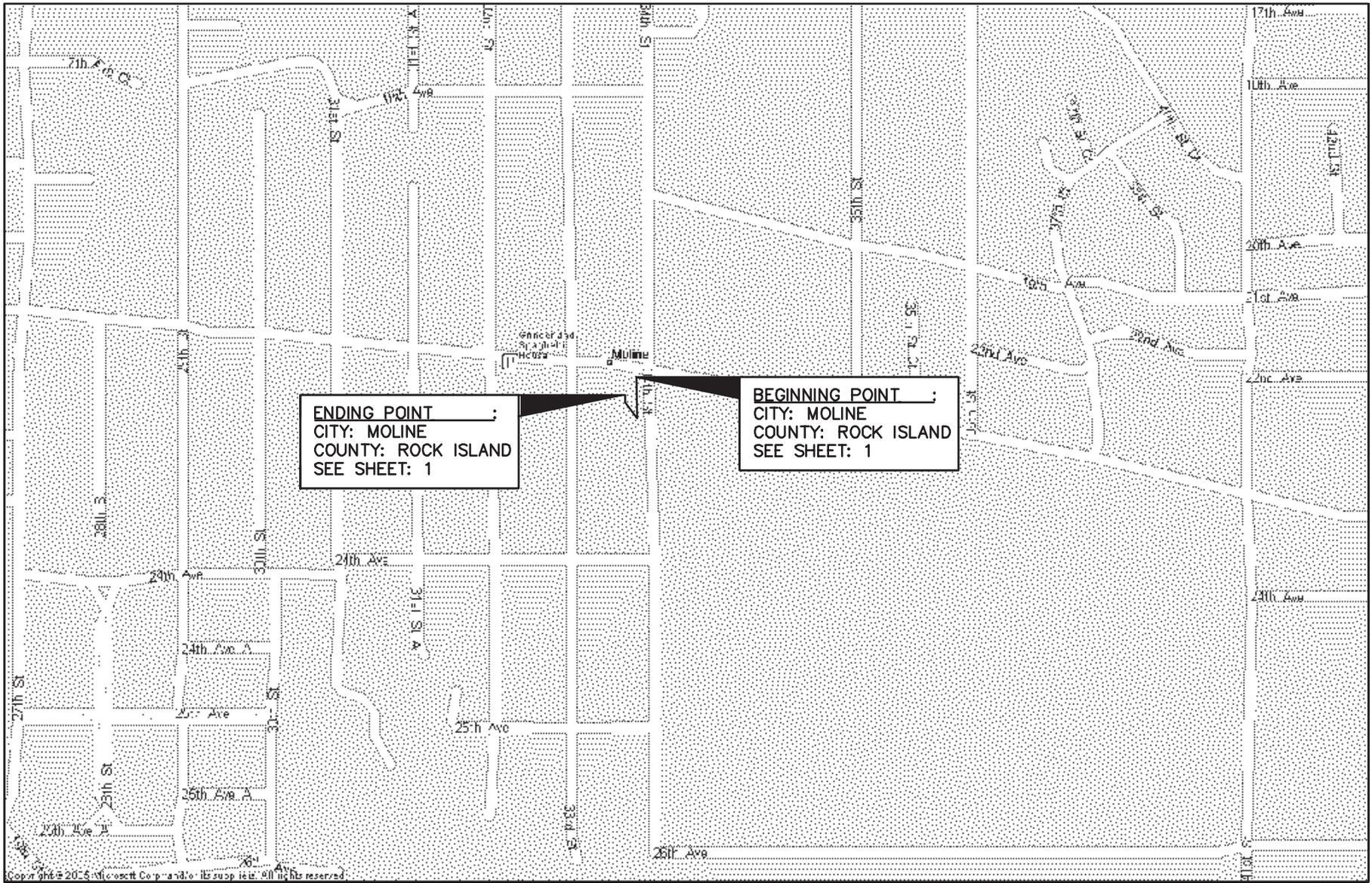
**BURIED WORK CODES:**  
 BM61(1.5)F-182  
 BFD48-559  
 WXN H/H-1  
 BM53F-1  
 HD18-48



*Next City Cancel  
 June 5<sup>th</sup> - 12*

windstream kdi <small>communications</small>	
EXCHANGE: MOLINE	DISTRICT:
WORK ORDER NUMBER:	
REVISION NO.	AND DATE / /
ENGINEER ANDRES BRAVO PHONE: 847-345-4024	
CUT SHEET REQ: <input type="checkbox"/>	MOP REQ: <input type="checkbox"/>
PERMIT REQ: <input type="checkbox"/>	JOINT WORK REQ: <input type="checkbox"/>
DATE: 05/10/12	SHEET 5 OF 5





ROUTE OVERVIEW



BID OPENING FOR: 100-PC Purchase						
DATE:	5/18/2012					
TIME:	2:20 PM					
LOCATION:	1640 6th Ave, IT Office					
ATTENDING:	NATE SCOTT - IT					
VENDOR NAME	Base PC Total Cost	Option 1 - Monitors	Option 1a - Speaker Bar	Option 2 - integrated speakers	all specs met	all RFP required docs/formatting present?
<b>Camera Corner/Connecting Point</b> P.O. Box 248 Green Bay, WI 54305	HP 6200 PRO PCs - <b>\$51,200</b> (microtower) Port to VGA adapters- <b>\$2,300</b> lift gate fee - <b>\$50</b> <b>total = \$53,550</b>	HP 22" LCD widescreen w/ 3 year warranty - <b>\$15,800</b> <b>total = \$69,350</b>	plus \$1,400 <b>total = \$70,750</b>	n/a	yes	yes
<b>Dell Marketing LP</b> One Dell Way Rock, TX 78682	Dell Optiplex 390 Minitower (w/ internal speaker) - \$57,329 + 909 = <b>\$58,238</b>	Dell P1911 19" widescreen (and PC speakers) - <b>\$68,427</b>	plus \$1,239 <b>total = \$69,666</b>	see base cost	yes	yes
<b>Computers on the Move</b> 6910 N. Crestwood Dr. Glendale, WI 53209	Lenovo ThinkCentre M71e minitower (w/ internal speaker) = <b>\$47,385.25</b>	Lenovo ThinkVision LT1952P 19" widescreen = \$16,250 total = <b>\$63,635.25</b>	plus \$2,999 <b>total = \$66,634.25</b>	see base cost	yes	yes
<b>Tallgrass Systems, LTD</b> 9501 W. 144th Street Orland Park, IL	HP 3405 PRO, w/ warranty and HDMI adapters - <b>\$60,550</b>	HP LA 2006 20" widescreen = \$14,050 total = <b>\$74,600</b>	plus \$1,850 <b>total = \$76,450</b>	n/a	yes	yes
<b>OM Office Supply</b> 5007 Carlisle Pike, Suite 101 Mechanicsburg, PA 17050	HP 6200 PRO PCs - \$53,300 (small form factor) total = <b>\$53,300</b>	HP LA 1951G = \$15,200 HP LA 2006x = \$12,700 best total = <b>\$66,250</b> HP LA 2206x = \$15,400	<b>not included</b>	n/a	yes	didn't say "Do Not Open" on envelope as specified
<b>CDS Office Technologies</b> 1913 North Knoxville Peoria, IL 61603	Lenovo ThinkCentre M77 (w/ internal speaker)- <b>\$61,700</b>	Dell P1911 19" widescreen - \$15,755 total = <b>\$77,455</b>	<b>n/a</b>	see base cost	yes	yes
<b>Howard Technology Solutions</b> 36 Howard Drive Ellisville, MS 39437	Howard H61 AMKB - <b>\$89,900</b>	two options specified - but no separate pricing	two options specified - but no separate pricing	n/a	yes	said "Sealed Bid", but not "Do Not Open"; didn't follow instructions for separate pricing of options

ILLINOIS DEPARTMENT OF REVENUE  
CONTRACTUAL AGREEMENT

City of Moline  
619 16th Street  
Moline, IL 61265

Federal Employers Identification No. 36-6005999, hereinafter referred to as Contractor or Vendor, and the State of Illinois, Department of Revenue, herein referred to as the Department, in consideration of the mutual covenant herein contained, agree as follows:

1. NATURE AND CONDITIONS OF ASSIGNMENT

The Contractor agrees to provide the following goods and/or services to the Department; which goods and/or services shall be expected to meet acceptable levels of performance:

In the event of a conflict between the State's and the Vendor's terms, conditions and attachments, the State's terms, conditions and attachments shall prevail.

A. The number of tobacco retailers affected by this Agreement is determined to be 64.

B. A Contractor not participating in the FY 2011 Tobacco Enforcement Program (July 1, 2011 - June 30, 2012) is required to participate in an Annual Conference Call to review program assurances. Conference calls will be scheduled for the beginning of August 2012. A Contractor participating in the FY 2012 Tobacco Enforcement Program will be given the opportunity to participate if they desire.

C. The Contractor is required to contact each tobacco retailer, informing them of their participation in the program and that minimum-age tobacco laws will be enforced. This contact may be in writing or in-person. A Contractor not participating in the FY 2012 Tobacco Enforcement Program is not allowed to initiate this contact until after their participation in the Annual Conference Call which will review the Tobacco Enforcement Program in detail.

D. The Contractor is required to distribute the Commission's Tobacco Retailer Kit to each tobacco retailer. A Contractor not participating in the FY 2012 Tobacco Enforcement Program must wait until after their participation in the Annual Conference Call to distribute the kits. A contractor must distribute the kits prior to the first round of compliance checks, regardless if the kits were distributed the previous year(s).

E. The Contractor will conduct three compliance checks on each tobacco retailer. The first round of compliance checks is due November 30, 2012; the second round of compliance checks is due February 28, 2013 and the third round of compliance checks is due May 31, 2013. Upon completion of each round of compliance checks, the Contractor will submit a *Tobacco Enforcement Program Summary Report*.

i) Contractors **not** participating in the program from the time period between July 1, 2011 and June 30, 2012 are required to issue written warnings for first round violations.

ii) Contractors participating in the program from the time period between July 1, 2011 and June 30, 2012 may elect to issue warnings or citations for first round violations.

iii) After the first round, all Contractors must assess monetary fines to all violators regardless if the tobacco retailer's first round compliance check resulted in a non-violation, warning or citation.

iv) The Contractor will recruit youth workers that are 15, 16, or 17 years of age as the underage minor when conducting the required compliance checks.

v) Contractors receiving written permission from the Commission may elect to replace one round of retail compliance checks with one round of possession enforcement. Written permission from the Commission will include: the round of retail compliance checks which is to be replaced with possession enforcement; and the number of hours the Contractor will dedicate to possession enforcement. During possession enforcement, any minor found in possession will be given an "Illinois Tobacco Quitline" card to encourage access to cessation classes. The "Illinois Tobacco Quitline" cards will be provided to the Contractor by the Department.

F. Mandatory attendance or documentation of prior attendance at an Illinois Law Enforcement Training and Standards Board (ILETSB) state certified class for conducting compliance checks is required by at least one individual supervising your compliance checks. The Contractor may elect to attend a Commission sponsored class which meets the Tobacco Enforcement Program requirements and timelines. For Commission sponsored classes, the Commission assumes responsibility for all registration fees, however Contractors are responsible for their travel related costs.

G. As required by state law, Contractors must have written procedures for conducting compliance checks. Written procedures can be submitted after attending an ILETSB certified compliance check training class and are due no later than October 28, 2012.

H. The Contractor is required to show proof of insurance meeting the requirements in section "12. Liability and Insurance" of this contract. If during the contract time period the proof of insurance document provided expires, the Contractor will provide updated proof of insurance.

I. Request for Grant Payment will be made by the Commission immediately after the Contractor's scheduled time for the Annual Conference Call provided the Contractor is compliant with grant requirements.

i) Permissible expenditures of the grant payment include but are not limited to: payroll and payroll related expenses incurred individuals conducting work related to the grant requirements with the individuals including Administrative staff, enforcement officers and minors; travel related expenses including vehicle costs/maintenance; training cost for officers and/or minors; purchase of tobacco products and meal allowances; software and/or equipment purchase for training; equipment purchases for inspections; and educational and/or training materials to supplement the Tobacco Retailer Kit or other youth access prevention materials. Questions regarding acceptable expenditures should be directed to Jeff Barr of the Commission.

ii) Contractors receiving grants in excess of \$25,000 must submit quarterly reports describing the progress of the program and the expenditure of grant funds.

iii) Grant funds must be expended by June 30, 2013.

iv) Any funds not expended by June 30, 2013 must be returned to the Commission within 45 days.

**2. PAYMENT FOR SERVICES**

The amount payable for the services rendered shall be \$7040. No other charge by the Contractor may be paid for services rendered under this agreement without the written approval of the Department.

**3. REIMBURSEMENT FOR EXPENSES**

The Contractor will not be eligible for reimbursement by the Department of any expenses that the Contractor accrues in performance of this Agreement.

**4. GEOGRAPHIC AREA SERVED**

The Contractor shall accept assignments within the following geographic area: State of Illinois.

**5. DURATION OF AGREEMENT**

This agreement shall begin on August 1, 2012, and remain in effect until June 30, 2013. No payment shall be made for services rendered prior to the effective date of this agreement.

**6. TERMINATION**

Each party reserves the right to terminate this contract at any time on 30 days written notice to the other party. In the event of default or non-compliance with the terms of this contract, it may be terminated immediately. In the event of termination, the Department shall not be liable for amounts other than payments for services hereunder which have accrued up to the date of termination.

**7. TAX LAW COMPLIANCE**

This contract is expressly conditioned upon the Contractor being and at all time remaining in compliance with all Illinois tax laws. The Department reserves the right to conduct tax law compliance checks to determine that the Contractor is in compliance with all Illinois tax laws. In the event the Department determines that the Contractor is not in compliance with all Illinois tax laws, this contract may be terminated immediately at the Department's option.

**8. VOUCHERS**

The Department shall submit, on behalf of the Contractor, vouchers for payments under this agreement monthly, semi-annually, or annually; the Contractor shall account for the completion of work on such forms and under such procedures as are required by the Department. Vouchers submitted more than thirty (30) days following termination of this agreement or later than thirty (30) days following the end of the fiscal year (June 30, 2013), will not be honored by the Department.

**9. EMPLOYMENT STATUS**

Contractor acknowledges that for purposes of the Illinois Pension Code, the State Employees' Group Insurance Program and other benefits provided to persons

who are on the regular payroll of the State, the services rendered pursuant to this agreement are not rendered as an employee of the State and amounts paid pursuant to this agreement do not constitute compensation paid to an employee for such purposes.

**10. LAWS OF ILLINOIS**

This contract shall be governed by Illinois law and administrative rule including the Standard Procurement Rules. Any claim against the State arising out of this contract must be filed exclusively with the Illinois Court of Claims, or if jurisdiction is not accepted, then with the appropriate state or federal court located in Sangamon County, Illinois (705 ILCS 505/1).

**11. CONFIDENTIALITY**

1. CONFIDENTIALITY OF TAX RETURN INFORMATION. Services provided to the Department by Vendor may require Vendor to have access to and use of documents and data which may contain tax return information. Tax returns and tax return information are confidential and may not be disclosed under Illinois or federal law, including, but not limited to, 35 ILCS 5/917, 35 ILCS 120/11, 26 U.S.C. 7213, and 26 U.S.C. 7431. These statutes provide for the imposition of criminal penalties for improper disclosure of confidential tax return information. Vendor agrees that it shall keep confidential all tax returns and tax return information that it accesses and uses in performance of its services to the Department and will not provide it to any third party unless approved in writing by the Department. Vendor agrees to protect such information from unauthorized disclosure by it and its employees and by its corporate affiliates and their employees and to strictly limit access to such information to its personnel who require said information to perform their duties. Vendor further agrees to inform its personnel having access to such information of the confidential and statutorily protected nature of tax information and of the penalties associated with improper use or disclosure of such information.

2. CONFIDENTIALITY OF PROCESSES AND PROCEDURES. Services provided to the Department by Vendor may require Vendor to have access to and use of processes and procedures employed by the Department in its administration of the Illinois tax acts. These processes and procedures are the property of the Department and are highly confidential. Vendor agrees that it shall keep confidential any and all information concerning such systems, processes, and procedures and will not provide it to any third party. Vendor further agrees to protect such information from unauthorized disclosure by Vendor and its employees and by Vendor's corporate affiliates and their employees and to strictly limit access to such information to its personnel who require said information to perform their duties.

**12. LIABILITY AND INSURANCE**

The State does not assume any liability for acts or omissions of Contractor and such liability rests solely with Contractor. The State is unable to indemnify or hold harmless any contractor for claims based on the State's use of the contractor provided goods and services including software. Any liability for damages that the State might have is expressly limited by and subject to the provisions of the Illinois Court of Claims Act and to the availability of suitable appropriations. Contractor shall carry public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of Contractor. Minimum acceptable coverage for bodily injury shall be \$250,000 per person and \$500,000 per occurrence and for property damage, \$100,000 per occurrence. Contractor shall carry Worker's Compensation Insurance in amount required by law.

If risk of loss transfers before delivery and installation at State's site, Contractor shall procure insurance chargeable to the State to cover all reasonable risks.

The State may self-insure against any and all risks.

**157. APPLICABLE LAW**

This agreement and contractor's obligations and services hereunder are hereby made and must be performed in compliance with all applicable federal and state laws. This agreement shall be construed in accordance with the laws of the State of Illinois.

**14. LEGAL ABILITY TO CONTRACT:** Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- a. Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
- b. Vendor is not in default on an educational loan (5 ILCS 385/3).
- c. Vendor (if an individual, sole proprietor, or partner) has informed the director of the Agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
- d. Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid

or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).

- e. Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).
- f. If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
- g. If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the Contract void if this certification is false (30 ILCS 500/50-10.5).
- h. Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the Contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
- i. Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the Contract being declared void.
- j. Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the State may declare the Contract void (30 ILCS 500/50-14).
- k. Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
- l. Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- m. Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).

- n. In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
- o. Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Vendor and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).
- p. Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- q. Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
- r. Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- s. Vendor does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- t. Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
- u. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).
- v. Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".
- w. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at

any time during the one-year period preceding the procurement lobbying activity.

- x. In accordance with Public Act 095-0307, all information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at [www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa).
- y. Vendor has disclosed if required, on forms provided by the State, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in the Vendor or the Contract, Vendor certifies it has disclosed that information to the State if required, on forms provided by the State, and any waiver of the conflict has been issued in accordance with applicable law and rule. A waiver is required if:
  - a) the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$106,447.20). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
  - b) the contract is with a firm, partnership, association or corporation in which a person referenced in a) above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$177,412.00).
  - c) the contract is with a firm, partnership, association or corporation in which a person referenced in b) above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$354,824.00) from the firm, partnership, association or corporation.
- z. Vendor, as defined in Public Act 95-971, certifies that it has read, understands, and is in compliance with the Act and will not make a contribution that will violate the Act. In general, Public Act 95-0971 contains new registration and reporting requirements for certain Vendors, as well as limitations on political contributions by certain Vendors and their affiliates. These requirements shall be effective for the duration

of the term of office of the incumbent Governor or for a period of 2 years after the end of the contract term, whichever is longer.

Vendor certifies, in accordance with Public Act 95-971, as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration as required by the Act. A copy of the certificate of registration is attached.

Vendor acknowledges that the State may declare this Contract void without any additional compensation due to the Vendor if this foregoing certification is false or if the Vendor (or any of its Affiliated Persons or Entities) engages in conduct that violates Public Act 95-0971.

**159. BACKGROUND CHECK**

The State may conduct criminal and driver history background checks of VENDOR'S officers, employees or agents who would directly supervise or physically perform the CONTRACT requirements at State facilities. Any such officer, employee or agent deemed unsuitable by the State must be replaced immediately.

**160. AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60)**

AGENCY shall use its best efforts to secure sufficient appropriations to fund this CONTRACT. However, the AGENCY'S obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. The AGENCY shall determine whether amounts appropriated are sufficient. AGENCY shall give VENDOR notice of insufficient funding as soon as practicable. VENDOR'S obligation to perform shall cease upon receipt of the notice.

**161. SOLICITATION AND EMPLOYMENT**

VENDOR shall not employ any person employed by the AGENCY at any time during the term of this CONTRACT to perform any work required by the terms of this CONTRACT. As a condition of this CONTRACT, the VENDOR shall give notice immediately to the AGENCY'S director if VENDOR solicits or intends to solicit for employment any of the AGENCY'S employees during the term of this CONTRACT. AGENCY has no authority to contractually refuse to hire VENDOR'S employees who apply to the State for employment.

**18. FISCAL FUNDING**

Obligations of the State will cease immediately without penalty of further payment being required if in any fiscal year the Illinois General Assembly funding source fails to appropriate or otherwise make available sufficient funds for this agreement.

**19. SUBCONTRACTING AND ASSIGNMENTS**

Subcontracting, assignment or transfer of all or part of the interests of contractor in the work covered by this agreement shall be prohibited without prior written consent of the department. In the event the department gives such consent, the terms and conditions of this agreement shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as contractor is hereby bound and obligated. Any contract with a subcontractor shall provide that the subcontractor shall maintain, for a minimum of five (5) years after the completion of the subcontract, adequate books, records and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract and that the Department of Revenue and Auditor General shall have the right to audit the books, records and supporting documents of any subcontractor within said five (5) year period. The contract shall also provide, that the subcontractor will fully cooperate with the department or Auditor General during the course of any audit.

**20. BREACH**

Failure of Contractor to perform as specified is cause for immediate termination of the contract at the option of the department, without limitation upon any other relief available to the department.

**21. RIGHT TO AUDIT**

The Vendor is required to permit the grantor agency, the Auditor General, or the Attorney General to inspect and audit any books, records, or papers related to the program, project, or use of which grant funds were provided.

**AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65):** Vendor and its subcontractors shall maintain books and records relating to the performance of the contract or subcontract and necessary to support amounts charged to the State under the contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, the Vendor and its subcontractors must retain its records for five years. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the procuring Agency, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor's books and records.

"The Vendor certifies under oath that all information I the grant agreement is true and correct to the best of the vendor's knowledge, information, and belief; that the funds shall be used only for the purposes described in the

grant agreement; and that the award of the grant funds is conditioned upon such certification."

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Contractor

Kim Hankins  
City of Moline Police Department  
Contractor, (printed name)

Chief of Police  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Manager, Department of Revenue

Jeff Barr  
Manager, Department of Revenue  
(printed name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director, Department of Revenue

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

### TAXPAYER IDENTIFICATION NUMBER

I certify that:

433. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

434. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

435. I am a U.S. person (including a U.S. resident alien).

- *If you are an individual, enter your name and SSN as it appears on your Social Security Card.*
- *If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.*
- *If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.*
- *If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).*
- *For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.*

**Name:** City of Moline

**Business Name:** City of Moline

**Taxpayer Identification Number:**

Social Security Number

or

Employer Identification Number: 36-6005999

**Legal Status** (check one):

- |   |   |
|---|---|
| <input type="checkbox"/> Individual   | <input checked="" type="checkbox"/> Governmental  |
| <input type="checkbox"/> Sole Proprietor  | <input type="checkbox"/> Nonresident alien  |
| <input type="checkbox"/> Partnership  | <input type="checkbox"/> Estate or trust  |
| <input type="checkbox"/> Legal Services Corporation   | <input type="checkbox"/> Pharmacy (Non-Corp.)   |
| <input type="checkbox"/> Tax-exempt   | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.)                           |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services     | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> D = disregarded entity   |
|   | <input type="checkbox"/> C = corporation  |
|   | <input type="checkbox"/> P = partnership  |

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**AGREEMENT FOR SALE OF REAL ESTATE**

CITY OF MOLINE  
A MUNICIPAL CORPORATION  
**SELLER**

RED OAK CUSTOM HOMES, INC.  
**PURCHASER**

Address: 619 16<sup>th</sup> Street  
Moline, IL 61265

Address: 1009 14<sup>th</sup> Avenue  
Orion, IL 61273

Telephone: (309) 524-2012

Telephone: (309) 781-5728

**THIS AGREEMENT IS DATED** \_\_\_\_\_.

The Purchaser agrees to purchase from the Seller and the Seller agrees to sell to Purchaser the real estate located at 933 32<sup>nd</sup> Avenue A, Moline, Illinois (Parcel Number 08-8742), consisting of 13,269 square feet, more or less, legally described as:

Lot Number Seven (7) in Harris Nelson Fourth Addition to the City of Moline, Illinois, situated in the County of Rock Island, in the State of Illinois.

Hereinafter referred to as the "Property," for the total sum of FIFTY-TWO THOUSAND EIGHT HUNDRED and No/100 DOLLARS (\$52,800.00) plus a right of reverter requiring Purchaser to complete interior and exterior renovations of 933 32<sup>nd</sup> Avenue A within three (3) months from the date of possession of the Property, or the Property will automatically revert to the City; and adjusted for the special restrictions and covenants as set forth in the sections related to special restrictions and covenants herein, and payable in cash or other immediately available funds, at Closing, as defined herein. Purchaser understands that Seller's City Council must approve this Agreement before it becomes effective. Therefore, the Purchaser agrees that Purchaser's offer to buy hereunder shall be irrevocable until June 29, 2012, to allow Seller's City Council to consider and approve this Agreement at its June 19, 2012 City Council meeting all as described herein below.

**SPECIAL RESTRICTIONS AND COVENANTS**

Each and every item listed in this Section shall be construed as a material condition of this Agreement for Sale of Real Estate and shall be controlling over any portion in conflict therewith and any provision of any deed created pursuant hereto. If Purchaser or its successors in interest, if any, are at any time in breach or other violation of any provision of this Section and so remain for a period of fourteen (14) days after notice from Seller of the breach or other violation, then the Seller may reclaim and repossess the real estate interests transferred pursuant hereto; the Seller shall retain any and all amount paid to it for purposes of the transfer and/or sale contemplated herein as consideration for this Agreement and as payment for Seller's costs in preparing and conducting the sale herein contemplated. The special restrictions and covenants shall be as follows:

1. The purchase price for the Property is Fifty-Two Thousand Eight Hundred and No/100 Dollars (\$52,800.00). Purchaser shall pay Two Thousand Eight Hundred and No/100 Dollars (\$2,800.00) upon execution of this Agreement. The remaining Fifty Thousand and No/100 Dollars (\$50,000.00) shall be paid by Purchaser at Closing. All 2011 taxes due and payable in 2012 shall be borne and paid by the Purchaser as well as all other current and future taxes not otherwise provided for herein.

2. Purchaser acknowledges and agrees to the following construction schedule:

**Site Work:** Tear down screen room in back of property. Build gable over car port in front of garage and match existing shingles.

**Excavation:** Excavate right side of house and regrade to take water pressure off foundation.

**Siding:** Double 4" lap vinyl all of house.

**Shutter:** Front.

**Shingles:** 30-year Owens Corning Oakridge (or match existing roof)

**Exterior Door:** Front door – rehang existing front door. Other doors – rehang existing car port door.

**Deck:** 10 x 12, treated (new deck out back replacing window with slider)

**Garage Doors:** 1-9x7, steel, white and ½ hp chain opener.

**Insulation:** Will have a MidAmerican energy audit done and have ceiling added to if needed.

**Sheetrock:** House – 1/2" drywall, taped and finished. Basement: ½" drywall downstairs.

**Heating & Air Conditioning:** Furnace – Ruud UPK 75,000 80%. Air: Ruud AJA 13 seer 2 ton.

**Flatwork:** Shall be of 4000# concrete. Driveways and Walkways – 4" on crushed rock (repair front of garage).

**Windows:** Andersen, 200 series, white (replace all windows on main floor)

**Plumbing:** All plumbing work to meet and exceed city or county codes. Water Heater – 1 gas, 40 gallon. Fixtures – all new delta fixtures in kitchen and bath.

**Electrical:** All electrical work to meet or exceed city or county codes. Fixtures – All new outlets and switches, all new fixtures on main floor.

**Appliances:** 1 gas range, 1 microwave/hood, 1 dishwasher, 1 refrigerator.

**Cabinets:** Chadwood Oak and laminate counter top.

**Painting & Staining:** Walls – 1 coat paint. Doors – sprayed white. Exterior Doors – paint all. Trim – white. Windows – white.

**Trim:** Doors – 6 panel primed. Base – 3/8” 3 1/4” clay coat. Casing – 1/2” 2 1/2” clay coat. Railing – pine. Knee Wall Cap – poplar. Hardware – schlage. Closets – wire.

**Landscaping:** Seed needed areas. Landscape front area.

**Floor Coverings:** Carpet throughout bedrooms and living room. Vinyl throughout bath and kitchen.

### **Timeline**

**July 31, 2012** – Complete windows, roof and siding work

**August 15, 2012** – Complete concrete and landscaping work

**September 7, 2012** – Complete drywall taping and painting

**September 24, 2012** – Complete plumbing, electrical, cabinets and trim work

**September 30, 2012** – Complete all work (will repair exterior work first to improve neighborhood)

Purchaser further acknowledges and agrees that Purchaser’s failure to abide by any of the above conditions will result in reverter of the Property to the Seller without further action by or notice from the Seller, and Purchaser will voluntarily relinquish all interests in the Property to the Seller. In the case of reverter, any improvements done to the Property by the Purchaser shall become the property of the Seller and Purchaser has no right to said improvements or reimbursement therefor.

### **CONVEYANCE OF TITLE AND DOCUMENTS OF SALE**

At Closing, Seller shall deliver a Quit Claim Deed to a licensed attorney practicing in Rock Island County in the name of the Purchaser conveying Seller’s interests and title together with such other documents that may be required to record the deed and transfer personal property. If the above conditions are met on September 30, 2012, at this time the deed shall be delivered to Purchaser provided that all conditions of this Agreement have been met by the parties.

## **POSSESSION AND CLOSING**

- (a) The Closing of this transaction shall be held on or about September 30, 2012 (“Closing”), with possession of the Property to be delivered to Purchaser on or before June 29, 2012, free and clear of all possessory interests, including, without limitation, squatters;
- (b) Possession shall be deemed delivered when Seller has vacated the Property.

## **ASSIGNMENTS AND TRANSFERS PROHIBITED**

The parties covenant not to suffer or permit without the written permission or consent of the other being first had and obtained, a sale, assignment, or transfer of any right, title or interest of any sort in and to said Property, or any portion thereof, or any of the improvements, apparatus, fixtures or equipment that may be found in or on said Property prior to Closing.

## **BUILDINGS, FIXTURES AND PERSONAL PROPERTY**

All buildings or fixtures presently installed on the Property shall be left by Seller in or upon said Property as they are as of the date of this Agreement and shall be deemed a part of the real estate and title thereto and shall pass to Purchaser at delivery of the Quit Claim Deed.

## **CONDITION OF THE PROPERTY**

Sale of the property shall be “as is without representation or warranty as to fitness or condition.”

## **CASUALTY CLAUSE**

This Agreement shall be subject to the Illinois Uniform Vendor and Purchaser Act as currently in effect. Seller shall keep adequate insurance, including fire and other extended coverage, on improvements on the above Property until the deed and possession are delivered to the Purchaser, whichever first occurs. Purchaser shall be responsible for insurance coverage, including liability coverage upon taking title to or possession of the above Property, whichever occurs first. Any monies paid as a result of damage to the Property shall be paid to the Seller to reduce the monies due hereunder; provided, however, that should monies paid as a result of said damage exceed any monies due hereunder, then such excess amount shall be retained by Purchaser.

## **EXPENSES OF TRANSFER**

PURCHASER shall pay:

- (a) Recording fee for deed;
- (b) Costs of any additional appraisal for the Property obtained by Purchaser;
- (c) Revenue stamps and recording of any releases, if any;
- (d) Broker commission, if any;

EACH PARTY shall be responsible for its own attorney fees and customary Closing costs.

**ENTIRE AGREEMENT**

This Agreement, executed by the parties, constitutes the entire agreement between the parties and there are no oral representations, warranties, or covenants other than those set forth herein and this Agreement shall extend to and be binding upon the executors, administrators, and assigns of the parties hereto.

**LEGAL ASSISTANCE**

The Seller and Purchaser are aware that when fully signed, this is a legally binding agreement for the sale and purchase of real estate and that in order to protect their interests in connection with contractual, title and other aspects of this transaction, they have had the right and opportunity to consult legal counsel before this Agreement is signed.

**ACCEPTANCE BY SELLER**

Until accepted by Seller, this document constitutes an irrevocable offer to buy by Purchaser on the terms stated above. This Agreement must be accepted by Seller on or before June 29, 2012, and Purchaser’s offer to buy herein shall be irrevocable to and including June 29, 2012, to allow Seller’s City Council opportunity to review and approve this Agreement. Within twenty-four (24) hours of acceptance by Seller’s City Council, Two Thousand Eight Hundred and No/100 Dollars (\$2,800.00) earnest money shall be provided to Seller in the form of cash or check. Purchaser acknowledges and agrees that this Agreement is subject to Seller’s right and legal responsibility to formally submit this Agreement to the Seller’s City Council for review, approval and authorization to execute. If not so approved by the Council by June 19, 2012, this offer and Agreement shall be void. The parties understand that Seller’s City Council may not approve this Agreement and that until approved by the City Council, it is not and shall not be binding upon Seller, its officers, employees or agents.

This Agreement has been read and executed in duplicate on the dates beside the parties’ authorized agents’ signatures.

Executed by SELLER:

Executed by PURCHASER:

CITY OF MOLINE, ILLINOIS

RED OAK CUSTOM HOMES, INC.

By: \_\_\_\_\_  
Donald P. Welvaert, Mayor

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Tracy A. Koranda, City Clerk

Date: \_\_\_\_\_

*FOR INFORMATION ONLY:*

Seller's Attorney:

Amy L. Keys  
(309) 524-2012

## AGREEMENT FOR USE OF DOCKS FOR CHANNEL CAT WATER TAXI SERVICE

WHEREAS, the Illinois Quad City Civic Center Authority (the "Authority") owned docks located on the Mississippi River and contiguous to the Authority's property by the i wireless Center, formerly known as The MARK of the Quad Cities, that have been used, in part, by the Rock Island County Metropolitan Mass Transit District, an Illinois municipal corporation ("MetroLINK"), to provide private operation of water shuttle service to and from the Authority's property; and

WHEREAS, pursuant to the Second Amendment to the River Edge Enhancement Agreement executed on October 4, 2011, the Authority transferred its ownership of the docks to the City of Moline ("City") for the City to continue to operate and maintain the docks; and

WHEREAS, in order to promote the usage of the Authority's grounds and the usage of the River's Edge in the City as part of the City's Redevelopment Plan by users desiring to travel to the City by water transportation over the Mississippi River, the City desires to enter into an agreement with MetroLINK to continue water taxi service to and from the westernmost dock (the "City Dock"); and

WHEREAS, Article VII, Section 10, of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, found at 5 ILCS 220/1 *et seq.*, both authorize and allow the type of agreement contained herein.

NOW, THEREFORE, in consideration of the covenants and conditions herein contained and for other valuable consideration, the receipt of which is hereby acknowledged and subject to the following terms and conditions, the City and MetroLINK execute this agreement for the operation of water shuttle service to and from the City Dock with regular stops to the other Iowa and Illinois docking points along the Mississippi River as follows:

### SECTION 1. TERM.

1.1 Term. The Term of this Agreement shall commence on May 1, 2012 and terminate October 1, 2017.

1.2 Extension To Be Negotiated. An extension of the original term, if any, shall be at the sole discretion of the City on terms negotiated between the parties.

### SECTION 2. SCHEDULE.

2.1 Schedule. MetroLINK shall operate the water shuttle service in accordance with the schedule published in the 2011 schedule previously distributed by MetroLINK, as modified from time to time by the schedule posted at the City Dock ("Schedule"). The water shuttle service shall operate in good weather and shall not start prior to the Saturday prior to Memorial Day nor extend beyond October 1 of each year of the Agreement.

2.2 Off Season Access Restricted. The Dock shall be closed and locked during the off season and when hazardous conditions exist, as determined by the City.

### SECTION 3. FARE.

3.1 Fare Structure. MetroLINK shall establish a consistent Fare Structure to operate the water shuttle service.

### SECTION 4. PAYMENTS BY THE PARTIES.

4.1 Fee Paid to City by MetroLINK. MetroLINK agrees to pay the City for the use of the City Dock the fee of one dollar for the term of this Agreement.

### SECTION 5. OPERATIONS.

5.1 Docking Area. MetroLINK shall use its best efforts to operate safe and convenient docking facilities in conformance with the performance standards hereinafter described in Section 5.3.

5.2 Waiting Area. MetroLINK shall cooperate with the City in establishing a waiting area landside near the handicap-accessible entrance on the “west bumpout” depicted on Exhibit A; and MetroLINK shall be responsible for all communications to persons waiting to utilize MetroLINK’s passenger vessel service. To the extent that this area is maintained by the Quad City Civic Center Authority, the parties agree to work with the Authority to establish a waiting area.

5.3 Standard of Performance. MetroLINK agrees that the services provided hereunder shall conform to the standards from time-to-time prevailing for a first class passenger vessel service operating in waterfront downtown areas of Standard Metropolitan Statistical Areas similar in size to the Quad Cities. MetroLINK further agrees that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them, and the training, guidance and performance of such personnel shall reflect such a high standard of professional knowledge and judgment.

5.4 Conduct at the City Dock. During the operation of the water shuttle service, MetroLINK shall at all times cause itself, its employees, agents, and contractors to conduct themselves so as not to interfere with any other water craft operations at the City Dock. MetroLINK further agrees not to interfere with the Corp of Engineers, Coast Guard, Police boat, Fire boat, or public safety emergency operations around the City Dock. In addition, MetroLINK shall observe and obey all rules and regulations of the City, as well as the directives from responsible City personnel, and all other applicable laws, statutes, regulations, and permits or license requirements imposed or administered by other public agencies of competent jurisdiction.

5.5 Conduct. MetroLINK and any employees, agents, invitees, licensees, guests, or others authorized to be at the City Dock shall not participate in any detrimental, offensive, or objectionable activity.

5.6 MetroLINK's Representative. MetroLINK shall employ and designate in writing to the City a person whose duties shall include serving as MetroLINK's primary representative for all emergency situations and regular operations.

5.7 License to Use City Dock. The City hereby grants MetroLINK a license to the exclusive use of the City Dock, which is more particularly described in Exhibit B, for the sole purpose of providing water shuttle service in accordance with this Agreement. This right shall terminate upon the termination of this Agreement.

5.8 Dock Responsibilities. MetroLINK acknowledges that it is completely responsible for the safety of its passengers from the time passengers arrive and depart from the waiting area by the City Dock, as depicted in Exhibit B, to the time they are aboard its vessels. MetroLINK shall furnish and maintain any equipment necessary to promote the safety of passengers and shall escort those passengers who require assistance to the waiting area whenever the tidal conditions or the weather conditions at the City Dock in any way hinder the safe movement of passengers to the waiting areas.

MetroLINK shall not make, or permit to be made, any attachment or addition of equipment or trade fixtures to the City Dock without the City's prior written consent. The City's consent to the attachment or addition of equipment or a trade fixture to the City Dock shall not create liability on the part of the City, and MetroLINK shall be solely responsible for the design sufficiency of such equipment and/or trade fixture and for the attachment to the City Dock, as well as compliance with any applicable laws, ordinances, rules, or regulations. During the term of this Agreement, MetroLINK shall keep such equipment and trade fixtures in good repair so that the safe movement of passengers over the City Dock to the waiting area is not affected. Upon the expiration or termination of this Agreement, MetroLINK shall remove such equipment and trade fixtures, if such removal can be accomplished without damage to the City Dock. MetroLINK shall remain responsible for any damage to the City Dock, caused by such trade fixtures and/or equipment, including damage caused during the attachment or removal of the trade fixtures and/or equipment.

MetroLINK shall be responsible for any and all property damage caused by its employees, agents, contractors, crew, and passengers to the City Dock.

MetroLINK shall be responsible for notifying the City in writing of any needed repairs or maintenance to the City Dock which would in any way affect the safe movement of passengers. Upon delivery and receipt of notice needed repairs or maintenance as hereinabove provided, the parties shall exercise diligence toward achieving mutual agreement as to remedial action, the implementation thereof, and the allocation of expenses therefor. If a condition of needed repairs or maintenance is not rectified as described above in a reasonably timely manner, MetroLINK retains the right to suspend water shuttle service until the condition is resolved.

5.9 Licenses and Permits. MetroLINK and any vessels used to provide water shuttle service shall possess all permits, certificates, or licenses required by any federal, state, municipal, Corps of Engineers, or other regulatory agency regarding providing water shuttle service.

5.10 Requirements of MetroLINK's Vessel. MetroLINK shall provide the specific vessels, identified in this Agreement, to meet the performance standards required under Section 5.3.

5.11 Requirements of MetroLINK's Personnel. MetroLINK's employees, agents, contractors, and crew shall possess the required licenses needed for operating passenger water vessels and maintain training in conformance with the performance standards required under Section 5.3.

5.12 Safety Plan. MetroLINK shall develop, maintain, and perform in accordance with a safety plan in compliance with all applicable requirements of the regulatory agencies referred to in Section 5.9 and in accordance with a manner designed to meet the performance standards required under Section 5.3.

5.13 ADA Compliance. MetroLINK agrees that, in providing water shuttle service, it shall be responsible for compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 *et. seq.*) at the City Dock and aboard any vessels involved in providing water shuttle service and applicable implementing regulations.

## SECTION 6. RESPONSIBILITIES OF THE CITY.

6.1 City Dock. The City shall provide a location on the City Dock (as depicted on Exhibit B) at which MetroLINK shall have the exclusive right to embark and disembark passengers. The City shall comply with the maintenance responsibilities, if any, arising under Section 5.8 in the manner described in Section 5.8.

## SECTION 7. RECORDS OF OPERATION.

7.1 Reporting Compliance. [Reserved.]

7.2 Audit. MetroLINK shall, upon request by the City but no more than annually, submit an audited statement of water shuttle service revenues from the last calendar year.

7.3 Review and Evaluation. Both the City and MetroLINK may review and evaluate information concerning providing water shuttle service. Both parties shall make available for inspection of the other party on reasonable notice any information, records, or documents which the other party reasonably believes will assist it in its review and evaluation of the water shuttle service.

## SECTION 8. INSURANCE AND INDEMNIFICATION.

8.1 Indemnification by MetroLINK. To the fullest extent permitted by law, MetroLINK, at its sole cost and expense, shall defend, indemnify, and hold harmless the City, its officers, agents and employees from and against all claims, liabilities, causes of action, suits, losses, damages, and expenses (including attorney's fees and costs of investigation and litigation)

based upon or arising out of the performance of this Agreement by MetroLINK, the business or operations conducted by MetroLINK at or near the City Dock and other docking facilities used by MetroLINK, or (without limiting the foregoing) any act or omission of MetroLINK, its officers, employees, contractors, or agents and to the extent feasible those of MetroLINK's guests, invitees, licensees, passengers, suppliers, and furnishers of service for or related to all aspects of providing water shuttle service, including any claims arising from the movement of passengers, invitees, and licensees to and from MetroLINK's vessels. This indemnification obligation shall not apply to any claims arising from the gross negligence or willful misconduct of the City, its officers, agents and employees. The foregoing express obligation indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which would exist at common law or under another provision of insurance undertaken in accordance with Section 8.2 of this Agreement. The City shall give MetroLINK reasonable notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder. MetroLINK shall have the right to compromise and defend the same to the extent of its own interest. This section shall survive the termination of this Agreement.

8.2 MetroLINK shall, at its own expense, maintain at all times the following insurance:

- (a) Workers' Compensation and Employer's Liability insurance in the amounts required by law. The service herein is to be performed in or near navigable water docks, piers, and waterfronts of the United States; therefore, endorsements shall be provided by MetroLINK's Workmen's Compensation policy, compensation in respect to disability or death of any employee under the United States Longshoremen's and Harbor Workers' Compensation Act if recovery for such disability or death through Workmen's Compensation proceedings may not validly be provided by the state law. Said policies shall provide a waiver of subrogation in favor of the City.
- (b) Commercial general liability insurance with extension for Dock, Pier, and Gangway liability insuring both MetroLINK and the City against all claims, suits, obligations, liabilities, and damages, including attorneys' fees, based upon arising out of actual or alleged bodily injuries, wrongful death, and property damage which may be claimed to have occurred on or about MetroLINK's Vessel(s), the City Dock, or any docking facility in the Mississippi River used in connection with providing water shuttle service in accordance with this Agreement or from the movement of passengers to and from MetroLINK's Vessel(s), or otherwise relating to MetroLINK's performance and activities under this Agreement. These policies shall be endorsed specifically to recognize and insure the indemnification provision appearing in Section 8.1 of this Agreement.

8.3 Each policy of insurance required herein shall be in a form and with a company satisfactory to the City. Prior to the exercise of any rights granted herein, MetroLINK shall furnish to the City certificates from each insurance company issuing such insurance coverage that the same is in full force and effect, all premiums have been paid, and same will not be

canceled except upon thirty (30) days prior written notice to the City. The City shall be named as an additional insurance on the commercial general liability policies, as the interest of the City may appear, and these policies and the Workers' Compensation and Employer's Liability insurance shall be in effect and maintained during the term of the Agreement. MetroLINK acknowledges that the insurance types and limits established at the commencement date of this Agreement may become inadequate, and MetroLINK agrees that it will increase such coverage limits to commercially reasonable levels available at prevailing premium rates as the City may reasonably require.

8.4 Failure to Procure and Maintain Insurance. If MetroLINK fails to procure or maintain the insurance required by this Article in full force and effect, this Agreement may be terminated immediately by City and be of no further force or effect. In addition, if MetroLINK fails to procure or maintain the insurance required by this Article, MetroLINK shall cease and desist from using the Dock and the improvements erected thereon during any period in which such insurance policies are not in full force and effect.

## SECTION 9. TERMINATION.

9.1 Breach or Violation of this Agreement. If any of the terms and provisions of this Agreement are violated, then this Agreement shall be subject to termination by the City or MetroLINK as the case may be. The party electing to terminate shall promptly notify the other party in writing, detailing the breach or violation. A violation of this Agreement and grounds for termination shall include, in addition to the breach of any other express provision hereof, in the City's sole determination and discretion, that MetroLINK has not adequately demonstrated an ability to provide reliable, safe, on-time water shuttle service in a manner or at a ridership level acceptable to the City, or that MetroLINK is otherwise not performing to the satisfaction of the City.

9.2 Termination by Mutual Consent. Notwithstanding any provision herein to the contrary, this Agreement may be terminated, and the provisions of this Agreement may be altered, changed or amended in writing by mutual consent of City and MetroLINK.

9.3 Termination by One Party. Notwithstanding any provision herein to the contrary, this Agreement may be terminated by either party providing the other party with six (6) months prior notice in writing. Notices of termination under this Section shall be delivered in accordance with the provisions of Section 11.9.

9.4 Surrender Of Premises At Expiration Or Termination Of Lease. At the expiration or early termination of this Agreement, MetroLINK shall peaceably and quietly leave, surrender, and yield up to City the Dock together with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted.

## SECTION 10. ASSIGNMENT OR SUBCONTRACT.

10.1 Assignment. The parties agree that the City may, in its sole discretion, transfer, convey, or assign any or all rights or obligations under this Agreement. MetroLINK shall not transfer, convey or assign its obligations herein without the prior written approval of the City,

which may be withheld at its sole discretion. Any attempted transaction in violation of the provisions hereof shall be null and void and considered a breach of this Agreement. After any assignment, MetroLINK shall remain liable for performance of this Agreement, in the first instance, to the extent that MetroLINK retains rights and duties under the terms of such assignment and, in any event, MetroLINK shall guaranty the performance of its assignee.

10.2 Subcontracting. The City shall review and approve all subcontracts by MetroLINK of all or any portion of its obligations under this Agreement. The City's approval of any subcontracts may be withheld at its sole discretion.

10.3 Consistent with the Agreement. In the event that an assignment, transfer, agreement, conveyance, or subcontract is allowed under this Section, the provisions thereof shall require compliance with all of MetroLINK's obligations under this Agreement and shall not be inconsistent with the terms and conditions of this Agreement.

10.4 Further Approvals Necessary. Approval by the City to any type of transfer or assignment provided for by this Section shall not in any way be construed to relieve MetroLINK from obtaining further approval for any subsequent assignment, transfer, or subcontract of any nature whatsoever, or to relieve MetroLINK from its obligations and responsibilities under this Agreement.

## SECTION 11. MISCELLANEOUS.

11.1 Entry by the City. The City, and its duly authorized representatives, shall have the right to enter and inspect the condition of the City Dock and other docking facilities utilized by MetroLINK, MetroLINK's vessels, and any equipment used to provide water shuttle service.

11.2 Rules and Regulations. MetroLINK shall observe and obey, and shall require its employees, agents, guests, invitees, passengers, suppliers, and furnishers of services to observe and obey duly enacted and lawful rules and regulations now in existence or hereafter promulgated and amended by the City, or by any local, state, and federal agency of competent jurisdiction.

11.3 Non-Waiver. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to the term or provision. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

11.4 Entire Agreement. This Agreement, including exhibits attached hereto, at the time of its execution constitutes the entire agreement between the parties hereto, and all prior agreements covering the rights and privileges set out herein are superseded by and merged into this Agreement.

11.5 Amendment. This Agreement may be amended only by a written instrument executed by both the City and MetroLINK.

11.6 Governing Law. This Agreement shall be deemed to be made in and construed in accordance with the laws of the State of Illinois.

11.7 Invalid Provisions. If any provision of this Agreement or any application thereof shall be held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

11.8 Headings. The Article and Section headings contained herein are for convenience, in reference only, and are not intended to define or limit the scope of this Agreement or any term thereof.

11.9 Notices. All notices required to be given to the City shall be in writing and shall be deemed duly given if mailed by registered or certified mail, postage prepaid, or delivered in hand to:

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

Attention: Maureen E. Riggs, City Attorney

or to such other address as the City may in writing substitute therefor by notice to MetroLINK.

All notices required to be given to MetroLINK shall be deemed duly given if mailed by registered or certified mail, postage prepaid, or delivered in hand to:

Jeffrey A. Nelson  
MetroLINK  
1515 River Drive  
Moline, Illinois 61265

With a copy to:

Roger L. Strandlund  
Califf & Harper, P.C.  
600 First Midwest Bank Building  
506 – 15<sup>th</sup> Street  
Moline, Illinois 61266

or to such other address as MetroLINK may in writing substitute therefor by notice to the City.

11.10 Non -Discrimination. MetroLINK agrees that neither its water shuttle service described herein nor any portion thereof shall be operated in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, religion, marital

status, age, handicap, or national origin, and that its operations shall be in compliance with all applicable laws, ordinances, and regulations relating to discrimination and affirmative action.

11.11 Waiver of Claim for Lost Profits. MetroLINK hereby waives any claim against the City and its officers, agents, or employees for loss of anticipated profits or any other consequential damages caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or arising out of this Agreement or any part thereof, or by any judgment or aware of any suit or proceedings declaring this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

11.12 Hazardous Waste Representation and Disclosure. MetroLINK shall not generate, store, handle, or dispose of any oil or any hazardous waste, hazardous materials, or hazardous substances in, on, about, or from the City Dock in any manner contrary to federal, state, or local environmental laws and regulations. MetroLINK is, to the best of its knowledge, not aware of the generation, storage, handling, or disposal of any such substance in, on, about, or from the City Dock by any person or entity, and agrees to notify the City promptly in the event that it becomes aware of any such improper generation, storage, handling, or disposal.

11.13 No Personal Liability. No member, director, or officer or employee of the City shall be charged personally or held contractually liable under any term or provision under this Agreement because of any breach thereof, or because of the execution or attempted execution of this Agreement.

11.14 Limitations on Damages. The City shall never be liable to MetroLINK for any loss of business or any indirect, incidental, special, consequential, or exemplary damages or lost profits.

11.15 Mechanic's Liens. MetroLINK agrees to immediately discharge either by payment or by the filing of the necessary bond, or otherwise, any mechanics' or other liens which may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for MetroLINK in the operation of the water shuttle service.

11.16 MetroLINK's Status. MetroLINK is engaged under this Agreement as a private, independent contractor and not as an agent or employee of the City.

Executed on the dates set forth below:

CITY OF MOLINE, ILLINOIS

ROCK ISLAND COUNTY  
METROPOLITAN MASS TRANSIT  
DISTRICT

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

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

Donald P. Welvaert, Mayor

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

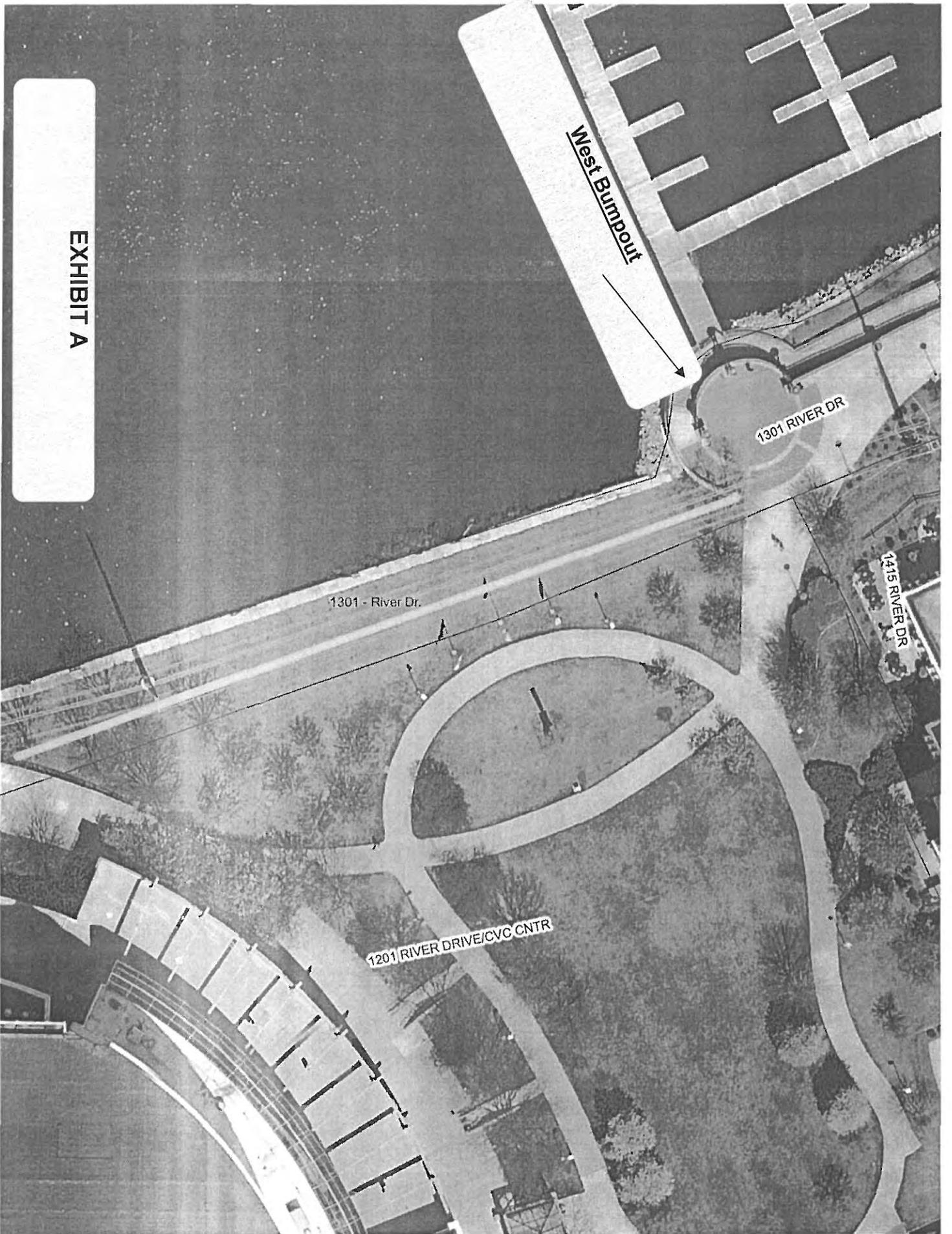
Attest: \_\_\_\_\_

Tracy A. Koranda, City Clerk

Approved as to form:

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

**EXHIBIT A**

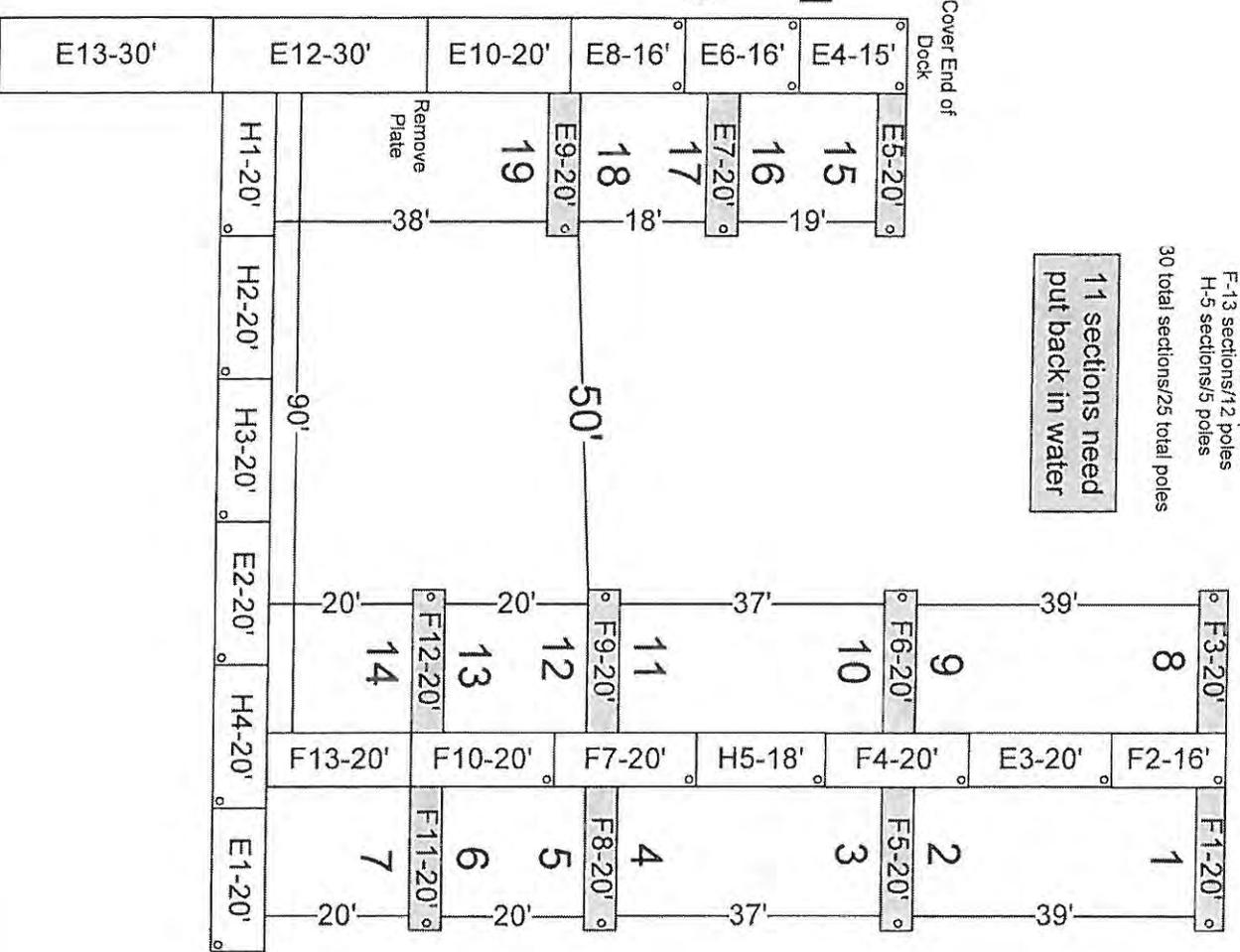


E-12 sections/8 poles  
 F-13 sections/12 poles  
 H-5 sections/5 poles

30 total sections/25 total poles

11 sections need  
 put back in water

Channel  
 Cat  
 Docking  
 ONLY



City Dock to be Licensed for Use

EXHIBIT B