

MEMORANDUM

January 31, 2020

TO: Mayor John P. Kahl and Members of the City Council

FROM: City Attorney's Office (Dennis R. Triggs)

SUBJECT: Short Term Lease

DISCUSSION: Pursuant to the attached Resolution the City would approve a Short Term Lease of vacant City property with ICC Group, Inc., contractor for work to be performed on the Interstate 74 Murray-Baker Bridge. The City's overriding interest is that the work be performed in a timely manner and with minimal adverse impact on businesses located in the area. The Short Term Lease therefore seeks only nominal rent but obliges the contractor to minimize the adverse impact on businesses.

RECOMMENDATION: Approval.

RESOLUTION NO. 1920-113

East Peoria, Illinois
_____, 2020

RESOLUTION BY COMMISSIONER _____

**RESOLUTION APPROVING A SHORT TERM LEASE BETWEEN
THE CITY OF EAST PEORIA AND ICC GROUP, INC.
FOR THE USE OF VACANT CITY PROPERTY
IN CONNECTION WITH WORK ON THE MURRAY-BAKER BRIDGE**

WHEREAS, the ICC Group, Inc. ("ICC") is the contractor selected by the Illinois Department of Transportation to perform work on the Interstate 74 Murray-Baker Bridge; and

WHEREAS, ICC has approached the City of East Peoria ("City") requesting use of vacant City-owned property adjacent to Interstate 74 for the purpose of storage of material and for a field office in connection with such construction; and

WHEREAS, the City desires to minimize the adverse impact on businesses located within its corporate boundaries; and

WHEREAS, the City is willing to allow ICC to use said City-owned property pursuant to the terms of the Short Term Lease attached hereto;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. The Mayor is authorized and directed to enter into said Short Term Lease together with such changes therein as the Mayor in his discretion may approve; provided, however, that the City shall have no obligation under the terms of this Resolution until an executed copy of the Short Term Lease has been delivered to ICC Group, Inc.

APPROVED:

Mayor

ATTEST:

City Clerk

SHORT TERM LEASE

This **SHORT TERM LEASE** is made as of this _____ day of _____, 2020, by and between the **City of East Peoria**, an Illinois municipal corporation (hereinafter known as "Landlord"), and **ICC Group, Inc.**, an Illinois corporation (hereinafter known as "Tenant").

1. **DESCRIPTION OF PREMISES:** Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions set forth in this Lease, certain real property located adjacent to Interstate 74 in Tazewell County, Illinois, which is more particularly depicted on Exhibit A attached hereto (the "Premises").

2. **UTILITIES AND EQUIPMENT:** Tenant shall pay for all water, gas, heat, light, power, telephone service, and for all other services or utilities supplied to the Premises, if any, used by Tenant.

3. **CONDITION OF PREMISES:** By entry on the Premises under this Lease, Tenant agrees on the last day of the term (or on sooner termination of this Lease) to surrender the Premises and the appurtenances relating thereto to Landlord in at least the same or substantially similar condition as on the date of lease commencement, and to remove all of Tenant's property and debris from the Premises. Landlord makes no representations or warranties of any kind regarding the physical condition, requirements of governmental agencies concerning pollution, contaminants or hazardous wastes, or otherwise, with respect to the Premises. Additionally, upon surrender of the Premises, Tenant shall have caused the entire site and the access road depicted on Exhibit A to have been scraped, leveled and free of ruts or indentations.

4. **TERM:** The term of this Lease shall commence on February 1, 2020 and end at 11:59 P.M. on November 30, 2020.

5. **RENTAL:** The net rental shall be Ten Dollars (\$10.00), which amount shall be paid by Tenant and earned in full by Landlord on or before February 28, 2020.

6. **OTHER CONSIDERATION:** In view of the nominal amount of the rental set forth above Tenant covenants during the construction work on the I-74 Murray Baker Bridge to use its best efforts: (a) to minimize the adverse impact on businesses located within the corporate boundaries of the Landlord, (b) to cause patronage of business located within the corporate boundaries of the Landlord and (c) to generally accommodate the reasonable requests of the Landlord to lessen the inconvenience to Landlord's citizens.

7. **USE OF PREMISES:** The Premises are leased to Tenant for the storage of materials and for a field office.

8. **ZONING, PERMITS, HAZARDOUS SUBSTANCES:** Tenant, at Tenant's own expense, shall comply with all laws and requirements relating to the Premises, and shall indemnify, defend and hold Landlord free and harmless from and against violations of all laws and requirements relating to the Premises, including without limitation, laws and requirements concerning the storage or use of hazardous substances, materials, waste, and toxic substances or air contaminants emitting therefrom ("Hazardous Materials") as such are defined from time to time in the Federal, State and local laws and ordinances in effect during the Lease term. Upon termination of this Lease, Tenant agrees at Tenant's expense to remove and, if necessary, transport all Hazardous Materials from the Premises, conforming to all legal requirements. Tenant will give Landlord immediate notice of any enforcement activity threatened or taken by any governmental agency.

9. **MAINTENANCE:** Tenant shall care for the Premises and maintain them in good condition, including (without limitation) keeping the Premises free from weeds, trash and debris.

10. **OPERATIONS ON THE PREMISES:** Ancillary to the use of the Premises for storage of materials and for a field office, loading and off-loading of materials and vehicular traffic is permitted. No crushing of concrete or actual work on materials shall occur on the Premises. Normal operating hours shall be from 7:00am to 5:30pm Monday through Saturday. However, deviations from these limited operating hours are permitted when necessitated by work demands and construction deadlines. Tenant shall use its best efforts to minimize noise, dust and any other nuisance arising from its operations on the Premises. For security Tenant shall cause the entire area of the Premises used for its operation to be enclosed by a fence and assure that the gate to same is locked following each work day.

11. **ACCESS TO THE PREMISES:** Until March 29, 2020 Tenant may access the Premises by automobiles and pick-up trucks via the access road parallel to Interstate 74 and as depicted on the Exhibit A. Bass Pro Drive may be used by semi-trucks or other vehicles that cannot execute the sharp turn from River Road on to the access road parallel to Interstate 74. No later than March 29, 2020, Tenant shall cause to be constructed an access road/ramp to the Premises as depicted on Exhibit A and thereafter, Tenant and its invitees shall only use the access road/ramp to access the Premises, excepting only for rare and unavoidable situations where access via the road/ramp is not feasible.

12. **NON-LIABILITY OF LANDLORD FOR DAMAGES:** Tenant shall indemnify, defend and hold Landlord free and harmless from and against, all liability and claims, including (without limitation) costs and attorneys' fees and costs, property damage or personal injury in any way connected with Tenant's use, possession or operation on the Premises, including, without limitation, all claims and liabilities relating to violations of law, including, without limitation, any hazardous materials law or environmental law. Without limitation of the foregoing, Tenant shall be solely responsible for any and all damage to underground pipelines, any and all other utility lines, surface valves and all other property damage caused by equipment and Tenant's employees, agents, and

invitees on the Premises. Tenant further agrees to maintain during the term of this Lease, at Tenant's expense (i) worker's compensation insurance for all of Tenant's employees, that may engage in activities at the Premises, and (ii) comprehensive liability insurance insuring Landlord against liability to any person or persons, arising as an incident to the use of or resulting from any accident occurring in or about the Premises, or the use or condition thereof with combined single limit of not less than Two Million Dollars (\$2,000,000.00). Landlord shall be named as an additional insured under such liability policy of insurance. Such liability insurance shall be primary and not contributing with any other insurance in effect for the Landlord. Tenant shall deliver a Certificate of Insurance with respect to all such insurance in advance of the effective date of this Lease. All of Tenant's covenants and indemnities set forth in this Lease shall survive the expiration or termination of this Lease.

13. **REMEDIES OF LANDLORD ON DEFAULT:** If Tenant breaches this Lease, Landlord shall have, in addition to all other legal rights or remedies, the right of re-entry, after having given five (5) days' written notice, and the right to take possession thereof. If Landlord elects to re-enter, as provided above, or to take possession under legal proceedings, or under any notice provided for by law, Landlord may terminate this Lease or exercise all other rights and remedies permitted by law.

14. **ATTORNEYS' FEES ON DEFAULT:** In any action or proceeding by either party to enforce this Lease or any provision thereof, the prevailing party shall be entitled to all costs incurred and to reasonable attorney's fees.

15. **ASSIGNMENT OR SUBLETTING:** Tenant may not assign this Lease, or any rights under it, and may not sublet the entire or any part of the Premises without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion. Any attempt by Tenant to assign or sublet any portion of the Premises in violation of this Section 15 shall be null and void.

16. **ENTRY BY LANDLORD AND ITS CONTRACTORS:** Notwithstanding anything to the contrary contained in this Lease, Landlord shall have the right, without cost or compensation to Tenant, at any time during the term of this Lease to enter (and to permit its contractors, agents and employees to enter) upon the Premises for the purpose of conducting inspections, including (but not limited to) surveying, soil testing, environmental testing and other analyses in connection with the Premises as Landlord may desire to perform; provided that Landlord shall use good faith efforts to minimize interference with or disruption of Tenant's use of the Premises in connection with any such entry. Landlord shall indemnify and hold Tenant harmless from and against any loss, cost, liability and expense to a third party directly resulting from Landlord's performance of such investigations or inspections, which indemnity shall survive the termination of this Lease.

17. **HOLDING OVER:** Should Tenant holdover following expiration or termination of this Lease, such holdover shall be on a day to day basis only, at a rate of \$1,000 per day and without limitation of Landlord's right to eject Tenant and exercise its

other remedies if such holdover is without Landlord's prior written consent. Tenant hereby waives any rights that Tenant may have or enjoy under Illinois law to holdover at, use or possess the Premises (or any part thereof) beyond the original term of the Lease.

18. **NO RECORDATION:** Neither this Lease nor any memorandum of lease or short form lease shall be recorded by Tenant.

19. **NOTICES:** All notices shall be served at the addresses below unless any party shall provide a different address by written notice given upon at least ten (10) days' notice. Any notice required under this Lease shall be deemed served upon Landlord or Tenant when personally delivered or deposited for mailing by certified mail to the parties at the addresses set forth herein.

The parties hereto have executed this Lease effective as of the day and year first above written.

LANDLORD:

City of East Peoria,
An Illinois Municipal Corporation

By: _____
John Kahl, Mayor

401 W. Washington Street
East Peoria, IL 61611

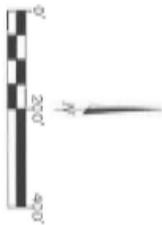
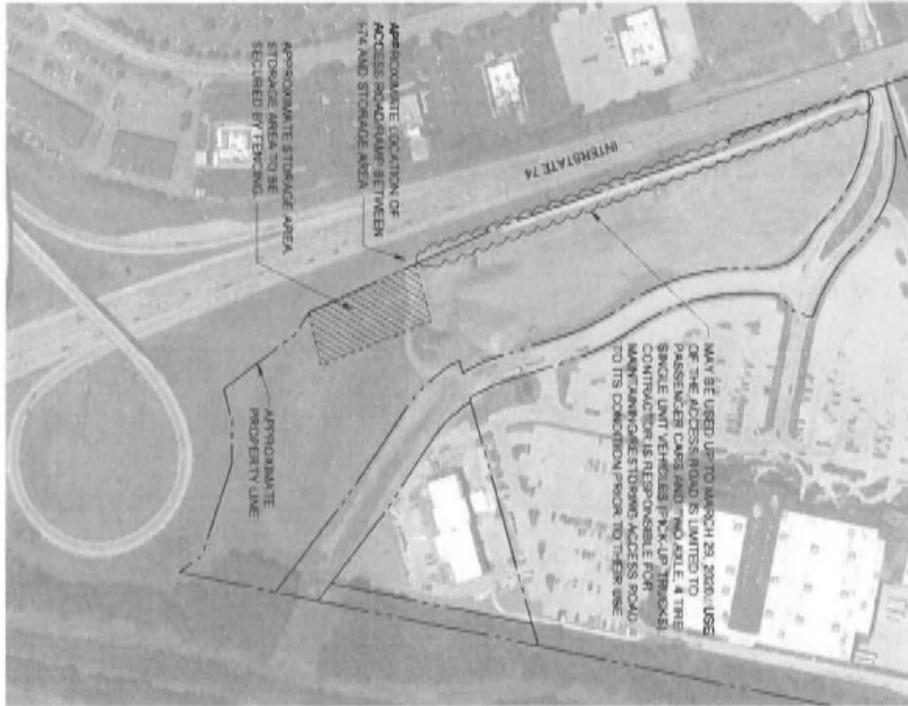
TENANT:

ICC Group, Inc.
An Illinois Corporation

By: _____
Printed Name: _____
Title: _____

39 W 866 Fabyan Pkwy.
Elburn, IL 60119

EXHIBIT A



Drawn	CD	01/24/2010
Checked	REC	01/24/2010
Approved		
Project		
Sheet		
Scale		
Notes		

CITY OF EAST PEORIA

MURRAY BAKER BRIDGE
REHABILITATION
CONTRACTOR REQUESTED
LEASE AREA

MW
MWH Engineering
Solutions, Inc.
1601 Poplar Drive
Chattanooga, TN 37403
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11.7000000000000000
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