



MOLINE CITY COUNCIL AGENDA

Tuesday, December 11, 2012

6:30 p.m.

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

City Hall

Council Chambers – 2nd Floor

619 16th Street

Moline, IL

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CONSENT AGENDA

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

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

APPROVAL OF MINUTES

Committee-of-the-Whole and Council meeting minutes of December 4, 2012.

SECOND READING ORDINANCES

1. Council Bill/ General Ordinance 3041-2012

An Ordinance making Appropriations for Corporate Purposes for the Fiscal Year beginning January 1, 2013 and ending December 31, 2013.

EXPLANATION: This is the annual Appropriation Ordinance which is required to be passed by State Statute. This Ordinance allows the City to expend funds during the fiscal year 2013.

FISCAL IMPACT: This Ordinance is necessary as an authorization granted by the City Council to make expenditures and to incur obligations during the fiscal year 2013.

PUBLIC NOTICE/RECORDING: Public Notice/File with the County Clerk

2. Council Bill/ General Ordinance 3042-2012

An Ordinance amending Chapter 21, "NUISANCES IN GENERAL," of the Moline Code of Ordinances, by repealing said chapter in its entirety and enacting in lieu thereof one new Chapter 21 relating to the same subject matter.

EXPLANATION: The City recognizes the issue of repeat nuisance offenses on or within Moline properties and seeks to implement remedies and abatement procedures for same. This ordinance defines chronic nuisance properties and aggravated chronic nuisance properties and the types of offenses that, when repeated within a 365-day period, would fall within the parameters of the definitions and constitute a violation of the City Code. Such offenses include but are not limited to certain drug and/or alcohol related activities, criminal damage to property, assault or battery, disorderly conduct, and more severe criminal activities. Remedies by the court will include closure of the property for a certain time period, emergency closure due to immediate threat, civil penalties, and authorization for the City to secure the property or otherwise abate the chronic nuisance or aggravated chronic nuisance if the owner fails to do so.

FISCAL IMPACT: N/A

PUBLIC NOTICE/RECORDING: Pamphlet publication

RESOLUTIONS

3. Council Bill/Resolution 1276-2012

A Resolution amending Budget Resolution #1198-2011 by authorizing changes to various line items in the budget for FY 2012.

EXPLANATION: Budget amendments are compiled periodically throughout the fiscal year and presented to City Council for approval. These amendments are proposed to reflect recent changes to the current budget that avoid any adverse affect to the City's legal budgetary compliance.

FISCAL IMPACT: Sound Financial Management

PUBLIC NOTICE/RECORDING: N/A

4. Council Bill/Resolution 1277-2012

A Resolution adopting a budget for corporate purposes for the Fiscal Year 2013.

EXPLANATION: This resolution adopts the Fiscal Year 2013 Budget. The budget provides the guidelines for incurring expenditures, financial reports and fiscal controls during the year.

FISCAL IMPACT: In conjunction with the Appropriations Ordinance, the budget estimates revenues available to the City during the fiscal year; and, also includes expenditures for each department of the City. All estimates conform to sound fiscal management practices.

PUBLIC NOTICE/RECORDING: Public Hearing Notice; File with County Clerk

5. Council Bill/Resolution 1278-2012

A Resolution authorizing the Mayor and City Clerk to execute an agreement between the City of Moline and Alliedbarton Security Services, LLC, setting forth the terms for assignment of three police officers to the SouthPark Mall complex for the period January 1, 2013 through December 31, 2013.

EXPLANATION: Annual renewal of the agreement for assignment of three police officers to the SouthPark Mall police substation. The agreement provides for Alliedbarton Security Services to reimburse the City of Moline for a portion of the salary and benefit costs for the three assigned police officers.

FISCAL IMPACT: Budgeted positions, reimbursement of \$129,986.

PUBLIC NOTICE/RECORDING: N/A

6. Council Bill/Resolution 1279-2012

A Resolution authorizing the Utilities General Manager to execute a contract with Strand Associates Inc., for professional engineering services required for the design of the North Slope Wastewater Treatment Plant Improvements Project, in an amount not-to-exceed \$1,927,500.00.

EXPLANATION: The City of Moline requires specialized professional engineering services for the design of the North Slope Wastewater Treatment Plant Improvements Project. City staff has determined that Strand Associates Inc. is best qualified to provide the required professional engineering services for this important project.

FISCAL IMPACT: Sufficient funds are available for this expenditure in WPC's Rehabilitation and Replacement reserve account 320-0000-151.10-00.

PUBLIC NOTICE/RECORDING: N/A

7. Council Bill/Resolution 1280-2012

A Resolution authorizing the Mayor and City Clerk to execute a grant agreement between the City of Moline and the Illinois Department of Commerce and Economic Opportunity for the administration of an IKE Planning and Technical Assistance Grant related to the preparation and completion of the Moline Riverfront Comprehensive Plan Update for the City of Moline in the amount of \$100,000.00 for the project consulting team and project expense; and authorizing staff to do all things necessary related to fulfilling the items of said Agreement and completing the Plan(s).

EXPLANATION: In March 2012 the City Council authorized the Mayor and City Clerk to submit a grant application to the Illinois Department of Commerce and Economic Opportunity (DCEO) under the IKE Planning and Technical Assistance Grant Program. The City recently received a funding grant agreement in the amount of \$100,000.00 for updating the Moline Centre Plan and adjacent Floreciente and Edgewater Neighborhood Plans. This resolution will authorize the Mayor and City Clerk to execute said grant agreement with the Illinois DCEO.

FISCAL IMPACT: \$100,000.00 grant funding from State; no local match required.

PUBLIC NOTICE/RECORDING: N/A

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

OMNIBUS VOTE

ITEMS NOT ON CONSENT

FIRST READING ORDINANCES

8. Council Bill/ General Ordinance 3043-2012

An Ordinance amending Chapter 34, “WATER AND SEWERS,” of the Moline Code of Ordinances, Section 34-2119, “APPLICATION FOR SERVICE,” by adding subsection (c), subsection (d), and subsection (e) pertaining to the return of required deposits for water, sewer, and stormwater drainage service.

EXPLANATION: City Staff seek to amend Chapter 34, “WATER AND SEWERS,” of the Moline Code of Ordinances concerning applications for water service. Subsection (b) of Section 34-2119, “APPLICATION FOR SERVICE,” requires all applicants for water, sewer and stormwater drainage service to pay a cash deposit in an amount reasonably commensurate with the size of the applicant’s water meter and average consumption history, as determined by the accounts and finance office, but in no case be less than amounts set forth in said subsection. The Code is silent as to what is done with these required deposits. The accounts and finance office has been collecting the deposits that continue to be required and has been operating under the policy that water deposits shall be retained for two years and then returned to the customer. Amending Section 34-2119 to add subsections (c), (d), and (e), which address the return of the required deposit, will provide clarity to customers on when and how their required deposit will be returned.

FISCAL IMPACT: N/A

PUBLIC NOTICE/RECORDING: Pamphlet Publication Required

9. Council Bill/ Special Ordinance 4055-2012

A Special Ordinance setting the annual meetings agenda for 2013.

EXPLANATION: Pursuant to Ordinance, Staff is required to notify media of the 2013 City Council and Committee Meetings Schedule. This Ordinance would authorize that notification.

FISCAL IMPACT: N/A

PUBLIC NOTICE/RECORDING: Website Posting

MISCELLANEOUS BUSINESS

PUBLIC COMMENT

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

EXECUTIVE SESSION

Council Bill /General Ordinance No. 3041-2012
Sponsor _____

AN ORDINANCE

MAKING appropriations for corporate purposes for the fiscal year beginning January 1, 2013 and ending December 31, 2013.

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

Section 1. That the following sums, or so much thereof as hereby may be authorized either by law or by ordinance, be and the same are hereby appropriated to pay all necessary expenses and liabilities of the City of Moline, Rock Island County, Illinois for the fiscal year beginning, January 1, 2013 and ending December 31, 2013, such appropriations are hereby made for the following objects and purposes:

<u>Fund</u>	<u>Appropriation</u>	<u>Amount Raised Other Than Taxation</u>	<u>Amount to be Raised by Taxation</u>
General	\$42,310,740	\$39,153,505	\$3,157,235
General Trust	\$414,600	\$414,600	\$0
SFOOR Grant	\$132,560	\$132,560	\$0
Tourism	\$1,094,100	\$1,094,100	\$0
NSP2 Grant	\$1,085,750	\$1,085,750	\$0
Library	\$3,001,045	\$330,435	\$2,670,610
Park	\$3,997,015	\$1,384,750	\$2,612,265
Motor Fuel Tax	\$2,550,000	\$2,550,000	\$0
CDBG	\$665,265	\$665,265	\$0
Revolving Loan	\$238,860	\$238,860	\$0
TIF #1	\$3,570,865	\$3,570,865	\$0
TIF #2	\$193,350	\$193,350	\$0
TIF #3	\$54,450	\$54,450	\$0
TIF #4	\$193,425	\$193,425	\$0
Homebuyer Grant	\$237,170	\$237,170	\$0
TIF #5	\$32,365	\$32,365	\$0
TIF #6	\$53,500	\$53,500	\$0
TIF #7	\$5,728,635	\$5,728,635	\$0
Special Service Area #5	\$110,400	\$110,400	\$0
Special Service Area #6	\$225,000	\$144,600	\$80,400
Water	\$10,300,945	\$10,075,945	\$225,000
Water Pollution Control	\$9,347,690	\$9,347,690	\$0
Stormwater Utility	\$983,140	\$983,140	\$0
Fire Pension	\$4,329,925	\$1,050,400	\$3,279,525

Council Bill/General Ordinance No. 3041-2012

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Reher Art Gallery	\$33,795	\$33,795	\$0
Perpetual Care	\$14,075	\$14,075	\$0
Park/Cemetery Gifts	\$26,500	\$26,500	\$0
Foreign Fire Insurance	\$31,700	\$31,700	\$0
Police Pension	\$4,209,465	\$1,245,100	\$2,964,365
Library Trust Fund	\$107,200	\$107,200	\$0
Health Insurance	\$7,564,505	\$7,564,505	\$0
OPEB Retirement Fund	\$500,000	\$500,000	\$0
Information Technology	\$1,141,470	\$1,141,470	\$0
Public Safety Equipment	\$158,265	\$158,265	\$0
Liability	\$3,439,830	\$3,439,830	\$0
Fleet Services	\$4,757,695	\$4,757,695	\$0
Sanitation	\$2,443,165	\$2,443,165	\$0
Debt Service	\$7,441,475	\$7,441,475	\$0
2007 Escrow	\$420,000	\$420,000	\$0
Capital Improvement	\$7,533,715	\$7,533,715	\$0
	\$130,673,650	\$115,684,250	\$14,989,400

Section 2. That this Appropriation Ordinance is adopted pursuant to procedures set forth in the Illinois Municipal Code, 65 ILCS Articles 1 and 8 of Act 5, provided any limitations set forth herein in conflict with this Ordinance shall not be applicable to the Ordinance pursuant to Section 6 of Article VII of the Constitution of the State of Illinois. For the purposes of this ordinance, “taxation” shall mean real property tax levy only.

Section 3. That this Appropriation Ordinance has been enacted only after the City Council gave proper notice of a public hearing at least ten days prior thereto, made the documents upon which the Appropriation Ordinance is based available for public inspection at least ten days prior to said public hearing, and held a public hearing at 6:30 p.m., December 4, 2012, City of Moline, City Hall, 619 16th Street, Moline, Illinois.

Section 4. Furthermore, that the City Clerk is hereby directed to publish in pamphlet form within ten days from the date of passage at least twenty-five (25) copies of the Ordinance and to make available for public inspection said copy in the Office of the City Clerk during normal business hours. Publication in pamphlet form shall not delay the effective date of this Ordinance.

Section 5. That this Ordinance shall be in full force and effect from and after passage; approval; and, if required by law, publication in the manner provided by law.

CITY OF MOLINE, ILLINOIS

Mayor

Date

Passed: _____

Approved: _____

Attest: _____
City Clerk

Approved as to Form:

City Attorney

Council Bill/General Ordinance No. 3042-2012

Sponsor: _____

AN ORDINANCE

AMENDING Chapter 21, “NUISANCES IN GENERAL,” of the Moline Code of Ordinances, by repealing said chapter in its entirety and enacting in lieu thereof one new Chapter 21 relating to the same subject matter.

WHEREAS, the City recognizes the issue of repeat nuisance offenses on or within Moline properties and seeks to implement remedies and abatement procedures for same; and

WHEREAS, this ordinance defines chronic nuisance properties and aggravated chronic nuisance properties and the types of offenses that, when repeated within a 365-day period, would fall within the parameters of the definitions and constitute a violation of the City Code; and

WHEREAS, such offenses include but are not limited to certain drug and/or alcohol related activities, criminal damage to property, assault or battery, disorderly conduct, and more severe criminal activities; and

WHEREAS, remedies by the court will include closure of the property for a certain time period, emergency closure due to immediate threat, civil penalties, and authorization for the City to secure the property or otherwise abate the chronic nuisance or aggravated chronic nuisance if the owner fails to do so; and

WHEREAS, the City wishes to adopt this ordinance in furtherance of its goal to protect the public health, safety and welfare of its citizens; and

WHEREAS, this ordinance repeals Chapter 21 in its entirety and enacts a new Chapter 21 to properly incorporate the new provisions pertaining to chronic nuisance properties and aggravated chronic nuisance properties.

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

Section 1 – That Chapter 21, “NUISANCES IN GENERAL,” of the Moline Code of Ordinances, is hereby amended by repealing said chapter in its entirety and enacting in lieu thereof one new Chapter 21 relating to the same subject matter, which shall read as follows:

“CHAPTER 21

NUISANCES IN GENERAL

Art. I. General Provisions, §21-1100 - §21-1104

Art. II. Chronic Nuisance Property and Aggravated Chronic Nuisance Property, §21-2101 - §21-2107

ARTICLE I. GENERAL PROVISIONS

SEC. 21-1100. DEFINED.

Within the City, it is hereby declared a nuisance for any person:

- (1) **Nuisances defined by state law; nuisances in fact.** To cause any of those acts or omissions that are declared to be nuisances by the laws of the state, and such as are known as nuisances to the common law, not hereinafter enumerated in this section or this Code; or to cause those acts or omissions which are nuisances in fact.
- (2) **Nuisances defined by this Code.** To cause any of those acts or omissions that is declared by this Code to be nuisances.
- (3) **Unsafe, unsightly structures.** To maintain any building, structure, street, sign or billboard in an unsafe, hazardous, or unsightly condition.
- (4) **Distillery, slaughterhouse, etc.** To carry on, use, or occupy any distillery or slaughtering establishment, or establishment for steaming or rendering lard, tallow, offal, dead animals, or other substance of like nature, without the permission of the City Council.
- (5) **Odors.** To engage in any activity which causes or produces unreasonably offensive odors, except that this subsection shall not apply to those activities carried on in the public interest.
- (6) **Putrid substances.** Maintain or permit any substance on the premises which is, or may become, putrid or create an unhealthy condition.
- (7) **Noises.** To cause or allow unreasonably loud noises tending to cause alarm or to disturb the public peace and quiet.
- (8) **Licenses.** To fail or refuse to obtain and possess any license required by this Code or other ordinance of the City.
- (9) **Continuing violations of this Code.** To continue to do any act, acts, omission or omissions which constitutes a violation of this Code or other ordinance of the City.
- (10) **Attractive nuisances.** For the owner or occupant of any premises to create, maintain, or suffer an attractive nuisance to remain on the premises.
- (11) **Zoning violations.** To violate the Zoning Ordinance of the City.
- (12) **Unhealthy conditions.** To create, allow, maintain, or permit any condition which may endanger the public health.
- (13) **Encroachments.** To cause, allow, permit, or suffer any encroachment upon public ways or upon public grounds without obtaining a permit therefor.
- (14) **Unlawful assemblies.** To organize, lead, or participate in any unlawful assembly of persons.
- (15) **Violation of technical Codes.** To cause, allow, permit, or suffer the violation of the Building Code of the City, the Electrical Code of the City, the Fire Prevention Code of the City, the Heating and Air Conditioning Code of the City, the Plumbing Code of the City, or any other technical Code adopted by any provision of this Code or any other ordinance of the City.
- (16) **Abandoned refrigerators.** To leave or permit standing outside of any structure, or within any abandoned structure, in a place accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container which has an air tight door or lid with a snap lock or other

locking device which cannot be released from the inside; except that it shall not be a nuisance under the subsection if the door is first removed from the device.

- (17) **Littering.** To allow, suffer, permit, or cause to be dropped, thrown, discarded, placed, or deposited on any public way or public place, or on any private property when public property may be affected thereby, any paper, glass, plastic, wood, metal, solid or liquid vegetable or animal compound, rubbish, garbage, waste, effluent, junk, debris, litter, solid, or any combination thereof, except in a refuse receptacle or landfill site of the City.
- (18) **Construction and heavy equipment noise.** To allow, suffer, permit or cause to be operated, or otherwise engaged vehicles licensed by the State of Illinois or another state as a second division truck exceeding gross vehicle weight of thirty thousand (30,000) pounds or unlicensed motor vehicles used in the construction industry and commonly referred to as heavy construction equipment (such equipment to include but not to be limited to road graders, back hoes, steam rollers and crane) for the purpose of making commercial deliveries or engaging in building construction, other construction, or making commercial pickups, such as refuse collections, at any location within five hundred (500) feet of a residential use, prior to 6:00 a.m. on any day and after 9:00 p.m. on any day; however, this prohibition shall not apply in cases where a repair is immediately required for the protection of life or property. Nothing herein is intended to prohibit mere travel of legally authorized vehicles upon the streets of the City.
- (19) **Graffiti.**
- a. Graffiti shall be defined as any sign, symbol, marking, drawing, name, initial, word, diagram, sketch, picture or letter placed upon the real or personal property of an owner without the owner's express, written permission; provided, however, it shall not be a defense that the owner/occupant has given permission where this graffiti tends to incite violence.
 - b. It shall be unlawful for any person to place graffiti upon the real or personal, public or private, property of another.
 - c. It shall be unlawful for the owner and/or occupant of fixed real or personal property located within the public view to place or give permission to place graffiti, as otherwise defined in subsection a., on said real or personal property if the graffiti tends to incite violence by referring to gang or criminal activity, depicts or expresses obscenity as defined in Chapter 22, Sec. 22-7200, of the Moline Code of Ordinances or contains defamatory material about a public or private person, except as otherwise allowed by law.
 - d. It shall be unlawful for any person to possess, while in any public building or facility, or while on private property, any of the following materials with the intent to use such material(s) to violate subsection b. and/or c. above: spray paint containers, paint, ink, marking pens containing non-water soluble fluid, brushes, applicators or other materials for marking, scratching or etching.
 - e. Upon being notified, in writing, by the City of Moline, the property owner upon which graffiti has been illegally placed shall remove the graffiti within fifteen (15) days of the date of notice. By written request, this time period may be waived due to weather conditions by the chief of police or designee thereof. The property owner may also request assistance, in writing, for the graffiti removal based on the owner's inability to perform removal. Failure to remove the graffiti within the specified time shall cause the summary abatement of this nuisance as prescribed in this chapter and costs shall be assessed to the owner. The penalty upon conviction for the offense of failure to remove graffiti shall be a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00) for each offense and each day such failure shall continue shall be considered a separate offense and fines shall be assessed accordingly.
 - f. Penalty for violating subsection b. shall be a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00). The offender may also be ordered by the Court, in addition to fines, to pay restitution to the property owner for the costs of restoring the property to its condition before the graffiti was applied.
 - g. Penalty for violating subsection c. shall consist of a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00) for each offense and a

separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

- h. Penalty for violating subsection d. shall be a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00.).
- i. Public service work including, but not limited to, cleaning graffiti at locations within the City of Moline may be required by the court for persons convicted of violating subsections b., c., or d., in addition to or in lieu of fines or penalties described in subsections f., g., and h.
(Ord. No. 95-2-2, §21-1100 amended by enacting new subsection (19); 02/14/95; Ord. No. 98-10-1; §21-1100 (19) repealed; new §21-1100 (19) enacted; 10/06/98)

(20) **Barbed wire.** To construct, create, allow, maintain or permit within the City a fence or barrier, consisting of or made of barbed wire, or of which barbed wire is a part, unless the barbed wire commences at least eight feet above the ground.

(21) **Abandoned or Inoperable Vehicles.**

- a. To allow, cause or permit an abandoned or inoperable vehicle as defined in Section 20-7400 to be present and open to the view of the public.
- b. Penalty. Any person violating Section 21-1100(21) shall be subject to a mandatory fine of not less than one hundred dollars (\$100.00) plus court costs nor more than seven hundred fifty dollars (\$750.00) plus court costs. (Ord. No. 3008-2004; new subsection 21 enacted; 02/03/04)

SEC. 21-1101. NUISANCES CONSTITUTE VIOLATION.

It shall be unlawful for any person to create or maintain or permit the creation or maintenance of a nuisance as above defined upon property under such person's control. A person who violates this section shall be guilty of violation of this Code and such violation shall be punished as set forth within each subsection unless no punishment is set forth in said subsection, in which case the violation will be punished as set forth in Chapter 1, Sec.1-1107 of this Code. Nothing herein shall be construed to limit injunctive or other equitable relief.
(Ord. No. 95-2-2; §21-1101 repealed in its entirety; new section enacted, 02/14/95)

SEC. 21-1102. STANDING TO COMPLAIN.

The following shall have standing to complain of any condition declared to be a nuisance by this chapter:

- (1) The City;
- (2) Any person whose interest, rights or property are particularly adversely affected by the nuisance.

SEC. 21-1103. ABATEMENT PROCEEDINGS IN GENERAL.

Any person having standing to complain of a nuisance under this chapter, or the head of any City department having cognizance of a nuisance, shall report the fact of the nuisance and the details surrounding it to the city attorney who shall, if it is justified under the circumstances, institute abatement proceedings in accordance with the laws of the state.

SEC. 21-1104. EMERGENCY ABATEMENT OF CERTAIN NUISANCES.

When a nuisance as defined by this chapter exists and the nuisance causes or threatens imminent danger or great peril to persons or property, the nuisance may be immediately abated by the City, by using the following procedure:

- (1) The city administrator shall find that the nuisance exists, and that the nuisance causes or threatens imminent danger or great peril to persons or property, and that an emergency exists.
(Ord. No. 92-6-1; §21-1104(1) repealed; new subsection (1) enacted; 06/02/92)

- (2) A copy of the city administrator's findings made under subsection (1) shall be placed on file in the office of the city clerk. (Ord. No. 92-6-1; §21-1104(2) repealed; new subsection (2) enacted; 06/02/92)
- (3) The city clerk shall immediately issue a notice directed to the owner or occupant of the premises on which the nuisance exists, directing the owner or occupant to immediately abate the nuisance.
- (4) The notice issued pursuant to subsection (3) shall be served upon the owner or occupant of the premises upon which the nuisance exists. The notice may be served by any officer or employee of the City. In the event that the owner or occupant of the premises is not to be found, the notice may be posted on the premises on which the nuisance exists.
- (5) Upon being served with a notice to abate a nuisance as provided in subsection (4), the owner or occupant of the premises on which the nuisance is located shall immediately abate the nuisance. The failure of the owner or occupant to immediately abate the nuisance upon service or posting of the notice shall be a violation of this Code and shall be punished as provided in Sec. 1-1107 of this Code.
- (6) In the event that the owner or occupant of a premises on which a nuisance is ordered to be abated under this section does not immediately abate the nuisance, the appropriate City department shall immediately abate the nuisance. The cost of the abatement by the City shall be assessed against the property on which the nuisance existed, and shall be collected as other special assessments.

ARTICLE II. CHRONIC NUISANCE PROPERTY AND AGGRAVATED CHRONIC NUISANCE PROPERTY

SEC. 21-2101. VIOLATION OF THIS ARTICLE.

- (a) Any certain property within the City of Moline which becomes a chronic nuisance property or an aggravated chronic nuisance property is in violation of this article and is subject to its remedies.
- (b) Any owner or person in charge who permits property under his or her ownership or control to be a chronic nuisance property or an aggravated chronic nuisance property shall be in violation of this article and subject to its remedies.

SEC. 21-2102. DEFINITIONS.

- (a) **Chronic nuisance property.** Property upon which three (3) or more of the criminal or other offenses listed below have occurred during any 365-day period, as a result of any three (3) separate and distinct events.
 - (1) First degree murder as defined in 720 ILCS 5/9-1;
 - (2) Any kidnapping offense as defined in 720 ILCS 5/10-1 et seq.;
 - (3) Criminal Housing Management as defined in 720 ILCS 5/12-5.1;
 - (4) Possession of explosives or incendiary devices as defined in 720 ILCS 5/20-2;
 - (5) Any offense involving deadly weapons as defined in 720 ILCS 5/24 et seq.;
 - (6) Mob action as defined in 720 ILCS 5/25-1;
 - (7) Possession, manufacture or delivery of controlled substances as defined in 720 ILCS 570/401 et seq.;

- (8) Sexual abuse or related offenses as defined in 720 ILCS 5/12-15 et seq.;
 - (9) Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/1 et seq. or Section 22-1106 of the Moline Code of Ordinances;
 - (10) Sale, delivery or possession of drug paraphernalia, as defined in 720 ILCS 600/3 or Section 22-1201, 22-1202, and 22-1203 of the Moline Code of Ordinances;
 - (11) Disorderly conduct as defined in 720 ILCS 5/26-1 or Section 22-2100 of the Moline Code of Ordinances;
 - (12) Gambling as defined in 720 ILCS 5/28-1;
 - (13) Assault or battery or any related offense as defined in 720 ILCS 5/12-1 et seq. or Section 22-2101 or Section 22-2102 of the Moline Code of Ordinances;
 - (14) Public indecency as defined in 720 ILCS 5/11-9;
 - (15) Prostitution as defined in 720 ILCS 5/11-14 et seq.;
 - (16) Criminal damage to property as defined in 720 ILCS 5/21 et seq. or Section 22-3100 of the Moline Code of Ordinances;
 - (17) Illegal consumption or possession of alcohol as defined in 235 ILCS 5/1-1 et seq. or Section 4-5102 or Section 4-5104 of the Moline Code of Ordinances;
 - (18) An order imposing a fine or other sanction for violation of Chapter 8 of the Moline Code of Ordinances, which order is issued by the administrative hearing officer pursuant to Sections 2-6100 through 2-6117 of the Moline Code of Ordinances or by a Court;
 - (19) A violation of Chapter 32 of the Moline Code of Ordinances, which violation is not remedied within the time allotted after service of a notice to abate or correct as provided in Chapter 32;
 - (20) Violation of the City nuisance ordinance, Sections 21-1100 and 21-1101, of the Moline Code of Ordinances;
 - (21) Violation of the City of Moline's Liquor Ordinance as set forth in Chapter 4 of the Moline Code of Ordinances or violation of the State of Illinois Statute controlling or regulating the sale or use of alcoholic beverages.
- (b) **Aggravated chronic nuisance property.** Property upon which two (2) or more of the criminal offenses listed below have occurred during any 365-day period, as a result of any two (2) separate and distinct events.
- (1) First degree murder as defined in 720 ILCS 5/9-1;
 - (2) Any kidnapping offense as defined in 720 ILCS 5/10-1 et seq.;
 - (3) Criminal Housing Management as defined in 720 ILCS 5/12-5.1;
 - (4) Possession of explosives or incendiary devices as defined in 720 ILCS 5/20-2;
 - (5) Any offense involving deadly weapons as defined in 720 ILCS 5/24 et seq.;
 - (6) Mob action as defined in 720 ILCS 5/25-1 (a)(1), (d), (e);

- (7) Possession, manufacture or delivery of controlled substances as defined in 720 ILCS 570/401 et seq.;
 - (8) Sexual abuse or related offenses as defined in 720 ILCS 5/12-15 et seq.;
 - (9) Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/1 et seq. and Section 22-1106 of the Moline Code of Ordinances;
 - (10) Sale, delivery or possession of drug paraphernalia, as defined in 720 ILCS 600/3 and Section 22-1201, 22-1202, and 22-1203 of the Moline Code of Ordinances.
- (c) **Control.** The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.
- (d) **Court.** A court of competent jurisdiction in the State of Illinois or the City's system of administrative adjudication, commonly known as the Municipal Code Enforcement System ("MUNICES").
- (e) **Owner.** Any person, partnership, land trust, or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to:
- (1) A mortgagee in possession in whom is vested (a) all or part of the legal title to the property; or (b) all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or
 - (2) An occupant who can control what occurs on the property; or
 - (3) Any person acting as an agent of an owner.
- (f) **Permit.** To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- (g) **Person.** Any natural person, association, partnership, corporation or other entity capable of owning or using property in the City of Moline.
- (h) **Person in charge.** Any person in actual or constructive possession of a property, including but not limited to an owner, occupant of property under his or her domain, ownership or control.
- (i) **Property.** Any real property, including that which is affixed, incidental or pertinent to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, whether permitted or not.

SEC. 21-2103. REMEDIES.

- (a) In the event the court determines the property to be a chronic nuisance property or an aggravated chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred eighty (180) days, or may employ any other remedy deemed by it to be appropriate to abate the nuisance.
- (b) In addition to Sec. 21-2103(a) above, the court may impose upon the owner a civil penalty in accordance with Sec. 1-1107 of the Moline Code of Ordinances for each day the owner had actual knowledge that the property was a chronic nuisance property or an aggravated chronic nuisance property and permitted the property to remain a chronic nuisance property or an aggravated chronic nuisance property.
- (c) In determining what remedy or remedies shall be employed, the court may consider evidence of other conduct which has occurred on the property, including, but not limited to:
- (1) The actions or lack of action taken by the owner to mitigate or correct the problem at the property;

- (2) Whether the problem at the property was repeated or continuous;
- (3) The magnitude or gravity of the problem;
- (4) The cooperation of the person in charge with the City;
- (5) The cost to the City to investigate and correct or attempt to correct the condition;
- (6) The disturbance of neighbors;
- (7) The recurrence of loud and obnoxious noises; and/or
- (8) Repeated consumption of alcohol in public.

(d) The court may authorize the City of Moline to physically secure the property against use or occupancy in the event the owner fails to do so within the time specified by the court or to take other steps necessary to abate a chronic nuisance or an aggravated chronic nuisance.

(e) In the event that the City is authorized to secure the property or otherwise abate a chronic nuisance or an aggravated chronic nuisance, all costs reasonably incurred by the City to effect a closure or abate the nuisance shall be assessed against the owner.

(f) In the court's discretion, a tenant may be entitled to his or her reasonable relocation costs from the owner, as those costs are determined by the court if, without actual notice, the tenant moved into the property, after the owner received notice as described herein of the neighborhood improvement officer's determination as described below.

(g) The City, in addition to any other remedies set forth herein, may, at its discretion, charge an owner of a chronic public nuisance or an aggravated chronic public nuisance with a violation of this article which may be processed and prosecuted as an ordinance violation. Any person violating Section 21-2101 shall be subject to a mandatory fine of not less than two hundred fifty dollars (\$250.00) plus court costs.

(h) In addition to other remedies available, the court may order the owner or person in control of the nuisance property to post a reasonable bond to assure future compliance with the statutes of the State of Illinois and the ordinances of the City of Moline for a reasonable period of time, not to exceed one (1) year.

SEC. 21-2104. NOTIFICATION OF PROCEDURE.

(a) When the neighborhood improvement officer receives three (3) or more police or inspection reports documenting the occurrence of nuisance activity, as defined by Section 21-2102(a) of this chapter, or two or more police or inspection reports documenting the occurrence of nuisance activity, as defined by Section 21-2102(b) of this chapter, on or within a property, the neighborhood improvement officer shall independently review such reports to determine whether they describe acts set forth in Section 21-2102(a) or (b) of this chapter. Upon such findings, the neighborhood improvement officer shall notify the owner or person in control in writing that the property has been determined to be a chronic nuisance or an aggravated chronic nuisance property. The notice shall contain the following information:

- (1) The street address or legal description sufficient for identification of the property;
- (2) A statement that the neighborhood improvement officer has determined the property to be a chronic nuisance property or aggravated chronic nuisance property with a concise description of the nuisance activities leading to his/her findings;
- (3) Demand that the owner respond within ten (10) days to the neighborhood improvement officer and propose a course of action that the neighborhood improvement officer agrees will abate the nuisance activities giving rise to the violation;

- (4) Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the owner at the address of the property believed to be a chronic nuisance property, or such other place which is likely to give the person in charge notice of the determination by the neighborhood improvement officer;
- (5) A copy of the notice shall be served on the owner at such address as shown on the tax rolls of the county in which the property is located, and/or the occupant, at the address of the property, if these persons are different than the owner, and shall be made either personally or by first class mail, postage prepaid;
- (6) A copy of the notice shall also be posted at the property after ten (10) days has elapsed from the service or mailing of the notice to the owner and the owner has not contacted the neighborhood improvement officer.

Nothing herein shall prohibit the neighborhood improvement officer from sending a warning letter that a property is in danger of becoming a chronic nuisance or an aggravated chronic nuisance property after receiving one or more police or inspection reports documenting the occurrence of nuisance activity, as defined in Section 21-2102(a) and (b) of this chapter. Such warning is not required.

(b) The failure of any person to receive notice that the property may be a chronic nuisance property or aggravated chronic nuisance property shall not invalidate or otherwise affect the proceedings under this article.

(c) If after the notification, but prior to the commencement of legal proceedings by the City pursuant to this article, an owner stipulates with the neighborhood improvement officer that the owner will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the neighborhood improvement officer may agree to postpone legal proceedings for not less than ten (10) days nor more than thirty (30) days. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within thirty (30) days, the City of Moline shall commence a legal proceeding to abate the nuisance.

SEC. 21-2105. COMMENCEMENT OF ACTION, BURDEN OF PROOF.

(a) The City of Moline may commence an action to abate a chronic nuisance or an aggravated chronic nuisance as described in Section 21-2102(a) and (b).

(b) In an action seeking abatement of a chronic nuisance property or aggravated chronic nuisance property, the City shall have the initial burden of showing by preponderance of the evidence that the property is a chronic nuisance property or an aggravated chronic nuisance property.

(c) It is a defense to an action seeking the closure of chronic nuisance property or an aggravated chronic nuisance property that the owner or person in control of the property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property or an aggravated chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the findings that the property is a chronic nuisance property or an aggravated chronic nuisance property.

SEC. 21-2106. EMERGENCY CLOSING PROCEDURES.

(a) In the event that it is determined that the property is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief, as is deemed by the city attorney to be appropriate. In such an event, the notification provision set forth in Section 21-2104 above need not be complied with; however, the City shall make a diligent effort to notify the person in charge prior to a court hearing. In the alternative, the City may proceed under Section 21-1104 for emergency abatement.

(b) In the event that the court finds the property constitutes a chronic nuisance property or an aggravated chronic nuisance property and finds that the property is an immediate threat to the public safety and welfare, the court may order the remedies set forth in Section 21-2103 of this chapter.

SEC. 21-2107. SEVERABILITY.

If any provision of this article or its application, or any person or circumstances held to be invalid for any reason, the remainder of said application of its provisions to the other persons or circumstances shall not be in any way affected.”

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

CITY OF MOLINE, ILLINOIS

Mayor

Date

Passed: _____

Approved: _____

Attest: _____
City Clerk

Approved as to Form:

City Attorney

Council Bill/Resolution No. 1276-2012

Sponsor: _____

A RESOLUTION

AMENDING Budget Resolution #1198-2011 by authorizing various changes to line items in the FY 2012 Budget.

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

That the FY 2012 Budget is amended by changing the following line items:

<u>Account Number</u>	<u>Current Budget</u>	<u>Budget Adjustment</u>	<u>Revised Budget</u>
1) 010-0715-463.03-61 Payment to Agencies	\$275,125	\$ 33,290	\$308,415
010-9955-481.10-98 Contingency	\$1,473,970	(\$33,290)	\$1,440,680

Explanation: Only \$10,000 was budgeted for the Single Family Property Tax Rebate Program and to date \$43,288.99 has been authorized.

2) 421-1617-455.03-22 Professional/Technical	\$51,435	\$11,000	\$62,435
421-0000-365.20-00 Donation Revenue	\$50,000	\$11,000	\$61,000

Explanation: Library has received more donations/gifts than expected, resulting in more expenditures.

3) 440-9964-415.10-41 Transfer to OPEB	\$0	\$500,000	\$500,000
440-0000-300.00-00 Transfer from Reserves	\$801,045	\$500,000	\$1,301,045
441-0000-391-44-00 Transfer from Health Insurance	\$0	\$500,000	\$500,000
441-0000-415-10-99 Transfer to Reserves	\$0	\$500,000	\$500,000

Explanation: To reflect the internal transfer of funds to the OPEB account

Account Number	Current Budget	Budget Adjustment	Revised Budget
4) 252-9956-483.02-55 Professional Development	\$800	\$2,000	\$2,800
252-9956-483.03-22 Professional/Technical	\$125	\$5,000	\$5,125
252-9956-483.04-16 Utilities	\$19,000	(\$10,000)	\$9,000
252-9956-483.04-26 Contractual Services	\$47,000	\$810	\$47,810
252-9956-483.05-55 Liability Insurance	\$330	\$20	\$350
252-0000-300.00-00 Transfer from Reserves	\$9,070	(\$2,170)	\$6,900
253-9956-483.02-55 Professional Development	\$3,200	\$1,300	\$4,500
253-9956-483.04-15 Rental Expense	\$0	\$100	\$100
253-9956-483.05-04 Postage/Shipping	\$200	\$300	\$500
253-9956-483.05-06 Advertising/Promotional	\$2,100	\$1,400	\$3,500
253-0000-300.00-00 Transfer from Reserves	\$13,615	\$3,100	\$16,715

Explanation: To revise the two Special Service Area budgets based on actual funds available at the close of FY 2011.

5) 452-9910-471.09-10 Debt Service - Principal	\$0	\$400,000	\$400,000
452-9910-471-09-20 Debt Service – Interest	\$0	\$200,000	\$200,000
452-0000-371.10-00 Loan Repayment Revenue	\$0	\$600,000	\$600,000

Explanation: To reflect annual principal and interest debt service payments on KONE Loan not included as part of the 2012 budget.

Council Bill/Resolution No. 1276-2012

Sponsor: _____

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Account Number	Current Budget	Budget Adjustment	Revised Budget
6) 415-9954-415.06-30 Operating Supplies	\$19,000	\$10,000	\$29,000
415-9954-415.06-65 Other Supplies	\$ 3,100	\$30,000	\$33,100
415-0000-300.00-00 Transfer from Reserves	\$ 0	\$40,000	\$40,000

Explanation: For Foreign Fire Insurance purchases approved by the Board but not reflected in the 2012 budget (Workout equipment, Kitchen Remodel, flooring, refrigerator, pop machine)

7) 450-0000-393.10-00 Bond Proceeds	\$0	\$263,190	\$263,190
450-9910-471.09-50 Bond Issuance Costs	\$0	\$263,190	\$263,190

Explanation: Refinancing costs for various bond issues not reflected in the 2012 budget.

8) 414-1523-452.06-30 Operating Supplies	\$5,500	\$20,000	\$25,500
414-0000-300.00-00 Transfer from Reserves	\$0	\$20,000	\$20,000

Explanation: Park & Recreation has received more donations/gifts than expected, resulting in more expenditures.

9) 235-0775-496.10-85 Transfer to Debt Service	\$240,440	\$2,737,000	\$2,977,440
235-0000-393.10-00 Bond Proceeds	\$0	\$2,737,000	\$2,737,000

Explanation: Refinancing of One Moline Place Debt not reflected in the 2012 budget.

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Sponsor: _____

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Account Number	Current Budget	Budget Adjustment	Revised Budget
10) 237-0775-496.04-40 Tax Incentive	\$150,000	\$680,200	\$830,200
237-0000-300.00-00 Transfer from Reserves	\$0	\$680,200	\$680,200

Explanation: Borrowing for Autumn Trails Advanced Payment not reflected in the 2012 Budget.

11) 245-0775-496.03-22 Professional Services	\$0	\$75,000	\$75,000
245-0000-300.00-00 Transfer from Reserves	\$0	\$75,000	\$75,000

Explanation: Moline Business Park expenditures for RDC Case Creek higher than anticipated in 2012 (multi-year spend down of 2011 bond proceeds)

12) 253-9956-483.08-95 Other Capital Projects	\$115,000	\$1,100,000	\$1,215,000
253-0000-395.30-00 RAN Issuance	\$0	\$1,100,000	\$1,100,000

Explanation: Issuance of Revenue Anticipation Notes from Special Service Area #6 to fund the final cost of the 5th Avenue Reconstruction, 17th – 19th Streets Project.

13) 017-0729-492.12-77 Rehab Projects 2012	\$0	\$40,000	\$40,000
017-0729-492.20-77 Rehab Projects 2010	\$0	\$135,000	\$135,000
017-0729-492.28-71 Rehab Activity 2008	\$121,000	(\$121,000)	\$0
017-0000-300.00-00 Transfer from Reserves	\$0	\$54,000	\$54,000

Explanation: Adjustments necessary to reflect new SFOOR grant program.

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Sponsor: _____

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14)	019-0729-492.29.11	\$30,000	\$8,830	\$38,830
	Lead Remediation RI			
	019-0000-331.60-00	\$200,375	\$8,830	\$209,205
	Grant Revenue			

Explanation: Lead Grant Ended – adjustment per final report

15)	025-0732-492.04-25	\$0	\$600,000	\$600,000
	Contractual Repairs			
	025-0732-492.29-25	\$600,000	(\$600,000)	\$0
	Rehab Projects 2009			
	025-0734-492.04-25	\$0	\$420,000	\$420,000
	Contractual Repairs			
	025-0734-492.29-25	\$420,000	(\$420,000)	\$0
	New Construction			
	238-0729-492.11-77	\$0	\$336,000	\$336,000
	Rehab Project 2011			
	238-0729-492.20-77	\$336,000	(\$336,000)	\$0
	Rehab Projects 2010			

Explanation: Washington Square Project costs not reflected in 2012 budget.

BE IT FURTHER RESOLVED that the City Council directs the Finance Director to make the necessary accounting entries for the aforementioned budget amendments.

CITY OF MOLINE, ILLINOIS

Mayor

December 4, 2012

Date

Passed: December 4, 2012

Approved: December 11, 2012

Attest: _____

City Clerk

Approved as to Form:

City Attorney

Council Bill/Resolution No. 1277-2012

Sponsor _____

A RESOLUTION

ADOPTING a Budget for corporate purposes for the Fiscal Year 2013.

WHEREAS, the City of Moline having a population greater than 25,000, is a home rule unit under Section 6, Article VII of the Constitution of the State of Illinois; and

WHEREAS, even though the City of Moline adopts an Annual Appropriation Ordinance, this Council desires a more detailed accounting of authorized expenditures; and

WHEREAS, a budget provides such a detailed accounting; and

WHEREAS, that it is the intent of this City Council that said budget document shall provide authorization to and this Council hereby grants authorization to the Mayor and the various other officers and department directors of said City of making expenditures for corporate purposes during said period in accordance with said budget; provided, that no capital expenditures (as established by expense code number 700 through 899) shall be incurred without first obtaining City Council approval; and

WHEREAS, that it is the intent of the City Council that no performance center total in said budget document be exceeded in said period without first obtaining approval from the City Council. Therefore, the authorization provided above is limited by the adoption and approval of expenditures in the amounts stated in said budget document; and

WHEREAS, that this City Council recognizes that there are genuine emergencies in the operation of the various activities of the City which cannot be adequately set by strict compliance with the limitation contained above. Therefore, in cases of bona fide emergency, the City Administrator, upon recommendation of the Department Director, and in consultation with the Finance Director, may approve expenditures either not budgeted or exceeding the budgeted amount; provided, that an appropriate amount will not be exceeded by such expenditures. Furthermore, prior to authorizing the expenditures, or as soon afterward as is reasonable, the City Administrator will consult with the Mayor.

Council Bill/Resolution No. 1277-2012
Sponsor _____
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NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the budget for corporate purposes for the fiscal year 2013 attached hereto and incorporated herein by this reference thereto as Exhibit "A" is hereby adopted as the budget for the City of Moline, Illinois, for the fiscal year beginning January 1, 2013 and ending December 31, 2013.

CITY OF MOLINE, ILLINOIS

Mayor

December 11, 2012
Date

Passed: December 11, 2012

Approved: December 18, 2012

Attest _____
City Clerk

Approved as to Form:

City Attorney

Council Bill/Resolution No. 1278-2012

Sponsor: _____

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute an agreement between the City of Moline and AlliedBarton Security Services LLC, setting forth the terms for assignment of three police officers to the SouthPark Mall complex for the period January 1, 2013 through December 31, 2013.

WHEREAS, in 1996 the police department obtained a federal grant to assign three police officers to work in SouthPark Mall on a full-time basis through March 1999; and

WHEREAS, in recognition of the success of this program, the City and mall representatives have annually proposed an agreement for the continued funding of the program; and

WHEREAS, the proposed agreement provides, in part, for AlliedBarton Security Services to reimburse the City for a portion of the current salary and benefit costs for the three police officers assigned to duty at the Mall.

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

That the Mayor and City Clerk are hereby authorized to execute an agreement between the City of Moline and AlliedBarton Security Services LLC, setting forth the terms for assignment of three police officers to the SouthPark Mall complex for the period January 1, 2013 through December 31, 2013, provided said agreement is substantially similar in form and content to Exhibit A, attached hereto and incorporated herein by this reference thereto, and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

Mayor
December 11, 2012

Date

Passed: December 11, 2012

Approved: December 18, 2012

Attest: _____
City Clerk

Approved as to form:

City Attorney

SOUTHPARK MALL LIAISON OFFICER PROGRAM
AGREEMENT

This Agreement made and entered into this ____ day of _____, 20 __, by and between the CITY OF MOLINE, ILLINOIS, a municipal corporation, hereinafter referred to as "City," and, ALLIEDBARTON SECURITY SERVICES, LLC, hereinafter referred to as "Allied."

WITNESSETH:

WHEREAS, the City, with a population greater than 25,000, has plenary police powers pursuant to Art. VII, §6(a), Ill. Const.; and

WHEREAS, both Allied and the City believe that having police officers assigned to and stationed at SouthPark Mall will deter crime and increase citizen and staff safety; and

WHEREAS, the City is willing to assign three (3) officers to SouthPark Mall only if Allied participates in a cost sharing of the employment costs of such officers; and

WHEREAS, Allied is willing to participate in such cost sharing only upon certain guarantees about approval of personnel, availability of personnel, and delineation of duties;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained hereinbelow, the parties hereto agree as follows:

Article I. Purpose.

This agreement sets forth an arrangement between the City of Moline and AlliedBarton Security Services whereby the City will utilize a facility at the Macerich SouthPark Mall as a police substation and the SouthPark Mall will benefit by increased police security. It is hoped that through this alliance, the public will benefit through fewer acts of vandalism, property losses, breaches of the peace, acts of violence, and acts of intimidation against the public. It is also hoped that the increased police presence at SouthPark Mall, as well as in the surrounding area, will act to effectively deter crime to benefit the City and the public. This agreement defines the basic parameters of, and operational guidelines for, the relationship between Allied and the City with respect to the police substation.

Article II. Term.

The term of this Agreement is from January 1, 2013 to December 31, 2013.

Article III. Termination Rights.

3.1 Either party may terminate this Agreement for cause upon fifteen (15) days written

notice delivered to the other party. "For cause" is defined for purposes herein as written notice of deficiency, which deficiency is not corrected to the mutual satisfaction of both parties within fifteen (15) days after receipt of such notice.

3.2 Either party may terminate this Agreement without cause upon ninety (90) days written notice delivered to the other party.

3.3 Termination of this Agreement under either 3.1 or 3.2 shall not relieve either party of any obligation incurred up to and including the date of termination; if Allied terminates under 3.2, it shall be responsible for payment of all assignment days remaining in the current billing quarter in which the termination date falls.

Article IV. City's Duties.

4.1 The City has the sole right to control the manner and means of performing the services covered by this agreement. The City's police officers, supervisors, employees, and agents furnished pursuant to this agreement shall be employees of the City, and the City shall exercise complete and exclusive control over all personnel and all aspects of the services provided to the Macerich SouthPark Mall, including, but not limited to, evaluation of the City's personnel screening, hiring, training, deployment, supervision, discipline, discharge, and adherence to all relevant laws, statutes, and regulations, resolution of complaints and grievances, and all other matters necessary to provide the services herein.

4.2 The City shall assign three (3) Moline Police Officers to and station said officers at SouthPark Mall. The City shall not be required to assign an alternate officer in the event of sickness of an officer, other than an extended illness, or when on paid leave status; however, the City reserves the right to assign an alternate on such days or other days.

4.3 Said assigned officers, and any alternate, shall be selected, supervised, and instructed to perform in accordance with the job description attached hereto and incorporated herein as Exhibit A."

4.4 It is understood that the assigned officers shall not continuously remain on mall property during the assignment day. Court appearances, training, police emergencies will require assigned officers to be off mall property. While the City will attempt to keep those incidents to a minimum, both parties acknowledge that such matters are not completely within the control of the City. In addition, Allied understands that training of officers will benefit not only the City and the police department, but also the Mall.

4.5 The City shall perform a written evaluation of the SouthPark Mall Liaison Officer Program and the officers assigned thereto annually. Such evaluation shall allow for written input from Allied.

4.6 The City shall authorize overtime not associated with mall activities and pay for any overtime so authorized.

4.7 The City shall purchase and hold title to one (1) vehicle to be assigned to the officers

at SouthPark Mall, and shall be responsible for all costs associated with such vehicle.

4.8 The City shall provide Allied with quarterly statements for Allied's share of the cost of three police officers for the period of this agreement in accordance with the Statement of Cost attached hereto and incorporated herein as Exhibit "B."

4.9 The City shall indemnify, defend, and hold harmless Allied, their subsidiaries, affiliates, partners, officers, directors, employees, and agents, from and against all claims under the Workers Compensation, Occupational Disease, or similar statutes for injury or illness, resulting to the assigned employees from such assignment. In addition, the City shall indemnify, defend, and hold harmless Allied, their subsidiaries, affiliates, partners, officers, directors, employees, and agents, from and against all claims, demands, damages, costs, expenses (including reasonable attorney fees), suits, actions, or liability, whether at law or in equity, resulting to third parties, the mall, its owners, managers, or tenants (including employees of tenants) for the negligent acts or omissions or willful misconduct of the City, its employees, agents, or representatives which occur during the course of police activity at or from the mall which arises out of this agreement. Provided, however, that once the City accepts its responsibility to defend and indemnify Allied, any attorney fees incurred by Allied by appointment of or employment of additional counsel to that retained or assigned by the City shall be the sole and exclusive cost and expense of Allied and the City shall not be liable therefor.

Article V. Allied Duties.

5.1 Allied shall request three (3) assigned officers to SouthPark Mall during the term hereof.

5.2 Allied shall provide sufficient office space inside SouthPark Mall for said assigned officers.

5.3 Allied shall pay an agreed sum each quarter to the City. Said payment shall be made within thirty (30) days after receipt of billing from the City. The charges will be in accordance with the Statement of Cost attached hereto and incorporated herein as Exhibit "B."

5.4 Any time Allied requests and authorizes overtime for the assigned officers this shall be paid by Allied but at the rates established by the City.

Article VI. Miscellaneous.

6.1 The City has certain duties to indemnify, defend, and hold harmless Allied under certain specified circumstances. Therefore, whenever a demand or suit is made or filed against Allied, that party shall promptly notify in writing the City of such demand or suit, and the City shall promptly notify Allied of the name of the individual assigned to handle and defend such demand or suit.

6.2 While Allied reserves the right to make final approval of assigned officers and alternates and to demand the removal of any such officer approved, the City reserves the sole and exclusive right to discipline such personnel. Allied shall report promptly, however, to the Chief of

Police any infractions or deficiency in performance and may file charges with the Board of Fire and Police Commissioners against said personnel only after ten (10) days have expired from so reporting same to the Chief of Police.

6.3 Both parties agree that, if the assigned officers are expected to perform a search or seizure of persons or property, said officers shall be bound by and shall follow established City policies and directives. Nothing herein shall prevent Allied personnel from acting under Allied policies and directives outside the presence of the assigned officers.

6.4 Should a dispute arise concerning an itemized bill, the parties shall first meet to discuss the amounts in dispute and attempt to resolve the matter by agreement. If the parties are unable to satisfactorily reach resolution within ten days, the dispute shall be submitted to a neutral arbiter chosen by the parties and acceptable to both of them whose decision shall be final and binding. If neither party can agree on a mutually acceptable neutral to decide the issue, each party may select an arbiter and the two arbiters so selected shall appoint a third arbiter. The three arbiters shall hear the matter informally and issue a determination which shall be final and binding. Any costs of arbitration shall be divided equally between the two parties.

6.5 Any change to this Agreement shall be in writing and approved by the governing bodies of both parties. The Chief of Police and the designated Allied representative may, however, approve non-substantive changes, i.e., matters not affecting the daily charge, the billing cycle, or the scope of authority, by reducing same to writing and executing same for the respective parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized agents to sign and seal, if any, these presents the day and year first above written.

AlliedBarton Security Services LLC

City of Moline, Illinois

By 
Sean O'Neill
Title: Operations Manager

By _____
Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

**JOB DESCRIPTION
POLICE LIAISON OFFICERS
SOUTHPARK MALL**

Job Title: SouthPark Mall Police Liaison Officers

Employment: The SouthPark Mall Police Liaison Officers are officers of the Moline Police Department and employees of the City of Moline on special assignment to the Macerich SouthPark Mall facility.

Employment Contract: The City of Moline and AlliedBarton Security Services, LLC will enter into an annual agreement to purchase the services of three (3) SouthPark Mall Police Liaison Officers.

Qualifications/Selection: The training, experience and other qualifications of the SouthPark Mall Police Liaison Officers shall be established by the Chief of Police. When selecting officers for these positions, the Chief of Police shall nominate a slate of qualified candidates, and the designated representative of Allied shall make the final selection.

Professional Standards: The SouthPark Mall Police Liaison Officers must conduct themselves in a professional manner and must maintain a high level of respect and integrity within the community.

Attire: When functioning as SouthPark Mall Police Liaison Officers, the officers shall attired in standard police uniform, except on those occasions when, in the judgment of Allied, civilian attire would be more appropriate.

Reports to: The SouthPark Mall Police Liaison Officers are police officers, and as such are at all times under the command of their designated police department superiors.

Duties: The position of SouthPark Mall Police Liaison Officer is under the immediate supervision of the Moline Police Department, and the duties of the assigned officers are under the authority and responsibility of the Moline Police Department.

The SouthPark Mall Police Liaison Officers shall not be responsible for the enforcement of Allied policies.

While in this assignment, the SouthPark Mall Police Liaison Officers:

1. Serve as the liaison between SouthPark Mall and the Moline Police Department, promote the development of effective communication between the mall and legal authorities, and coordinate the provision of police services at the mall.
2. Serve as consultants to SouthPark Mall in matters of crime prevention, law enforcement, and other related matters.

3. Pro-actively work with Mall personnel to prevent crime on mall property, to protect citizens and staff, and to provide a safe and secure environment. In this role the liaison officers patrol the mall and grounds, supervise parking lots, monitor pedestrian and vehicular traffic on mall grounds, and prevent loitering and trespassing on mall property when requested to do so.
4. Conduct and/or coordinate the police investigation of incidents involving SouthPark Mall, its staff and customers. The officers will also investigate other cases or perform other duties as assigned by their designated police department supervisor.
5. Perform other duties as assigned by their designated police department supervisor.

**STATEMENT OF COST
SOUTHPARK MALL ASSIGNMENT
ASSIGNED OFFICERS**

01/01/2013 - 12/31/2013
12-Month Period
Quarterly Billings (4)

LINE ITEM	#1	#2	#3	TOTAL
Salary (Assigned Officers)	69,794	71,672	47,549	189,015
Police Retirement (53.5592%)	37,381	38,387	25,467	101,235
Health Coverage (\$1,118.41 fam/\$428.50 sgl/mo.)	13,420	13,420	5,140	31,980
Qualification Pay (\$20-\$30 month)	280	280	280	840
Life Insurance	0	0	20	20
Medicare (1.45% x base + qualification pay)	1,016	1,043	694	2,753
Worker's Compensation (base + qual. pay /100 x \$3.05)	2,137	2,195	1,459	5,791
Clothing Allowance (Paid in June & December)	700	700	700	2,100
TOTAL 12-MONTH COST	124,728	127,697	81,308	333,734
SOUTHPARK SHARE (38.949%)				129,986

Payable in four (4) quarterly payments of \$32,496.50 as follows:

For Period

January - March, 2013
April - June, 2013
July - September, 2013
October - December 2013

Statement Date

April 1, 2013
July 1, 2013
October 1, 2013
January 1, 2014

ADDENDUM

SOUTHPARK MALL LIAISON AGREEMENT

This addendum is made in accordance with section 6.5 of the agreement between the City of Moline and AlliedBarton Security Services.

6.5 Any change to this Agreement shall be in writing and approved by the governing bodies of both parties. The Chief of Police and the designated Allied representative may, however, approve non-substantive changes, i.e., matters not affecting the daily charge, the billing cycle, or the scope of authority, by reducing same to writing and executing same for the respective parties.

In mutual consideration of the reduced level of funding available from Allied Barton during 2013 for the SouthPark Mall Liaison Officer Program, and the current budget constraints affecting the City of Moline, it is agreed that the police department may utilize one of the assigned SouthPark Mall Liaison Officers for regular police department duties for a maximum of seventy-eight (78) individual duty days during the term of this agreement. The police department will determine the officer and dates of reassignment, and will provide SouthPark management with notification of that determination.

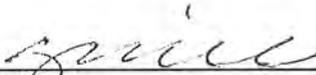
Dated this 7 day of November, 2012.

MOLINE POLICE DEPARTMENT

ALLIED BARTON



Kim R. Hankins
Interim Chief of Police



Sean O'Neill
Operations Manager

Moline Police Department
South Park Mall Officers' Assignment Days
(Resulting from Reduction in 50-50 Funding)

Week	Year	Maximum	Holidays	Annual Vacation	Balance	11.05%	88.95%
"Hours" Per Officer			Subtract	Subtract	Hours	Hours	Hours
40 hours	52 weeks	2080	104	104	1872	207	1665
"Day" Equivalentents Per Officer			Subtract	Subtract	Days	Days	Days
5	260	260	13	13	234	26	208
					Total Individual Duty Days (3 Officers)		
					702	78	624

Council Bill/Resolution No.: 1279-2012

Sponsor: _____

A RESOLUTION

AUTHORIZING the Utilities General Manager to execute a contract with Strand Associates Inc., for professional engineering services required for the design of the North Slope Wastewater Treatment Plant Improvements Project, in an amount not-to-exceed \$1,927,500.00.

WHEREAS, the City of Moline requires specialized engineering professional services to design much needed improvements to the North Slope Wastewater Treatment Plant; and

WHEREAS, Staff has determined that Strand Associates Inc. is best qualified to provide the required professional engineering services for this project.

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

That the Utilities General Manager is hereby authorized to execute a contract with Strand Associates Inc., for professional engineering services required for the design of the North Slope Wastewater Treatment Plant Improvements Project, in an amount not-to-exceed \$1,927,500.00; provided said contract is substantially similar in form and content to Exhibit "A," attached hereto and incorporated herein by this reference thereto, and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

Mayor

December 4, 2012

Date

Passed: December 4, 2012

Approved: December 11, 2012

Attest: _____

City Clerk

Approved as to Form:

City Attorney



Strand Associates, Inc.
910 West Wagra Drive
Madison, WI 53715
P: 608-251-4843
F: 608-251-8055

November 21, 2012

City of Moline
Moline Water Plant
30 18th Street
Moline, IL 61265

Attention: Mr. Gregory A. Swanson, Utilities General Manager

Re: Agreement for Design Services
North Slope Wastewater Treatment Plant Improvements

This is an Agreement between the City of Moline, Illinois, hereinafter referred to as OWNER, and Strand Associates, Inc.[®], hereinafter referred to as ENGINEER, to provide Design Services (Services) for the North Slope Wastewater Treatment Plant Improvements project comprising a new preliminary treatment facility including mechanical fine screening and influent pumping, modification to the existing primary clarifiers and aeration tanks, new aeration blowers, two new final clarifiers, a new return-activated sludge/waste-activated sludge pumping building, a new chlorine contact tank for disinfection, conversion of existing gas chlorination to liquid sodium hypochlorite, two new sludge holding tanks, conversion of the existing final clarifiers to excess flow clarifiers, upgrades to the existing control building, and conversion of the existing dissolved air flotation building to a maintenance building identified as alternatives HW6, T1, and D2 in the 2012 Wastewater Facilities Plan Report prepared by ENGINEER. This Agreement shall be in accordance with the following elements.

Scope of Services

ENGINEER will provide the following Services to OWNER.

Design Services

1. Review design objectives, schedule, and anticipated costs during a kickoff meeting at the beginning of the design effort.
2. Conduct a topographic site survey to gather information for the preparation of the bidding documents.
3. Develop the schematic and spatial design for processes recommended in the facilities plan prepared by ENGINEER, including additional detailed schematics, site, and building layout drawings and hydraulic calculations.

TWS:\nro\R\MAD\Documents\Agreements\M\Moline, City of (IL)\NorthSlopeWWTP\Imps.2012\Agr\3676.001.docx

City of Moline
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November 21, 2012

4. Design the various treatment processes and support systems, including process, hydraulic, structural, electrical, and mechanical elements and final calculations to design the components.
5. Prepare layouts of the site and each new or modified structure.
6. Prepare for and facilitate an approximately 15 percent complete meeting with OWNER to finalize design parameters and to review site layout, equipment selection, and proposed facilities.
7. Prepare Bidding Documents using Engineers Joint Contract Documents Committee C-700 Standard General Conditions of the Construction Contract, 2007 edition, technical specifications, engineering drawings, and Contract Documents to permit the entire project to be competitively bid as a single prime construction contract.
8. Meet with OWNER to obtain input and concurrence with the design. Attend four review meetings at approximately 30, 60, 90, and 100 percent drawing completion.
9. Prepare an opinion of probable construction cost based on the final Contract Documents.
10. Submit three copies of the final bidding documents to OWNER for review and comment.
11. Prepare and assist OWNER in submitting the application fee for the construction permit required by the Illinois Environmental Protection Agency (IEPA). Submit drawings and specifications to IEPA for approval.
12. Incorporate OWNER and IEPA review comments as appropriate into the Contract Documents, drawings, and specifications. Submit three copies of the reviewed documents to OWNER and IEPA.

Miscellaneous Design Services

1. Prepare and submit the IEPA Loan Preapplication.
2. Assist OWNER in preparing and submitting a financial aid application for the Illinois Water Pollution Control Revolving Loan Fund and communicate with IEPA funding staff.
3. Assist OWNER in developing a request for proposal to obtain the services of a geotechnical engineering firm for soils borings and geotechnical recommendations for construction at the site. OWNER shall contract directly with the geotechnical engineering firm.

City of Moline
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4. Assist OWNER in developing a request for proposal to obtain the services of an environmental site assessment firm for environmental site recommendations for construction at the site. OWNER shall contract directly with the environmental site assessment firm.
5. Assist OWNER in obtaining IEPA and City of Moline Stormwater and Erosion Control Permitting associated with construction of the new wastewater treatment plant which is not anticipated to result in floodplain or wetland impacts.

Service Elements Not Included

The following services are not included in this Agreement. If such services are required, they will be provided as noted.

1. Additional and Extended Services during construction made necessary by:
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of any contractor.
 - c. Prolongation of the time of the construction contract.
 - d. Default by contractor under the construction contract.Any services of this type will be provided through an amendment to this Agreement.
2. Archaeological or Botanical Investigations: ENGINEER will assist OWNER in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review through a separate agreement with OWNER.
3. Bidding- and Construction-Related Services: Bidding- and construction-related services for the project will require a separate agreement with OWNER.
4. Flood Studies: Any services involved in performing flood and floodway studies, if required, will be provided through an amendment to this Agreement or through a separate agreement with OWNER.
5. Geotechnical Engineering: It is anticipated that geotechnical engineering information will be provided through OWNER and OWNER's geotechnical consultant. If soil borings are required, ENGINEER will assist OWNER in direct procurement of drilling services.
6. Land and Easement Surveys/Procurement: Any services of this type including, but not limited to, a record search, field work, preparation of legal descriptions, or assistance to OWNER for securing land rights necessary for siting sanitary sewer, tanks, and appurtenances will be provided through a separate agreement with OWNER.

City of Moline
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7. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by OWNER.
8. Preparation for and/or Appearance in Litigation on Behalf of OWNER: This type of service by ENGINEER will be provided through a separate agreement with OWNER.
9. Review of Product Substitutions or Means, Method, Technique, Sequence, or Procedure Substitutions Proposed by Contractor: The terms of the construction Contract (GC 6.05B and GC 6.05E) call for the construction contractor to reimburse OWNER for ENGINEER's cost for evaluating substitute products, means, method, technique, sequence, or procedure of construction. ENGINEER's cost for such evaluations is not included in the scope of this Agreement. Services of this type by ENGINEER will be provided through an amendment to this Agreement.
10. Revising Designs, Drawings, Specifications, and Documents: Any services required after these items have been previously approved by state or federal regulatory agencies, because of a change in project scope or where such revisions are necessary to comply with changed state and federal regulations that are put in force after Services have been partially completed, will be provided through an amendment to this Agreement.
11. Services Furnished During Readvertisement for Bids, if Ordered by OWNER: If a Contract is not awarded pursuant to the original bids, any services of this type will be provided through an amendment to this Agreement.
12. Services Related to Buried Wastes and Contamination: Should buried solid, liquid, or potentially hazardous wastes or subsurface or soil contamination be uncovered at the site, follow-up investigations may be required to identify the nature and extent of such wastes or subsurface soil or groundwater contamination and to determine appropriate methods for managing of such wastes or contamination and for follow-up monitoring. Investigation, design, or construction-related services related to buried solid, liquid, or potentially hazardous wastes or soil or groundwater contamination will be provided through a separate agreement with OWNER.

Compensation

OWNER shall compensate ENGINEER for Services a lump sum of \$1,927,500.

Only sales taxes or other taxes on Services that are in effect at the time this Agreement is executed are included in the Compensation. If the tax laws are subsequently changed by legislation during the life of this Agreement, this Agreement will be adjusted to reflect the net change.

The lump sum for the Services is based on wage scale/hourly billing rates, adjusted annually on July 1, that assumes the Services will be completed as indicated. Should the completion

City of Moline
Page 5
November 21, 2012

time be extended, it may be cause for an adjustment in the lump sum that reflects any wage scale adjustments made.

The lump sum will not be exceeded without prior notice to and agreement by OWNER but may be adjusted for time delays, time extensions, amendments, and changes in the **Scope of Services**. Any adjustment will be negotiated based on ENGINEER's increase in costs caused by delays, extensions, amendments, or changes.

Schedule

Services will begin upon execution of this Agreement, which is anticipated on November 27, 2012. Services are scheduled for completion in accordance with the following anticipated milestones:

<u>Service Element</u>	<u>Anticipated Completion Date</u>
Drawings and specifications submitted to IEPA	September 30, 2013
Design Services	December 31, 2013
Miscellaneous Design Services	December 31, 2013

Standard of Care

The Standard of Care for all Services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's Services.

OWNER's Responsibilities

1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to this project including previous reports, previous drawings and specifications, and any other data relative to the scope of this project.
2. Furnish to ENGINEER, as required by ENGINEER for performance of Services as part of this Agreement, data prepared by or services of others obtained or prepared by OWNER relative to the scope of this project, such as soil borings, probings and subsurface explorations, and laboratory tests and inspections of samples, all of which ENGINEER may rely upon in performing Services under this Agreement.
3. Provide access to the site as required for ENGINEER to perform Services under this Agreement.
4. Guarantee access to and make all provisions for ENGINEER to enter upon public and private lands as required for ENGINEER to perform Services under this Agreement.

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5. Examine all reports, sketches, estimates, special provisions, drawings, and other documents presented by ENGINEER and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the performance of ENGINEER.
6. Provide all legal services as may be required for the development of this project.
7. Retain the services of a soils consultant to provide any necessary geotechnical evaluation and recommendations.

Audit, Access to Records

In accordance with 35 ILLINOIS ADMINISTRATIVE CODE CH.II.SEC.365.630, SUBTITLE C, books, records, documents, and other evidence directly pertinent to performance of Agency loan work under this Agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The Agency or any of its duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. Facilities for such access and inspection shall be provided.

Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.

Disclosure of all information and reports resulting from access to records shall be provided to the Agency. The auditing agency will afford ENGINEER an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Records shall be maintained and made available during performance of Services under this Agreement and until three years after the final loan closing. In addition, those records which relate to any "dispute" appeal under an Agency loan agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim, or exception.

Covenant Against Contingent Fees

In accordance with 35 ILLINOIS ADMINISTRATIVE CODE CH.II.SEC.365.630, SUBTITLE C, ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or

City of Moline
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consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Opinion of Probable Cost

Any opinions of probable cost prepared by ENGINEER are supplied for general guidance of OWNER only. ENGINEER has no control over competitive bidding or market conditions and cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to OWNER.

Changes

1. OWNER may make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in ENGINEER's cost or time required for performance of any Services under this Agreement, an equitable adjustment will be made and this Agreement will be modified in writing accordingly.
2. No services for which additional compensation will be charged by ENGINEER will be furnished without the written authorization of OWNER. The fee established herein will not be exceeded without agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**.
3. If there is a modification of IEPA requirements relating to the Services to be performed under this Agreement subsequent to the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement will be reflected in an appropriate modification of this Agreement.

Extension of Services

This Agreement may be extended for additional Services upon OWNER's authorization. Extension of Services will be provided for a lump sum or an hourly rate plus expenses.

Payment

OWNER shall make monthly payments to ENGINEER for Services performed in the preceding month based upon monthly statements. Nonpayment 90 days after the date of receipt of invoice may, at ENGINEER's option, result in assessment of a 1 percent per month carrying charge on the unpaid balance.

Nonpayment 90 days after the date of receipt of invoice may, at ENGINEER's option, result in suspension of Services upon five calendar days' notice to OWNER. ENGINEER will have no liability to OWNER, and OWNER agrees to make no claim for any delay or damage as a result

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of such suspension caused by any breach of this Agreement by OWNER. Upon receipt of payment in full of all outstanding sums due from OWNER, or curing of such other breach which caused ENGINEER to suspend Services, ENGINEER will resume Services and there will be an equitable adjustment to the remaining project schedule and compensation as a result of the suspension.

Data Provided by Others

ENGINEER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through OWNER, contractor, or others to ENGINEER and where ENGINEER's Services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analyses, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, contractor's marked-up drawings, and topographical surveys.

Utilization of Small, Minority, and Women's Businesses

ENGINEER shall not discriminate on the basis of race, color, national origin or sex in the performance of these services. ENGINEER will carry out applicable requirements of 40 CFR Part 33 in the award and administration of services awarded under EPA financial assistance agreements. Failure by ENGINEER to carry out these requirements is a material breach of this agreement which may result in the termination or legally available remedies.

ENGINEER agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction, and services in accordance with the Clean Water Loan Program rules. As required by the award conditions of the United States Environmental Protection Agency's Assistance Agreement with IEPA, ENGINEER acknowledges that the fair share percentages are 5 percent for minority business enterprises and 12 percent for women's business enterprises.

Termination

This Agreement may be terminated with cause in whole or in part in writing by either party subject to a two-week notice and the right of the party being terminated to meet and discuss the termination before the termination takes place. ENGINEER will be paid for all completed or obligated Services up to the date of termination.

Third-Party Beneficiaries

Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's Services under this Agreement are being performed solely for OWNER's benefit, and no other party or entity shall have any claim against ENGINEER because of this Agreement or the performance

City of Moline
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November 21, 2012

or nonperformance of Services hereunder. OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this project to carry out the intent of this provision.

Dispute Resolution

Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between OWNER and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided first by mediation, if the parties mutually agree, or in a court of competent jurisdiction within the State of Illinois

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

See attached Certification (EPA Form 5700-49).

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement.

ENGINEER:

OWNER:

STRAND ASSOCIATES, INC.®

CITY OF MOLINE

Matthew S. Richards
Corporate Secretary

Date

Gregory A. Swanson
Utilities General Manager

Date

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative Date



I am unable to certify to the above statements. My explanation is attached.

Sponsor: _____

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute a grant agreement between the City of Moline and the Illinois Department of Commerce and Economic Opportunity for the administration of an IKE Planning and Technical Assistance Grant related to the preparation and completion of the Moline Riverfront Comprehensive Plan Update for the City of Moline in the amount of \$100,000.00 for the project consulting team and project expense; and authorizing staff to do all things necessary related to fulfilling the items of said Agreement and completing the Plan(s).

WHEREAS, the State of Illinois Department of Commerce and Economic Opportunity has made a grant award to the City of Moline through the IKE Planning and Technical Assistant Grant Program funds and is providing \$100,000.00 to assist the City with developing the Moline Riverfront Comprehensive Plan update; and

WHEREAS, the City is desirous to update its Comprehensive Riverfront Development Plan which is currently composed of the City's Comprehensive Plan, Moline Centre Plan, Floreciente Plan, and Edgewater Plan in order to facilitate future development that is economically and environmentally beneficial for the community; and

WHEREAS, the City will work with the state to identify and select a qualified professional consultant to assist with conducting said project.

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

That this City Council hereby authorizes the Mayor and City Council to execute a grant agreement between the City of Moline and the Illinois Department of Commerce and Economic Opportunity for the administration of an IKE Planning and Technical Assistance Grant related to the preparation and completion of the Moline Riverfront Comprehensive Plan Update for the City of Moline in the amount of \$100,000.00 for the project consulting team and project expense; and authorizing staff to do all things necessary related to fulfilling the items of said Agreement and completing the Plan(s); provided said Agreement is substantially similar in form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A," and approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

Mayor

December 11, 2012

Date

Passed: December 11, 2012

Approved: December 18, 2012

Attest: _____
City Clerk

APPROVED AS TO FORM:

City Attorney



Ike Planning and Technical Assistance

Grant No. 08-355029

for the

City of Moline

Illinois Department of Commerce and Economic Opportunity
500 E. Monroe St.
Springfield, IL 62701

**STATE OF ILLINOIS
DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**

Notice of Grant Award No. 08-355029

This Grant Agreement (hereinafter referred to as the "Agreement") is entered into between the Illinois Department of Commerce and Economic Opportunity (hereinafter referred to as the "Department" or "DCEO") and **City of Moline** (hereinafter referred to as the "Grantee"). Subject to terms and conditions of this Agreement, the Department agrees to provide a Grant in an amount not to exceed **\$100,000.00** to the Grantee.

Subject to the execution of this Agreement by both parties, the Grantee is hereby authorized to incur costs against this Agreement from the beginning date of **10/01/2012** through the ending date of **04/30/2014**, unless otherwise established within Part II Scope of Work. The Grantee hereby agrees to use the Grant Funds provided under the Agreement for the purposes set forth herein and agrees to comply with all terms of this Agreement.

This Agreement includes the following sections, all of which are incorporated into and made part of this Agreement:

Parts:

- I. Budget**
- II. Scope of Work**
- III Grant Fund Control Requirements**
- IV. Terms and Conditions**
- V. General Provisions**
- VI. Certifications**

This grant is federally funded.

Under penalties of perjury, the undersigned certifies that the name, taxpayer information number and legal status listed below are correct.

Name: City of Moline

Taxpayer Identification Number:
SSN/FEIN: 366005999

Legal Status:

- Individual (01)
- Sole Proprietor (02)
- Partnership/Legal Corporation (03)
- Corporation (04)
- Not For Profit Corporation (04)
- Medical Corporation (06)
- Governmental (08)
- Estate or Trust (10)
- Pharmacy-Noncoporate (11)
- Nonresident Alien (13)
- Pharmacy/Funeral Home/Cemetery Corp (15)
- Tax Exempt (16)
- Limited Liability Company (select applicable tax classification)
 - C - Corporation
 - P - Partnership

GRANTEE:
City of Moline

Grantee's execution of this Agreement shall serve as its certification under oath that Grantee has read, understands and agrees to all provisions of this Agreement and that the information contained in the Agreement is true and correct to the best of his/her knowledge, information and belief and that the Grantee shall be bound by the same. Grantee acknowledges that the individual executing this Agreement is authorized to act on the Grantee's behalf. Grantee further acknowledges that the award of Grant Funds under this Agreement is conditioned upon the above certification.

By: _____ Date _____
(Authorized Signator)

Donald P Welvaert, Mayor
Name and Title

STATE OF ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

By: _____ Date _____
David Vaught, Director

Grantee Address:

Please indicate any address changes below

619 16TH ST
Moline, IL 61265-2121

In processing this grant and related documentation, the Department will only accept materials signed by the Authorized Signatory or Designee of this Agreement, as designated or prescribed herein. If the Authorized Signatory chooses to assign a designee to sign or submit materials required by this Agreement to the Department, the Authorized Signatory must either send written notice to the Department indicating the name of the designee or provide notice as set forth immediately following this paragraph. Without such notice, the Department will reject any materials signed or submitted on the Grantee's behalf by anyone other than the Authorized Signatory. The Authorized Signatory must approve each Authorized Designee separately by signing as indicated below. If an Authorized Designee(s) appears below, please verify the information and indicate any changes as necessary.

The following are designated as Authorized Designee(s) for the Grantee:

Authorized Designee: _____
Authorized Designee Title: _____
Authorized Designee Phone: _____
Authorized Designee Email: _____

Authorized Signatory Approval: _____

PART I
BUDGET

Cost Category Description	Cost Cat	DCEO Budget Amount	Variance %	Variance Limit
PLANNING ASSISTANCE (20)	0910	100,000.00	0.00	0.00
Total		\$100,000.00		

BUDGET LINE ITEM DEFINITIONS

The definitions listed below will help to identify allowable costs for each of the budgeted lines in this Agreement. Any costs not specifically named below should be verified to be allowable by the DCEO grant manager prior to incurring the cost.

PLANNING ASSISTANCE (20) Development and adoption of forward thinking comprehensive plans that will guide long-term recovery efforts and subsequent decisions that reduce existing or future development in disaster-risk areas

Pass-Through Entity or Subgrantor Responsibilities. If Grantee provides any portion of this funding to another entity through a grant agreement or contract, Grantee is considered to be a pass-through entity or subgrantor. Per Section 5.10(M) of the Agreement, Grantee must obtain written approval before it provides any portion of this funding to another entity through a grant agreement or contract. If the Department provides written approval, the Grantee must adhere to the following for any awards or contracts entered into using the Grant Funds listed above:

- (1) Inform any subrecipient(s) of the proper Federal award identifying information (shown below) as required by Federal regulations contained in OMB Circular A-133.

This Federally funded award is identified by the following:

CFDA #	14.228
CFDA Title	Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii
Award #	B-08-DI-17-0001
Federal Awarding Agency	Department Of Housing And Urban Development

- (2) Advise any subrecipient(s) of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements which provided this funding. Advise subrecipient(s) of any supplemental requirements imposed by the pass-through entity or subgrantor (your organization).

PART II

SCOPE OF WORK

In consideration for the Grant Funds to be provided by the Department, the Grantee agrees to perform the Project described in Part II (Scope of Work) hereof, in accordance with the provisions of Part I (Budget) hereof.

The Department, as administrator of the CDBG Illinois "Ike" Disaster Recovery Program (hereinafter referred to as "IDRP"), shall make available to the **City of Moline** (the Grantee) IDRP funds in the amount of **\$100,000.00**. Funding through the Ike Disaster Recovery Planning Program will be used to develop and adopt forward thinking comprehensive plans, update existing comprehensive plans or supplement current plans with studies and specific recommendations to plans that will guide long-term recovery efforts and subsequent decisions that reduce existing or future development in disaster-risk areas.

In addition to the general terms and conditions contained in this Agreement, the following special grant conditions must be met.

I. SPECIAL GRANT CONDITIONS

- a) Grantee will certify via written record that it will comply with the Duplication of Benefits (DOB) requirement.
- b) Within 90 days of the execution of this document, resolutions from each participating governmental entity must be received by the Department.
- c) The environmental requirement must be cleared by the Department prior to the incurrence of costs on activities that would limit the choice of reasonable alternatives.
- d) Grantees may elect to contract with other firms to complete this project; however, all procurement must be done in compliance with Federal rules following the execution of this Grant.
- e) Grantee must establish and maintain a separate checking account for the short-term deposit of IDRP grant drawdown resources.
- f) The Grantee must maintain documentation demonstrating that it is in compliance with all applicable Federal and State regulations governing the receipt of IDRP funds. The minimum documentation includes, but is not limited to the following:
 - o Affirmative Fair Housing Policy
 - o Procurement Policy including Code of Conduct
 - o Excessive Force Policy
 - o Equal Employment Opportunity Policy
 - o Residential Anti-displacement and Relocation Assistance Policy
 - o Sexual Harassment Policy
 - o Compliance documentation for Section 504 of the Rehabilitation Act of 1973 (Grievance Procedures and Public Notification)
 - o Citizen Participation Plan
 - o Financial Management Questionnaire

II. PROJECT DESCRIPTION

The funding will support an update of the 2001 Moline Centre, Edgewater and Floricente Plans which are components of the 2001 Comprehensive Plan. The process will center on an extensive community outreach

component to ensure the plan meets the needs of the residents as well as the business community and create a strong vision of a vibrant riverfront where people want to live, work and play. The end deliverable will be a high-quality professionally published document to be approved by the the City of Moline and incorporated into the Comprehensive Plan. The Plan will also help to guide long-term efforts from the 2008 flooding and subsequent decisions that reduce existing or future development in disaster-risk areas.

III. PROJECT OUTCOME

The documented Moline Riverfront Comprehensive Plan Update:

- will address the City of Moline's disaster recovery needs per the Planning Program Application requirements on Page A-6 of the Ike-PLP Application Guidebook & Forms dated January 31, 2012.
- will address the sustainable planning principles per the Planning Program Application requirements on Page A-7 of the Ike-PLP Guidebook & Forms dated January 31, 2012.
- will address the scope presented by the Grantee or as agreed upon and amended per the Planning Program Application.

IV. PROJECT MANAGEMENT

The Grantee's point of contact will be:

Linda Bowen
Grant Manager
217.241.6650

Illinois Disaster Recovery Program
427 East Monroe Street, Suite 200
Springfield, Illinois 62701
bowenls@cdmsmith.com

V. PERFORMANCE MEASURES & DELIVERABLES

- **The schedule of dates and times for public participation meetings will be due by February 24, 2013.**
- **The *DRAFT PLAN* will be due January 7, 2014.**

The requirements are provided so that plans developed with these funds involve direct participation from all of the areas that are affected by the plans, and that these plans will have the full force of law – i.e. they will be adopted by the government agencies that have the legal authority to implement them and that the citizens who will potentially be affected by them will have an opportunity to participate in the process through their representative governments.

Final drawdown of twenty-five percent will be available upon documented evidence of:

- **At least 2 public participation meetings**
- **A complete documented copy of Moline Riverfront Comprehensive Plan Update**
- **The signed resolution adopting the Moline Riverfront Comprehensive Plan Update by the Grantee(s) and/or additional recipients as required.**

VI. PROJECT ACTIVITIES (BY BUDGET/COST CATEGORY)

<u>Cost Cat.</u>	<u>Activity</u>	<u>Ike</u>	<u>Local</u>	<u>Total</u>
910	Planning Assistance	\$100000	\$0.00	\$100000
	TOTALS:	\$100000	\$0.00	\$100000

PART III
GRANT FUND CONTROL REQUIREMENTS

3.1 **AUDITS**

- A. Standard Audit If the Grantee is required to have a Standard Audit, the Grantee shall provide the Department with a copy of such audit report, applicable management letters (SAS 115), and applicable SAS 114 letters (Auditor's Communication With Those Charged With Governance) within thirty (30) days of the Grantee's receipt of such audit report, but in no event later than nine (9) months following the end of the period for which the audit was performed. The Audit Report is required to be provided to DCEO any year an audit is performed over the life of the grant. In lieu of providing a Standard Audit, the Grantee may submit a Grant-Specific Audit as defined in Section 3.1 D.
- B. Federal Requirements If the Grantee is required to have an audit performed pursuant to the Single Audit Act of 1984, as amended in 1996 ("Single Audit Act") and by the Office of Management and Budget Circular A-133 ("OMB Circular A-133"), the Grantee shall provide the Department with a copy of the audit report, applicable management letters (SAS 115), and applicable SAS 114 letters (Auditor's Communication With Those Charged With Governance), as provided for in the Single Audit Act and OMB Circular A-133, to the Department within thirty (30) days of the Grantee's receipt of such audit report, but in no event later than nine (9) months following the end of the period for which the audit was performed. The Audit Report is required to be provided to DCEO annually for the life of the grant. In accordance with the American Recovery and Reinvestment (ARRA) Act of 2009 Article 3, the audit report in the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) must separately identify all expenditures for federal awards including each subrecipient, the Federal Award number, CFDA number, and the amount of ARRA funds. Please refer to the ARRA Act Article 3 for further guidance. If no Single Audit is required of federally-funded Grantees, the Grantee is to provide DCEO with an annual letter stating a Single Audit was not required.
- C. Discretionary Audit The Department may, at any time, and at its discretion, request a Grant-Specific Audit or other audit, Management Letters (SAS 115) and SAS 114 Letters (Auditor's Communication With Those Charged With Governance) to be delivered within thirty (30) days of the Grantee's receipt of such audit report, but in no event later than nine (9) months following the end of the period for which the audit was performed.
- D. Grant-Specific Audit If the Grantee submits a Grant-Specific Audit either by requirement of the Department or in place of a Standard Audit, the Grant-Specific Audit must meet the following requirements:

The audit must be completed at the end of the grant and cover the entire grant period.

The audit must include a Revenue (Receipt) and Expenditure Statement, which verifies budget amounts with actual amounts for this grant. The audit must also include a compliance component which covers, at a minimum, the following items:

- Confirmation that the Grantee completed the activities described in the Scope of Work (Part II) within the grant term;
- Confirmation that the Grantee obtained prior written approvals from the Department for material changes from the performance of the activities described in the Scope of Work (Part II);
- Confirmation that the Grantee expended grant funds within the grant period;
- Confirmation that the Grantee adhered to the grant budget (Part I) or, if not variances must be identified;
- Confirmation that the Grantee obtained prior written approvals from the Department for any material variances in its expenditure of grant funds;

- Confirmation that the Grantee adequately accounted for the receipts and expenditures of grant funds;
 - Confirmation, if applicable, that the Grantee returned grant funds and interest to the Department in accordance with the provisions of the Grant Agreement; and
 - Confirmation that the amounts reported in the Grantee's Final Financial Status Report are traceable to its general ledger and accounting records.
- E. Audit Performance All Audits shall be performed by an independent certified public accountant or accounting firm licensed by the appropriate licensing body in accordance with applicable auditing standards.
- F. Audit Submission The Grantee shall electronically send all audit reports and related deliverables to the Department at the following address:

externalauditunit@illinois.gov

If the Grantee is unable to submit the aforementioned documents to the Department electronically, the information shall be sent to the Department at the following address:

Illinois Department of Commerce and Economic Opportunity
Office of Accountability
External Audit Section
500 East Monroe Street
Springfield, IL 62701

3.2 REPORTING REQUIREMENTS

In addition to any other documents specified in this Agreement, the Grantee must submit the following reports and information in accordance with the provisions hereof.

- A. Expenditures and Project Activity Prior to Grant Execution If the Agreement is executed more than thirty (30) days after the beginning date of the grant term provided in the Notice of Grant Award, the Grantee must submit a Financial Status Report and a Project Status Report, in a format provided by the Department, accounting for expenditures and project activity incurred from the beginning of the grant term up to the end of the month preceding the date of the Department's execution. If these Reports are required, the Department will not disburse any Grant Funds until the report is submitted to and approved by the Department.
- B. Final Financial Status Report The Final Financial Status Report described in Section 5.3 hereof is due within 45 days following the end date stated in the Notice of Grant Award. The Grantee should refer to the Welcome Package and the Reports Deliverable Schedule for the specific reporting requirements and due dates. Grantee must submit the report in the format provided by the Department. This report must summarize expenditure of the Grant Funds and activities completed during the grant term. The Grantee's failure to comply with the Close-out requirements set forth herein and in Section 5.3 will be considered a material breach of the performance required by this Agreement and may be the basis to initiate proceedings to recover all Grant Funds disbursed to the Grantee. Grantee's failure to comply with this Section shall be considered prima facie evidence of default, and may be admitted as such, without further proof, into evidence before the Department or in any other legal proceeding.
- C. Additional Information Upon request by the Department, the Grantee must, within the time directed by the Department, submit additional written reports regarding the Project, including, but not limited to, materials sufficient to document information provided by the Grantee.
- D. Submittal of Reports Submittal of all reports and documentation required under this Agreement should be submitted to the individual as directed by the Department. Grants in excess of \$25,000 require, at a

minimum, the filing of quarterly reports describing the progress of the program, project, or use and the expenditure of the grant funds related thereto.

- E. Failure to Submit Reports In the event Grantee fails to timely submit any reports required under this Agreement, the Department may withhold or suspend the distribution of Grant Funds until said reports are filed and approved by the Department.

3.3 WELCOME PACKAGE

Upon execution of this Grant Agreement, the Grantee will receive a Welcome Package detailing reporting requirements and procedures relating to the Grant. The Grantee is obligated to comply with those requirements and any revisions thereto in accordance with Section 3.2(B) of this Grant Agreement.

3.4 FISCAL RECORDING REQUIREMENTS

The Grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the financial results of the Project funded under this grant program. The Grantee is accountable for all Grant Funds received under this Grant, including those expended for subgrantees. The Grantee shall maintain effective control and accountability over all Grant Funds, equipment, property, and other assets under the grant as required by the Department. The Grantee shall keep records sufficient to permit the tracing of Grant Funds to a level of expenditure adequate to insure that Grant Funds have not been inappropriately expended, and must have internal controls consistent with generally accepted accounting practices adopted by the American Institute of Certified Public Accountants.

3.5 DUE DILIGENCE IN EXPENDITURE OF FUNDS

Grantee shall ensure that Grant Funds are expended in accordance with the following principles: (i) grant expenditures should be made in accordance with generally accepted sound, business practices, arms-length bargaining, applicable federal and state laws and regulations; (ii) grant expenditures should conform to the terms and conditions of this Agreement; (iii) grant expenditures should not exceed the amount that would be incurred by a prudent person under the circumstances prevailing at the time the decision is made to incur the costs; and (iv) grant accounting should be consistent with generally accepted accounting principles.

3.6 MONITORING

The grant will be monitored for compliance in accordance with the terms and conditions of the Grant Agreement, together with appropriate programmatic rules, regulations, and/or guidelines that the Department promulgates or implements. The Grantee must permit any agent authorized by the Department, upon presentation of credentials, in accordance by all methods available by law, including full access to and the right to examine any document, papers and records either in hard copy or electronic, of the Grantee involving transactions relating to this grant.

3.7 RECORDS RETENTION

The Grantee is accountable for all Grant Funds received under this Agreement and shall maintain, for a minimum of four (4) years following the Department's final written approval of all required close-outs, unless the Department notifies the Grantee prior to the expiration of the four years that a longer period is required, adequate books, records, and supporting documents, including digital and electronic data, to verify the amount, recipients and uses of all disbursements of Grant Funds passing in conjunction with this Agreement. This Agreement and all books, records and supporting documents related hereto shall be available for inspection and audit by the Department, the Office of Inspector General, the Auditor General of the State of Illinois, the Illinois Attorney General, or any of their duly authorized representative(s), and the Grantee agrees to fully cooperate with any audit performed by the Auditor General or the Department. Grantee agrees to provide full access to all relevant materials and to provide copies of same upon request. Failure to maintain books, records and supporting documents required by this Agreement shall establish a presumption in favor of the Department for the recovery of any Grant Funds paid by the Department under

this Agreement for which adequate books, records and supporting documentation are not available to support their purported disbursement or expenditure.

If any of the services to be performed under this Agreement are subcontracted and/or if subgrants are issued/awarded for the expenditure of Grant Funds provided under this Agreement, the Grantee shall include in all such subcontracts and subgrants, a provision that the Department, the Office of Inspector General, and the Auditor General of the State of Illinois, or any of their duly authorized representatives, will have full access to and the right to examine any pertinent books, documents, papers and records of any such subcontractor or subgrantee involving transactions related to this Agreement for a period of four (4) years following the Department's final approval of all required close-outs (financial and/or programmatic), and any such subcontractor shall be governed by the same requirements to which the Grantee is subject under this Agreement.

**PART IV
TERMS AND CONDITIONS**

4.1 AUTHORITY: PURPOSE: REPRESENTATIONS AND WARRANTIES

- A. Authority The Department is authorized to make this grant pursuant to Pub.Law 110-329,2008, FR 5256-n-01/ 5337-n-01.

The purpose of this authority is as follows:

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009

- B. Purpose; Representations and Warranties The sole purpose of this grant is to fund the Grantee's performance of the Project, described in Part II hereof, during the term of this grant. The Grantee represents and warrants that the grant proposal/application submitted by the Grantee is in all material respects true and accurate; that it is authorized to undertake the obligations set forth in this Agreement and that it has obtained or will obtain and maintain all permits, licenses or other governmental approvals necessary to perform the Project described in Part II.

4.2 PROJECT SCHEDULE; EXTENSIONS

- A. Project Schedule The Grantee must complete the Scope of Work within the grant term. The Department may require the submission of deliverables. Deliverables must be provided as directed by the Department. For purposes of this Agreement, the Grant Period Begin Date shall be the Project Commencement Date and the Grant Period End Date shall be the Project Completion Date unless these dates are clearly identified as distinctly different in the Part II Scope of Work.
- B. Extensions Extensions of the grant term will be granted only for good cause. Grantees requiring an extension of the grant term should submit a written request to the Program Manager prior to the grant expiration date stating the reason for the extension. All extensions must comply with requirements of Section 5.7.

Grantee's failure to adhere to the schedule set forth in Part II may be grounds for suspension or termination of this Agreement pursuant to Section 5.5 herein. Further, failure by the Grantee to comply with the terms and conditions outlined in Part II, or with any additional terms and conditions within the Agreement, may result in the Grantee being deemed ineligible by the Department for future funding.

4.3 PAYMENT AND EXPENDITURE OF GRANT FUNDS

- A. Expenditure of Funds; Right to Refund Payment of the grant amount specified in the Notice of Grant Award shall be made to the Grantee as specified herein. Grant Funds provided under this Agreement must be expended only to perform the tasks set forth in the Scope of Work attached as Part II of this Agreement. In addition to reasons set forth in other sections of this Agreement, the Department will require a refund from Grantee if (i) the total grant expenditures are less than the amount vouchered to the Grantee from the Department pursuant to the Notice of Grant Award; or (ii) Grant Funds have not been expended or legally obligated within the grant term in accordance with Parts I and Part II hereof. If the Department requires a refund under either of the above circumstances, the Grant Funds must be returned to the Department within forty-five (45) days of the end of the grant term or the otherwise effective Grant Agreement termination date.
- B. Payment Provisions; Prior Incurred Costs

Reimbursement

Payments to the Grantee are subject to the Grantee's submission and certification of eligible costs and any documentation as required by the Department. Payment shall be initiated upon the Department's approval of eligible costs and cash amount requested for reimbursement of those costs.

4.4 GRANT SPECIFIC TERMS/CONDITIONS

- A. Program Objective. Funding under this grant is to meet one or more of the following national objectives as required by Section 104(b)(3) of the US Housing and Community Development Act of 1974 (42 USC 5301 et seq.). The national objectives include: 1) Benefiting low and moderate-income persons; 2) Aiding in the prevention or elimination of slums and/or blight; or 3) Meeting other community development needs that pose a serious and immediate threat to the health and welfare of the community.

Correspondingly, the United States Congress allocated funding to the State of Illinois for disaster recovery in the form of a HUD CDBG-IKE Grant (PL 110-329) for necessary expenses related to disaster relief, long term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster, and in Illinois the disaster recovery program is known as the Illinois "IKE" Disaster Recovery Program ("IDRP"). The State of Illinois established the following specific objectives for the Illinois "IKE" Disaster Recovery Program, (IDRP) which include: 1) Strengthening community economic development through the creation of jobs, stimulation of private investment, and strengthening of the tax base; 2) Alleviation of economic distress and realizing community economic development opportunities of benefit for low and moderate-income individuals; 3) Improvement of public infrastructure and elimination of conditions which are detrimental to health, safety, and public welfare; 4) Conservation and expansion of the State's housing stock in order to provide a decent home and suitable living environment for persons of low and moderate-income and persons with disabilities. The primary objective/scope of work for this Grant is identified in Part II hereof.

For carrying out the program objectives as described in the Scope of Work (Part II), the total compensation and reimbursement payable by the Department to the Grantee shall not exceed the amount specified in the Notice of Grant Award. The Department shall distribute/pay the total amount of the grant award to the Grantee and the Grantee agrees to perform the Scope of Work in compliance with the Grant Budget (Part I), the Scope of Work (Part II), the Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (24 CFR Part 85), the federal regulations for the Community Development Block Grants (24 CFR 570 et seq.), and the "Waivers and Alternative Requirements for Grants Under the Supplemental Appropriations Act, 2008" (Federal Register / Vol. 74, No. 29 / Friday, February 13, 2009 / Notices [FR-5256-N-01]). The Grant Funds shall be expended only for project costs that are necessary to complete the program objectives and which are eligible under and meet the provisions of OMB Circular A-87 "Cost Principles for State and Local Governments" or OMB Circular A-122 "Cost Principles for a Not-for-Profit Entity," as appropriate. The Department is authorized to award this grant by implementing Sections 605-940 and 605-945 of the Civil Administrative Code of Illinois [20 ILCS 605/605-940 and 605-945], which is authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301 et seq.).

- B. Official Action. The Grantee certifies that with respect to the Grant Agreement that its governing body has duly adopted or passed as an official act, resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Grantee to act in connection with the application and to provide such additional information as may be required.
- C. The Grantee will comply with all of the requirements outlined in the Local Government Certifications signed and submitted at the time of application.
- D. The Grantee certifies that with respect to the Grant Agreement it:
- a. Has provided citizens with an opportunity to participate in the determination of priorities in community development and housing needs;

- b. Will provide for citizen participation in the planning, implementation, and assessment of the Illinois "IKE" Disaster Recovery Program, including the development of the Grantee Evaluation Report and the submission of views to the Department.
- E. The Grantee will comply with Section 102 of the HUD Reform Act of 1989 which contains a number of provisions designed to ensure greater accountability and integrity. Certain grantees must disclose the other government assistance to be used with respect to the project for which the assistance is sought, the financial interests of persons in the project, and the sources and uses of funds to be made available for the project. Disclosure information will be updated as required. 24 CFR 4.1 et seq.
- F. The Grantee shall comply with the regulations, policies, guidelines and requirements of 24 CFR 85.1 et seq., and OMB Circular A-87 or OMB Circular A-122, as they relate to the application, acceptance, and use of Federal funds under this Part.
- G. The Grantee certifies that it will adopt and enforce:
 - a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
 - b. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.
- H. Recordkeeping. The Grantee shall comply with the records management requirements set forth in 24 CFR 570.490 and the documentation requirements set forth in 24 CFR 570.506.
- I. Monitoring and Evaluation. The Department will monitor and evaluate the Grant made to the Grantee under this program. Throughout the program year, the Department will periodically monitor the Grant for programmatic and fiscal compliance under the federal regulations, and the policies and guidelines contained in the IDRPs State of Illinois Action Plan, as amended. The Grant will also be subject to monitoring and evaluation by the U. S. Department of Housing and Urban Development.
- J. Grant Impact. The Grant will be evaluated to determine its impact upon the low-and-moderate income residents of the community and for the effective and efficient utilization of IDRPs funds. Evaluations will occur both during the operation of the Grant and upon its completion.
- K. Audits, Inspections and Record Retention. The Grantee will as often as deemed necessary by the Department or the Comptroller of the State of Illinois, or the U. S. Department of Housing and Urban Development, or the Comptroller General of the United States, or any of their duly authorized representatives, permit the Department, or the Comptroller of the State of Illinois, or the U. S. Department of Housing and Urban Development, or Comptroller General of the United States, or any of their duly authorized representatives to have full access to and the right to examine any pertinent books, documents, papers and records of the Grantee involving transactions related to this Grant. The Grantee shall include in all of its contracts under this Grant a provision that the Department or the Comptroller of the State of Illinois, or the U. S. Department of Housing and Urban Development, or the Comptroller General of the United States, or any of their duly authorized representatives will have full access to and the right to examine any pertinent books, documents, papers and records of any such contractor involving transactions related to the contract. The Grantee is accountable for all Grant Funds received under this Agreement and shall maintain, for a minimum of four (4) years following written approval from the Department that all disbursements of grant funds have been reviewed, considered adequate and closed by the Department.

The Grantee is accountable for all Grant funds received under this Agreement and in addition to the requirements contained in Section 3.7 hereof, shall maintain, until the closeout of the grant by the U.S. Department of Housing and Urban Development to the State, all records that are pertinent to the activities funded under this Agreement.. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken

- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - c. Records required determining the eligibility of activities;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
 - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- L. Procurement, Interest of Public Officials and Employees. The Grantee shall conduct all procurement transactions in a manner providing for full and open competition and comply with all applicable procurement regulations (24 CFR 85.36 or 24 CFR 84.40-48) and/or Illinois' Procurement Code (30 ILCS 500), whichever are more stringent and applicable. The Grantee shall also follow the federal conflict of interest provisions (24 CFR 570.489(h)) and/or Illinois' Procurement and Ethic Disclosure laws (30 ILCS 500/50), whichever are more stringent. The Grantee must maintain all records and source documentation related to its purchase of services, supplies, materials, property, equipment or other acquisitions. Procurement records will include rationale for the method of procurement selection of contract type, contractor selection or rejection, and basis of contract price. The Grantee shall specifically identify all awards of sole source contracts and the rationale for making the award on a sole source basis in reports to the Department. All sole-source procurements shall be reported to the Department. The Grantee shall provide the Department with executed copies of all contracts along with documentation concerning the selection process. The Grantee agrees to abide by the provisions of 24 CFR 85.36, 570.609, and 570.611, which include, but are not limited to, the following:
- a. The Grantee shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
 - b. The Grantee shall comply with the requirements set forth in 24 CFR Part 5 concerning the use of debarred, suspended or ineligible contractors or subrecipients.
 - c. No employee, officer or agent of the Grantee shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
 - d. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-IKE assisted activities (Project/Scope of Work), or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-IKE assisted activity, or with respect to the proceeds from the CDBG-IKE assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, or any designated public agency.
- M. Consultant Activities. No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with Community Development Block Grant funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (24 CFR 570.200(d)(1)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

Consultant services provided under an independent contractor relationship are governed by the procurement standards found in 24 CFR 85.36(b), and are not subject to the compensation limitation of Level IV of the Executive Schedule (24 CFR 570.200(d)(2)).

- N. The Grantee shall perform an independent review of requests for payment and performance pursuant to the engineering services contract if the Grantee contracts with a single entity to provide both engineering and administrative services.
- O. Federal Lobbying Restrictions. The Grantee acknowledges and agrees that receipt of funds under this Grant Agreement requires compliance with Section 319 of Public Law 101-121 (31 U.S.C.A. 1352) and the regulations issued pursuant thereto (24 CFR 87.1 et seq.) regarding the certification and disclosure of lobbying activities with the Federal Government and agrees to comply with those provisions, and all Federal rules promulgated by the Federal Grantor which is the funding source for implementation for the Federal program; and will require that this assurance of compliance with Federal lobbying restrictions is part of any agreement with all subrecipients or subgrantees. Grantee's acknowledgement and certification of the same is evidenced by execution this Grant Agreement.
- P. The Grantee will comply with the provisions of the Hatch Act and any other Federal and State legislation that limits the political activity of employees.
- Q. The Grantee agrees that no funds granted hereunder shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office, nor shall they be used in any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election or in any voter registration activity.
- R. The Grantee certifies that it:
 - a. Consents to cooperate with the Department in complying with the provisions of the National Environmental Policy Act of 1969, insofar as the provisions of such Act apply to 24 CFR 570.604;
 - b. Is authorized and consents on behalf of the Grantee to accept the jurisdiction of the State and Federal courts for the purpose of enforcement of these responsibilities regarding environmental clearances of local projects.
- S. Interagency Wetland Policy Act. The Grantee certifies that the proposed project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989. The Grantee acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor the proposed project to ensure continued compliance with the aforementioned Act. In the event that the project does not remain in compliance with the Act, such noncompliance shall constitute a breach of this Agreement, and failure to cure the breach within 60 days after notice thereof will result in the termination of this Agreement.
- T. The Grantee shall comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards and Executive Order 11507 relating to the prevention, control, and abatement of water pollution. 24 CFR 570.605.
- U. The Grantee certifies that it will not use CDBG IDRP grants funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55.
- V. The Grantee shall require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117.1P 1971, subject to the exceptions contained in 41 CFR 101-19.604. The

Grantee will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

- W. The Grantee will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- X. The Grantee will comply with the flood insurance purchase requirements of Section 102(9) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) required, on or after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance. 24 CFR 570.605.
- Y. The Grantee will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11583 and the Preservation of Archeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
 - a. Consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the proposed activity 36 CFR 800.8; and,
 - b. Complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.
- Z. The Grantee will conduct eligible project activities in such a manner as to fully protect prime agricultural farm land from irreversible conversion to uses which result in its loss as an environmental or essential food production resource.
- AA. The Grantee will assure that if the project financing includes USDA Rural Development funds, the final design will be in accordance with a preliminary engineering report prepared following Guide 7 (Water) or Guide 8 (Sewer) of FmHA Instruction 1942-A and approved by USDA Rural Development.
- BB. The Grantee certifies that it will comply with the Illinois Underground Utility Facilities Damage Prevention Act requiring owners or operators of underground utility facilities to participate in the State-Wide One-Call Notice System (JULIE - Joint Utility Locating Information for Excavators). (JULIE can be reached at 618/662-2118 or 815/741-5005 or by e-mail at julieinc@wabash.net.)
- CC. The Grantee certifies that it will comply with the requirements set forth in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35.
- DD. The Grantee will assure compliance with the U. S. Department of Housing and Urban Development rule which prohibits special assessment of any such amount against property which is owned or occupied by eligible low-and-moderate income persons. The most common type of assessment is a "tap-on fee" which is a one-time charge made as a condition of access to the public improvement. 24 CFR 570.482(b).
- EE. The Grantee certifies that it will affirmatively further fair housing. 24 CFR 570.487(b)(2).
- FF. The Grantee will comply with the goals listed in the Minority Benefit/Affirmative Housing Statement submitted at the time of application.

GG. The Grantee shall comply with:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto (24 CFR 1.1 et seq.), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Grantee, this assurance shall obligate the Grantee, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits
- b. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–20), as amended (also known as the Fair Housing Act), and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, which provides that recipients will administer all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.
- c. Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Part.
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), and the regulations issued pursuant thereto (24 CFR 8.1 et seq.), which provides that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.
- e. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the regulations issued pursuant thereto (24 CFR 135.1 et seq.), which provides that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
- f. Executive Order 11063, as amended by Executive Order 12259, and the regulations issued pursuant thereto (24 CFR 107.1 et seq.), regarding equal opportunity in housing and non-discrimination in the sale or rental of housing built with Federal assistance.
- g. Executive Order 11246, and the regulations issued pursuant thereto (41 CFR 60-1.1 et seq.), which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts; shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
- h. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), and the regulations issued pursuant thereto (24 CFR 40.1 et seq.), which requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people.

HH. Any contract or subcontract awarded by a recipient or contractor shall include the following clause (referred to as the "Section 3" clause):

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and-moderate income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's federal regulations, which implement Section 3. The parties to this contract will certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR 135.1 et seq.
- c. The Grantee or any subcontractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment can see the notice. 24 CFR 135.38(c).

The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. 24 CFR 135.38(c).

- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with 24 CFR 135, and agrees to take appropriate action as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of these regulations. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135.38(d).
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled:
 - A. after the contractor is selected but before the contract is executed, and
 - B. with persons other than those of whom the regulations require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.38(e).
- f. Noncompliance with HUD's regulations may result in termination of this contract for default or suspension from future HUD assisted contracts. 24 CFR 135.38(f).
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b). 24 CFR 135.38(g).

II. The Grantee shall ensure that any contract or subcontract for work procured under this Agreement contains all applicable Federal Equal Employment Opportunity provisions.

- JJ. The Grantee shall administer and enforce the labor standards requirements set forth in 24 CFR 570.603 and HUD regulations issued to implement such requirements.
- KK. The Grant awarded under this agreement is federally funded and the payment of federal prevailing wages for all construction activities funded in whole, or in part, with CDBG or other federal funds requires compliance with the Davis Bacon Act. Further, Grantee and its subgrantees and/or subcontractors will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposal, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract (24 CFR 85.36(c)). Accordingly, Section 5.9(K) of this Agreement is not applicable to the Project/Scope of Work set forth in Part II of this Agreement.
- LL. The Grantee shall:
- a. To the greatest extent practicable under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42.1 et seq.;
 - b. Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD implementing regulations found at 24 CFR 42 and 24 CFR 570.606, except where waivers or alternative requirements are provided for this grant;
 - c. Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced as a result of acquisition of real property for an activity assisted under the Illinois "IKE" Disaster Recovery Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treatment of such persons on account of race, color, national origin, sex, or source of income;
 - d. Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income; and
 - e. Inform affected persons of the relocation assistance, policies and procedures set forth in the regulations at 24 CFR 42 and 24 CFR 570.606.
- MM. In accordance with 24 CFR 42.325, the Grantee certifies that it will adopt and follow a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.
- NN. Program income. Income generated by activities performed under the terms of this agreement are subject to the program income alternative requirements set forth in the "Waivers and Alternative Requirements for Grants Under the Supplemental Appropriations Act, 2008" (Federal Register / Vol. 74, No. 29 / Friday, February 13, 2009 / Notices [FR-5256-N-01]). Directions on retention or return of Program Income will be identified in the Special Terms and Conditions Section in Part II hereof.
- OO. Interest on Grant Funds. In accordance with 24 CFR 570.489(c)(2), interest earned by units of local government on grant funds before disbursement of the funds for activities is not program income and must

be returned to the Treasury, except that the unit of local government may keep interest amounts of up to \$100 per year for administrative expenses.

- PP. Use of Real Property. The Grantee shall comply with the Change of Use requirements set forth in 24 CFR 570.489(j), which apply to real property within the Grantee's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000.
- QQ. Equipment. The Grantee retains title to all equipment or nonexpendable personal property purchased with grant funds for program operation, subject to the following: for items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, the Department may reserve the right to transfer the title to the Department or to a third party named by it. The disposition rules for equipment no longer needed are as follows: 1) if the cost of the property is less than \$1,000, the Grantee may sell or retain it, without compensation to the Department; 2) if the property costs \$1,000 or more, the Grantee may either a) keep it, and pay the Department its share of the market value, or b) request disposition instructions from the Department. If the Grantee is instructed to ship the equipment elsewhere, the Grantee shall be reimbursed by the Department for the non-Federal share of the market value, plus shipping costs. If the Grantee is instructed to otherwise dispose of the equipment, the Grantee will be reimbursed by the Department for such costs incurred in the disposition.
- RR. Use of grant funds must relate to the covered disaster(s). In accordance with FR-5256-N-01, funds received under the terms of this agreement will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of recent natural disasters.
- SS. Duplication of Benefits. The Grantee certifies that it will comply with 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act), as amended and will not use funds for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency ("FEMA"), the Army Corps of Engineers, or other sources.

4.5 DEPOSIT OF GRANT FUNDS

Grant Funds paid in advance of realized costs must be kept in an interest bearing account and maintained therein until used in accordance with the terms and conditions of this Agreement. The Department may waive this requirement upon a written request from the Grantee; however written Departmental approval must be received before any Grant Funds are kept in a non-interest bearing account. Grantee will be responsible for the payment of interest to the Department at a rate equal to twelve percent (12%) per annum on any of the Grant Funds kept in a non-interest bearing account without prior Departmental written approval.

Any interest earned on these Grant Funds must be accounted for as provided in Section 4.6 of this Agreement. Exceptions to Section 4.5 are not permissible without prior written approval by the Department.

Grant Funds paid in reimbursement of previously paid costs may be kept in a non-interest bearing account at the Grantee's discretion.

4.6 INTEREST EARNED ON GRANT FUNDS

In accordance with federal Uniform Administrative Requirements for Grants and Cooperative Agreements, the Grantee may be allowed to retain a portion of interest earned on Grant Funds awarded under this Agreement, applying the following guidelines:

- A. Interest retention limits by entity type

- (1) **Governmental** - Interest earned by units of state or local government on Grant Funds before disbursement of the Grant Funds for activities is not program income and must be returned to the federal Treasury through the Department, except that the unit of state or local government may keep interest amounts of up to \$100 per year for administrative expenses; and
 - (2) **Non-governmental** - Interest earned by non-governmental entities on Grant Funds before disbursement of the Grant Funds for activities is not program income and must be returned to the federal Treasury through the Department, except that the non-governmental entities may keep interest amounts of up to \$250 per year for administrative expenses; and
- B. Any interest earned in excess of the allowable amount, as calculated in 4.6 A(1) or 4.6 A(2), must be returned as interest to the Department in accordance with the directions provided by the Department in Section 5.3 herein; and
 - C. All interest earned must be accounted for and reported to the Department in the Final Financial Status Report described in Section 5.3 herein.

4.7 **INTENTIONALLY LEFT BLANK**

4.8 **SUPPORT**

Grantee, through its agents, employees and contractors, will provide all equipment, supplies, services and other items of support which are necessary for the effective performance of the Project, unless the Agreement specifically sets forth items of support to be provided by the Department.

4.9 **OWNERSHIP, USE AND MAINTENANCE OF PERSONAL PROPERTY**

- A. Ownership Subject to the provisions of this Section 4.9, and the remedies available to the Department as set forth in Section 4.11 below, equipment and material authorized to be purchased with Grant Funds becomes the property of the Grantee. Grantee will maintain an inventory or property control record for all equipment and material purchased with Grant Funds.
- B. Use: Maintenance: Insurance During the Grant term, the Grantee must:
 - (1) use equipment and materials acquired with Grant Funds only for the approved Project purposes set forth in Part II; and (2) provide sufficient maintenance on the equipment and materials to permit achievement of the approved Project purposes and maintain, at its own expense, insurance coverage on all equipment and material purchased with Grant Funds, for its full insurable value, against loss, damage and other risks ordinarily insured against by owners or users of similar equipment and material in similar businesses.
- C. Prohibition Against Disposition/Encumbrance The Grantee is prohibited from, and may not sell, transfer, encumber (other than original financing) or otherwise dispose of said equipment or material during the grant term without prior written approval of the Department.

4.10 **PUBLIC INFORMATION REQUIREMENTS**

For the duration of the Agreement, the Grantee will prominently acknowledge the participation of the Department in the Project in all press releases, publications and promotional materials presented to the media or otherwise dissemination published concerning the Project. The Grantee must provide the Department with copies of any proposed press releases, publications and promotional materials not less than ten (10) days before these materials are disseminated. Grantee will submit copies of any press releases, publications and promotional materials to the Department's Project Manager.

The Grantee will provide adequate advance notice pursuant to Section 4.12 of promotional events such as open houses, dedications, or other planned publicity events; and will also coordinate in the planning of said

events. Any materials or displays to be distributed in connection with the promotional event must be submitted to the Department in advance of publication or dissemination and must prominently acknowledge the Department's participation in the Project.

4.11 DEPARTMENT REMEDIES

In addition to any remedies found elsewhere in this Agreement or at law, the Department may elect any of the following remedies in the event this Agreement is terminated pursuant to Section 5.5 herein. Grantee must comply with the Department's direction within 45 days following written notice or demand from the Department.

- A. The Department may direct the Grantee to refund all grant moneys disbursed to it under this Agreement;
- B. The Department may direct the Grantee to remit an amount equivalent to the "Net Salvage Value" of all equipment or materials purchased with Grant Funds provided under this Agreement. For purposes of this Agreement, "Net Salvage Value" is defined as the amount realized, or that the Parties agree is likely to be realized from, the sale of equipment or materials purchased with Grant Funds provided under this Agreement at its current fair market value, less selling expenses;
- C. The Department may direct the Grantee to transfer ownership of equipment or material purchased with Grant Funds provided under this Agreement to the Department or its designee.

4.12 NOTICES

Notices and other communications provided for herein shall be given in writing by first class mail, by registered, or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the respective party at the address set forth on the signature page hereto, or to such other authorized designees as the parties may designate in writing from time to time. Grantee is responsible for providing the Department with correct address and contact information for itself and its designees. Any notice to the Grantee shall be deemed to have been provided if sent to the address or contact information on the signature page or to the address of an authorized designee. Notice to the Department is deemed to have been provided at the time it is actually received.

4.13 COMPLAINT PROCESS

In the event of a Grantee complaint, the Department's Administrative Hearing Rules shall govern and said rules can be found at Title 56 Illinois Administrative Code, Section 2605.

4.14 GRANT FUNDS RECOVERY ACT (30 ILCS 705/1, ET SEQ.)

This Agreement is subject to all applicable provisions of the Illinois Grant Funds Recovery Act, including the requirement that any Grant Funds not expended or legally obligated at the expiration or termination of the Grant term must be returned to the Department within 45 days following said expiration or termination. Notwithstanding any provision specified elsewhere in this Agreement regarding the treatment of interest earned on the Grant Funds, any interest earned on Grant Funds that is not expended or legally obligated during the Grant term must also be returned to the Department within 45 days following the expiration or termination of this Agreement.

4.15 GRANT PROJECT MANAGEMENT

All necessary and ordinary communications, submittals, approvals, requests and notices related to the Project shall be submitted to:

Linda Bowen

Illinois Department of Commerce and Economic Opportunity
500 E. Monroe St.
Springfield, IL 62701

4.16 FEDERALLY FUNDED GENERAL GRANT PROVISIONS

- A. Lobbying Restrictions The Grantee acknowledges that receipt of Grant Funds under the Agreement may require compliance with Section 319 of Public Law 101-121 (31 U.S.C.A. 1352) regarding the certification and disclosure of lobbying activities with the Federal Government and agrees to comply with those provisions, and all federal rules promulgated by the United States Department of Health and Human Services, the funding source for implementation of programs operated under this Agreement; and will require that this assurance of compliance is part of any sub-agreements executed hereunder.

By executing this Agreement on behalf of the Grantee, the Authorized Signatory hereby certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Grantee shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Grantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made and entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who failed to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- B. Debarment The Grantee certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any Federal department or agency.
- C. Environmental Tobacco Smoke Public Law 103-227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Tobacco Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by Federal programs either directly or through States or local governments by Federal grant, contract, loan or loan guarantee. This language must be included in all sub-awards containing provisions for children's services.

**PART V
GENERAL PROVISIONS**

5.1 GRANTEE REPRESENTATIONS AND WARRANTIES; GRANTEE GENERAL COVENANTS

- A. Grantee Representations and Warranties In connection with the execution and delivery of this Agreement, the Grantee makes the following representations and warranties to the Department:
- (1) That it has all requisite authority to carry on its business and to execute, deliver and consummate the transactions contemplated by this Agreement;
 - (2) That its employees, agents and officials are competent to perform as required under this Agreement;
 - (3) That it is the real party in interest to this Agreement and is not acting for or on behalf of an undisclosed party;
 - (4) That it has taken all necessary action under its governing documents to authorize the execution and performance of this Agreement under the terms and conditions stated herein;
 - (5) That it has no public or private interest, direct or indirect, and shall not acquire, directly or indirectly any such interest which does or may conflict in any manner with the performance of the Grantee's services and obligations under this Agreement;
 - (6) That no member of any governing body or any officer, agent or employee of the State, is employed by the Grantee or has a financial or economic interest directly in this Agreement, or any compensation to be paid hereunder except as may be permitted applicable statute, regulation or ordinance;
 - (7) That there is no action, suit or proceeding at law or in equity pending, nor to the best of Grantee's knowledge, threatened, against or affecting the Grantee, before any court or before any governmental or administrative agency, which will have a material adverse effect on the performance required by this Agreement;
 - (8) That to the best of the Grantee's knowledge and belief, the Grantee, its principals and key project personnel:
 - (a) Are not presently declared ineligible or voluntarily excluded from contracting with any Federal or State department or agency;
 - (b) Have not within a three-year period preceding this Agreement been convicted of any felony; been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; had a civil judgment rendered against them for commission of fraud; been found in violation of Federal or State antitrust statutes; or been convicted of embezzlement, theft, larceny, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property; and
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in subparagraph (b) of this certification.

Any request for an exception to the provisions of this paragraph must be made in writing, listing the name of the individual, home address, type of conviction and date of conviction.

- (9) That this Agreement has been duly executed and delivered on behalf of the Grantee and constitutes a legal, valid and binding obligation of the Grantee, enforceable in accordance with its terms, except to the extent that enforcement of any such terms may be limited by
 - (a) Applicable bankruptcy, reorganization, debt arrangement, insolvency or other similar laws generally affecting creditors' rights; or
 - (b) Judicial public policy limitations upon the enforcement of certain remedies including those which a court of equity may in its discretion decline to enforce; and performance required under this Agreement; and
- (10) Grantee certifies that it is not currently operating under or subject to any cease and desist order, or subject to any informal or formal regulatory action, and, to the best of Grantee's knowledge, that it is not currently the subject of any investigation by any state or federal regulatory, law enforcement or legal authority. Should it become the subject of an investigation by any state or federal regulatory, law enforcement or legal authority, Grantee shall promptly notify the Department of any such investigation. Grantee acknowledges that should it later be subject to a cease and desist order, Memorandum of Understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, that the Department is authorized to declare Grantee in default of this Agreement and suspend or terminate the Agreement pursuant to Section 5.5.

B. General Covenants In connection with the execution and delivery of this Agreement, the Grantee makes the following covenants to the Department, which are in addition to any specific covenants contained in this Agreement:

- (1) That it will use Grant Funds only for the purposes set forth in the Budget and Scope of Work, Parts I and II, respectively, of this Agreement;
- (2) That all warranties and representations made by the Grantee in this Agreement shall be true, accurate and complete for the term of the Agreement;
- (3) That it shall be subject to, obey, and adhere to any and all federal, state and local laws, statutes, ordinances, rules, regulations and executive orders as are now or may be in effect during the term of this Agreement which may be applicable to the Grantee;
- (4) That it shall remain solvent and able to pay its debts as they mature. In the event of bankruptcy filing by the Grantee, voluntary or involuntary, the Department may decline to make any further payment, which may otherwise be required under this Agreement;
- (5) That it shall immediately notify the Department of any and all events or actions that may materially adversely affect its ability to carry on its operations or perform any or all of its obligations under this Agreement; and
- (6) That it shall not enter into any other agreement or transaction that would conflict with the performance of its duties hereunder.

5.2 **APPROPRIATION; NONAPPROPRIATION/INSUFFICIENT APPROPRIATION; REDUCED FUNDING SOURCES/REVENUES**

- A. Appropriation The Grantee is hereby given actual knowledge that pursuant to the State Finance Act, 30 ILCS 105/30, payments under this grant are contingent upon the existence of a valid appropriation therefore and that no officer shall contract any indebtedness on behalf of the State, or assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

- B. Non-appropriation/Insufficient Appropriation Payments pursuant to this Agreement are subject to the availability of applicable federal and/or state funding from the Department and their appropriation and authorized expenditures under State law. The Department shall use its best efforts to secure sufficient appropriations to fund this Agreement. However, the Department's obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. The Department, at its sole discretion, shall determine whether amounts appropriated are sufficient to continue its obligations under this Agreement. Termination resulting from non-appropriation or insufficient appropriation shall be in accordance with Section 5.5(A)(1) hereof. Any grant is void by operation of law if the Department fails to obtain the requisite appropriation to pay the grant in any year in which this Agreement is in effect.
- C. Reduced Funding Sources/Revenues The Department reserves the right to reduce the amount to be paid to Grantee under this Agreement if the Department determines that it is in the best interest of the State of Illinois to reduce its obligation under this Agreement as a result of the occurrence of any of the following events during the term of the Agreement:
 - (1) Receipts from revenues which provide the funding for this Agreement either fall significantly short of anticipated levels, or significantly decrease, or
 - (2) Other sources (external grants, contracts, awards, etc.) providing funds for this Agreement are decreased or withdrawn. If such an event occurs, the Department will notify the Grantee as soon as possible. If the Department and Grantee are able to agree on a reduced compensation amount and a corresponding reduced scope of services, the parties shall execute a grant modification so stating. If the Department and Grantee are unable to agree on the reduced compensation and reduced scope of services, the Department shall terminate the Grant in accordance with the provisions of Section 5.5(A)(2) herein.

5.3 GRANT CLOSE-OUT

- A. Final Financial Status Report In addition to any other reporting requirements specified in this Agreement, the Grantee shall complete and submit a Final Financial Status Report on forms provided by the Department, within forty-five (45) days of the earlier of the Grant Period end date or the effective date of termination of this Agreement. The Grantee should refer to the Welcome Package and the Reports Deliverable Schedule for the specific reporting requirements and due dates. The Grantee must report on the expenditure of Grant Funds provided by the State, and if applicable, the Grantee's required matching funds. The Grantee is responsible for taking the necessary steps to correct any deficiencies disclosed by such Final Financial Status Report, including such action as the Department, based on its review of the report, may direct.
- B. Grant Refunds In accordance with the Illinois Grant Funds Recovery Act, 30 ILCS 705/1, et seq., the Grantee must, within forty-five (45) days of the earlier of the Grant Period end date or the effective date of termination of this Agreement, refund to the Department, any balance of Grant Funds not spent or not obligated as of said date.

5.4 DEFAULT AND REMEDIES

The occurrence of any of the following events, during the grant term, shall constitute a default:

- A. Grantee shall fail to observe or perform any covenant or agreement contained in this Agreement, including the Exhibits hereto;
- B. Any representation, warranty, certificate or statement made by the Grantee in this Agreement, including the Exhibits hereto, or in any certificate, report, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect when made in any material respect;

- C. Grantee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;
- D. An involuntary case or other proceeding shall be commenced against the Grantee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceedings shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against the Grantee under the federal bankruptcy laws as now or hereby after in effect;
- E. The Grantee permanently ceases the conduct of active trade or business at the location specified in Part II, Scope of Work, for any reason, including, but not limited to, fire or other casualty;
- F. Company fails to provide the Company Contribution, if applicable, as identified in Part II, Scope of Work;
- G. Grantee defaults on a loan from a third party. Grantee shall provide the Department with immediate notice upon making a determination that it will default on a loan.

Grantee shall have 30 days from the date Department notifies it of the occurrence of a default to cure the default to Department's satisfaction. Grantee's failure to cure, or to initiate a cure which is satisfactory to the Department, shall be a sufficient basis for the Department to terminate this Agreement and to direct Grantee to refund all Grant Funds disbursed to it by the Department within thirty (30) days of receipt of the notice of termination.

At the Department's discretion the Grantee shall be responsible for the payment of interest at a rate equal to twelve percent (12%) per annum for any amount of the Grant Funds which it has not refunded to the Department beginning thirty (30) days from the date the termination notice is sent by the Department and continuing to the date that all Grant Funds are refunded by Grantee or recovered through other legal processes available to the Department.

5.5 TERMINATION; SUSPENSION

- A. This Agreement may be terminated as follows:
 - (1) Non-appropriation, Insufficient Appropriation In the event of non-appropriation or insufficient appropriation as described in Section 5.2(B) above, Grantee shall be paid for non-cancelable, allowable expenditures incurred in the performance of authorized services under this Agreement prior to the effective date of termination which shall be the date stated in the written termination notice provided to Grantee. The Department shall provide such notice to Grantee as soon as possible after it becomes aware of such non-appropriation or insufficient appropriation. Any refunds due the Department shall be submitted in accordance with the provisions of Section 5.3(B) hereof.
 - (2) Reduced Funding Sources/Revenues In the event the parties are unable to agree on a reduced amount of compensation and scope of services necessitated due to a reduction in revenues or other funding sources for this Agreement as described in Section 5.2(C) above, Grantee shall be paid for non-cancelable, allowable expenditures incurred in the performance of authorized services under

this Agreement prior to the effective date of termination which shall be the date stated in the written termination notice provided to Grantee. Any refunds due the Department shall be submitted in accordance with the provisions of Section 5.3(B) hereof.

For Cause If the Department determines that the Grantee has failed to comply with any of the covenants, terms, conditions or provisions of this Agreement, or any other application, proposal or grant award executed by the Department and the Grantee, including any applicable rules or regulations, or has made a false representation or warranty in connection with the receipt of the grant, the Department may terminate this Agreement in whole or in part at any time before the expiration date of this Agreement. The Department shall notify the Grantee in writing of the reasons for the termination and the effective date of the termination. Grantee shall not incur any costs after the effective date of the termination. Payments made to the Grantee or recovery by the Department shall be in accord with the legal rights and liabilities of the parties.

In the event of termination for cause, Grantee shall also be subject to any other applicable provisions specified elsewhere in this Agreement.

Termination for cause may render the Grantee ineligible for consideration for future grants from the Department for a period not to exceed two (2) years.

(3) For Convenience The Grantee acknowledges that this grant was made by the Department based on its determination that the activities to be funded under this Agreement are in furtherance of either the Department's statutory requirements or its program objectives. The Grantee further acknowledges that the Department may unilaterally terminate this Agreement based on its good faith determination that the continued expenditure of Grant Funds under this Agreement is no longer in furtherance of said statutory requirements or program objectives. Termination for convenience shall be effective upon delivery of notice to Grantee pursuant to Section 5.10(F) hereof. The Grantee shall not incur new obligations after the effective date of the termination, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the Grantee for properly incurred expenditures made in connection with the Grant in accordance with the provisions of Part I (Budget) and Part II (Scope of Work). Grant refunds shall be submitted in accordance with the provisions of Section 5.3(B) hereof.

B. Suspension If the Grantee fails to comply with the specific conditions and/or general terms and conditions of this Agreement, the Department may, upon written notice to the Grantee, suspend this Agreement, withhold further payments and prohibit the Grantee from incurring additional obligations of Grant Funds, pending corrective action by the Grantee or a decision to terminate this Agreement. The Department may determine to allow such necessary and proper costs, which the Grantee could not reasonably avoid during the period of suspension provided that the Department agrees that such costs were necessary and reasonable and incurred in accordance with the provisions of this Agreement.

5.6 INDEMNIFICATION

A. Non-Governmental Entities The Grantee agrees to assume all risk of loss and to indemnify and hold the State, its officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of Grantee, its employees, agents, or subcontractors or subgrantees in the performance of this Agreement. Grantee shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property and shall, at the State's request and expense, furnish to the State reasonable assistance and cooperation including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery.

The Grantee shall, at its expense, defend the State against all claims asserted by any person that anything provided by Grantee infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the State in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement.

- B. Governmental Entities In the event that the Grantee is a Governmental Entity, it will indemnify and hold harmless the Department as set out herein to the extent authorized by Federal and/or State constitutions(s) and/or laws.

5.7 **MODIFICATION BY OPERATION OF LAW; BUDGET MODIFICATIONS; DISCRETIONARY MODIFICATIONS**

- A. Modifications by Operation of Law This Agreement is subject to such modifications as the Department determines may be required by changes in Federal or State law or regulations applicable to this Agreement. Any such required modification shall be incorporated into and become part of this Agreement as if fully set forth herein. The Department shall timely notify the Grantee of any pending implementation of or proposed amendment to such regulations of which it has notice.
- B. Budget Modifications Grantee must expend the Grant Funds in accordance with the approved budget set forth in Part I hereof. If the Grantee determines that its expenditures for the grant term will vary from the amounts listed in the approved project budget it must submit a written request for approval from the Department prior to incurring the revised costs. Said request must give the reasons for and amounts of the revisions. If the Department approves the revised expenditures, it will provide the Grantee with a revised Project Budget incorporating the revisions. Grantee's failure to obtain written approval for anticipated budget revisions is a sufficient reason for the Department to disallow any costs not included in the original project budget and require a refund from the Grantee.

The Grantee may make a line item transfer up to the allowable variance percentage/amount of the total approved line item budget as specified in Part I Budget without prior written approval of the Department, subject to the following conditions:

- (1) Modifications Requiring Departmental Approval If the Grantee determines that its expenditures will vary from the approved budgeted line item amounts listed in Part I Budget by more than the allowable variance percentage/amount for any given line item expenditure, but will not exceed the total grant award, it shall submit a written request for approval from the Department prior to incurring the revised costs. Modification requests shall give the reasons for and amounts of the revisions. If the Department approves the revised expenditures, it will provide the Grantee with a revised project Part I Budget incorporating the revisions. Grantee's failure to obtain written approval for anticipated budget revisions shall be deemed sufficient for the Department to disallow any costs not included in the original project budget and require a refund from the Grantee.
- (2) Discretionary Transfers Transfers between approved line items that do not exceed the allowable variance percentage/amount of the original approved budget line item may be made at the Grantee's discretion without the Department's approval. For purposes of the allowable discretionary transfer(s), the line item to which the transfer is made cannot be increased by more than the allowable variance percentage/amount of the original approved line item. Additionally, the allowable discretionary transfer does not apply to an Audit line item (if present). Any and all modifications to an existing Audit line item may only be made with the Department's prior written approval.
- C. Discretionary Modifications If either the Department or the Grantee wishes to modify the terms of this Agreement other than as set forth in Sections 5.7(A) and 5.7(B) above, written notice of the proposed

modification must be given to the other party. Modifications will only take effect when agreed to in writing by both the Department and the Grantee. However, if the Department notifies the Grantee in writing of a proposed modification, and the Grantee fails to respond to that notification, in writing, within thirty (30) days, the proposed modification will be deemed to have been approved by the Grantee. In making an objection to the proposed modification, the Grantee shall specify the reasons for the objection and the Department shall consider those objections when evaluating whether to follow through with the proposed modification. The Department's notice to the Grantee shall contain the Grantee name, Grant number, modification number, purpose of the revision and signature of the Department's Director.

- D. Unilateral Modifications The parties agree that the Department may unilaterally modify this Agreement without prior approval of the Grantee when the modification is initiated by the Department for the sole purpose of increasing the Grantee's funding allocation as additional funds become available for the grant during the program year covered by the term of this Agreement. The parties further agree that the thirty (30) day period for objection described in Section 5.7(C) above does not apply to the unilateral modification authority described in Section 5.7(D).
- E. Management Waiver The parties agree that the Department may issue a waiver of specific requirements of this Agreement after the term of the Agreement has expired. These waivers are limited to requirements relating to the Grantee's compliance with existing audit requirements in the Agreement, retention of interest earned by the Grantee on Grant Funds, variances to budgetary line items, non-material changes to the Scope of Work in Part II, and any other non-material changes to specific grant terms that the Department determines are necessary to place the Grantee in administrative compliance with the terms of this Agreement. A management waiver issued after the term of the Agreement has expired will supersede the original requirements of this Agreement that would normally require a modification of this Agreement to be executed. The Department will make no modifications of this Agreement not agreed to prior to the expiration of the Agreement beyond what is specifically set forth in this section.
- F. Term Extensions The Grantee acknowledges that all Grant Funds must be expended or legally obligated during the grant term set forth in the Notice of Grant Award. Pursuant to the Grant Funds Recovery Act (30 ILCS 705/1 et. seq.), no grant term may be extend beyond a two-year period unless the Grant Funds are expended or legally obligated during that initial two-year period, or unless Grant Funds are disbursed in reimbursement of costs previously incurred by the grantee.

5.8 **CONFLICT OF INTEREST; INTEREST OF PUBLIC OFFICIALS/ EMPLOYEES; BONUS/COMMISSION PROHIBITED; HIRING OF STATE EMPLOYEES PROHIBITED; DUE DILIGENCE IN EXPENDITURE OF GRANT FUNDS**

- A. Conflict of Interest A conflict of interest exists if a Grantee's officers, directors, agents, employees and family members use their position for a purpose that is, or gives the appearance of, being motivated by a desire for a private gain, financial or nonfinancial, for themselves or others, particularly those with whom they have family business or other ties. The Grantee must establish safeguards to prohibit such a conflict of interest from occurring. Safeguards, evidenced by rules or bylaws, shall also be established to prohibit persons from engaging in actions, which create or which appear to create a conflict of interest as described herein.

The Grantee must immediately notify the Department in writing of any actual or potential conflicts of interest, as well as any actions that create or which appear to create a conflict of interest.

- B. Interest of Public Officials/Employees
 - (1) Governmental Entity If the Grantee is a governmental entity, the Grantee certifies that no conflict of interest as defined in Section 5.8A exists. Further, Grantee certifies that no officer or employee of the Grantee and no member of its governing body and no other public official of the locality in which the program objectives will be carried out who exercises any functions or responsibilities in

the review or approval of the undertaking or carrying out of such objectives shall participate in any decision relating to any contract negotiated under a program grant which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested, or has any financial interest, direct or indirect, in such contract or in the work to be performed under such contract.

- (2) Nongovernmental Entity If the Grantee is a nongovernmental entity, the Grantee certifies that no conflict of interest as defined in Section 5.8A exists. If such a conflict or appearance thereof exists or arises, the Grantee must provide immediate notification to the Department as provided in Section 5.8A. The Department may, in its discretion, issue Grant Funds if it determines that appropriate safeguards are in place and that it is in the best interest of the State to proceed.

Violations of Section 5.8 may result in suspension or termination of this Agreement, and recovery of Grant Funds provided hereunder. Violators may also be criminally liable under other applicable State or Federal laws and subject to actions up to and including felony prosecution.

- C. Bonus or Commission Prohibited The Grantee shall not pay any bonus or commission for the purpose of obtaining the grant awarded under this Agreement.
- D. Hiring State Employees Prohibited No State officer or employee may be hired to perform services under this Agreement, or be paid with Grant Funds derived directly or indirectly through this grant without the written approval of the Department.

5.9 APPLICABLE STATUTES

- A. Grantee Responsibility All applicable Federal, State and local laws, rules and regulations governing the performance required by Grantee shall apply to this Agreement and will be deemed to be included in this Agreement the same as though written herein in full. Grantee is responsible for ensuring compliance with all applicable laws, rules and regulations, including, but not limited to those specifically referenced herein. Except where expressly required by applicable laws and regulations, the Department shall not be responsible for monitoring Grantee's compliance.
- B. Land Trust/Beneficial Interest Disclosure Act (765 ILCS 405/2.1) No grant award Grant Funds shall be paid to any trustee of a land trust, or any beneficiary or beneficiaries of a land trust, for any purpose relating to the land, which is the subject of such trust, any interest in such land, improvements to such land or use of such land unless an affidavit is first filed with the Department identifying each beneficiary of the land trust by name and address and defining such interest therein.
- C. Historic Preservation Act (20 ILCS 3420/1 et seq.) The Grantee will not expend Grant Funds under this Agreement which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Historic Preservation Agency.
- D. State of Illinois Discrimination Laws (775 ILCS 5/1-101 et seq.) In carrying out the performance required under this Agreement, the Grantee shall comply with all applicable provisions of the Illinois Human Rights Act, and rules and regulations promulgated by the Illinois Department of Human Rights, prohibiting unlawful discrimination in employment. Grantee's failure to comply with all applicable provisions of the Illinois Human Rights Act, or applicable rules and regulations promulgated thereunder, may result in a determination that Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
- E. Drugfree Workplace Act (30 ILCS 580/1 et seq.) Grantee will make the certification required in this Agreement and will comply with all of the provisions of the Drugfree Workplace Act that are

applicable to the Grantee. False certification or violation of the requirements of the Drugfree Workplace Act may result in sanctions including, but not limited to, suspension of grant payments, termination of this Agreement and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years.

- F. Freedom of Information Act (5 ILCS 140/1 et seq.) Applications, programmatic reports and other information obtained by the Department under this Agreement shall be administered pursuant to the Freedom of Information Act.
- G. Prevailing Wage Act (820 ILCS 130/0.01 et seq.) All projects for the construction of fixed works which are financed in whole or in part with Grant Funds provided by this Agreement shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01) unless the provisions of that Act exempt its application. In the construction of the project, the Grantee shall comply with the requirements of the Prevailing Wage Act, including, but not limited to, inserting into all contracts for such construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the project shall be paid to all laborers, workers and mechanics performing work under the contract and requiring all bonds of contractors to include a provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract.
- H. Victims Economic Security and Safety Act (820 ILCS 180 et seq.) If the Grantee has 50 or more employees, it may not discharge or discriminate against an employee who is a victim of domestic violence, or who has a family or household member who is a victim of domestic violence, for taking up to a total of twelve (12) work weeks of leave from work during any twelve month period to address the domestic violence, pursuant to the Victims Economic Security and Safety Act. The Grantee is not required to provide paid leave under the Victims Economic Security and Safety Act, but may not suspend group health plan benefits during the leave period. Any failure on behalf of the Grantee to comply with all applicable provisions of the Victims Economic Security and Safety Act, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by Statute or regulation.
- I. Equal Pay Act of 2003 (820 ILCS 112 et seq.) If the Grantee has four or more employees, it is prohibited by the Equal Pay Act of 2003 from paying unequal wages to men and women for doing the same or substantially similar work. Further, the Grantee is prohibited by the Equal Pay Act of 2003 from remedying violations of the Act by reducing the wages of other employees or discriminating against any employee exercising his/her rights under this Act. Any failure on behalf of the Grantee to comply with all applicable provisions of the Equal Pay Act of 2003, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by Statute or regulation.
- J. Steel Products Procurement Act (30 ILCS 565 et seq.) The grantee, if applicable, hereby certifies that any steel products used or supplied in accordance with this grant for a public works project shall be manufactured or produced in the United States per the requirements of the Steel Products Procurement Act (30 ILCS 565 et seq.).
- K. Use of Illinois Labor for Public Works Projects (20 ILCS 605/605-390; 30 ILCS 570/0.01) The Grantee shall provide the Department with documentation certifying that at least fifty percent (50%) of the total labor hours performed to complete the project described in Part II were performed by actual residents of the State of Illinois, in those cases where the project meets the statutory definition of a state construction project in 20 ILCS 605/605-390. In periods of excessive unemployment the Grantee shall also provide the Department with documentation certifying that it has caused to be employed at

least 90% Illinois laborers on the project described in Part II, in those cases where the project meets the statutory definition of a public works project or improvement in 30 ILCS 570/0.01 et seq.

- L. Minorities, Females, and Persons with Disabilities Act and Illinois Human Rights Act (30 ILCS 575/0.01; 775 ILCS 5/2-105) The Grantee acknowledges and hereby certifies compliance with the provisions of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, and the equal employment practices of Section 2-105 of the Illinois Human Rights Act for the provision of services which are directly related to the Scope of Work to be performed under this Agreement.
- M. Identity Protection Act (5 ILCS/179 et. seq.) and Personal Information Protection Act (815 ILCS 530 et. seq.) The Department of Commerce and Economic Opportunity (DCEO) is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, DCEO will request social security numbers (SSNs) or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, grants. DCEO also collects confidential information for oversight and monitoring purposes.

Furnishing personal identity information, such as a social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by DCEO as a result of state or federal laws, rules and regulations.

5.10 MISCELLANEOUS PROVISIONS

- A. Independence of Grantee Personnel All technical, clerical, and other personnel necessary for the performance required by this Agreement shall be employed by or contracted with Grantee, and shall in all respects be subject to the rules and regulations of Grantee governing its employees. Neither Grantee nor its personnel shall be considered to be the agents or employees of the Department.
- B. Grantor Authority The Department and its payroll employees, when acting pursuant to this Agreement, are acting as State officials in their official capacity and not personally or as the agents of others.
- C. Governing Law This Grant is awarded in the State of Illinois for execution within the State of Illinois. This Agreement shall be governed by and construed according to Illinois law.
- D. Worker's Compensation Insurance, Social Security, Retirement and Health Insurance Benefits, and Taxes The Grantee shall provide Worker's Compensation insurance where the same is required and shall accept full responsibility for the payment of unemployment insurance, premiums for Workers' Compensation, Social Security and retirement and health insurance benefits, as well as all income tax deduction and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.
- E. Delivery of Grantee Payments Payment to the Grantee under this Agreement shall be made payable in the name of the Grantee and sent to the person and place specified in the Notice of Grant Award. The Grantee may change the person to whom payments are sent, or the place to which payments are sent by written notice to the Department signed by the Grantee, that complies with the requirements of Section 5.10(F) below. No such change or payment notice shall be binding upon the Department until ten (10) business days after actual receipt.
- F. Notice Any notice, demand, or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth in the Notice of Grant Award by any of the following means: (a) personal service, (b) electronic communication, whether by telex, telegram or telecopy, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested. Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means,

respectively. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received five (5) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

The Grantee acknowledges and agrees that its address set forth in the Notice of Grant Award is its current address and shall be considered its last known address for purposes of receiving any and all notice(s) required under this Agreement. The Grantee further acknowledges and agrees that the Department is justified in relying upon the address information furnished to it by the Grantee in absence of notice to the contrary. The Grantee also acknowledges and agrees that it has the burden of notifying the Department of its current/last known address. In the event that the Grantee changes its current address, it shall contact its Program Manager and notify him/her of said change of address and a formal modification will be executed.

- G. Required Notice Grantee agrees to give prompt notice to the Department of any event that may materially affect the performance required under this Agreement. Any notice or approval relating to Section 5.5 (Termination), Section 5.7C (Discretionary Modifications), Section 5.7E (Waivers), and Section 5.10I (Assignment) must be executed by the Director of the Department or her/his authorized designee.
- H. Modifications A modification of any condition of this Agreement must be requested in writing. No modification of any condition of this Agreement may be effective unless in writing from and signed by the Director of the Department.
- I. Assignment The benefits of this Agreement and the rights, duties and responsibilities of the Grantee under this Agreement may not be assigned (in whole or in part) except with the express written approval of the Department acting through its Director. Any assignment by the Grantee in violation of this provision renders this Agreement voidable by the Department.
- J. Severability Clause If any provision under this Agreement or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or its application of this Agreement, which can be given effect without the invalid provision or application.
- K. Integration Clause This Agreement, with attachments, as written, is the full and complete agreement between the parties and there are no oral agreements or understandings between the parties other than what has been reduced to writing herein.
- L. Comptroller Filing Notice The Grantee expressly understands that whenever applicable, a copy of this Agreement and any modification, cancellation or renewal is required to be filed by the Department with the State Comptroller.
- M. Subcontract and Grants The Grantee's services, duties and responsibilities specified herein shall not be subcontracted or subgranted by the Grantee without prior written approval of the Department, unless such subcontracts or subgrants are provided for elsewhere in this Agreement. Any subcontracts or subgrants shall be subject to, and conform with, all applicable State and Federal laws, and shall specifically provide that subcontractors or subgrantees are subject to all of the terms and conditions of this Agreement. For the Department to approve the use of any subcontract or subgrant, the Grantee must employ an open, impartial and reasonably competitive selection process.
- N. Attorney Fees and Costs If the Department is the prevailing party in any proceeding to enforce the terms of this Agreement, the Department has the right to recover reasonable attorney fees, costs and expenses associated with recovering the Grant Funds.

**PART VI
STATE OF ILLINOIS REQUIRED
CERTIFICATIONS**

The Grantee makes the following certifications as a condition of this Agreement. These certifications are required by State statute and are in addition to any certifications required by any Federal funding source as set forth in this Agreement. Grantee's execution of this Agreement shall serve as its attestation that the certifications made herein are true and correct.

6.1 COMPLIANCE WITH APPLICABLE LAW

The Grantee certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to this Agreement.

6.2 CONFLICT OF INTEREST

The Grantee certifies that it has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of Grantee's services and obligations under this Agreement.

6.3 BID-RIGGING/BID-ROTATING

The Grantee certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961 (720 ILCS 5/33 E-3 and 5/33 E-4).

6.4 DEFAULT ON EDUCATIONAL LOAN

The Grantee certifies that this Agreement is not in violation of the Educational Loan Default Act (5 ILCS 385/3) prohibiting certain contracts to individuals who are in default on an educational loan.

6.5 AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et. seq.) and the regulations thereunder (28 CFR 35.130) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this grant, the Grantee certifies that services, programs and activities provided under this Agreement are, and will continue to be, in compliance with the ADA.

6.6 DRUGFREE WORKPLACE ACT

The Grantee certifies that:

- A) It is a Corporation, Partnership, or other entity (other than an individual) **with 24 or fewer employees** at the time of execution of this Agreement.
- B) That the purpose of this grant is to fund solid waste reduction.
- C) It is a Corporation, Partnership, or other entity (other than an individual) **with 25 or more employees** at the time of execution of this Agreement, or
- D) That it is an individual.

If Option "A" or "B" is checked this Agreement is not subject to the requirements of the Act.

If Option "C" or "D" is checked and the amount of this grant is five thousand dollars (\$5,000.00) or more, the Grantee is notified that the Drugfree Workplace Act (30 ILCS 580/1 et seq.) is applicable to this Agreement, and the Grantee must comply with the terms of said Act, as set forth below:

Grantee will provide a drugfree workplace by:

- (a) Publishing a statement:
 - (i) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the Grantee's workplace.
 - (ii) Specifying the actions that will be taken against employees for violations of such prohibition.
 - (iii) Notifying the employee that, as a condition of employment on such grant, the employee will:
 - (A) abide by the terms of the statement; and
 - (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the Grantee's policy of maintaining a drug free workplace;
 - (iii) any available drug counseling, rehabilitation and employee assistance programs; and
 - (iv) the penalties that may be imposed upon an employee for drug violations.
- (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the granting agency within ten (10) days after receiving notice, under part (B) of paragraph (iii) of subsection (a) above, from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in, a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by Section 5 of the Drugfree Workplace Act, 30 ILCS 580/5.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation are required and indicating that a trained referral team is in place.
- (g) Making a good faith effort to continue to maintain a drugfree workplace through implementation of the Drugfree Workplace Act, 30 ILCS 580/5.

If Grantee is an individual, it certifies that it will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of this Agreement.

6.7 **ANTI-BRIBERY**

The Grantee certifies that neither it nor its employees have been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois, nor has Grantee or any of its employees made an admission

of guilt of such conduct which is a matter of record as defined in the Illinois Procurement Code (30 ILCS 500/50-5).

6.8 DISCRIMINATION/ILLINOIS HUMAN RIGHTS ACT

The Grantee certifies (i) that it will not commit unlawful discrimination in employment in Illinois as that term is defined in Article 2 of said Act; (ii) that it will comply with the provisions of Article 5 of the Act regarding equal employment opportunities and affirmative action; and, (iii) that it will comply with policies and procedures established by the Department of Human Rights under Article 7 of the Act regarding equal employment opportunities and affirmative action.

The Grantee further certifies that, if applicable, it will comply with "An Act to prohibit discrimination and intimidation on account of race, creed, color, sex, religion, physical or mental handicap unrelated to ability or national origin in employment under contracts for public buildings or public works." (775 ILCS 10/0.01 et seq.)

6.9 SEXUAL HARASSMENT

The Grantee certifies that it has written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Grantee's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105 (B)(5)). A copy of the policies shall be provided to the Department upon request.

6.10 INTERNATIONAL ANTI-BOYCOTT CERTIFICATION

The Grantee hereby certifies that neither the Grantee nor any substantially owned affiliate company of the Grantee is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979, or as defined by the regulations of the U.S. Department of Commerce, promulgated pursuant to that Act (30 ILCS 582/1 et seq.).

6.11 FEDERAL, STATE AND LOCAL LAWS; TAX LIABILITIES; STATE AGENCY DELINQUENCIES

The Grantee is required to comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In the event that a Grantee is delinquent in filing and/or paying any federal, state and/or local taxes, the Department shall disburse Grant Funds only if the Grantee enters into an installment payment agreement with said tax authority and remains in good standing therewith. Grantee is required to tender a copy of any such installment payment agreement to the Department. In no event may Grantee utilize Grant Funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. **The execution of this Agreement by the Grantee is its certification that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Grantee; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.**

6.12 PROHIBITION OF GOODS DERIVED FROM CHILD LABOR

The Grantee certifies, in accordance with Public Act 94-0264, that no foreign-made equipment, materials, or supplies furnished to the State in connection with this Agreement have been produced in whole or in part by the labor of any child under the age of 12.

6.13 PREVAILING WAGE

The Grantee acknowledges that receipt of Grant Funds under this Agreement require compliance with the Prevailing Wage Act (820 ILCS 130 et. seq.). Persons willfully failing to comply with, or willfully violating this Act may be in violation of the Criminal Code. Questions concerning compliance with the Prevailing Wage Act should be directed to the Illinois Department of Labor.

6.14 LIEN WAIVERS

The Grantee shall monitor construction to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Grant Funds to contractors and subcontractors.

6.15 INTERAGENCY WETLAND POLICY ACT

The Grantee certifies that the proposed project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989. The Grantee acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor the proposed project to ensure continued compliance with the aforementioned Act. In the event that the project does not remain in compliance with the Act, such noncompliance shall constitute a breach of the Agreement, and failure to cure the breach within sixty (60) days after notice thereof will result in the termination of this Agreement.

Council Bill/General Ordinance No. 3043-2012

Sponsor: _____

AN ORDINANCE

AMENDING Chapter 34, “WATER AND SEWERS,” of the Moline Code of Ordinances, Section 34-2119, “APPLICATION FOR SERVICE,” by adding subsection (c), subsection (d), and subsection (e) pertaining to the return of required deposits for water, sewer, and stormwater drainage service.

WHEREAS, City Staff seek to amend Chapter 34, “WATER AND SEWERS,” of the Moline Code of Ordinances concerning applications for water service;

WHEREAS, subsection (b) of Section 34-2119, “APPLICATION FOR SERVICE,” requires all applicants for water, sewer and stormwater drainage service to pay a cash deposit in an amount reasonably commensurate with the size of the applicant’s water meter and average consumption history, as determined by the accounts and finance office, but in no case be less than amounts set forth in said subsection;

WHEREAS, the Code is silent as to what is done with these required deposits;

WHEREAS, the accounts and finance office has been collecting the deposits that continue to be required and has been operating under the policy that water deposits shall be retained for two years and then returned to the customer; and

WHEREAS, amending Section 34-2119 to add subsections (c), (d), and (e), which address the return of the required deposit, will provide clarity to customers on when and how their required deposit will be returned.

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

Section 1 – That Chapter 34, “WATER AND SEWERS,” of the Moline Code of Ordinances, Section 34-2119, “APPLICATION FOR SERVICE,” is hereby amended by adding subsection (c), subsection (d), and subsection (e), pertaining to the return of required deposits for water, sewer, and stormwater drainage service, which shall read as follows:

“SEC. 34-2119. APPLICATION FOR SERVICE.

* * * * *

(c) **Return of deposit.** Unless the accounts and finance office shall sooner refund such deposit in accordance with the paragraphs below, such deposit shall be retained by the accounts and finance office until such service is discontinued and shall then be returned to the applicant by crediting the amount of the deposit to the account of the applicant. If the amount of the deposit exceeds the amount of the water, sewer and stormwater drainage service charges then due and owing to the City for water and sewerage services used on said premises, then the excess amount will be repaid by check being sent to the last known address of applicant, unless an alternate address has been provided in writing.

Any owner who shall establish a record with the accounts and finance office for prompt and timely payment of all bills for water, sewer and stormwater drainage service at the particular premises for two (2) consecutive years, which constitutes eight (8) consecutive bills, shall be entitled to a refund of any deposit made by him for service, provided that all billings have been in the name of and have been posted and mailed, either by regular U.S. Mail or by electronic mail, to such owner. Said deposit shall be credited to the account of the applicant by the account and finance office. If the amount of the deposit exceeds the amount of the water, sewer and stormwater drainage service charges then due and owing to the City for water and sewerage services used on said premises, then the excess amount will be repaid by check being sent to the last known address of applicant.

(d) Any owner, moving from one premises to another as owner thereof, may have his deposit transferred to the new place of residence. Any owner, who has had his deposit refunded by the paragraph immediately above and has maintained his record of timely payment, shall not be required to pay a new deposit upon said move.

(e) **Obligation of applicant to notify City of any changes.** Any person or party signing an application pursuant to the terms hereof, shall be obligated to notify the accounts and finance office of any termination or change in occupancy, or other facts requiring a change in contract, a discontinuance, or an interruption of water, sewer and stormwater drainage services, and in the event any such person or party shall so fail to notify the accounts and finance office, they shall remain liable upon the account for that premises for previous and subsequent service furnished at the premises until the accounts and finance office has written notice of such changes.”

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

CITY OF MOLINE, ILLINOIS

Mayor

Date

Passed: _____

Approved: _____

Attest: _____
City Clerk

Approved as to Form:

City Attorney

Council Bill No. 4055-2012

Sponsor: _____

A SPECIAL ORDINANCE

SETTING the annual meetings agenda for 2013.

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

Section 1: That the annual meetings agenda for 2013 is hereby set by
the City Council and City staff is hereby directed to do all things necessary to notify the
media of the 2013 City Council and Committee Meetings Schedule as shown on Exhibit
A attached hereto.

Section 2: That this Ordinance shall be in full force and effect from
and after its passage and approval as required by law, publication, if required, in the
manner provided by law.

CITY OF MOLINE, ILLINOIS

Mayor

December 18, 2012
Date

Passed: December 18, 2012

Approved: January 8, 2013

Attest: _____
City Clerk

Approved as to Form:

City Attorney

2013 CITY OF MOLINE COUNCIL BOARD/COMMITTEE MEETINGS SCHEDULE
(dates times subject to change with notification)

COMMITTEE	LOCATION	TIME	DATES	DATES	DATES	DATES
Committee-of-the-Whole & City Council immediately following	City Hall-2nd Floor Council Chambers 619-16th Street	6:30 p.m. (or as deemed necessary)	Jan ---, 08, 15, 22, --- Feb 05, 12, 19, 26 Mar 05, 12, 19, 26	Apr 02, 09, 16, 23, --- May 07, 14, 21, 28 Jun 04, 11, 18, ---	Jul ---, 09, 16, 23, --- Aug 06, 13, ---, 27 Sep 03, 10, 17, 24	Oct 01, 08, 15, 22, --- Nov 05, 12, 19, --- Dec 03, 10, 17, ---, ---
Citizens Advisory Council on Urban Policy (CACUP)	City Hall-2nd Floor Committee-of-the-Whole 619-16th Street	4:00 p.m.	Jan --- Feb --- Mar ---	Apr 22 May 06, 20 Jun 3, 17	Jul --- Aug --- Sep 9, 23	Oct --- Nov --- Dec ---
Consolidated Public Safety Communications Budget Board	East Moline City Hall Conference Room 915 16th Ave, East Moline	4:00 p.m.			Jul 03	Nov 6
Fire and Police Commissioners	Police Department Community Room 1640 6th Avenue	4:30 p.m.	Jan 08 Feb 12 Mar 12	Apr 09 May 14 Jun 11	Jul 09 Aug 13 Sep 10	Oct 08 Nov 12 Dec 10
Firefighters Pension Board	Conference Room-2nd Floor 1630-8th Avenue	8:30 a.m.	Jan 24	Apr 25	Jul 25	Oct 24
Foreign Fire Tax	Central Fire Station Conference Room 1630 8th Avenue	8:15 a.m.	Jan --- Feb 12 Mar ---	Apr 09 May --- Jun 11	Jul --- Aug 13 Sep ---	Oct 08 Nov --- Dec 10
Historic Preservation Advisory	City Hall-2nd Floor Council Chambers 619-16th Street	4:00 p.m.	Jan 14 Feb 11 Mar 11	Apr 15 May 13 Jun 10	Jul 08 Aug 12 Sep 09	Oct 14 Nov 12 Dec 09
Human Rights Commission	City Hall-2nd Floor Committee-of-the-Whole 619-16th Street	4:00 p.m.	Jan --- Feb --- Mar 11	Apr 08 May 13 Jun ---	Jul --- Aug 12 Sep 09	Oct 14 Nov 12 Dec 09
Keep Moline Beautiful Commission	Public Works Building Conference Room 3635 4th Avenue	4:30 p.m.	Jan 10 Feb 14 Mar 14	Apr 11 May 09 Jun 13	Jul 11 Aug 08 Sep 12	Oct 10 Nov 14 Dec 12
Library Board of Trustees	Moline Public Library Platinum Room 3210 41st Street	12:00 p.m.	Jan 10 Feb 14 Mar 14	Apr 11 May 09 Jun 13	Jul 11 Aug 08 Sep 12	Oct 10 Nov 14 Dec 12
Park Board	Public Works Building Conference Room 3635 4th Avenue	3:30 p.m.	Jan 31 Feb 28 Mar 28	Apr 25 May 23 Jun 27	Jul 25 Aug 22 Sep 26	Oct 24 Nov --- Dec 05
Plan Commission	City Hall-2nd Floor Council Chambers 619-16th Street	4:00 p.m.	Jan 09, 23 Feb 13, 27 Mar 13, 27	Apr 10, 24 May 08, 22 Jun 12, 26	Jul 10, 24 Aug 14, 28 Sep 11, 25	Oct 09, 23 Nov 13 Dec 11
Police Pension Board of Trustees	Police Department Community Room 1640 6th Avenue	12:00 p.m.	Jan 23	Apr 24	Jul 24	Oct 23
Project Management Team	Renew Moline Conference Room 1506-River Drive	1:30 p.m.	Jan 16 Feb --- Mar 13	Apr --- May 08 Jun ---	Jul 10 Aug --- Sep 11	Oct --- Nov 13 Dec ---
Moline Centre Main Street Commission	City Hall-2nd Floor Committee-of-the-Whole 619-16th Street	4:00 p.m.	Jan 21 Feb --- Mar 18	Apr 15 May 20 Jun 17	Jul 15 Aug 19 Sep 16	Oct 21 Nov 18 Dec 16
Moline Housing Authority	Moline Housing Authority Board Room 4141-11th Avenue A	5:30 p.m.	Jan 14 Feb 25 Mar 18	Apr 22 May 20 Jun 17	Jul 15 Aug 19 Sep 16	Oct 21 Nov 18 Dec 16
Special Services Area #5 - Bass Street	City Hall-2nd Floor Committee-of-the-Whole 619-16th Street	3:00 p.m.	Jan 14	May 20	Aug 19	Nov 18
Special Services Area #6 - Downtown	City Hall-2nd Floor Committee-of-the-Whole 619-16th Street	3:00 p.m.	Jan 21	Apr 15	Jul 15	Oct 21
Traffic Committee	Public Works Building Conference Room 3635 4th Avenue	1:30 p.m.	Jan 08 Feb 05 Mar 05	Apr 02 May 07 Jun 04	Jul 02 Aug 06 Sep 03	Oct 01 Nov 05 Dec 03
Youth Commission	Moline Public Library Platinum Room 3210 41st Street	4:00 p.m.	Jan --- Feb --- Mar 21	Apr 18 May 16 Jun ---	Jul --- Aug --- Sep 19	Oct 17 Nov 21 Dec 19