

MOLINE CITY COUNCIL AGENDA

Tuesday, March 27, 2012

6:30 p.m.

(immediately following the Committee-of-the-Whole meeting)

City Hall
Council Chambers – 2nd Floor
619 16th Street
Moline, IL

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CONSENT AGENDA

All items under the consent agenda are considered to be routine in nature and will be enacted by one motion. There will be no separate discussions of these items unless a council member so requests, in which event the item will be removed from the consent agenda and considered as the first item after approval of the consent agenda.

COUNCIL MEMBER	PRESENT	ABSENT
Knaack		
Meredith		
Raes		
Ronk		
Turner		
Schoonmaker		
Liddell		
Acri		
Mayor Welvaert		

APPROVAL OF MINUTES

Committee-of-the-Whole and Council meeting minutes of March 20, 2012.

SECOND READING ORDINANCES

1. Council Bill/Special Ordinance 4012-2012

A Special Ordinance authorizing the Mayor and City Clerk to execute a Licensing Agreement with the United States Postal Service (USPS) to install cluster mailboxes in public right-of-way.

EXPLANATION: The USPS wishes to install cluster mailboxes in public right-of-way in certain neighborhoods to provide more efficient delivery of US mail. The applicant would like licensing agreement approval for mailboxes at 2200 7th Avenue, 2129 43rd Street and 631 45th Street. Please see the attachments for a map showing the proposed locations. Staff is recommending approval and that the proposed ordinance authorize the City Administrator to approve future cluster mailboxes without further City Council approval.

FISCAL IMPACT: No fiscal impact to the City.

PUBLIC NOTICE/RECORDING: N/A

RESOLUTIONS

2. Council Bill/Resolution 1156-2012

A Resolution authorizing the Mayor and City Clerk to apply for a highway permit and execute the necessary forms in conjunction with the Bi-State Motorcycle Awareness Ride scheduled for Saturday, May 5, 2012.

EXPLANATION: This is an annual event sponsored by the Bi-State Motorcycle Awareness Council. Fourth Avenue is a state route. Therefore, local approval of usage is necessary before permission can be sought from the Illinois Department of Transportation.

FISCAL IMPACT: N/A

PUBLIC NOTICE/RECORDING: N/A

OMNIBUS VOTE

OMNIBUS VOTE		
Council		
Member	Aye	Nay
Turner		
Schoonmaker		
Liddell		
Acri		
Knaack		
Meredith		
Raes		
Ronk		
Mayor Welvaert		
		•

ITEMS NOT ON CONSENT

FIRST READING ORDINANCES

3. Council Bill/General Ordinance 3010-2012

An Ordinance amending Chapter 15, "GARBAGE AND TRASH," of the Moline Code of Ordinances, Section 15-2101, "AUTOMATED TIPPER CARTS," by repealing subsection "(a)" in its entirety and enacting in lieu thereof one new subsection "(a)" relating to the same subject matter.

EXPLANATION: Per Section 15-2101(a) of the Moline Code of Ordinances, the City provides one automated tipper cart at no cost to each Moline residence and to each unit of a residential building consisting of five dwelling units or less. A second and/or additional cart may be requested by the property owner or occupant of the residence and will be provided by the City upon prepayment of a \$46.00 fee per cart. The cost to the City for each cart has recently increased from \$46.00 to \$63.60, a difference of \$17.60 per cart. To avoid a revenue loss due to the increase, the City wishes to amend it ordinance to reflect the increased cost.

FISCAL IMPACT: Recover total costs of additional carts to residents.

PUBLIC NOTICE/RECORDING: N/A

4. Council Bill/Special Ordinance 4013-2012

A Special Ordinance closing certain streets more particularly described herein to vehicular traffic and authorizing the use of public right-of-way in conjunction with the Bi-State Motorcycle Awareness Ride scheduled for Saturday, May 5, 2012.

EXPLANATION: This is a yearly event.

FISCAL IMPACT: N/A

PUBLIC NOTICE/RECORDING: N/A

5. Council Bill/Special Ordinance 4014-2012

A Special Ordinance authorizing the Mayor and City Clerk to execute a Lease and Concession Agreement with Roy's All Fed Up, Inc., (2504 18th Avenue, Apt. D, Rock Island, IL 61201) to sell food and beverages from a mobile concession stand along a portion of Ben Butterworth Parkway (RICO Parcel 08-2644-A) from April 1, 2012 through November 30, 2012.

EXPLANATION: Roy's All Fed Up desires a Lease and Concession Agreement for the purpose of selling food and beverages from a mobile concession stand along a certain portion of Ben Butterworth Parkway described in Exhibits "A" and "A-1," attached. The Park and Recreation Board of Directors supports having a vendor serving food and beverages from a mobile concession stand along the Parkway from April through November each year, as a method of enhancing services for citizens and visitors utilizing the Parkway and has approved this Agreement for that purpose. CONSIDERATION REQUESTED

FISCAL IMPACT: City will receive \$700.00 income for the period.

PUBLIC NOTICE/RECORDING: N/A

MISCELLANEOUS BUSINESS

EXECUTIVE SESSION

PUBLIC COMMENT Members of the public are permitted to speak after first stating their name and address.

Consideration		
Council		
Member	Aye	Nay
Turner		
Schoonmaker		
Liddell		
Acri		
Knaack		
Meredith		
Raes		
Ronk		
Mayor Welvaert		

Aye	Nay
	Aye

City Council and Committee Meetings Schedule March 26 - 30, 2012

(dates and times are subject to change with notification)

The next regularly scheduled City Council meeting will be April 3, 2012.

COMMITTEE	DAY	DATE	TIME	LOCATION
Committee-of-the-Whole with City Council immediately following	Tuesday	March 27	6:30 p.m.	City Hall Council Chambers - 2 nd Floor 619 16 th Street
Plan Commission	Wednesday	March 28	4:00 p.m.	City Hall Council Chambers – 2 nd Floor 619 16 th Street

Council Bill/Speci Sponsor:	al Ordinance No. <u>4012-2012</u>		
•	<u>A SPE</u>	ECIAL ORDINANCE	
AUTHORIZING	the Mayor and City Clerk to ex (USPS) to install cluster mailbox	ecute a Licensing Agreement with the United ses in public right-of-way.	States Postal Service
	S, the USPS has found that the instate US mail delivery; and	stallation of cluster mailboxes in certain neighbo	orhoods is required to
WHEREA Street, and 631 45 ^t		ster mailboxes in public right-of-way at 2200 7	th Avenue, 2129 43 rd
WHEREA motorists or pedes	•	lboxes within the public right-of-way should not	t pose any hazards to
		e the City Administrator to grant additional uster mailboxes without further Council action.	public right-of-way
NOW, THEREFO follows:	RE, BE IT ORDAINED BY TH	E CITY COUNCIL OF THE CITY OF MOI	LINE, ILLINOIS, as
Licensing Agreem 631 45 th Street; pro	ent with the USPS to install cluster ovided said agreement is substantia	re hereby authorized to execute, on behalf of the mailboxes in right-of-way at 2200 7 th Avenue, 2 lly similar in form and content to that attached h it "A," and has been approved as to form by the	2129 43 rd Street, and ereto and
	That this Ordinance shall author cement of future cluster mailboxes	rize the City Administrator to grant additional R without further Council action.	ROW licensing to the
	That this ordinance shall be a not constitute a repeal of any such of	temporary variance from any other ordinance ordinance.	e with which it may
	That this ordinance shall be in function in the manner provided for by law	ull force and effect from and after passage, appr	oval, and, if required
		CITY OF MOLINE, ILLINOIS	
		Mayor	-
		Date	-
Passed:			
Approved:			
Attest: City Clerk			
·			
Approved as to Fo	rm:		
City	Attorney		

Exhibit "A"

LICENSEE: United States Postal Service – **514 17**th **Street, Moline, IL 61265**

LICENSING AGREEMENT

PARTIES: The LICENSOR is the City of Moline, Illinois, a municipal corporation,

hereinafter called the CITY.

The LICENSEE is United States Postal Service, 514 17th Street, Moline, IL

61265, hereinafter called the LICENSEE.

PREMISES: Constructed on public right-of-way at three different locations:

2200 7th Avenue: Located in 22nd Street public right-of-way, adjacent to the

public sidewalk.

2129 43rd Street: Located in 43rd Street public right-of-way, adjacent to the

public sidewalk.

631 45th Street: Located in 45th Street public right-of-way, 4 feet off of 45th

Street and adjacent to this vacant lot.

USE: LICENSEE shall be allowed only to: Install and maintain cluster mailboxes for

mail delivery in the premises.

INTEREST

ACQUIRED: LICENSEE acquires only the right to: Install and maintain cluster mailboxes

for mail delivery 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,

possessatory, 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 March 27, 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 \$0.00.

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.

<u>LICENSEE</u> :	<u>CITY OF MOLINE, ILLINOIS</u> :
By: Postmaster	By: Mayor
Date:	Attest:City Clerk
	Approved as to Form:
	City Attorney



631 45th Street



2129 43rd Street



Council Bill/Resolution No.:	<u>1156-2012</u>
Sponsor: —	

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to apply for a highway permit and execute the necessary forms in conjunction with the Bi-State Motorcyle Awareness Ride scheduled for Saturday, May 5, 2012.

WHEREAS, the Bi-State Motorcycle Awareness Council is sponsoring a motorcycle parade in the City of Moline which constitutes a public purpose; and

WHEREAS, this event will require temporary lane closure of 4th Avenue westbound (Illinois 92) from 55th Street to 1st Street; and

WHEREAS, Section 4-408 of the Illinois Highway Code authorized the Department of Transportation to issue permits to local authorities to temporarily close portions of State Highways for such public purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That permission to temporarily close 4th Avenue westbound (Illinois 92) from 55th Street to 1st Street be and it is hereby requested of the State.

BE IT FURTHER RESOLVED that this closure shall occur during the approximate time period between 1:30 p.m. to 4:00 p.m. on Saturday, May 5, 2012.

BE IT FURTHER RESOLVED that this closure is for the public purpose of a Motorcycle Parade to promote awareness.

BE IT FURTHER RESOLVED that temporary lane closure of 4^{th} Avenue westbound (Illinois 92) from 55^{th} Street to 1^{st} Street be and it is hereby requested of the State.

BE IT FURTHER RESOLVED that police officers or authorized flaggers shall, at the expense of the City, be positioned at the end of the closed sections and at other points as may be necessary to assist in directing traffic through the detour.

BE IT FURTHER RESOLVED that police officers, flaggers, and officials shall permit emergency vehicles in emergency situations to pass through the closed area as swiftly as is safe for all concerned.

BE IT FURTHER RESOLVED that all debris shall be removed from the City of Moline prior to re-opening the State Highway.

BE IT FURTHER RESOLVED that the closure and detour shall be marked according to the Illinois Manual on Uniform Traffic Control Devices.

Council Bill/Resolution No.: <u>1156-2012</u> Page 2

all claims arising from the requested road closing.

BE IT FURTHER RESOLVED that the City of Moline shall provide comprehensive general liability insurance policy or an additional insured endorsement in the amount of \$100,000.00 per person and \$500,000.00 aggregate which names the Illinois Department of Transportation and its officials, employees, and agent as insured and which protects them from

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Illinois Department of Transportation to serve as a formal request for the permission sought in this resolution and to operate as part of the conditions of said permission.

	CITY OF MOLINE, ILLINOIS
	Mayor
	March 27, 2012
	Date
Passed: <u>March 27, 2012</u>	
Approved: April 3, 2012	
Attest:	
City Clerk	
Approved as to form:	
City Attorney	

Council Bill/General Ordinance No.: 3010-2012

Sponsor: —

AN ORDINANCE

AMENDING Chapter 15, "GARBAGE AND TRASH," of the Moline Code of Ordinances, Section 15-2101, "AUTOMATED TIPPER CARTS," by repealing subsection (a) in its entirety and enacting in lieu thereof one new subsection (a) relating to the same subject matter.

WHEREAS, per Section 15-2101(a) of the Moline Code of Ordinances, the City provides one automated tipper cart at no cost to each Moline residence and to each unit of a residential building consisting of five dwelling units or less; and

WHEREAS, a second and/or additional cart may be requested by the property owner or occupant of the residence and will be provided by the City upon prepayment of a \$46.00 fee per cart; and

WHEREAS, the cost to the City for each cart has recently increased from \$46.00 to \$63.60, a difference of \$17.60 per cart; and

WHEREAS, to avoid a revenue loss due to the increase, the City wishes to amend its ordinance to reflect the increased cost.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

<u>Section 1</u> – That Chapter 15, "GARBAGE AND TRASH," of the Moline Code of Ordinances, Section 15-2101, "AUTOMATED TIPPER CARTS," is hereby amended by repealing subsection (a) in its entirety and enacting in lieu thereof one new subsection (a) relating to the same subject matter, which shall read as follows:

"SEC. 15-2101. AUTOMATED TIPPER CARTS.

(a) The City will provide, at no charge, one (1) ninety-six (96) gallon automated tipper cart to each residence and one (1) ninety-six (96) gallon automated tipper cart per unit to each residential building of five (5) dwelling units or less. The property owner or occupant of the residence, or the owner of a residential building of five (5) dwelling units or less, may request a forty-eight (48) gallon cart in lieu of the ninety-six (96) gallon cart by completing a waiver for same at the City's accounts and finance department, library, or public works department. A second and/or additional cart may be requested and will be provided by the City upon payment to the City of a prepaid fee of sixty-three dollars and 60/100 (\$63.60); an annual administrative fee of forty dollars (\$40.00) will be charged to cover the extra volume of any additional cart and will be added to the property owner's or occupant's sewer and water bill. In special circumstances, two (2) forty-eight (48) gallon carts may be substituted for a single ninety-six (96) gallon cart upon request and when the director of public works or said director's designee, in said director's or designee's sole discretion, determines that it is in the best interest of the City to do so."

* * * * * *

Council Bill/General Ordinance No.: <u>3010-2012</u> Page 2 of 2

<u>Section 2</u> – That this ordinance shall be in full force and effect from and after its passage; approval; and, if required by law, publication in the manner provided for by law.

	CITY OF MOLINE, ILLINOIS
	Mayor
	Date
Passed:	
Approved:	
Attest:City Clerk	
City Clerk	
Approved as to Form:	
City Attorney	<u> </u>

Council Bill/Resolu	tion No.: <u>4013-2012</u>	
Sponsor:		
	<u>A S</u>	PECIAL ORDINANCE
CLOSING	certain streets more partic	cularly described herein to vehicular traffic; and
AUTHORIZING	the use of public right-of- scheduled for Saturday, N	way in conjunction with the Bi-State Motorcycle Awareness Ride May 5, 2012.
BE IT ORDAINED	BY THE CITY COUNCIL	OF THE CITY OF MOLINE, ILLINOIS, as follows:
Police Chief to ere	ct barricades and post temp	y authorizes and directs the Mayor, Director of Public Works and orary signs, if necessary, for the purpose of closing the following the specified times mentioned herein:
	Saturday, M	May 5, 2012, from 1:30 p.m. to 4:00 p.m.
4 th Av	enue westbound from the eas	sternmost side of 55 th Street to the westernmost side of 1 st Street.
It shall be an offens	e to use said roadways for ve	ehicular purposes during said time.
ordinances that may	be in conflict herewith and the street closings and shal	s the intent of this ordinance to be a temporary variance from other shall authorize the activities described hereinabove only during such l not constitute a repeal of other ordinances of the City of Moline
	That this ordinance shall blication in the manner provi	be in full force and effect from and after passage, approval, and if ided for by law.
		CITY OF MOLINE, ILLINOIS
		Mayor
		Date
Passed:		
Approved:		
Attest: City	Clerk	
Approved as to form		
City Att	orney	

ance No. 4014-2012	
A SPECIA	L ORDINANCE
Roy's All Fed Up, Inc., food and beverages from	rk to execute a Lease and Concession Agreement with (2504 18 th Avenue, Apt. D, Rock Island, IL 61201) to sell in a mobile concession stand along a portion of Ben RICO Parcel 08-2644-A) from April 1, 2012 through
"A" for the purpose of sell Ben Butterworth Parkway (1	Fter "Vendor") desires a Lease and Concession Agreement ling food and beverages from a mobile concession stand hereinafter "Parkway") being more particularly described ent and incorporated herein; and
od and beverages from a m	reation Board of Directors (hereinafter "Parks") supports obile concession stand along the Parkway from April ng services for citizens and visitors utilizing the Parkway;
or has a positive working hi	istory with the Parks providing this services.
IT ORDAINED BY THE O	CITY COUNCIL OF THE CITY OF MOLINE,
ession Agreement with Roy od and beverages from a m 2644-A); provided said agr	e hereby authorized to execute, on behalf of the City of s's All Fed Up, Inc. (2504 18 th Avenue, Apt. D, Rock tobile concession stand along a portion of Ben Butterworth reement is substantially similar in form and content to that nice thereto as Exhibit "A," and has been approved as to
	force and effect from and after passage, and approval vided for by law.
	CITY OF MOLINE, ILLINOIS
	Mayor
	Date
	Approved as to Form:
	the Mayor and City Cle Roy's All Fed Up, Inc., food and beverages from Butterworth Parkway (F. November 30, 2012. All Fed Up, Inc., (hereinant "A" for the purpose of sell Ben Butterworth Parkway (F. B" attached to said agreement by of Moline Park and Recrod and beverages from a mar, as a method of enhancing or has a positive working his properties of the Mayor and City Clerk are ession Agreement with Roy od and beverages from a mar 2644-A); provided said agreement by this reference of the Mayor and City Clerk are ession Agreement with Roy of and beverages from a mar 2644-A); provided said agreement by this reference of the Mayor and City Clerk are ession Agreement with Roy of and beverages from a mar 2644-A); provided said agreement with reference of the Mayor and City Clerk are ession Agreement with Roy of the Mayor and City Clerk are ession and the Mayor and City Clerk a

City Attorney

LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Moline, Illinois, a municipal corporation (hereinafter "Owner"), by and through its Park and Recreation Board of Directors, and Roy's All Fed Up, Inc., (hereinafter "Vendor") (hereinafter collectively "Parties") to lease portions of Ben Butterworth Parkway for the purpose of selling food and beverages to the public from a mobile food unit or pushcart.

WHEREAS, Owner seeks to enhance services to citizens of Moline and visitors (hereinafter "Individuals") utilizing Ben Butterworth Parkway; and

WHEREAS, Owner has determined having a means of providing food and beverages to Individuals utilizing a certain portion of Ben Butterworth Parkway would be a service enhancement; and

WHEREAS, Owner has determined having a vendor serve food and beverages from a mobile food unit or pushcart from April through November each year is the most appropriate means of providing such a service; and

WHEREAS, Owner is not in the business of nor does it have the personnel necessary to operate a food and beverage service; and

WHEREAS, Vendor is a mobile food unit or pushcart operator and has a positive working history with Owner; and

WHEREAS, Owner wishes to contract with Vendor for the sale of food and beverages to the Individuals, from a mobile food unit or pushcart, along a certain portion of Ben Butterworth Parkway subject to the terms, conditions, restrictions, limitations and reservations stated herein.

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

1. DEFINITIONS

- a) Premises: Portions of Ben Butterworth Parkway being more particularly described in **Exhibits "1"** and **"1-A,"** attached hereto and incorporated herein.
- b) Service(s)/Operation(s): The sale of Owner approved food and beverages from a mobile food unit or pushcart by Vendor.
- c) Vendor Property: All property provided by Vendor for the Operation including but not limited to the mobile food unit or pushcart, food and beverages.

2. USE

- a) Owner shall lease the Premises to Vendor solely for the sale of Owner approved food and beverages from a mobile food unit or pushcart to the public. All food and beverages sold shall be approved by Owner. The selection of beverages and foods referenced herein and its pricing shall be determined by the Vendor. Under no circumstances shall the Premises be used for the sale of alcoholic beverages, tobacco products or the paraphernalia of either.
- b) The Vendor shall operate under the name "Roy's All Fed Up, Inc."
- c) Vendor's shall offer services seven days a week from 10:00 a.m. until 4:00 p.m. weather permitting. Vendor may offer extended serves from 4:00 p.m. until dusk at Vendor's discretion.

3. VENDOR'S RESPONSIBILITIES.

- a) The Parties agree that Vendor is an independent contractor. Vendor shall have the exclusive responsibility for the Operation without undue influence by Owner except in cases specifically referred to in this Agreement; however, at times mutually agreeable, Vendor and Owner or Owner's designee(s) shall discuss and consider the matters which may be of mutual interest in maintaining efficient and profitable operation.
- b) Vendor shall at all times devote reasonable time, attention and energies to the management and improvement of the business. Vendor acknowledges the Premises is public property and agrees that the Owner must have the right to make and enforce rules and regulations governing the Premises, which rules and regulations shall be considered covenants of this Agreement. Present rules and regulations are set forth in **Exhibit "2**," attached hereto and incorporated by reference herein.
- c) Vendor shall be responsible for all Vendor Property associated with the Operation and shall pay all operational and maintenance costs for same.
- d) Vendor shall keep any mobile food unit or pushcart utilized in the Operation in good working order and shall permit Owner to make periodic inspections of same for the purpose of determining compliance with this requirement.
- e) Vendor agrees to provide Services to the public without discrimination other than that permitted by law. Discrimination by Vendor in the provision of Services hereunder based on race, sex, religion, age, marital status, handicap, national origin, or sexual orientation shall be deemed to be a material breach of this lease.
- f) Vendor shall comply with and at all times operate in a manner which meets all applicable Federal, State and Municipal laws, ordinances and regulations and guiding rules, including but not limited to meeting the requirements for food and beverage permits or licenses.

- g) Vendor shall be responsible for all staffing, taxes, insurance, and appropriate licensing associated with and necessary for the Operation. Vendor's employees shall not be deemed employees of Owner for any purpose whatsoever and shall not be eligible to participate in any benefit program provided by the Owner for its employees. Vendor shall be exclusively responsible for the payment of all wages and salaries, taxes, withholding payment, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans including, but not limited to, workers compensation and Social Security obligations, licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall not bring any cause of action alleging Owner is the employer of Vendor or any of Vendor's employees, officers or agents, and Vendor shall indemnify, defend and hold harmless Owner against all claims, losses, costs, or expenses associated with the employment of said employees by Vendor.
- h) Vendor shall remove all Vendor Property from the Premises daily upon completion of Operations for the day.
- i) Vendor shall be responsible for properly disposing of garbage from the Operation. Vendor shall clean the Premises no less than daily and as frequently as necessary to keep the Premises free of debris resulting from the Operation. Vendor may utilize garbage disposal receptacles on the Premise for debris disposal. Vendor shall notify Owner should the garbage receptacles need emptying.
- j) At its own expense, Vendor shall obtain a water supply for use at the Premises, which meets the approval of the Environmental Health Specialist prior to commencing Operations.
- 4. RENT. Vendor shall pay lease payments to Owner as follows:
 - a) \$100.00 per month due on or before the fifth day of each month during the lease term.
 - b) Delinquent payments shall accrue interest at a rate of eight percent per annum.
 - c) Payments shall be made to the City of Moline Finance Department 1630 8th Avenue, Moline, Illinois 61265.

5. TERM AND TERMINATION

a) The term of this Agreement shall commence on April 1, 2011 (hereinafter "Commencement Date") and shall continue through November 30, 2011. Any holding over after the expiration of the term hereof without the consent of the Owner shall be construed to be a tenancy from month to month at the rental five times the last rental rate in effect and shall otherwise be on the terms and conditions herein specified, as far as applicable.

b) In addition to any other remedies provided by law or equity, in the event of any default or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice. Said written notice shall describe the nature of the default, and what action, if any, is deemed necessary to cure the same. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, but in no event longer than thirty (30) days after receipt such notice unless mutually agreed to in writing by the parties, the aggrieved party may terminate this Agreement by providing final written notice to the other or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Upon termination of the Agreement by either party, Vendor must peacefully surrender the Premises to Owner; Owner must peacefully surrender Vendor's equipment to Vendor. The Premises leased herein shall include all appurtenant fixtures to said real estate, which, upon termination of this Agreement shall remain with the Premises and return to Owner.

6. HOLD HARMLESS/INDEMNIFY.

- a) In consideration for permission to use the Premises and Owner's property as granted above, Vendor hereby agrees to defend, hold harmless and indemnify Owner, its subsidiaries and affiliates, their respective officers, directors, employees, agents, assigns, servants and contractors from and against all claims, demands, actions, or proceedings, all costs, damages, expenses, or other liability of any nature whatsoever due to personal injury or property damage (including damage to the Premises and Owner's property other than reasonable wear and tear), any of which arises directly or indirectly from or in connection with, in whole or in part, the permission to use and/or use of the Premises and Owner's property granted hereinunder, unless caused or contributed to by the willful acts or omissions of Owner, its officers, directors, employees, agents or assigns, in which case Vendor shall have no duty to defend, hold harmless or indemnify.
- b) This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.
- 7. <u>VENDOR'S INSURANCE COVERAGE</u>. Vendor shall, throughout the term of this Agreement and at Vendor's expense, carry and keep in full force and effect comprehensive general liability insurance with respect to the Premises, with a carrier and in a form satisfactory to Owner, which policy or policies shall:
 - a) Have limits of \$1,000,000.00 per occurrence personal injury and \$100,000.00 per occurrence property damage.
 - c) Name Owner as an additional insured party.

- d) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving the Owner thirty (30) days prior written notice in a form similar to that attached hereto as **Exhibit "3."**
- g) Contain fire and extended perils insurance covering Vendor's own property and insuring Vendor's possessions on the Premises; Owner shall have no duty to insure Vendor's possessions, the possessions of Vendor's guests, invitees or permitees, or to replace same in the event of any calamity or other disaster.
- h) Each such policy of insurance shall contain a waiver of subrogation provision.

To the extent required by law, Vendor shall further carry workers' compensation insurance. Workers' compensation and public liability insurance shall be paid by Vendor from the Operation. Certificates of all insurance coverage shall be delivered to Owner seven (7) days prior to the Commencement Date.

- 8. <u>NOTICES</u>. Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when:
 - a) Hand delivered to the party to whom the notice is addressed, or
 - b) Mailed by certified mail, return receipt requested, United States mail, postage prepaid, and addressed to the party at the address shown below:

Owner:Vendor:Laura DuranRoy's All Fed Up, Inc.Park & Recreation Directorattn: John RogersCity of Moline2504 18th Avenue, Apt. D3635 4th AvenueRock Island, IL 61201Moline, IL 61265

Either party may change the address and individual(s) to whom the notice is to be directed by written notice sent to the other party in the manner provided above.

- 9. <u>OBSERVANCE OF LAWS AND ORDINANCES</u>. Vendor must, at its sole cost and expense, promptly correct any violation and comply with all laws, ordinances, notices, permits, requirements, orders, regulations and recommendations now or in the future in effect, of whatever nature, of all federal, state, county, municipal and other authorities, with respect to Vendor's conduct or use of the premises.
- 10. <u>SURRENDER OF PREMISES</u>. At the end or termination of the term hereby demised, Vendor covenants to surrender and deliver up the Premises hereby leased in as good as condition as they now are, or may hereafter be put, destruction by fire, reasonable use, ordinary wear and tear, and the effects of time excepted.

- 11. <u>ASSIGNMENT AND SUBLEASING</u>. Vendor shall not have the right to assign this Agreement or sell, transfer or sublet any portion of the Premises herein without the express written consent of Owner, and consent of Owner shall not release or discharge Vendor from any obligations hereunder.
- 12. <u>EFFECT OF PARTIAL INVALIDITY</u>. The invalidity of any part of this Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- 13. <u>WAIVER</u>. Waiver by Owner of any breach of any covenant or duty of Vendor under this Agreement is not a waiver of a breach of any other covenant or duty of Vendor, or of any subsequent breach of the same covenant or duty.
- 14. <u>CHOICE OF LAW</u>. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the same venue.
- 15. <u>TAXES</u>. Vendor shall also be responsible for and pay all real estate taxes assessed against the lease premises if any are so assessed and shall furnish to Owner proof of payment within thirty (30) days after payment is due.

16. <u>MISCELLANEOUS</u>.

- a) This Agreement and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.
- b) This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior agreements, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.
- c) The captions of the Agreement are used for convenience of reference only and shall have no significance in construing the text of the Agreement.

IN WITNESS WHEREOF, this Lease and Concession Agreement is executed in Moline, Illinois, as of the date hereof first above written.

CITY OF MOLINE, ILLINOIS (OWNER)	ROY'S ALL FED UP, INC. (VENDOR)
By:	BY:
By:	John Rogers,
	Print Title
BY:	
BY: Roger Clawson, President	
Parks and Recreation Board	
ATTEST:	
Tracy Koranda, City Clerk	
DATE:	
Approved as to Form:	
City Attorney	

EXHIBIT "1" DESCRIPTION

A portion of Ben Butterworth Parkway described as follows: Beginning at the northeast corner of the easternmost parking lot located on RICO Parcel MO-2644-A and commencing northwest 180 feet more or less following the northern edge of said parking lot; thence north 15 feet to the southern edge of the Ben Butterworth Parkway trail; thence east 177 feet more or less following the southern edge of the Ben Butterworth Parkway trail; thence south 60 feet more or less to the point of beginning, said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "1-A."

SEE ATTACHED DIAGRAM REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

A portion of Ben Butterworth Parkway described as follows: Beginning at the southeast corner of the easternmost parking lot located on RICO Parcel MO-3807-4 and commencing north 97 feet more or less to the northern lot line; thence west 80 feet more or less following the northern lot line; thence south 42 feet more or less to the northern edge of the parking lot; thence southeast 97 feet more or less to the point of beginning, said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "1-B."

RULES AND REGULATIONS

- 1. Use of Name: Vendor shall not use the name of the Owner, or any simulation or abbreviation thereof, as its name or as part of its name without Owner's prior written consent.
- 2. Obstruction: Vendor, its customers, invitees and guests shall not obstruct the public bike/walking path that runs through the Premises.
- 3. Noises and Odors: Vendor shall not make noises, cause disturbances or vibrations, or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be reasonably offensive to other users of the Premises or unduly disturb any wildlife in and around the Premises.
- 4. Solicitation: Vendor shall not exhibit, sell or offer to sell, use, rent or exchange any item or service from the Premises unless ordinarily embraced within Vendor's use of the Premises specified herein.
- 6. Vendor Shall Not Interfere With Reserved Rights: Vendor shall not attempt to exercise any of the rights specifically reserved by Owner or interfere in any way with the exercise of these rights by Owner.

INSURANCE REQUIREMENTS

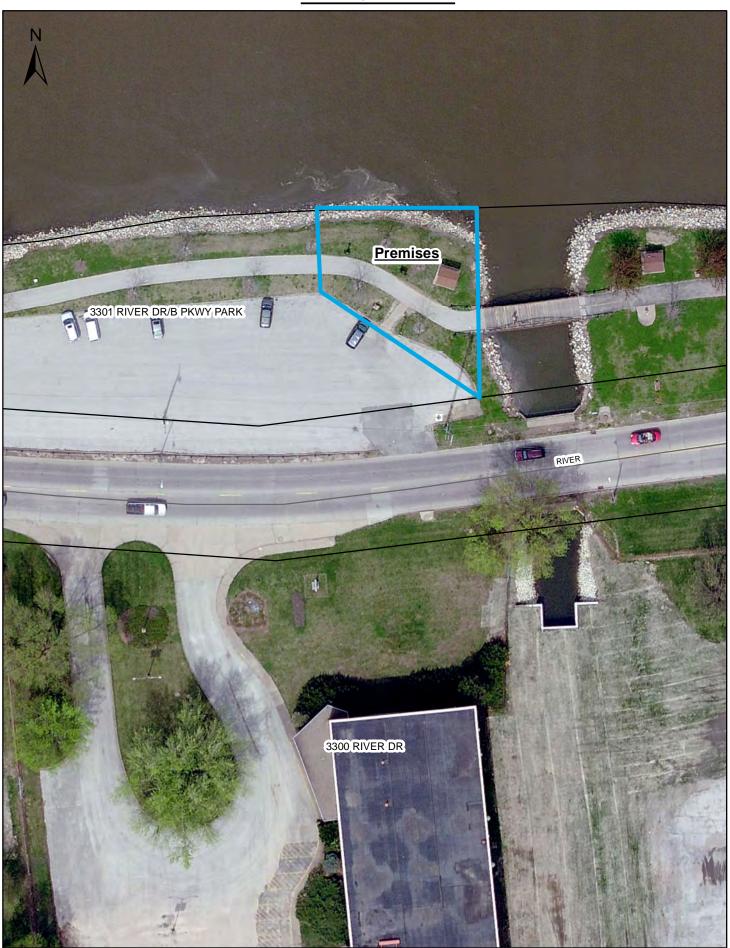
- 1) City should be listed as Additional Insured.
- 2) Certificate should evidence the addition of a special provision by which Insurer waives its right of subrogation with regard to the City of Moline.
- 2) Certificate Holder should read: City of Moline 619 16th Street

Moline, Illinois 61265

Exhibit "1-A"



Exhibit "1-B"



1 inch = 50 feet