

Mascoutah City Council

February 1, 2016
REGULAR MEETING AGENDA

City Council Meeting - 7:00 pm

1. PRAYER & PLEDGE OF ALLEGIANCE
2. CALL TO ORDER
3. ROLL CALL
4. AMEND AGENDA – consideration of items to be added/ deleted to /from the meeting agenda. *No action can be taken on added items, but may be discussed only. Exceptions – emergency items as authorized by law.*
5. MINUTES, January 19, 2016 City Council Meeting (Page 1 to Page 4)
MINUTES, January 19, 2016 Executive Session Meeting (Confidential, see City Clerk)
6. PUBLIC COMMENTS (3 minutes) – opportunity for the public to comment.
7. REPORTS AND COMMUNICATIONS
 - A. Mayor
 - B. City Council
 - C. City Manager
 - D. City Attorney
 - E. City Clerk
8. COUNCIL BUSINESS
 - A. Council Items for Action:
 1. SWIDA Bond Cap Reallocation Resolution (Page 5 to Page 13)
Description: Council approval of Resolution allowing the transfer of Private Activity Industrial Revenue Bond Volume Cap to SWIDA.

Recommendation: Council Approval and Adoption of Resolution.
 2. Construction Agreement between Ameren Illinois Company, IMEA & City of Mascoutah. (Page 14 to Page 37)
Description: Approval and authorization of Construction Agreement between Ameren Illinois Company and Illinois Municipal Electric Agency and City of Mascoutah.

Recommendation: Council Approval

3. Second Amendment to the Final Development Agreement – DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. (First Reading)

(Page 38 to Page 51)

Description: Approval of the Second Amendment to the Final Development Agreement for Eddies Fuel Cell/Convenience Store and Huddle House Restaurant project with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. by adoption of Ordinance.

Recommendation: First Reading

B. Council – Miscellaneous Items

C. City Manager

- **Waste Collection Bid**
- **Wisper Fiber Partner**
- **WWTP Engineering**
- **Special Census**

10. PUBLIC COMMENTS (3 MINUTES)

11. ADJOURNMENT TO EXECUTIVE SESSION

- A. Personnel – Possible Disciplinary Action - Section 2(c)(1)
- B. Litigation – Section 2(c)(11)

11. MISCELLANEOUS OR FINAL ACTIONS

12. ADJOURNMENT

POSTED 1/29/16 at 5:00 PM

**CITY OF MASCOUTAH
CITY COUNCIL MINUTES
#3 WEST MAIN STREET
MASCOUTAH, IL 62258-2030**

JANUARY 19, 2016

The minutes of the regular meeting of the City Council of the City of Mascoutah.

PRAYER AND PLEDGE OF ALLEGIANCE

City prayer was delivered by City Clerk Kari Haas. The Council remained standing and recited the Pledge of Allegiance.

CALL TO ORDER

Mayor Gerald Daugherty called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Mayor Gerald Daugherty and Council members Paul Schorr, John Weyant, and Pat McMahan.

Absent: Council member Ben Grodeon.

Other Staff Present: City Manager Cody Hawkins, City Clerk Kari Haas, City Attorney Al Paulson, Assistant City Manager Lisa Koerkenmeier, Police Chief Bruce Fleshren, Fire Chief Joe Zinck, City Engineer Ron Yeager, and Finance Coordinator Lynn Weidenbenner.

Establishment of a Quorum: A quorum of City Council members was present.

AMEND AGENDA

None.

MINUTES

The minutes of the January 4, 2016 regular City Council meeting were presented and approved as presented. The minutes of the January 11, 2016 City Council work session were presented and approved as presented.

Motion passed. Passed by unanimous yes voice vote.

PUBLIC COMMENTS

None.

DEPARTMENT REPORTS

Fire Chief Joe Zinck – December 2015 report was provided.

Police Chief Bruce Fleshren – December 2015 report was provided.

Finance Coordinator Lynn Weidenbenner – Monthly financials provided.

City Engineer/Director of Public Works Ron Yeager – Status report on public projects and monthly building permits report provided. Mayor asked about the final on Fuesser Road. City Engineer stated that the City has received a letter from S&S regarding their reasoning for why the project was finished late and why they shouldn't be charged the penalties. City Engineer stated that they will be reviewing the letter submitted and provide an update to Council. Councilman Schorr asked about the Poplar Street improvement project and thought that the City was going to replace the sidewalks on the north side. City Engineer stated that the current plans are to utilize the sidewalks on the north side because they are located on private property. City Engineer stated that if the City is going to spend any money on replacing the sidewalks, the property would have to be turned over to the City. City Engineer stated that TWM is drafting the deed documents for the City to approach the property owners. Councilman Weyant asked about South 10th Street improvement project and the movement of the utilities. City Manager stated that the biggest hang-up right now is the procedures and obtaining approvals from IDOT before we can move forward.

REPORTS AND COMMUNICATIONS

Mayor

Attended the following meetings and functions: Volunteered at the Visitor's Center, City employee appreciation dinner, MIA appreciation dinner, Phase II Electric workshop, meeting at IDOT regarding STP and CMAQ, presentation at Scott AFB for promotion of Colonel Kremer, "Tops in Blue" performance at the High School, Chamber annual meeting and dinner, meeting with IDOT regarding the resurfacing of Main Street, IML Executive Committee meeting.

City Council

Schorr – Attended the following meetings and functions: City employee appreciation dinner, Phase II Electric workshop, TIF JRB meeting, final government ethics class provided by the State's Attorney, Chamber annual meeting and dinner.

Weyant – Attended the following meetings and functions: City employee appreciation dinner, MIA appreciation dinner, Phase II Electric workshop, Chapel committee meeting.

McMahan – Attended the following meetings and functions: City employee appreciation dinner, MIA appreciation dinner, Phase II Electric workshop, Chamber annual meeting and dinner.

City Manager – Nothing to report.

City Attorney – Nothing to report.

City Clerk – Nothing to report.

COUNCIL BUSINESS

CONSENT CALENDAR (OMNIBUS)

The December 2015 Fund Balance Report and Claims & Salaries Report were provided under the omnibus consideration.

Councilman Schorr asked about a reimbursement to an employee for truck repairs. City Manager stated that it was for repairs to the park dump truck and the City did not have an account at the place where it was repaired so the employee paid for the repairs out of his personal account so the City reimbursed him for those expenses.

Weyant moved, seconded by Schorr, to accept all items under Omnibus consideration.

Motion passed. AYE's – Schorr, Weyant, McMahan, Daugherty. NAY's – none.
ABSENT – Grodeon.

CODE CHANGE – TAXATION (SECOND READING)

City Manager presented report for Council consideration of approval of an ordinance to amend Chapter 36 – Taxation, Article III – Municipal Utility Tax of the City Code of Ordinances.

Schorr moved, seconded by McMahan, to approve and adopt Ordinance No. 16-02, amending Chapter 36 – Taxation, Article III – Municipal Utility Tax of the City Code of Ordinances.

Motion passed. AYE's – Schorr, Weyant, McMahan, Daugherty. NAY's – none.
ABSENT – Grodeon.

COUNCIL – MISCELLANEOUS ITEMS

Council discussed the budget guidance for FY16/17.

Councilman Schorr asked if the City could put something in the utility bills regarding the vehicle registration renewals not being mailed out anymore to help get the word out to those who do not have internet access.

CITY MANAGER – MISCELLANEOUS ITEMS

City Manager provided information to Council regarding the IMEA energy efficiency funds. City Manager stated that the City was granted around \$40,000 and wanted to know how much the City Council wanted to allocate energy efficiency grants to businesses. City Manager stated that he has received an application from Handee Mart with qualified expenses of over \$6,000. City Manager stated that there have been some inquiries from other businesses but no applications are in the process right now through IMEA and the program wasn't publicized to all businesses so doesn't know if we will get another application completed by the end of April. City Manager stated that the City will do another street light project before the end of April to use up the remainder of the grant funds. City Manager stated that there may be more funds granted next fiscal year and more publicity could be

done to inform businesses better. Council was in general agreement to do a grant reimbursement for Handee Mart for the full amount of the qualified expenses. City Manager will draft a policy for energy efficiency grants for businesses for the coming year's funds if there are any allocated by IMEA.

PUBLIC COMMENTS

None.

ADJOURNMENT TO EXECUTIVE SESSION

Schorr moved, seconded by Weyant, to adjourn to Executive Session to discuss Litigation – Section 2(c)(11) at 7:47 p.m.

Motion passed. AYE's – Schorr, Weyant, McMahan, Daugherty. NAY's – none. ABSENT – Grodeon.

RETURN TO REGULAR SESSION

McMahan moved, seconded by Schorr, to return to Regular Session at 8:05 p.m.

Motion passed. Motion passed by unanimous yes voice vote.

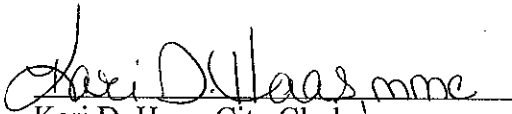
MISCELLANEOUS OR FINAL ACTIONS

None.

ADJOURNMENT

McMahan moved, seconded by Schorr, to **adjourn at 8:07 p.m.**

Motion passed. Motion passed by unanimous yes voice vote.


Kari D. Haas, City Clerk

CITY OF MASCOUTAH
Staff Report

TO: Honorable Mayor & City Council

FROM: Cody Hawkins – City Manager

SUBJECT: **SWIDA Bond Cap Reallocation Resolution**

MEETING DATE: February 1, 2016

REQUESTED ACTION:

Council approval of Resolution allowing the transfer of Private Activity Industrial Revenue Bond Volume Cap to SWIDA.

BACKGROUND & STAFF COMMENTS:

For many years, the City of Mascoutah has transferred its Private Activity Industrial Revenue Bond Volume Cap to Southwestern Illinois Development Authority (SWIDA) to assist the development of projects in Bond, Clinton, Madison and St. Clair counties. This action has passed through Council for many years and takes no funding from the City. All home-rule units are allocated a specific bond volume cap, based on their latest Census population. Since the City of Mascoutah did not issue (and could not use) the bonds it was allocated this year, SWIDA combines Mascoutah's unused bond allocations with other units and issues bonds for organizations that have large projects and are in need of additional bond amounts. Staff believes this action is warranted. SWIDA was created to facilitate economic development in Bond, Clinton, Madison and St. Clair counties. By allocating the bond cap to SWIDA, the City guarantees that the funding capacity stays in our immediate area.

Last year questions were raised as to what the transferred bond volume is used for. Attached is a list of SWIDA projects that the bonds have assisted with in the past.

RECOMMENDATION:

Staff recommends that the Council approve and adopt this Resolution.

SUGGESTED MOTION:

I move that the Council approve and adopt Resolution No. 15-16-__, thereby relinquishing the City of Mascoutah's Private Activity Industrial Revenue Bond Volume Cap to SWIDA.

Prepared By:


Kari D. Haas
City Clerk

Approved By:


Cody Hawkins
City Manager

Attachments: A – Letter from SWIDA Executive Director Michael Lundy
B – Resolution
C – SWIDA Projects List

Members of the Board:
James Nations, Chair
Khalil El-Amin
Barbara S. Johnson
David A. Miller
John Hippskind
Kevin Kaufhold
Kennard Tucker
Reggie Sparks
Jim Sullivan
David Willey
Greg Kuehnelt
Tom Hoechst



Ex. Officio:
Jim Schultz
Randall Blankenhorn

Executive Director:
Michael J. Lundy

Assistant Executive Director
Joe Gasparich, MBA, CPA

January 21, 2016

The Honorable Gerald Daugherty, Mayor
City of Mascoutah
3 West Main Street
Mascoutah, IL 62258-2030

Dear Mayor Mitchell:

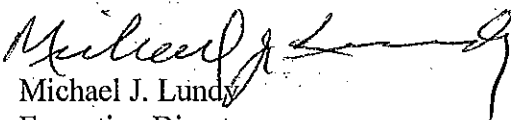
In the past, home-rule cities and villages have agreed to transfer industrial revenue bond volume cap to SWIDA to assist the development of projects in Bond, Clinton, Madison and St. Clair Counties. SWIDA is once again hoping that the City of Mascoutah will agree to transfer their private activity industrial revenue bond cap to us prior to the May 1st deadline.

If the City of Mascoutah does not use its bond volume cap for a project or does not transfer its unused bond volume cap to SWIDA by May 1, 2016, the state requires the cities to return the cap back to the state where it will be used in other parts of Illinois.

SWIDA uses the transferred cap to finance developments in our four-county area. In recent years, SWIDA used bond cap in Belleville, Fayetteville, Greenville and Caseyville. If later in the year the City of Mascoutah finds it needs the bond cap for a project in the City of Mascoutah, the City of Mascoutah can request an allocation from the pool. Since 1989, SWIDA has issued 1.1 billion dollars in revenue bonds to finance projects in its jurisdiction. These projects have built the tax base of the area and created and retained jobs for our citizens.

We would appreciate your help again this year. The process has been simplified, only passing of the enclosed draft ordinance by May 1st is required; no Intergovernmental Agreement is necessary. A copy of the passed ordinance along with the attached draft letter, *Report of Allocation Granted by Home-Rule Units*, needs to be sent to the Governor by May 1st, with a copy to SWIDA. If you have any questions please call me at 618-345-3400. If you would like the documents emailed to you in Word format, please call the above number and ask for Teri.

Sincerely yours,


Michael J. Lundy
Executive Director

Enclosures

Attachment A

(Letterhead of the City)

**REPORT OF ALLOCATION GRANTED
BY HOME-RULE UNITS**

(Date) [Due by May 1, 2016]

Office of the Governor
Governor's Office of Management and Budget
603 Stratton Building
Springfield, Illinois 62706

ATTENTION:Debt Management Unit

Re: **Issuer: City of Mascoutah**
Total 2016 Volume Cap Allocation: \$786,900

Volume Cap allocations transferred by Issuer resolution prior to May 1, 2016: _____
\$786,900

If reallocated to another issuer, state name of issuer: Southwestern Illinois Development Authority (SWIDA)

Copies of allocation resolutions or ordinances are attached. (Note: Memorandums of agreements with businesses need not be attached.)

Total Allocation Granted or Reallocated: \$ \$786,900

Sincerely,

(Signature of authorized public official)
(Title)
(Telephone number)

RESOLUTION NO. 15-16-__

**A RESOLUTION AUTHORIZING THE TRANSFER OF VOLUME CAP
IN CONNECTION WITH PRIVATE ACTIVITY BOND ISSUES,
AND RELATED MATTERS**

WHEREAS, Mascoutah, Illinois (the "Municipality") is a municipality and a home rule unit of government under Section 6 of Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, Section 146 of the Internal Revenue code of 1986, as amended (the "Code"), provides that the Municipality has volume cap equal to \$100 per resident of the Municipality in each calendar year, which volume cap may be allocated to certain tax-exempt private activity bonds; and

WHEREAS, the Illinois Private Activity Bond Allocation Act, 30 Illinois Compiled Statutes 2008, 345/1 et seq., as supplemented and amended (the "Act"), provides that a home rule unit of government may transfer its allocation of volume cap to any other home rule unit of government, the State of Illinois or any agency thereof or any non-home rule unit of government; and

WHEREAS, it is now deemed necessary and desirable by the Municipality to transfer its entire volume cap allocation for calendar year 2016 to the Southwestern Illinois Development Authority (the "Issuer") to be applied toward the issuance of private activity bonds by the Issuer (the "Bond") or for such other purpose permitted by this Resolution;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mascoutah, Illinois, as follows:

SECTION 1. That, pursuant to Section 146 of the Code and the Act, the entire volume cap of the Municipality for calendar year 2016 is hereby transferred to the Issuer, which shall issue the Bonds using such transfer of volume cap, without any further action required on the part of the Municipality, and the adoption of this Resolution shall be deemed to be an allocation of such volume cap to the issuance of the Bonds or such other bonds.

SECTION 2. That the Municipality and the Issuer shall maintain a written record of this Resolution in their respective records during the term that the Bonds or any other such bonds to which such volume cap is allocated remain outstanding.

SECTION 3. That the Mayor, the City Clerk and all other proper officers, officials, agents and employees of the Municipality are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents and certificates as many be necessary to further the purposes and intent of this Resolution.

Attachment B

SECTION 4. That the provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision of this Resolution shall for any reason be declared to be invalid, such declaration shall not affect the remainder of the sections, phrases, and provisions of this Resolution.

SECTION 5. That all ordinances, resolutions, or orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded; and that this Resolution shall be in full force and effect upon its adoption and approval.

PRESENTED, PASSED, APPROVED AND RECORDED by the City Council of the City of Mascoutah, Illinois on the 1st day of February, 2016, by the following votes, to wit:

AYES - .

NAYS - .

ABSENT - .

Approved by the Mayor of the City of Mascoutah, Illinois, the 1st day of February, 2016.

CITY OF MASCOUTAH

Gerald Daugherty, Mayor

[SEAL]

ATTEST:

City Clerk

| YEAR | SWIDA BOND ISSUE | AMOUNT | DATED |
|------|--|--------------|----------|
| 1989 | Tri City Port District Granite City, Madison County | \$3,515,000 | 10/25/89 |
| | Monsanto Sauget, St. Clair County | \$12,795,000 | 12/01/89 |
| 1990 | Children's Center for Behavioral Development Centerville, St. Clair County | \$2,925,000 | 08/01/90 |
| | Progressive Recovery, Inc. Dupont, St. Clair County | \$3,400,000 | 08/01/90 |
| | AEL Industries, Inc. Bethalto, Madison County | \$6,500,000 | 09/13/90 |
| | Laclede Steel Company Alton, Madison County | \$25,000,000 | 09/01/90 |
| | St. Elizabeth Medical Center Granite City, Madison County | \$6,000,000 | 11/01/90 |
| 1991 | McKendree College Lebanon, St. Clair County | \$3,000,000 | 12/01/90 |
| | Shell Oil Company Wood River/Roxana/Hartford Madison County | \$19,200,000 | 08/20/91 |
| | Monsanto Sauget, St. Clair County | \$8,600,000 | 09/15/91 |
| | Illinois Center for Autism Fairview Heights, St. Clair | \$1,660,000 | 12/11/91 |
| | Robinson Steel Company Granite City, Madison County | \$7,500,000 | 12/23/91 |
| 1992 | Wood River Township Hospital, Wood River, Madison | \$8,200,000 | 03/01/92 |
| | Shell Oil Company Wood River, Madison County | \$19,600,000 | 04/13/92 |
| | Anderson Hospital - Series A Maryville, Madison County | \$19,445,000 | 08/15/92 |
| | Anderson Hospital - Series B Maryville, Madison County | \$2,345,000 | 08/15/92 |
| | Waste Recovery Illinois Dupont, St. Clair County | \$4,845,000 | 09/01/94 |
| 1994 | Spectralite Consortium, Inc. Madison, Madison County | \$6,700,000 | 04/19/95 |
| 1995 | Shell Oil Company Wood River, Madison County | \$19,475,000 | 11/01/95 |

| <u>YEAR</u> | <u>SWIDA BOND ISSUE</u> | <u>AMOUNT</u> | <u>DATED</u> |
|-------------|---|---------------|--------------|
| 1996 | Gateway International Motorsports, Madison/St. Clair County | \$21,500,000 | 06/21/96 |
| | Kienstra, Inc. Wood River, Madison County | \$4,000,000 | 09/27/96 |
| | McKendree College Lebanon, St. Clair County | \$2,850,000 | 09/01/96 |
| 1997 | EASSC Belleville, St. Clair County | \$3,270,000 | 05/01/97 |
| | YMCA of Edwardsville, Edwardsville, Madison County | \$800,000 | 07/15/97 |
| 1998 | Illinois-American Water Co. Madison & St. Clair Counties | \$12,000,000 | 02/01/98 |
| 1998 | Holten Meat Company Sauget, St. Clair County | \$8,200,000 | 03/01/98 |
| | Fiber Line Sauget, St. Clair County | \$2,750,000 | 05/06/98 |
| | Meridian Village Glen Carbon, Madison County | \$13,075,000 | 09/03/98 |
| | Children's Center for Behavioral Development St. Clair County | \$2,940,000 | 11/19/98 |
| | Waste Recovery - A Duplo, St. Clair County | \$2,895,000 | 08/01/98 |
| | Waste Recovery - B Duplo, St. Clair County | \$850,000 | 08/01/98 |
| | City of East St. Louis TIF - A East St. Louis, St. Clair County | \$8,000,000 | 03/11/99 |
| 1999 | City of East St. Louis TIF - B East St. Louis, St. Clair County | \$3,000,000 | 03/11/99 |
| | Anderson Hospital Maryville, Madison County | \$26,320,000 | 04/01/99 |
| | Illinois-American Water Co. Madison & St. Clair Counties | \$90,645,000 | 06/01/99 |
| 2000 | Alton Center Business Park Madison County | \$11,548,000 | 05/04/00 |
| 2001 | City of O'Fallon St. Clair County | \$7,640,000 | 09/15/01 |
| | Holten Meat, Inc. St. Clair County | \$7,618,111 | 10/01/01 |

| <u>YEAR</u> | <u>SWIDA BOND ISSUE</u> | <u>AMOUNT</u> | <u>DATED</u> |
|-------------|---|---------------|--------------|
| 2002 | Waste Management Inc. Madison & St. Clair Counties | \$4,700,000 | 10/01/02 |
| 2003 | City of Fairview Hights St. Clair County | \$9,450,000 | 03/27/03 |
| 2004 | Maclede Steel State of Illinois Refinance | \$13,585,000 | 06/02/04 |
| | Hoflen Meat Inc. St. Clair County | \$6,860,000 | 10/05/04 |
| 2005 | Allen Community Unit School District #1, Madison County | \$3,295,434 | 04/26/05 |
| | Belleville Township High School District #201 (West) St. Clair County | \$37,805,000 | 10/04/05 |
| | Mattingly Lumber, Series A Madison County | \$3,080,000 | 12/02/05 |
| | Mattingly Lumber, Series B Madison County | \$2,065,000 | 12/02/05 |
| | City of Belleville St. Clair County | \$14,450,000 | 12/02/05 |
| | City of Granite City Madison County | \$1,635,000 | 12/28/05 |
| 2006 | Triad CUSD No. 2 Madison County | \$44,134,291 | 06/01/06 |
| | Eden Retirement Center Inc Madison County | \$22,390,000 | 09/14/06 |
| | Village of Sikeston Center City St. Clair County | \$23,655,000 | 11/01/06 |
| | Anderson Hospital Madison County | \$13,750,000 | 12/14/06 |
| 2007 | Belleville Township High School District #201 (East) St. Clair County | \$34,130,000 | 04/11/07 |
| | Edwardsville CUSD #7 Madison County | \$94,782,316 | 06/28/07 |
| | Collinsville City of Madison County | \$20,250,000 | 07/31/07 |
| | Center Ethanol Co. Series A St. Clair County | \$15,230,000 | 09/27/07 |
| | Center Ethanol Co. Series B St. Clair County | \$7,370,000 | 09/27/07 |
| | Sev-Rend Corporation, Series A, Madison County | \$3,500,000 | 10/11/07 |
| | Sev-Rend Corporation, Series B, Madison County | \$830,000 | 10/11/07 |
| | Southwestern IL RC&D Inc St. Clair County | \$2,600,000 | 11/15/07 |

| YEAR | SWIDA BOND ISSUE | AMOUNT | DATED |
|------|--|---------------|------------|
| | Comprehensive Mental Health of St. Clair County | \$12,565,000 | 12/13/07 |
| | Arizona Companies of Illinois Madison County | \$3,000,000 | 12/27/07 |
| 2008 | E. St. Louis City of TIF 2008A St. Clair County | \$26,085,000 | 07/05/08 |
| | Granite City, City of, Downtown Redev Project Madison County | \$9,780,000 | 09/24/08 |
| | Dei Star Corp/Dei Star Ventures St. Clair County | \$4,400,000 | 12/11/08 |
| 2009 | Mascoutah CUSD #19 St. Clair County | \$36,049,828 | 03/05/09 |
| | Granite City, City of, Route 3 Corridor Madison County | \$3,640,000 | 05/29/09 |
| | Granite City, City of, Series 2009-B, Madison County | \$4,210,000 | 09/29/09 |
| | Granite City, City of, Series 2009-B, Madison County | \$3,805,000 | 10/30/09 |
| | St. Clair Supportive Living (Knollwood) St. Clair County | \$10,338,000 | 12/29/09 |
| 2010 | Mollino, Inc. Bond County | \$9,995,000 | 07/18/10 |
| | Granite City Wastewater Treatment Project, Madison | \$3,485,000 | 10/28/10 |
| | Levee Bonds: Madison St. Clair and Monroe Counties | \$94,195,000 | 11/23/10 |
| | McKendree Residential, St. Clair County | \$15,000,000 | 12/30/10 |
| 2011 | Bellefonte Memorial Hospital St. Clair County | \$30,000,000 | 11/01/11 |
| | Anderson Hospital 2011A Maryville, Madison County | \$9,219,460 | 12/29/2011 |
| | Anderson Hospital 2011B Maryville, Madison County | \$9,219,460 | 12/29/2011 |
| 2012 | United States Steel Corp. | \$40,000,000 | 8/1/2012 |
| | Granite City 2012 | \$11,000,000 | 10/12/2012 |
| 2013 | Memorial Hospital 2013 | \$163,850,000 | 11/1/2013 |

TOTAL \$1,234,969,900

CITY OF MASCOUTAH
Staff Report

TO: Honorable Mayor & Council

FROM: Cody Hawkins – City Manager

SUBJECT: **Construction Agreement between Ameren Illinois Company, IMEA & City of Mascoutah**

MEETING DATE: February 1, 2016

REQUESTED ACTION:

Approval and authorization of Construction Agreement between Ameren Illinois Company and Illinois Municipal Electric Agency and City of Mascoutah.

BACKGROUND & STAFF COMMENTS:

Per discussions at previous City Council meetings and work session, attached is the construction agreement with Ameren Illinois to coincide with the Electric Phase II Project.

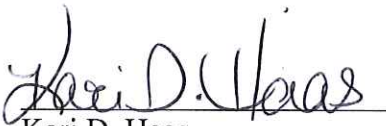
RECOMMENDATION:

Council Approval.

SUGGESTED MOTION:

I move that the Council approve the construction agreement substantially in the form of Construction Agreement By and Between Ameren Services Company on Behalf of and as Designated Agent for Ameren Illinois Company and Illinois Municipal Electric Agency and City of Mascoutah, Illinois and authorize the appropriate officials to execute said document.

Prepared By:


Kari D. Haas
City Clerk

Approved By:


Cody Hawkins
City Manager

Attachment: A – Construction Agreement

AMEREN ILLINOIS COMPANY

MISO Service Agreement No. _____

CONSTRUCTION AGREEMENT

By and Between

AMEREN SERVICES COMPANY

on Behalf of and as Designated Agent for

AMEREN ILLINOIS COMPANY

and

ILLINOIS MUNICIPAL ELECTRIC AGENCY

and

CITY OF MASCOUTAH, ILLINOIS

Hillgard Delivery Points

Dated: _____, 2016

CONSTRUCTION AGREEMENT
Ameren Illinois – IMEA/Mascoutah Hillgard Delivery Points

This Construction Agreement (“Agreement”) is entered into as of _____, 2015, by and between Ameren Services Company on behalf of and as designated agent for Ameren Illinois Company d/b/a Ameren Illinois, a corporation organized and existing under the laws of the State of Illinois (“Owner”), and Illinois Municipal Electric Agency (“IMEA”) together with the City of Mascoutah (“Mascoutah”), jointly referred to as (“Customer”) Customer and Owner may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Owner owns electric facilities and is engaged in transmission and distribution of electric power and energy; and

WHEREAS, Customer has requested that Owner provide a 138 kV terminal connection from Owner’s system at Owner’s new Hillgard Breaker Station, for distribution service, to serve as a second 138 kV source to Mascoutah, to be known as “Hillgard Delivery Point 1” (“Delivery Point 1”); and,

WHEREAS, Customer has an existing 138 kV connection to Owner’s Line 1482 at Structure 87A to Customer’s Mascoutah Breaker Station, and Customer will remove its facilities at this connection point, to be replaced by Owner with a new 138 kV terminal connection at Owner’s Hillgard Breaker Station, to be referred to as “Hillgard Delivery Point 2” (“Delivery Point 2”); and,

WHEREAS, Owner has agreed to provide Customer with transmission delivery service at Delivery Points 1 and 2; and,

WHEREAS, Owner has determined as per an Ameren transmission system assessment that Hillgard Breaker Station is needed to improve system reliability for Owner’s transmission system; and,

WHEREAS, Owner has agreed that the costs for construction of the Hillgard Breaker Station will be included in Owner’s transmission rate base, with exception to the dedicated tap-related facilities (“Dedicated Tap-Related Facilities”) installed for Customer’s Delivery Points 1 and 2, for which Customer has agreed to be assigned full cost responsibility; and,

WHEREAS, Owner will install the Dedicated Tap-Related Facilities, as included in the Modifications described in Exhibit A hereto; and

WHEREAS, Owner and Customer are in the process of negotiating a Distribution Wholesale Umbrella Construction Agreement (an “Umbrella Construction Agreement”), which will govern construction of and cost responsibility for Modifications such as those covered in this Agreement; and

WHEREAS, Customer and Owner have agreed to enter into this Agreement for the purpose of facilitating construction of the Modifications in advance of entering into an Umbrella Construction Agreement.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1.

- 1.1 “FERC”** shall mean the Federal Energy Regulatory Commission or its successor.
- 1.2 “Force Majeure”** shall mean any cause beyond the reasonable control of and without fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, strike, flood, earthquake, storm, fire, lightning, explosion, epidemic, war, riot, civil disturbance, sabotage, changes in Applicable Laws and Regulations or a binding order of any court, legislative body or Governmental Authority subsequent to the date hereof, and action or inaction by any Governmental Authority which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.3 “Good Utility Practice”** shall mean any of the applicable practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment by a Party in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result in a good faith, nondiscriminatory manner and at a reasonable cost consistent with good business practices, reliability, safety and expedition, giving due regard to the requirements of governmental agencies having jurisdiction. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region as they may be applicable to the Parties as system operators.
- 1.4 “Governmental/Regulatory Authority”** shall mean any federal, state, local, or other governmental agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over a Party; provided, however, that neither Customer nor any of its Members shall be considered a Governmental Authority for purposes of this Agreement.
- 1.5 “MISO”** shall mean the Midcontinent Independent System Operator, Inc., or any successor entity(ies) that is responsible for functional control of the operation of part or all of the Ameren Illinois transmission facilities.

- 1.6 **“Modifications”** shall mean the facilities to be constructed under this Agreement, as additions, replacements and/or modifications to the Ameren Illinois transmission system, to accommodate Customer’s request and for the sole benefit of Customer for service to the City of Mascoutah from Hillgard Delivery Points 1 and 2, which Owner expects would be considered, in an Umbrella Construction Agreement by and between Owner and Customer, as “Dedicated Tap-Related Connection Facilities”.
- 1.7 **“NERC”** shall mean the North American Electric Reliability Corporation or its successor.
- 1.8 **“Reasonable Efforts”** shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement for the benefit of or in the interests of the other Party, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.9 **“Regulatory Requirements”** shall mean any FERC policies including but not limited to reliability standards or associated requirements of NERC or of any applicable regional reliability organization, or requirements of the MISO or of any Governmental/Regulatory Authority having jurisdiction over the Parties with regard to the subject matter of this Agreement, or any successor to any of these.
- 1.10 **“Tariff”** shall mean the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, as amended from time to time.
- 1.11 **“WDS”** shall mean Wholesale Distribution Service provided by Owner to Customer pursuant to the WDS Agreement.
- 1.12 **“WDS Agreement”** shall mean the agreement for provision of Wholesale Distribution Service between Owner and Customer on file with FERC and in effect.

ARTICLE 2

TERM OF AGREEMENT AND REGULATORY APPROVAL

- 2.1 **Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by the Federal Energy Regulatory Commission (“FERC”) under Section 205 of the Federal Power Act, this Agreement shall be effective as of the date of execution of this Agreement, or such other date as it is permitted to become effective by the FERC (“Effective Date”).
- 2.2 **Term and Termination.** This Agreement shall continue in full force and effect until the date upon which the Modifications have been completed and each Party has complied with all provisions of this Agreement and all laws and regulations applicable to it. The Parties may terminate this Agreement in advance of that date only by mutual consent or pursuant to Article 8, subject to the FERC authorization referenced in Section 2.3.

- 2.3 Regulatory Filings.** Owner shall tender this Agreement to FERC for acceptance. Customer shall reasonably cooperate with Owner with respect to such filing and shall provide any information, including the filing of testimony, reasonably requested by the FERC to comply with applicable Regulatory Requirements. No termination, or any partial termination hereunder, shall become effective until the terminating Party (or the Parties jointly) tender(s) to FERC any amendment or any other required notification of termination of this Agreement and obtain(s) such acceptance thereof by FERC as may be necessary to comply with applicable Regulatory Requirements.
- 2.4 No Admissions or Precedent.** This Agreement, and the Parties' performance of their obligations hereunder, are the result of compromise and neither the Agreement nor the Parties' performance hereunder shall be deemed to be an admission of any fact or of any responsibility as it relates to any other transmission facilities connection project. This Agreement shall be binding on the Parties only with respect to the project that is the subject matter hereof, and shall not bind the Parties to apply the principles or provisions of this Agreement to any other agreement, arrangement, or proceeding. The Agreement establishes no principles and no precedent with respect to any issue concerning future projects or in any proceeding brought in connection with future projects.

ARTICLE 3 PURPOSE AND SCOPE

- 3.1 Purpose.** The purpose of this Agreement is to set forth the terms and conditions for the construction of and financial obligations associated with certain Modifications to the Ameren Illinois transmission and distribution system required to connect and provide distribution service to Customer by means of a new 138 kV delivery point ("Hillgard Delivery Point 1"), and creation of a new delivery point ("Hillgard Delivery Point 2") to replace the existing 138 kV delivery point. Both Hillgard Delivery Point 1 and 2 are to be constructed, owned, operated, and maintained by Owner for service to the City of Mascoutah. "Delivery Points" shall mean both Hillgard Delivery Point 1 and Hillgard Delivery Point 2, or singularly, either Hillgard Delivery Point 1 or Hillgard Delivery Point 2.
- 3.2 Transmission Arrangements.** Transmission service does not fall within the scope of this Agreement. Each Party shall be responsible for making any and all arrangements for transmission service with the MISO under the Tariff.
- 3.3 Wholesale Distribution Service.** The provision of WDS shall be governed by Schedule 11 of the MISO Tariff and the terms of the WDS Agreement in effect between the Parties, as it may be amended from time to time.
- 3.4 Contribution in Aid of Construction.** In the event that Customer makes one or more lump sum payments to Owner in connection with Modifications under this Agreement, such payment(s) shall be considered a Contribution in Aid of Construction ("CIAC"), and Owner and its affiliates shall not include the costs of such facilities in any assessment against Customer through any other charge, or include the costs of such facilities as plant in service under any other tariff, policy, assessment or agreement. This Section 3.4 shall survive termination of this Agreement.

ARTICLE 4 CONSTRUCTION AND SECURITY

- 4.1 Modifications and Customer Built Facilities.** Owner will procure material for and install facilities that are necessary to provide for new Delivery Points, as described in Exhibit A, attached hereto and incorporated herein by reference. Owner agrees to exercise Reasonable Efforts to design, engineer, construct, install and place in service (the "Design and Construction Process") the Modifications in accordance with the provisions identified in Exhibit A.

In addition, in conjunction with the installation of facilities for the Delivery Points, Customer will procure material for, install, own, operate, and maintain new 138 kV lines and related facilities ("Customer Built Facilities") to connect to Owner's system at the Delivery Points. Customer shall coordinate the installation of such facilities in accordance with the provisions identified in Exhibit A.

ARTICLE 5 COSTS AND PAYMENTS

- 5.1 [Reserved]**

- 5.2 Charges for Modifications and Delivery Point Maintenance.** An estimate of the costs of the Modifications for these Delivery Points is shown on Exhibit A. Customer shall pay Owner for Owner's actual labor and material costs reasonably incurred, including overheads and tax gross up ("Final Costs") associated with the Modifications. Customer understands that Owner's estimate is non-binding and that Customer will pay the actual costs and charges reasonably incurred consistent with this Section. Customer shall provide a Purchase Order (document issued by Customer authorizing Owner to proceed with project on the basis of the estimated Final Costs, and indicating a commitment to pay Owner the Final Costs of the project) in the amount of the estimated Final Cost to Ameren's contact person, identified in Article 10, Notices, within thirty (30) days of the Effective Date of this Agreement. Final Costs will be invoiced at the completion of the project and Customer agrees to make a lump sum payment in the amount invoiced within thirty (30) days of receipt of such invoice.

Ongoing costs of maintenance of the Delivery Point facilities shall be billed to Customer as reasonably incurred by Owner. If in the future such facilities require replacement, Customer shall be responsible to Owner for any reasonable replacement costs. Also, if in the future Customer requests that the Delivery Point facilities be removed, Customer will be responsible to Owner for Owner's actual costs reasonably incurred for such removal. Upon receipt by Owner of payment by Customer for removal of the Delivery Point facilities, Customer shall have no further obligation as to the cost associated with such facilities.

- 5.3 Metering Charges.** Charges for metering associated with the Delivery Points (including operations and maintenance of such metering equipment) shall be in accordance with the metering terms of the currently effective WDS Agreement, or of any successor agreement, and shall be billed monthly pursuant to this Agreement or through an amendment to the WDS Agreement as prescribed above.

ARTICLE 6 FORCE MAJEURE

- 6.1** Except for obligations to make any payments under this Agreement and to comply with the provisions of Article 5, the Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that:
- (a) the non-performing Party, as promptly as practicable after the Party reasonably determines that a Force Majeure event has occurred and such Force Majeure event will adversely impact the Party's ability to perform its obligations hereunder, gives the other Party written notice describing the particulars of the occurrence, including a reasonable estimation of the Force Majeure's expected duration and the probable impact on the performance of the non-performing Party's obligations hereunder;
 - (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
 - (c) the non-performing Party uses all Reasonable Efforts to remedy its inability to perform; and
 - (d) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it gives prompt written notification thereof to the other Party.

ARTICLE 7 LIABILITY AND INDEMNIFICATION

- 7.1 LIMITATION ON DAMAGES.** UNDER NO CIRCUMSTANCE SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, MEMBERS, DIRECTORS, ALTERNATE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, OR ANY OF THEM, BE LIABLE TO THE OTHER PARTY, WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EXCEPT TO THE EXTENT THE PARTY AND/OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IS LIABLE TO A THIRD PARTY FOR SUCH DAMAGES. THE PARTIES' LIABILITY HEREUNDER SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES (INCLUDING DAMAGES DESCRIBED IN THE PRECEDING SENTENCE FOR WHICH A PARTY IS LIABLE TO A THIRD PARTY), AND ALL OTHER DAMAGES ARE EXCLUDED WITHOUT

REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

- 7.2 **Indemnification.** The Parties shall indemnify, defend and hold harmless each other (and their respective directors, alternate directors, members, officers, employees, and agents) for any Third-Party Claims arising from the indemnifying Party's negligence or willful misconduct, or the negligence or willful misconduct of the indemnifying Party's employees, agents, suppliers, affiliates, contractors or subcontractors in connection with the performance of this Agreement. "Third Party Claims" means all claims, demands, losses, costs, expenses, damages (including, without limitation, direct, indirect, incidental, consequential, special, exemplary, and punitive damages), judgments, actions, payments made in settlement, arbitration awards, and liabilities, including reasonable attorney's fees, arising out of death, bodily injury or property damage brought by any individual, entity, partnership, association, or Governmental Authority which is not a Party to the Agreement (each a "Third Party").
- 7.3 **Survival.** The limitation of liability provided for, and the indemnification obligations of each Party under this Article, shall continue in full force and effect regardless of whether this Agreement has either expired or been terminated or canceled with respect to matters that arise during the effectiveness of the Agreement.

ARTICLE 8 BREACH, CURE AND DEFAULT, AND DISPOSITION OF FACILITIES UPON TERMINATION

- 8.1 **Breach.** A breach of this Agreement shall occur upon the failure by a Party or its affiliates, successors or assigns to perform any material term or condition of this Agreement.
- 8.2 **Events of Breach.** A breach of this Agreement by a Party (the "Breaching Party") shall include:
- (a) The failure to comply with any material term or condition of this Agreement, including but not limited to any material breach of a representation, warranty or covenant made in this Agreement;
 - (b) If a Party or its affiliates, successors or assigns: (i) by decree of a court of competent jurisdiction, is adjudicated bankrupt or insolvent; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law, or consents to the filing of any bankruptcy or reorganization petition against it under any similar law which is not dismissed within thirty (30) days; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;

- (c) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (d) Failure of any Party or its affiliates, successors or assigns to provide such access rights, or a Party's attempt to revoke or terminate such access rights, as provided under this Agreement; or
- (e) Failure of any Party or its affiliates, successors or assigns to provide information or data to another Party as required under this Agreement, provided that the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement or to satisfy Regulatory Requirements.

8.3 Cure and Default.

- (a) A Breaching Party automatically will be deemed to be in "Default" of this Agreement upon the occurrence of any one of the events described in Sections 8.2(b)(i)-(iv) of the Agreement.
- (b) Upon the occurrence of any event of breach other than those described in Section 8.2(b)(i)-(iv), any Party not in breach (hereinafter a "Non-Breaching Party"), when it becomes aware of any such breach, shall give written notice of the breach to the Breaching Party. Such notice shall set forth, in reasonable detail, the nature of the breach, and where known and applicable, the steps necessary to cure such breach. Upon receiving written notice of the breach hereunder, the Breaching Party shall have thirty (30) days to cure such breach. If the breach is such that it cannot be cured within such thirty-day (30-day) time period, the Breaching Party will provide written notice to the Non-Breaching Party of its intent to commence in good faith all steps as are reasonable and appropriate to cure the breach and diligently pursue such action to completion. Such notice to the Non-Breaching Party shall include a reasonable estimate of the time necessary to cure the breach. In the event the Breaching Party fails to cure the breach, fails to provide written notice to the Non-Breaching Party if the breach cannot be cured within the thirty-day (30-day) time period, and fails to commence reasonable and appropriate steps to cure the breach, the Breaching Party will be in "Default" of the Agreement.
- (c) Upon the occurrence of a Default, any Non-Breaching Party may, subject to the limitations contained in this Article 8, and subject to the FERC authorization referenced in Section 2.3, terminate this Agreement as to the Breaching Party by providing written notice of termination to the Breaching Party; provided that where a Default has been disputed by the Breaching Party, termination of this Agreement on account of such Default may not occur absent a final, binding and non-appealable decision by FERC, an arbitrator, or a court of competent authority having jurisdiction and making a determination of said Default.

8.4 Disposition of Facilities upon Termination.

- (a) Upon termination of this Agreement at the request of the Customer or through Default by the Customer, unless otherwise agreed by the Parties in writing, Owner shall:

 - (i) prior to the construction and installation of any portion of the Modifications, to the extent possible, cancel any pending orders of, or return, such facilities to the extent that such orders or facilities are not required by Owner for other purposes;
 - (ii) unless otherwise determined by Owner to cause a safety issue, keep in place any portion of the Modifications already constructed and installed; and
 - (iii) perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of Owner's transmission and distribution systems (e.g., construction demobilization, wind-up work).
- (b) Upon termination of this Agreement and submission of an itemized invoice by Owner, Customer shall reimburse Owner within 30 days from the date of an Owner invoice in a single lump sum payment, for any costs reasonably incurred by Owner in performance of the actions required or permitted by Section 8.4(a) and for any costs reasonably incurred by Owner prior to the time of termination, including design, drafting, and engineering, for any portion of Modifications described in Exhibit A.
- (c) Upon termination of this Agreement and prior to the construction and installation of any portion of the Modifications, Owner may, at its option, retain any portion of such materials not cancelled or returned in accordance with Section 8.4(a), in which case Owner shall be responsible for all costs associated with procuring such materials. To the extent that Customer has already paid Owner for any or all of such costs, Owner shall refund such amounts, without interest, to Customer. If Owner elects to not retain any portion of such materials that it was not able to cancel or return, Owner shall convey and make available to Customer such materials as soon as practicable after Customer has made full payment for such materials.
- (d) Notwithstanding anything to the contrary, if this Agreement is terminated by the Owner for any reason not attributed to Default by the Customer or as mutually agreed to in writing between the Owner and the Customer, the Customer shall not be liable for any costs incurred by the Owner in relation to or arising from this Agreement.

ARTICLE 9 DISPUTES

- 9.1 Submission.** Any claim or dispute, which either Party may have against the other, arising out of this Agreement, shall be submitted in writing to the other Party within a reasonable time after the circumstances which gave rise to the claim or dispute have taken place or the discovery of such circumstances. The submission of any claim or dispute shall include a concise statement of the question or issue in dispute, together with relevant facts and documentation to fully support the claim. In no event shall any claim be brought hereunder later than one year after the completion of the Modifications.
- 9.2 Alternative Dispute Resolution.** If any such claim or dispute arises, the Parties shall use their best efforts to resolve the claim or dispute through good faith negotiation. Upon the failure of such negotiations, the parties may resolve the claim or dispute through mutually agreed to Alternative Dispute Resolution ("ADR") techniques, which may, if both Parties consent, include arbitration before one neutral arbitrator conducted in accordance with the rules of the American Arbitration Association's Commercial Arbitration Rules. All negotiations pursuant to these procedures for the resolution of Disputes will be confidential, and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.
- 9.3 Termination of ADR.** Notwithstanding the provisions of Section 9.2, either Party may bypass ADR altogether or terminate its participation in ADR during any stage of ADR prior to the entry of judgment upon the decision of an arbitrator and proceed to submit such claim or dispute for decision by a court or regulatory authority of competent jurisdiction.

ARTICLE 10 NOTICES

- 10.1** Any notice, authorization, invoice, or consent required or permitted under this Agreement will be deemed properly given if: (1) provided in writing and delivered in person; (2) delivered to a nationally recognized overnight courier service and properly addressed with the delivery charges prepaid; or (3) sent by electronic communication or facsimile, with confirmation of successful transmission, to the intended recipient as follows:

To Owner:

B. Todd Masten
Ameren Illinois
200 West Washington Street
Springfield, IL 62701

With a copy to:

General Counsel
Ameren Services Company
1901 Chouteau Avenue
St. Louis, MO 63166

To Customer:

Mr. Kevin Gaden
President & CEO
Illinois Municipal Electric Agency
3400 Conifer Drive
Springfield, IL 62711

City Of Mascoutah

Mascoutah, IL

Any such notice or communication shall be deemed to have been given as of the date received. A Party may change its notice information by giving the other Party notice in accordance with this Article.

ARTICLE 11 MISCELLANEOUS

- 11.1 Governing Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Illinois, without reference to its rules relating to choice of law, except to the extent preempted by the laws of the United States of America.
- 11.2 Relationship of Parties; No Third-Party Beneficiaries.** Nothing contained in this Agreement will be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party will be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement will be construed to create a duty to, any standard of care with reference to, or any liability or inference of liability to a third party.
- 11.3 No Conflicting Agreement or Obligations.** Each Party represents and warrants that the execution of this Agreement, and the performance of its obligations under it, have been duly authorized and do not conflict with any other agreements or binding obligations applicable to it.
- 11.4 Assignment.** This Agreement will inure to the benefit of, and be binding upon, the Parties and their respective successors and assignees. Any Party may assign, transfer, or

subcontract all or any part of its rights and obligations under this Agreement, provided that the Party whose rights and obligations have been assigned, transferred, or subcontracted will continue to have the primary responsibility for all of its obligations set forth in this Agreement unless relieved of its obligations by written consent of the other Party; and provided further that any person or business entity that takes ownership or control of all or substantially all of Customer's assets shall be required to take assignment of Customer's rights and obligations under this Agreement.

- 11.5 Recitals, Headings and Subtitles.** The recitals, headings, and subtitles in the Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation.
- 11.6 Complete Agreement; Amendment.** This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, of the Parties with respect to the subject matter. No amendment of any provision of this Agreement will be valid unless set forth in a written amendment hereafter signed by authorized representatives of all Parties.
- 11.7 Waiver.** Any waiver at any time by any Party of its rights with respect to any breach of this Agreement, or with respect to any other matter arising in connection with this Agreement, will not constitute or be deemed a waiver with respect to any other breach or other matter arising in connection with this Agreement.
- 11.8 Counterparts.** This Agreement may be executed in counterparts, which taken together will constitute a single original document.
- 11.9 Execution and Effective Date.** This Agreement has been executed by duly authorized representatives of the Parties and shall become effective as of the Effective Date.
- 11.10 Subcontractors.** Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of the Agreement in providing such services. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under the Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by the Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party. No subcontractor is intended to be, nor will it be deemed to be, a third-party beneficiary of the Agreement.
- 11.11 Providing of Confidential Information.** Each Party may provide and supply to the other Party in its discretion, confidential or proprietary information which may be contained in documents, data, graphic or computerized material or other written or oral information (the "Confidential Information") in connection with or related to this Agreement. Each Party agrees that any and all Confidential Information which has been or may be disclosed, directly or indirectly, to it by or on behalf of the other Party with respect to this Agreement shall be maintained in strict confidence by it and shall not be disclosed by it to any third person or entity (other than its directors, alternate directors,

members, officers, employees or consultants including financial and legal advisors having a need to know such Confidential Information) without the disclosing Party's prior express written consent. The Parties each agree that they shall not make any use of any Confidential Information received pursuant to this Agreement except for the limited purposes for which such Confidential Information is given in connection with this Agreement without the express prior written consent of the disclosing Party.

11.12 Equipment Installed According to Manufacturer's Specifications. At its own cost, Owner will correct any installation installed by the Owner that is not in accordance with the manufacturer's written requirements and Good Utility Practice.

Illinois Municipal Electric Agency

By: _____

Name: _____

Title: _____

City of Mascoutah

By: _____

Name: _____

Title: _____

**Ameren Services Company
as designated agent for
Ameren Illinois Company
d/b/a Ameren Illinois**

By: _____

Name: _____

Title: _____

EXHIBIT A

FACILITIES TO BE INSTALLED

**SCOPE OF WORK, COST RESPONSIBILITY,
OPERATING RESPONSIBILITY AND SCHEDULE**

1.0 The Modifications.

1.1. Owner shall install, own, operate, and maintain the following facilities:

1.1.1. Delivery Point Facilities (Dedicated Tap-Related Connection Facilities):

Delivery Point 1:

One 138 kV motorized switch, foundation, relaying, surge arrestors, switching structure, meter structure, conductor, cable, connectors, and other associated equipment. The new switch shall be located on Owner's new 138 kV ring bus within the Hillgard Breaker Station, and connect to Customer's Line 1379.

Delivery Point 2:

One 138 kV motorized switch, foundation, relaying, surge arrestors, switching structure, meter structure, conductor, cable, connectors, and other associated equipment. The new switch shall be located on Owner's new 138 kV ring bus within the Hillgard Breaker Station, and connect to Customer's Line 1457.

Owner shall charge Customer for applicable labor, materials, overheads, and tax gross-up associated with the equipment identified above. Metering facilities shall also be installed by Owner, as addressed in Section 1.1.2, Metering, below.

1.1.2 Metering:

For both Delivery Points 1 and 2, Owner shall provide, own, install and maintain a bidirectional meter with 4 KYZ signals, metering test switch, meter cabinet, digital phone, primary PTs and CTs, and secondary cables on its meter structure. Owner shall make available kWh/kVArh pulse data from its meter to Customer. All metering related equipment, (with exception to the structures used for metering PTs and meter, included in the Delivery Point facilities, above) shall be subject to charges based on established rates for applicable metering equipment, as per Article 5 of this Agreement.

1.1.3 Other:

The creation of Delivery Point 2 is a relocation of the existing Mascoutah 138 kV delivery point, which eliminates the need for the existing delivery point. Owner shall remove its equipment associated with this delivery point, which consists solely of Owner's metering equipment. Owner shall charge Customer for applicable costs associated with removal of its metering facilities.

- 2.0 Customer Built Facilities.** Customer shall design, procure, install, own, control, operate, maintain and pay for all facilities on its side of Delivery Points 1 and 2, inclusive of the 138 kV lines to be extended to Owner's Hillgard Breaker Station. In addition, Customer shall procure, build, install, pay for, own, operate and maintain any equipment necessary for receiving the pulse data from the Owner's metering facilities identified in Section 1.1.2, above. Customer shall also install OPGW on its HILG-1379 and HILG-1457 lines, as indicated on Attachment 2.

Customer shall be responsible for removing its own facilities associated with the existing 138 kV connection, and shall bear all associated costs.

- 3.0 Final Costs and Cost Responsibility.** Owner shall charge Customer for applicable labor, materials, overheads, and tax gross-up associated with the facilities installed under Sections 1.1.1 and 1.1.3 above. The non-binding estimate of the total Final Costs to Customer is shown below:

| | |
|------------------------|--------------|
| Installed Cost: | \$ 868,163 |
| Tax Gross Up (28.42%): | 246,732 |
| Total Final Costs: | \$ 1,114,895 |

Customer and Owner hereby acknowledge and agree that the estimated Final Costs are only a non-binding estimate of Owner's total Final Costs for the Modifications. Customer agrees to pay Owner for Modifications made by Owner as specified in the Agreement, including but not limited to Article 5.

- 4.0 Inspection and Testing.** Upon the completion of the installation of the Customer Built Facilities under this Agreement, Owner shall have the right to witness the inspection and testing of all such Customer Built Facilities. Customer shall provide reasonable notice to Owner prior to such testing so that Owner may have representatives present for the tests. Customer shall provide to Owner written certified copies of the test results for Owner's records, as applicable.
- 5.0 Delivery Points:** The Delivery Points are located at the point of change in ownership of facilities, i.e., where Customer's conductor connects to Owner's arbor structure. The configuration for the arrangement is as represented in the one-line diagram on Attachment 2 of this Exhibit A.
- 6.0 Estimated Load Requirements:** Customer estimates based on its existing load that the initial total load requirements from both Delivery Points 1 and 2 will be approximately 18.5 MW. While Customer does not anticipate significant load growth in the near future, this estimated load requirement shall in no way serve as a limitation on Customer's load growth or its right to receive power from the transmission grid.
- 7.0 Estimated In-Service Date:** Customer requests the Delivery Points be energized by December, 2019. Owner anticipates it can meet the requested in-service date; however, Owner's ability to meet the requested date is non-binding and is dependent on the

construction of the new Hillgard Breaker Station, and impacts such as material lead time requirements, weather, and other factors which may impact the schedule of events.

- 8.0 Scheduled Outage:** Customer and Owner shall jointly determine an acceptable time period for the outage to complete the work in accordance with Good Utility Practice.
- 9.0 Coordination of Design Details:** Customer and Owner shall coordinate the design details for all associated connection facilities, including but not limited to associated structures, line loads, physical layout and structure locations, and any other facilities that the Parties determine to be appropriate. All such design details, including protective device specifications and settings are subject to the approval of Owner to ensure coordination with Owner's 138 kV relay settings.
- 10.0 Jurisdictional and Functional Authority:** Owner will maintain exclusive Jurisdictional Authority over the 138 kV ring bus from which Customer's Delivery Points are served, and Owner's isolating disconnect device at each Delivery Point. Owner shall maintain Functional Authority over its 138 kV ring bus and Owner's isolating disconnect device. Customer shall maintain Functional Authority over Customer's isolating disconnect device located at Customer's 138/34.5kV substation(s). Owner and the Customer will honor any hold tags or other clearances given for any isolating disconnection device. Customer will maintain Jurisdictional Authority and Functional Authority over its 138 kV facilities on Customer's side of Owner's 138 kV arbor structure.
- "Jurisdictional Authority" shall mean the Party that maintains the sole authority to direct and coordinate operation of the system equipment. "Functional Authority" shall mean the Party that maintains the authority to specifically perform or direct someone else to perform detailed switching operations, provided such Party has secured the necessary authorization from the Party with the Jurisdictional Authority.
- 11.0 Termination Charges:** Following completion of the Modifications, in the event Customer chooses to terminate the operation of the Delivery Point, such that the Delivery Point is no longer needed by Customer, Customer shall be responsible for charges associated with such termination as specified in the Agreement in Article 5.
- 12.0 Miscellaneous:** This project provides that Owner will allow Customer's ROW to encroach on Owner's easement, as associated with Customer's construction and installation of a new, Customer owned 138 kV line. Details as to the amount of allowable encroachment and other details will be covered by a separate encroachment agreement. However, in the event Owner and Customer enter into such separate encroachment agreement, and Customer cancels the project, such encroachment agreement shall be canceled and the encroachment shall be voided. In addition, to the extent Owner incurs costs to provide for such encroachment agreement, Customer shall reimburse Owner. Unless otherwise covered under the terms of the encroachment agreement, Customer shall reimburse Owner as per terms contained in Article 8 of this Agreement.

Attachment 1 to Exhibit A

Geographic Diagram

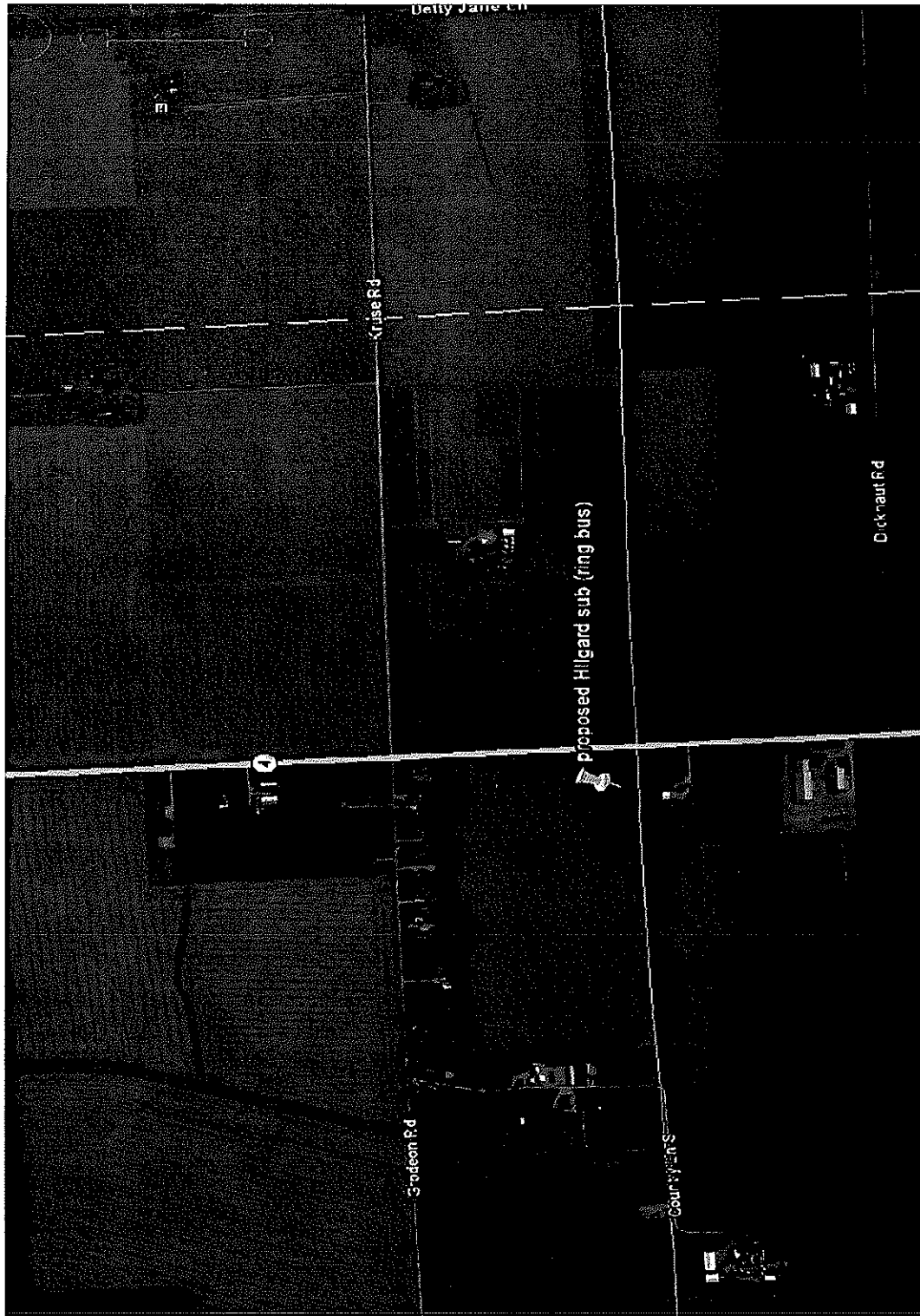
(Diagrams shown on following pages)

CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION –

DO NOT RELEASE

CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION

– DO NOT RELEASE

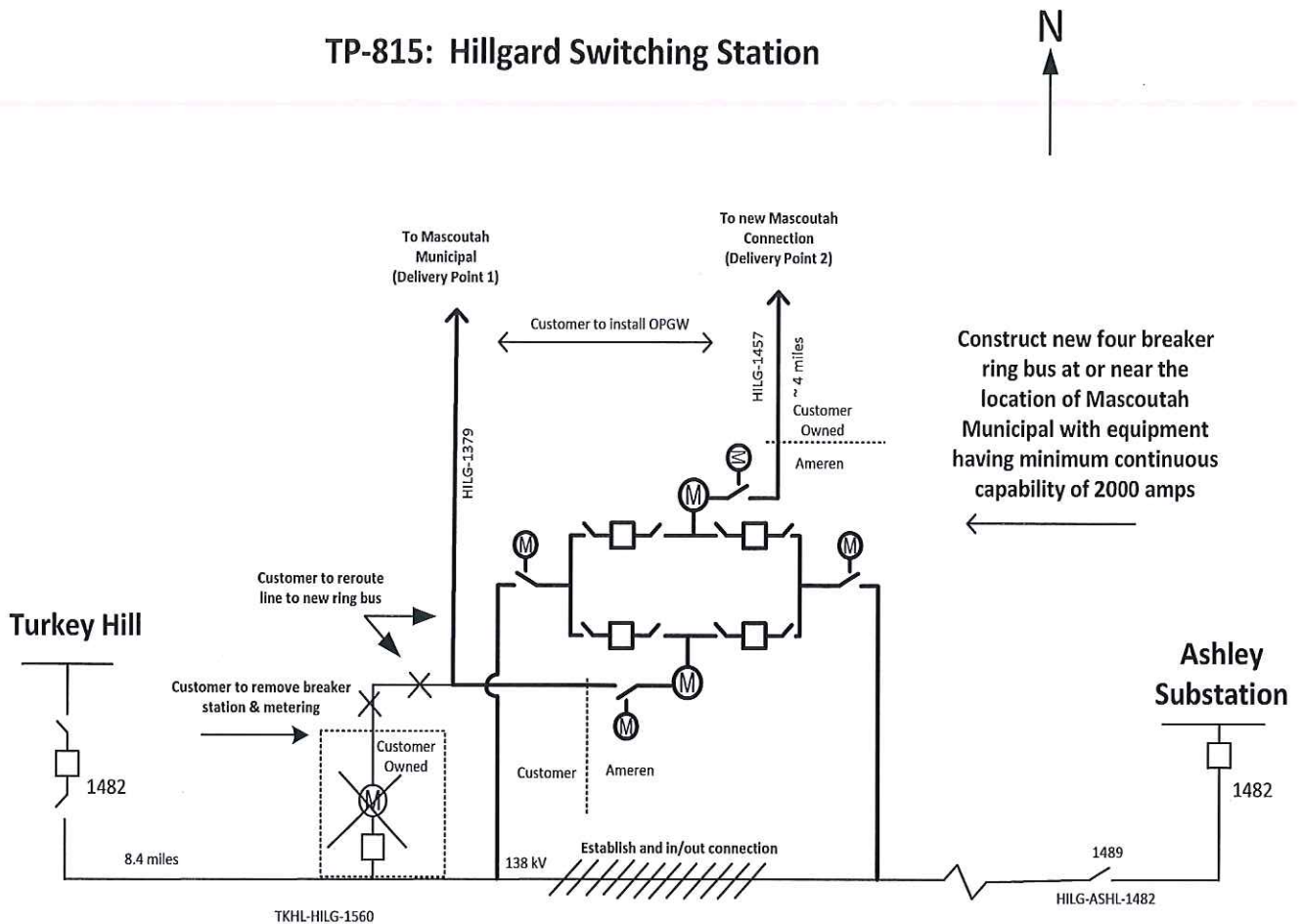


**CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION –
DO NOT RELEASE**

**Attachment 2
to Exhibit A
IMEA/Mascoutah – Hillgard Delivery Points
One-Line Diagram
(Diagram shown on following page)**

IMEA/Mascoutah – Hillgard Delivery Points

TP-815: Hillgard Switching Station



Construct new four breaker ring bus at or near the location of Mascoutah Municipal with equipment having minimum continuous capability of 2000 amps

- Arrangement shown is intended to depict electrical one-line only. Physical aspect may differ from what is shown.

CITY OF MASCOUTAH

Staff Report

TO: Honorable Mayor and City Council

FROM: Cody Hawkins City Manager

SUBJECT: **Second Amendment to the Final Development Agreement – DSS Properties, LLC and SDS Stores, Inc. d/b/s Eddies, Inc. (First Reading)**

MEETING DATE: February 1, 2016

REQUESTED ACTION:

Approval of the Second Amendment to the Final Development Agreement for Eddies Fuel Cell/Convenience Store and Huddle House Restaurant Project with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. by adoption of Ordinance.

BACKGROUND AND STAFF COMMENTS:

On September 6, 2011, the City Council approved by motion a Final Development Agreement with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. The core of the original agreement included establishment of a Business District and the imposition of a 1% sales tax for a period of up to 23 years to fund the construction of improvements to Perrin Road. Taxable bonds were to be issued for the Perrin Road project for an amount not to exceed \$750,000. Additionally, the City pledged 1% of its portion of regular sales tax generated (1.25%) from the project towards repayment of the issuance of a tax exempt bond. Tax exempt bonds were to be issued for project costs not to exceed \$1.815 million or 30% of the total cost of the project, whichever was the lesser. The amount of sales tax generated from the project, based upon the pro forma submitted by the developer, determined the bond amount in the original development agreement.

The project was completed at a cost of approximately \$6.8 million and has been in operation since the middle of January 2014. Perrin Road was constructed at a cost of approximately \$650,000. Prior to the issuance of the bonds as outlined in the Final Development Agreement, it was required that revenue studies be prepared by an independent party. Development Strategies, Inc. of St. Louis prepared revenue studies for the Huddle House project. The revenue study (the sales tax projections) came in lower than the developer's revenue study and therefore the tax exempt bond amount for the project was decreased to \$1,416,437. Subsequently, the Final Development Agreement was amended by Council on August 18, 2014. Along with specifying the amount of tax-exempt and taxable bonds to be issued based upon the independent revenue studies, the agreement was also amended to include specifically how the developer is to report sales tax revenues, and lastly, that the Developer agreed to prohibit all retail entities located on the property from selling any biodiesel fuel that is presently exempt from sales taxes as provided in the State Sales Tax Act while any of the bonds issued by the City for the project are

outstanding. This State Sales Tax on biodiesel fuels is in effect through 2018 and may or may not be extended by State lawmakers.

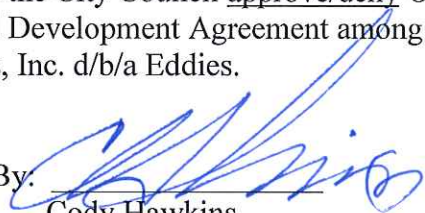
To stay competitive in the market, the Developer has sold the biodiesel fuel product that is sales tax exempt. As a result, their sales tax revenues have decreased and subsequently, the tax exempt bond amount for the project was significantly lowered. At this point, there is no market to sell these bonds, and the City therefore cannot issue bonds for the project.

The Developer is requesting the Council to consider agreeing to terms of the Final Development Agreement by pledging 1% of its portion of regular sales tax generated (1.25%) from the project towards repayment of the debt obligation in the form of a rebate to the Developer rather than towards repayment of a tax exempt bond. The total incentive will not exceed \$1.815 million or 30% of the total development cost, whichever is lesser. The 1% Business District Sales Tax would continue to be used to pay the City back for the cost to improve Perrin Road. If the City is paid back Perrin Road expenses prior to the Business District expiring, the 1% Business Sales Tax generated by the Project, the Developer is also requesting that the Business Sales Tax be rebated to him to assist with his debt obligation until the Business District expires, or the total incentive cap is reached.

SUGGESTED MOTION:

I move that the City Council approve/deny Ordinance 16-____, Approving a Second Amendment to the Final Development Agreement among the City of Mascoutah, DDS Properties, LLC and SDS Stores, Inc. d/b/a Eddies.

Approved By: _____


Cody Hawkins
City Manager

Attachments: A – Ordinance
B – Second Amendment to Final Development Agreement
C – Original Final Development Agreement

ORDINANCE NO. _____

AN ORDINANCE APPROVING AN AMENDMENT TO THE FINAL DEVELOPMENT AGREEMENT AMONG THE CITY OF MASCOUTAH, ILLINOIS, DSS PROPERTIES LLC AND SDS STORES, INC. d/b/a EDDIES, INC.

WHEREAS, the City of Mascoutah, Illinois (the "City") entered into a Final Development Agreement dated as of May 16, 2012 (the "Development Agreement") with DSS Properties LLC, an Illinois limited liability company ("DSS"), and SDS Stores, Inc. d/b/a Eddies, Inc., an Illinois corporation ("SDS" and, together with DSS, the "Developer"); and

WHEREAS, pursuant to the Development Agreement and to induce the Developer's undertaking and performance of the project described in the Development Agreement (the "Project"), the City agreed to reimburse the Developer for certain costs related to the Project and to construct certain improvements to Perrin Road; and

WHEREAS, the Developer has completed the Project, which includes a Huddle House restaurant and a fuel service station with convenience store, and the City has completed the improvements to Perrin Road; and

WHEREAS, the City and the Developer desire to enter into a Second Amendment to Final Development Agreement (the "Second Amendment") to amend the Development Agreement to, among other things, clarify certain terms of the Development Agreement, including the amount and type of incentives to be issued by the City.; and

WHEREAS, the City Council hereby determines that the implementation of the Second Amendment and the fulfillment of the Development Agreement, as amended by the Second Amendment, are in the best interests of the City and the welfare of its residents, and will serve the needs of the community, create jobs, further the development of adjacent areas and strengthen the commercial sector of the City and the region.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MASCOUTAH, ILLINOIS, AS FOLLOWS:

Section 1. Approval of Second Amendment. The City hereby approves the Second Amendment, in substantially the form set forth as **Exhibit A** hereto, between the City and the Developer, with such changes therein as shall be approved by the officers of the City executing the Second Amendment, such officers' signatures thereon being conclusive evidence of their approval and the City's approval thereof.

Section 2. Execution of Second Amendment. The Mayor is hereby authorized and directed to execute and deliver the Second Amendment, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to the

Attachment A

Second Amendment and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Severability. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. If any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

Section 4. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

Section 5. Recitals. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 6. Adoption. This Ordinance shall be in full force and effect from and after its passage, approval and publication, if required, as provided by law.

Passed by the City Council of the City of Mascoutah, Illinois on this ____ day of _____, 2016 on the following vote:

YEAS: _____.

NAYS: _____.

ABSENT: _____.

Gerald Daugherty, Mayor

[SEAL]

ATTEST:

Kari Haas, City Clerk

EXHIBIT A

FORM OF SECOND AMENDMENT TO FINAL DEVELOPMENT AGREEMENT

SECOND AMENDMENT TO FINAL DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO FINAL DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of _____, 2016 (the "Effective Date"), by and among the **CITY OF MASCOUTAH, ILLINOIS**, a home rule municipality organized as a municipal corporation of the State of Illinois (the "City"), **DSS PROPERTIES LLC**, an Illinois limited liability company ("DSS") and **SDS STORES, INC. d/b/a EDDIES, INC.** ("SDS" and collectively with DSS, the "Developer"). *Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the below-defined Original Development Agreement.*

RECITALS

A. The City and the Developer are parties to a Final Development Agreement dated May 16, 2012 (the "Original Development Agreement" and the "First Amendment" dated 8-18-14 ord. # 14-10 and, together with this Amendment, this "Agreement"), pursuant to which the Developer agreed to construct a project described therein (the "Project") on the real property described on **Exhibit A** hereto and the City agreed, in recognition of the Project's potential for job creation and stimulation of further investment, to provide the Developer with certain incentives to assist in the development of the Project.

B. The City and the Developer desire to amend the Original Development Agreement to, among other things, clarify certain terms of the Original Development Agreement, including the amount and type of incentives to be issued by the City.

AGREEMENT

NOW THEREFORE, in consideration of the above premises and the mutual obligations of the parties hereto, each party hereby agrees that the Original Development Agreement shall be and is hereby amended as provided below.

1. Remove Taxable and Tax-Exempt Bonds. Notwithstanding anything in the Original Development Agreement to the contrary, all references to incentives involving taxable and tax-exempt bonds shall be removed from the agreement (pg. 2 #3, pg. 3 #9, pg. 3 #9 a/c/d/g/h, pg. 5 B #2 and #5)

2. Business District Sales Tax. Notwithstanding anything in the Original Development Agreement to the contrary, the business district sales tax (1%) generated by the project will be pledged to pay for the cost of improvements to Perrin Road. Once the road debt is paid and if there is time remaining in the life of the business district (no extension included), the 1% business district sales tax generated by the project will be pledged towards allowable development costs, not to exceed \$1.815 million or 30% of total project cost (including any other sales tax incentives).

3. Regular Sales Tax. Notwithstanding anything in the Original Development Agreement to the contrary, the City shall pledge _____% of its regular sales tax toward allowable development costs and will be for a term of _____ years, not to exceed \$1.815 million or 30% of total project cost (including any other sales tax incentives). This incentive will be effective March 1, 2016.

Attachment B

4. **District Revenues.** Replace District revenues with Business District sales tax generated by the project (pg. 3 #3).

5. **Developer Incentive.** The incentive issued to the Developer for the allowable development cost in total will not exceed \$1.815 million or 30% of the total development cost, whichever is lesser. In addition, the incentive will expire based on the terms and time limits referenced in the agreement and/or upon the expiration of the Business District, or any change in ownership.

6. **City Liability.** In no way does any sales tax rebate or incentive make the City liable for the debt obligation of the project.

7. **Ratification and Approval.** This Amendment is made in accordance with Section (10)b of the Original Development Agreement. Except as modified herein, the Original Development Agreement is hereby ratified and confirmed, and except for the modifications contained herein, all other terms and conditions of the Original Development Agreement shall remain unchanged and in full force and effect.

8. **Binding Effect.** This Amendment shall be binding upon the Developer and the City and their respective successors and assigns.

9. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original and all of such counterparts, taken together, shall constitute one and the same agreement, even though all of the parties hereto may not have executed the same counterpart of the Amendment.

10. **Severability.** If any provision of this Amendment shall be unlawful, then such provision shall be null and void, but the remainder of this Amendment shall remain in full force and effect and be binding on the parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, DSS and SDS have caused this Amendment to be executed as of the date set forth above.

CITY OF MASCOUTAH, ILLINOIS

(SEAL)

By: _____
Gerald E. Daugherty, Mayor

Attest:

Kari Haas, City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this ____ day of _____, 2016, before me appeared **GERALD E. DAUGHERTY**, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF MASCOUTAH, ILLINOIS**, a home rule municipality organized as a municipal corporation of the State of Illinois, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **GERALD E. DAUGHERTY** acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

DSS PROPERTIES LLC

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this _____ day of _____, 2016, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **DSS PROPERTIES LLC**, an Illinois limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

SDS STORES INC. d/b/a EDDIES, INC.

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this _____ day of _____, 2016, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **SDS STORES INC. d/b/a EDDIES, INC.**, an Illinois corporation, and that he is authorized to sign the instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

BENCHMARK TITLE COMPANY, LLC
1124 HARTMAN LANE
SHILOH, IL 62221 1106035

WARRANTY DEED

30

THE GRANTOR, **Moto, Inc.**, a Missouri corporation, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, does hereby grant, bargain and sell to DSS Properties, LLC, an Illinois limited liability company, with a principal office address as 7680 State Highway 161, Germantown, Illinois 61145, ("Grantee") the real estate situated in St. Clair County, Illinois as more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Property"), subject to all easements, rights of way, conditions, covenants, restrictions, reservations, building lines, zoning regulations, rights of parties in possession or under unrecorded leases and other matters either of record or which may or would have been disclosed by inspection or accurate survey of the real estate ("Permitted Exceptions"), and also subject to General Real Estate Taxes for the years 2011 and 2012 to the extent same are not now due and payable, and subsequent years, an adjustment having been made therefor.


The Grantor warrants to the Grantee and Grantee's successors in title that Grantor has not created any lien, charge or encumbrance against the real estate described herein except for the Permitted Exceptions, and Grantor covenants to defend said real estate to the extent of only the warranty made herein and none other against the lawful claims of all persons claiming by, through or under the Grantor but none other.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be signed effective as of
May 22, 2012.

"Grantor"

Moto, Inc., a Missouri corporation

By:


James G. Forsyth, III,
Chief Executive Officer

APPROVED MAPPING & PLATTING
6-11-2012 Director
SUBJECT TO ZONING REGULATIONS

* A 0 2 3 1 7 8 3 8 3 *

A02317838

MICHAEL T. COSTELLO
RECORDER OF DEEDS
ST. CLAIR COUNTY
BELLEVILLE, IL

06/11/2012 09:38:45AM
RHSP FEE: 10.00
STATE FEE: 525.00
COUNTY FEE: 262.50
TOTAL FEE: \$817.50
PAGES: 3

STATE & COUNTY
TAX
STATE OF ILLINOIS
JUN. 11. 12
6-11-12
ST. CLAIR COUNTY

0000039218
REAL ESTATE
TRANSFER TAX
00787.50
FP351003

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR) ss.

The foregoing instrument was acknowledged before me this 22nd day of May, 2012 by James G. Forsyth, III, Chief Executive Officer of Moto, Inc., a Missouri corporation, on behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Melinda A French
Notary Public

My term expires: 12/14/2015



Future Taxes to Grantee's Address

Return this document to Grantee
This Instrument was prepared by:
Whose address is:

L. Kevin Vick
Greensfelder, Hemker & Gale, P.C.
12 Wolf Creek Drive
Swansea, Illinois 62226

Mail tax bills!
DSS Properties
7680 State Hwy 161
Germantown IL 62245

EXHIBIT A

LEGAL DESCRIPTION

Part of Lot No. 16B being part of the SW ¼ of the SE ¼ of Section 6, T1N R6W of the 3rd P.M., St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "A" on page 388, being more particularly described as follows, to-wit:

Commencing as the intersection of the centerline of F.A. 68 (Ill. Route 4) with the South line of Section 6; thence South 86° 45' 03" East (assumed bearing) along the South line of Section 6, a distance of 138.83 feet; thence North 00° 56' 00" East, a distance of 128.75 feet; thence North 06° 02' 40" West, a distance of 146.00 feet to the point of beginning of the tract of land herein described; thence continuing North 06° 02' 40" West, a distance of 281.38 feet; thence North 51° 46' 06" East, a distance of 70.02 feet; thence North 36° 13' 12" East, a distance of 14.64 feet; thence Southeasterly along a curve to the right having a radius of 442.46 feet, an arc distance of 431.72 feet to the point of tangency; thence South 34° 05' 43" East, a distance of 196.61 feet; thence Southeasterly along a curve to the left having a radius of 798.94 feet, an arc distance of 8.45 feet; thence North 86° 45' 03" West, a distance of 516.25 feet to the point of beginning of the tract herein described.

Situated in St. Clair County, Illinois.

Except the coal, oil, gas and other minerals underlying the surface of said land and all rights and easements in favor of the estate of said coal, oil, gas and other minerals.

Permanent Parcel No.: 10-06.0-400-008. *MC*

Benchmark Title Company
1206171



* A 0 2 3 2 7 8 9 1 6 *

A02327891

MICHAEL T. COSTELLO
RECORDER OF DEEDS
ST. CLAIR COUNTY
BELLEVILLE, IL

08/22/2012 08:30:08AM

RHSP FEE: 10.00

STATE FEE: 300.00

COUNTY FEE: 150.00

TOTAL FEE: \$482.00

PAGES: 6

WARRANTY DEED

32

THIS INDENTURE WITNESSETH, that the Grantor, Sean Bozorgzad a/k/a Sharhriar S. Bozorgzadeh and Kelly Lynn Evans, husband and wife, whose address is 221 Kane Dr., Herrin, IL 62948 in the County of Williamson and State of Illinois, for and in consideration of the sum of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, CONVEY AND WARRANT to DSS Properties, LLC, an Illinois Limited Liability Company, whose address is 7680 State Route 161, Germantown, IL, 62245, the following described real estate, to-wit:

See Attached Exhibit A

Informational Notes:

Parcel Numbers :10-06-0-400-020 and 10-07-0-200-023

Property Address: Perrin Road
Mascoutah, Illinois 62258

Previous Deed: Document No. A01885075 in Book 4124, Page 1992

Subject to all easements, reservations and other matters of record and zoning regulations situated in St. Clair County, Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Dated this 17th day of August, 2012

Sean Bozorgzad

Kelly Lynn Evans

APPROVED MAPPING & PLATTING
10-8-21-12
SUBJECT TO ZONING & FCRII ATTITUDE
Director

52

STATE OF ILLINOIS WASHINGTON)
COUNTY OF STARK WHATCOM)SS.

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY THAT Sean Bozorgzad and Kelly Lynn Evans, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal this 13th day of July, 2012



Nancy L. Witter
Notary Public

Send Future Tax Bills to:

DSS Properties, LLC

7680 State Highway 161

Germantown, IL 62245

Return this document to:

Benchmark Title Company, LLC

1124 Hartman Lane

Shiloh, IL 62221

The form of this instrument was prepared by:

Doreen Miller, Esq.

1124 Hartman Lane

Shiloh, Illinois 62221

Exhibit A

PARCEL 1:

Part of Lot Number 16B, being part of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 6, T1N R6W of the 3rd P.M., St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "A" on page 388, being more particularly described as follows, to-wit:

Commencing at the intersection of the centerline of F.A. 68 (Illinois Route 4) with the South line of Section 6; thence South $86^{\circ} 45' 03''$ East along the South line of Section 6, a distance of 138.83 feet to a point; thence North $0^{\circ} 56' 00''$ East, a distance of 35.03 feet to the point of beginning of the tract herein described; thence continuing North $0^{\circ} 56' 00''$ East, a distance of 93.72 feet to a point; thence North $6^{\circ} 2' 40''$ West, a distance of 427.38 feet to a point; thence North $51^{\circ} 46' 6''$ East, a distance of 70.02 feet to a point; thence North $36^{\circ} 13' 12''$ East, a distance of 14.64 feet to a point; thence Southeasterly along a curve of radius 442.46 feet, a distance of 431.72 feet to a point; thence South $34^{\circ} 5' 43''$ East, a distance of 196.61 feet to a point; thence Southeasterly along a curve of radius 798.94 feet, a distance of 397.34 feet to a point; thence North $86^{\circ} 45' 03''$ West a distance of 792.17 feet to the point of beginning of the tract herein described.

Excepting a tract of land, located in part of Lot 16B being part of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 6, T1N R6W of the 3rd P.M., St. Clair County, Illinois, being more particularly described as follows:

Commencing as the intersection of the centerline of F.A. 68 (Ill. Route 4) with the South line of Section 6; thence South $86^{\circ} 45' 03''$ East (assumed bearing) along the South line of Section 6, a distance of 138.83 feet; thence North $00^{\circ} 56' 00''$ East, a distance of 128.75 feet; thence North $06^{\circ} 02' 40''$ West, a distance of 146.00 feet to the point of beginning of the tract of land herein described; thence continuing North $06^{\circ} 02' 40''$ West, a distance of 281.38 feet; thence North $51^{\circ} 46' 06''$ East, a distance of 70.02 feet; thence North $36^{\circ} 13' 12''$ East, a distance of 14.64 feet; thence Southeasterly along a curve to the right having a radius of 442.46 feet, an arc distance of 431.72 feet to the point of tangency; thence South $34^{\circ} 05' 43''$ East, a distance of 196.61 feet; thence Southeasterly along a curve to the left having a radius of 798.94 feet, an arc distance of 8.45 feet; thence North $86^{\circ} 45' 03''$ West, a distance of 516.25 feet to the point of beginning of the tract herein described.

PARCEL 2:

A tract of land located in the NE $\frac{1}{4}$ of Section 7, T1N R6W of the 3rd P.M., St. Clair County, Illinois, more fully described as follows:

Beginning on the South line of County Highway #66 as the same is located and monumented, this date, which said point is located 125.0 feet East of and at right angles of Illinois Route #4 (F.A. Route #68); thence South $88^{\circ} 56'$ East from said beginning point and along the South line of said County Highway #66, a distance of 336.42 feet; thence South a distance of 365.95 feet; thence East a distance of 260.80 feet; thence South a distance of 481.33 feet to the Northeasterly right of way line of the proposed interchange to be constructed at the intersection of F.A. Interstate Route #64 with Illinois Route #4 (F.A. Route #68); thence North $57^{\circ} 28'$ West along said right of way line a distance of 82.5 feet; thence North $33^{\circ} 26'$ West continuing along said right of way line a distance of 523.58 feet;

thence North 67° 09' West and continuing along said right of way line a distance of 309.27 feet to a point on the East right of way line of Illinois State Route #4; thence North 0° 55' West along said right of way line a distance of 205.03 feet; thence North 46° 09' East a distance of 68.07 feet to the point of beginning.

Except that part more particularly described as follows, to-wit:

A tract of land in Lots 6A and 6B (reference being made to the Assessor's Plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "A" on page 388) in the NE ¼ of Section 7, T1N R6W of the 3rd P.M. in St. Clair County, Illinois, described as follows:

Beginning at a point on the Existing Southerly right of way line of County Highway 66, said point being 125 feet Easterly of Station 59+45 on the Surveyed centerline of reconstructed Federal Aid Route 68 (Illinois Route 4), as said centerline is now recorded in the Recorder's Office of St. Clair County in Plat Book 53 on page 143; thence Easterly along said existing Southerly right of way line of County Highway 66 to a point 140 feet Easterly of Station 59+44.72; thence Southerly to a point 140 feet Easterly of Station 59+25; thence Southeasterly to a point 420 feet Easterly of Station 58+00; thence Southeasterly to a point said point being 459.65 feet Easterly of Station 57+59.96; thence Southerly to a point 459.49 feet Easterly of Station 55+69.85; thence Southeasterly to a point; thence Easterly to a point 613.09 feet Easterly of Station 55+69.96; said point being 492.71 feet Northeasterly of Station 1132+29.07 on the surveyed centerline of FAI Route 64, as said centerline is now recorded in the Recorder's Office of St. Clair County in Plat book 53 on page 143; thence Southerly to a point 239.60 feet Northeasterly of Station 1132+78.36; thence Northwesterly to a point 270 feet Northeasterly of Station 1132.00; thence Northwesterly to a point 360 feet Easterly of said survey centerline of F.A. Route 68 at station 55+70; thence Northwesterly to a point 150 feet Easterly of Station 56+59.46; thence Northwesterly to a point 75 feet Easterly of Station 56+90; thence Northerly to the point of beginning.

Excepting further that part more particularly described as follows, to-wit:

Beginning at a point on the South right of way line of County Highway No. 66 in St. Clair County, Illinois, which point is 461.42 feet East of the centerline of Illinois Route No. 4; thence South a distance of 365.95 feet to a point; thence East a distance of 160 feet, more or less, to the point on the right of way line of I.64 and the point of beginning of the tract herein described; thence continuing East 100 feet to a point; thence South 200 feet, more or less, to a point on the right of way line of I-64; thence Northwesterly along said right of way line of I-64 a distance of 230 feet, more or less, to the point of beginning.

PARCEL 3:

Part of Section 6 and 7, T1N R6W of the 3rd P.M., St. Clair County, Illinois, being more particularly described as follows, to-wit:

Commencing at the intersection of the centerline of F.A. Route 68 (Illinois Route #4) with the South line of Section 6, T1N R6W of the 3rd P.M., St. Clair County, Illinois; thence South 86° 45' 3" East along the South line of Section 6, a distance of 138.83 feet to a point; thence North 0° 56' 0" East, a distance of 35.03 feet to the point of beginning of the tract herein described, said point being on the North right of way line of County Highway #66; thence South 86° 45' 3" East along said North right

of way line a distance of 322.59 feet to a point; thence South 0° 56' 0" West a distance of 66 feet to a point, said point being on the South right of way line of County Highway #66; thence North 88° 56' West along said South right of way line a distance of 321.42 feet; thence North 0° 56" East a distance of 66 feet, more or less, to the point of beginning.

Excepting from Parcels 1, 2 and 3 the tract of land as shown in Warranty Deed from Floyd Weil and Joan M. Weil to Leo J. Germain, Trustee under the provisions of a Trust Agreement dated the 12th day of March, 997 and know as the ALP Trust recorded October 26, 2004, in Book 4099, page 2078, as Doc. No. A01874081, described as follows, to-wit:

Part of Lot 16B, part of the SE ¼ of Section 6, in T1N R6W of the 3rd P.M., more particularly described as follows, to-wit:

Beginning at the intersection of the South line of said Section 6 with the Westerly right of way line of relocated County Highway 66 (C.H. 66), reference being had to the plat filed for record in the Recorder's Office of St. Clair County, Illinois in Book 64 on page 85; thence Westerly along the South line of said Section 6, a distance of 336.35 feet to an iron pipe; thence Northeasterly at a counterclockwise angle of 31° 43' 10" from the last described course a distance of 168.4 feet to the Westerly right of way line of said relocated County Highway 66; thence Southeasterly along said Westerly right of way line, being a circular curve to the left having a radius of 798.94 feet, an arc distance of 212.62 feet subtended by a chord of 212.0 feet, to the point of beginning.

Also, a part of Lot 6A, part of the NE ¼ of Section 6, in T1N R6W of the 3rd P.M., reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "A" on page 388, more particularly described as follows, to-wit:

Commencing at the intersection of the North line of said Section Seven with the Westerly right of way line of relocated County Highway 66 (C.H. 66) reference being had to the plat filed for record in the Recorder's Office of St. Clair County, Illinois, in Book 64 on page 85; thence Westerly along the North line of said Section 7 on an assumed bearing of North 88° 56' West for a distance of 565.15 feet to an iron pin; thence South 00° 10' 10" East a distance of 139.3 feet to an iron pipe, the point of beginning for the tract herein to be described; thence continuing South 00° 10' 10" East a distance of 68.26 feet, to the Northeasterly right of way line of F.A. Route 64, reference being had to the plat filed for record in the Recorder's Office of St. Clair County, Illinois in Book 64 on page 85; thence Northwesterly along the said right of way line a distance of 54 feet to the right of way marker; thence Northeasterly a distance of 47 feet to the point of beginning.

PARCEL 4:

Part of Lots No. 6A and 6B in the NE ¼ of Section 7 in T1N R6W of the 3rd P.M.; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair county, Illinois in Book of Plats "A" on page 388, more particularly described as follows, to-wit:

Commencing at the intersection of the North line of said Section 7 with the Westerly right of way line of relocated County Highway 66 (C.H. 66), reference being had to the plat filed for record in the Recorder's Office of St. Clair County, Illinois, in Plat Book 64 on page 85; thence Westerly along the North line of said Section 7, a distance of 336.35 feet to an iron pipe, the point of beginning for the tract herein to be described; thence continuing Westerly along the North line of said Section 7, a distance of 228.80 feet to an iron pin; thence South at a clockwise angle of 88° 45' 50" from the last described course a distance of 139.3 feet to an iron pipe; thence Northeasterly at a clockwise angle of 59° 31' from the last described course a distance of 265.45 feet to the point of beginning.

PARCEL 5:

The North ½ of a vacated roadway known as County Highway 66 in the SE ¼ of Section 6, T1N R6W of the 3rd P.M., further described as follows:

Commencing at the Northwest corner of Lot 6B in the NE ¼ of Section 7, T1N R6W of the 3rd P.M.; thence West along the North line of said Lot 6B, a distance of 260.8 feet; thence East along the centerline of vacated County Highway 66 to the West right of way line of a frontage road to Illinois Route 4; thence Northwest along the West right of way line of said frontage road to the North line of said vacated County Highway 66; thence West along the North line of vacated County Highway 66 to a point, said point being 40 feet North of the point of beginning; thence South a distance of 40 feet to the point of beginning, Township of Mascoutah.

Excepting from all parcels the coal, oil, gas and other minerals underlying said premises and the right to mine and remove same.