

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

**6:30 p.m.**

**Tuesday, March 20, 2012**

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### **Questions on the Agenda**

### **Agenda Items**

- 1. An Ordinance amending Chapter 15, “GARBAGE AND TRASH,” of the Moline Code of Ordinances, Section 15-2101, “AUTOMATED TIPPER CARTS,” by repealing subsection “(a)” in its entirety and enacting in lieu thereof one new subsection “(a)” relating to the same subject matter. (Doug House, Municipal Services General Manager)**
- 2. A Resolution authorizing the Mayor and City Clerk to execute an Agreement with Sedona Staffing for temporary and seasonal staffing services beginning April 1, 2012 through February 28, 2015. (Alison Fleming, Human Resources Manager)**
- 3. Other**

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# Explanation

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- 1. An Ordinance amending Chapter 15, “GARBAGE AND TRASH,” of the Moline Code of Ordinances, Section 15-2101, “AUTOMATED TIPPER CARTS,” by repealing subsection “(a)” in its entirety and enacting in lieu thereof one new subsection “(a)” relating to the same subject matter.** (Doug House, Municipal Services General Manager)

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

**Staff Recommendation:** Approve  
**Fiscal Impact:** Recover total costs of additional carts to residents.  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Strong Local Economy; Financially Strong City

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- 2. A Resolution authorizing the Mayor and City Clerk to execute an Agreement with Sedona Staffing for temporary and seasonal staffing services beginning April 1, 2012 through February 28, 2015.** (Alison Fleming, Human Resources Manager)

**Explanation:** A request for proposals was published, and Sedona Staffing provided the proposal that was most advantageous to the City and in the City’s best interest. The agreed upon and mutually beneficial agreement fulfills all temporary and seasonal staffing needs of City departments and also contains the insurance and liability coverage requested. The contract will be effective April 1, 2012 and will run for three years. This item will also appear under “Items Not on Consent” on the formal City Council Agenda for March 20, 2012. Additional documentation attached.

**Staff Recommendation:** Approve  
**Fiscal Impact:** Budgeted in various line items.  
**Public Notice/Recording:** N/A  
**Goal Impacted:** Financially Strong City

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## Temporary Services Agreement

This Temporary Services Agreement (the "Agreement"), effective the 1<sup>st</sup> day of April, 2012, is entered into by and between City of Moline, an Illinois municipal corporation, with its principal place of business at 619 16<sup>th</sup> Street, Moline, IL 61265 ("City"), and Sedona Staffing, a temporary employment service, with its national headquarters at 612 Valley View Drive, Moline, Illinois 61265 ("Contractor").

### 1. SERVICES

- 1.1 Contractor agrees to provide temporary employee services by furnishing to City temporary service and seasonal workers ("Assigned Employees") with skills meeting the requirements specified by City. City agrees to pay for said services in accordance with this Agreement.
- 1.2 If an Assigned Employee fails to meet City's requirements for the services to be provided, and City notifies Contractor of its dissatisfaction during the first eight (8) hours of the assignment, Contractor shall immediately remove the employee from the assignment, and City shall not be required to make any payment to Contractor for the hours worked by such employee, up to a maximum of eight (8) hours. City reserves the right to ask for the removal of an employee at any time for any reason; in doing so, the City attests that it complies with all State and Federal Equal Opportunity and Human Rights Acts and will continue to do so for the purposes of this Agreement.

### 2. CITY'S RESPONSIBILITY TO ASSIGNED EMPLOYEES

- 2.1 City shall provide a safe work place and will instruct, assist and supervise Assigned Employees in performing the agreed upon duties and the work performed.
- 2.2 City shall provide any general or specific safety training necessary to perform the assignment, including safety information regarding exposures to any dangerous or hazardous substances. City shall ensure that Assigned Employees use any protective equipment necessary to perform the assignment safely. City will provide a suitable work environment for all Assigned Employees which shall comply with all applicable statutes and ordinances relating to the worksite including, but not limited to OSHA and the ADA.
- 2.3 City shall review all time records submitted by Assigned Employees for accuracy in a manner that is consistent with the payroll and billing procedures of Contractor. City will approve or decline the time records based on the accuracy of such records. City will retain copies of such records in accordance with all applicable state and federal laws.

- 2.4 City and Contractor agree that for the purposes of all statutory and regulatory requirements for employee leaves of absence, including the Family Medical Leave Act and any similar state or local law, City and Contractor shall cooperate in compliance with any such requirements.
- 2.5 Nothing in this Agreement shall entitle Assigned Employees to any benefits or compensation from City. Assigned Employees are required to acknowledge in writing that they are not entitled to any benefits or compensation from City.

#### CONTRACTOR'S RESPONSIBILITY TO ASSIGNED EMPLOYEES

- 3.1 Assigned Employees are employees of Contractor and shall not be considered or treated as employees of City by the parties, except to such extent as may be required by applicable state and federal law. Contractor shall avoid actions that would make Assigned Employees common law employees of City or otherwise make City and Contractor co-employees of any Assigned Employee.
- 3.2 Contractor will perform an Employee Orientation prior to the commencement of the assignment for each Assigned Employee working on any work site for City. The orientation will ensure that all Assigned Employees are aware of and abide by, all applicable City Rules and Policies. City will provide examples of all Rules and Policies that are to be included in the Employee Orientation. It is the sole responsibility of Contractor to prepare for and conduct this orientation.
- 3.3 Contractor will pay Assigned Employees weekly for hours worked for City as submitted on timecards approved by City's authorized representative, in accordance with all applicable state and federal laws. The signature of City's authorized representative shall constitute verification that the time recorded is accurate.
- 3.4 Contractor shall report and pay the employer's share of applicable state taxes, federal taxes, workers' compensation, FICA, and federal unemployment insurance with respect to all compensation received by Assigned Employees and submit required tax withholdings. Contractor agrees to indemnify and hold harmless City against any liability for premiums, contributions or taxes payable under any workers' compensation, unemployment compensation, disability benefits, old age benefit or tax withholding laws for which City shall be finally adjudged liable as an employer with respect to any compensation that Contractor agreed to pay Assigned Employee for the performance of services pursuant to this Agreement.
- 3.5 Contractor will recruit, interview, select and hire Assigned Employees who, in Contractor's judgment, are qualified to perform the services required by City. Contractor understands that many of the positions needed by City require driving City vehicles and operating motorized equipment. Assigned Employees may only drive their own personal vehicle during business hours and for the use of conducting City business with express written permission by the City. However, under no circumstance is it acceptable for any Assigned Employee to drive their

own personal vehicle during business hours and for the use of conducting City business without proper insurance. Additionally, Contractor understands that many of these positions also require cash handling and some positions will serve alcohol. Assigned Employees working under any of those conditions will be required to go through the extra appropriate pre-employment testing and/or training required under this Agreement.

- 3.6 Contractor will conduct a criminal background check, drug screen (DOT and Non-DOT regulated), credit history check (cash handling positions), motor vehicle check (driving positions) and reference check for each Assigned Employee prior to beginning each assignment with City.

#### FEE FOR SERVICES

- 4.1 City shall pay Contractor a fee at an hourly bill rate for each hour worked by Assigned Employees as set forth in the time sheet approved by City's representative. Overtime hours worked will be paid in accordance with the multiple dictated by applicable federal and state law. Overtime hours worked by Assigned Employees will be billed to City based on the same straight-time mark-up rate. City shall pay, where required by law to do so, any federal, state, or local sales, use, excise, value added or other like tax on the services provided under this Agreement.
- 4.2 The mark-up rates for the services provided under this Agreement are listed on Exhibit A, attached hereto and incorporated herein. The rates may be adjusted by Contractor at any time based on increases in minimum wage, statutory taxes and premiums, statutorily mandated benefits, and annual liability and fidelity insurance costs, upon thirty (30) days prior written notice to Client.
- 4.3 Contractor shall submit invoices on a weekly basis to the designated supervisor within City. City shall pay all invoices as soon as administratively possible upon receipt, without offset or deduction. City shall promptly notify Contractor of any disputed or questioned item on an invoice, and the parties shall work together in good faith to resolve the issue; in the event it is determined that City is entitled to a credit, Contractor shall credit City in the next invoice for the appropriate amount. In the event that City fails to pay Contractor invoice when due, City shall pay all collection and/or litigation costs incurred by Contractor. City reserves the right to withhold payment of any outstanding invoices if a previously disputed invoice is not corrected within a reasonable timeframe. Additionally, City reserves the right to withhold payment of any outstanding invoices if any Assigned Employee receives a payroll check with non sufficient funds from Contractor until problems are resolved or if Contractor fails to pay Assigned Employee in a timely manner or if payments are returned to Assigned Employee with non sufficient funds.

## TERM AND TERMINATION

- 5.1 The initial term of this Agreement shall commence on April 1, 2012 and shall continue through February 28, 2015. Thereafter, this Agreement shall be automatically extended from year to year for up to five (5) full years unless and until either party terminates it as of an anniversary date by giving the other party written notice of such termination at least thirty (30) days prior to such anniversary date. Notwithstanding the foregoing, either party has the right, exercisable in its sole discretion at any time, to terminate this Agreement for its convenience, by giving the other party at least ninety (90) days written notice of such termination.
- 5.2 Each party has the right to terminate this Agreement immediately upon written notice to the other party, at any time, in the event of any material breach by the other party of its obligations under this Agreement; provided, however, that the allegedly breaching party shall be granted ten (10) days right to cure said breach.

## 6. RELATIONSHIP OF PARTIES

At all times during the term of this Agreement, Contractor shall be an independent contractor to City and employees assigned under this Agreement shall remain employees of Contractor and not of City and Contractor shall, indemnify and hold City harmless therefrom.

## 7. INSURANCE

Contractor will procure and maintain insurance during the entire term of this Agreement, and upon request shall provide City with certificates of such insurance, which at a minimum, cover the following risks:

- a) Commercial General Liability - \$1,000,000
- b) Workers' Compensation - Statutory Limits
- c) Employer's Liability - \$1,000,000
- d) Crime Policy with "Client Loss Extension" - \$1,000,000
- e) Depositors Forgery - \$100,000
- f) Umbrella Liability - \$5,000,000

It is agreed by and between City and Contractor that if City allows Contractor's employees to operate vehicles and/or other motorized equipment owned by City, City will accept full responsibility for the equipment and cargo, as well as for any claims, other than claims covered by worker's compensation, which might arise as a result of any incident taking place while City equipment is under the care and custody of Contractor's employee pursuant to his/her assignment.

It is understood City's Automobile Liability insurance policies will be the primary insurance in the event of any claim rising, as stated above, and that City's limits of liability are not less than \$250,000/\$500,000 Bodily Injury and \$100,000 Property Damage, with a \$10,000,000 Umbrella Policy. A certificate of insurance evidencing this coverage will be provided to Contractor prior to a Contractor's employee beginning such an assignment.

City will hold Contractor, its agents and employees, harmless from any causes of action, costs or damages arising out of or attributable to the operation of vehicles and/or motorized equipment by employees of Contractor.

## 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 8.1 Notwithstanding Paragraph 7 above, Contractor shall indemnify, defend, and hold harmless City, its affiliates, officers, directors, employees, agents, and other representatives from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney fees) and causes of action (hereinafter "Claims") for (i) injury to, or death of, any person, including without limitation the employees, agents, contractors, licensees, and invitees of Contractor, (ii) damage to, or destruction of, any property, whether owned by City or otherwise, or (iii) the failure of Contractor to comply with the provisions of this Agreement, but only to the extent such Claims are caused by or the result of the negligent, reckless, willful, wonton or intentional acts or omissions of Contractor, its officers, employees, agents, contractors, licensees or invitees in the performance of the services defined in this Agreement.
- 8.2 When claiming its right to indemnification, City shall promptly notify Contractor of the assertion of any claim covered by this Agreement so as Contractor shall have a reasonable time within which to notify its insurers of such claim and tender defense of the claim. Failure to so notify Contractor shall not relieve that party of its obligations hereunder except to the extent such failure actually and materially caused prejudice.
- 8.3 Neither party shall authorize any Assigned Employee to operate any motor vehicle, motorized equipment, automotive or truck equipment without signing a driver's release form supplied by Contractor and without having the proper pre-employment testing conducted and determining that Assigned Employee's actually possesses valid driver's license.

City will provide proper and customary safety awareness and training to any employees of Contractor operating vehicles and/or motorized equipment or performing related duties. City shall be solely responsible for, but not limited to, instruction and adherence of all department of transportation, state, and/or federal regulations pertaining to the operation of vehicles and/or motorized equipment or related duties.

- 8.4 City agrees not to entrust any Assigned Employee with cash, negotiable instruments or other negotiable personal property unless Contractor has provided such Assigned Employee for such purposes. City agrees that Contractor will not be responsible for any claims covered by its Fidelity Bond unless such claims are reported in writing to Contractor, in accordance with the notice provisions set forth in this Agreement, within fifteen (15) working days of the discovery of the alleged wrongful act.

9. PAYMENTS FOR OTHER USE OF EMPLOYEES AND TERMINATION PROCESS

- 9.1 During the term of this Agreement and upon any termination of this Agreement, City agrees not to condone or assist in the transitioning, recruiting or enticing of Assigned Employees on assignment at City to transfer to any third party or alternate status, with the exceptions of an offer of full-time regular employee status at City or with permission of Contractor. City will not be held responsible if an Assigned Employee, whether referred or not, chooses, of their own free will and volition, to transfer or begin employment with another staffing agency. If City hires or uses the services of an Assigned Employee in any capacity other than an employee of Contractor, on Contractor's payroll, City shall pay Contractor an amount equal to what City would have paid Contractor had such an Assigned Employee worked at City through Contractor for 520 hours at Contractor's current rates, minus the amount City has already paid to Contractor for that Assigned Employee; unless otherwise limited by the Temporary and Day Laborers Act, found generally at 820 ILCS 175/40.

- 9.2 In the event of termination of this Agreement, each Assigned Employee will continue the assignment through the earlier of: (1) the period of time referenced on the current Contractor work order unless it is determined there is a failure to perform the job function required, or the assignment has legitimately terminated for other reasons or (2) the Assigned Employee accepts another assignment with Contractor.

10. NOTICES

Any notice required or permitted to be delivered by one party to another under or in connection with this Agreement shall be deemed sufficiently given after three (3) business days if sent by certified U.S. Mail, return receipt requested, or after one (1) business day if sent by nationally recognized overnight carrier to the attention of the individual(s) and at the address (as) indicated below:

If to Contractor, to: Sedona Staffing, Attn: Cheryl Theofilis, 612 Valley View Drive, Moline, IL 61265

With a copy to: Sedona Staffing, Attn: Joe Lavin, 600 35<sup>th</sup> Avenue, Moline, IL 61265

If to City, to: City of Moline, Attn: Human Resources Manager, 619 16<sup>th</sup> Street, Moline, IL 61265  
With a copy to: City of Moline, Attn: City Attorney, 619 16<sup>th</sup> Street, Moline, IL 61265

## 11. MISCELLANEOUS

- 11.1 **Assignment.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. This Agreement shall not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may without the consent of the other party assign this Agreement, or delegate the performance of all or part of its obligations and duties hereunder, to an Affiliate (provided the party guarantees the Affiliate's performance) or to any successor to all or substantially all of its interest in the business to which this Agreement relates. As used herein, "Affiliate" of a party shall mean any corporation or other business entity controlled by, controlling or under common control with, such party.
- 11.2 **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, notwithstanding choice of law principles. Any litigation concerning this Agreement must be brought in a court of competent jurisdiction in Rock Island County, Illinois.
- 11.3 **Compliance with Laws.** In the performance of this Agreement, each party agrees to comply with all applicable laws, rules, and regulations of duly constituted governmental bodies.
- 11.4 **Complete Understanding; Modification.** This Agreement, together with all attachments, exhibits and addenda attached hereto, constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be effective as of the date first set forth above.

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

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

Printed Name: Donald Welvaert

Printed Name: Rick John, Jr.

Title: Mayor

Title: President

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

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

Approved as to Form:

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

