

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
JUNE 10, 2008 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Illinois Department of Commerce and Economic Opportunity Grant Agreement	✓ Resolution Ordinance Motion Discussion Only	Robin A. Weaver Interim Director of Public Works

SYNOPSIS

A resolution has been prepared authorizing execution of a grant agreement with the Illinois Department of Commerce and Economic Opportunity (DCEO). The grant would provide \$35,000 to support the installation of perimeter fencing at the Village's seven water towers and three rate control stations.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2007-2012 identified *Top Quality Village Infrastructure and Facilities* and the supporting objective of *Improve Neighborhood Infrastructure Curbs, Gutters, Streets, Sidewalks, Stormwater and Drainage System*.

FISCAL IMPACT

The adopted FY08 Capital Project fund includes \$150,000 for this project.

RECOMMENDATION

Approval on the June 17, 2008 consent agenda.

BACKGROUND

In 2004, the consulting firm of Burns & McDonnell conducted a vulnerability assessment of the Village's water system to identify potential vulnerabilities and to reduce the risk of the Village's water system to vandalism, intruders and malevolent acts. Several capital improvements were recommended to upgrade specific components of the Village's Physical Protection System. One recommendation called for the installation of perimeter fencing at the Village's water towers and rate control stations. The implementation of this improvement to the physical security system will meet the goal of reducing the risk of the Village's water system.

Therefore, it is the intent of the Village to use the DCEO funding to hire a contractor to install an eight-inch chain link perimeter fencing at each of the Village's seven water towers and three of the rate control stations.

ATTACHMENTS

Resolution
 Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND THE
ILLINOIS DEPARTMENT OF
COMMERCE AND ECONOMIC OPPORTUNITY (DCEO)**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Grantee”) and the Illinois Department of Commerce and Economic Opportunity (the “Department”), for grant funding for the installation of perimeter fencing at the Village’s seven water towers and three rate control stations submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further actions as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provision of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

STATE OF ILLINOIS
DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

Notice of Grant Award No. 08-203445
MISCELLANEOUS STATE PROGRAMS

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") AND

Village of Downers Grove

(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 \$35,000.00 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 04/01/2008 through the ending date of 03/03/2010, unless otherwise established within Part I Budget and/or Part III Scope of Work. The Grantee hereby agrees to use the funds provided under the Agreement for the purposes set forth herein and agrees to comply with all terms of the Agreement.

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

Part:

- I. Budget
- II. Special Grant Conditions
- III. Scope of Work
- IV. Program Terms and Conditions
- V. General Provisions
- VI. Required Certifications

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

If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sole proprietorship, enter the owner's name followed by the name of the business and the owner's SSN. For all other entities, enter the name of the entity (as used to apply for the entity's EIN) and the EIN.

Name: Village of Downers Grove

Taxpayer Identification Number:
SSN/EIN: 366005857

Legal Status (check one):

- 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-Noncorporate (11)
- Nonresident Alien(13)
- Pharmacy/Funeral Home/Cemetery Corporation(15)
- Tax Exempt(16): _____

The Grantee acknowledges that the individual signing below is authorized to execute this Agreement and that such signature constitutes the acceptance of this Agreement.

GRANTEE:
Village of Downers Grove

By: _____
(Signature)

Date

Print or Type Name and Title

STATE OF ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

By: _____
Jack Lavin, Director

_____ Date

Grantee Address:

Please indicate any changes below

801 BURLINGTON AVE
Downers Grove, IL 60515-4782

Auth Signator: Ron Sandack
Phone: (630) 434 - 6878

The following is designated as administrator for the Grantee:

Susan Brassfield

801 Burlington Ave
Downers Grove, IL. 60515-4776

Auth Signator: _____
Phone: _____

Reviewed by Legal
on 5.20.08
Ann Marie L. Perez

PART I GRANT BUDGET ESTABLISHMENT

PROGRAM: MISCELLANEOUS STATE PROGRAMS

NAME OF APPLICANT/GRANTEE:
Village of Downers Grove

APPLICATION GRANT NUMBER: 08-203445

PROJECT DURATION: BEGIN DATE: 04/01/2008 END DATE: 03/03/2010

SUMMARY OF PROJECT - BY BUDGET/COST CATEGORY

COST CAT.	DESCRIPTION	CURRENT APPROVED BUDGET	REQUESTED AMOUNT	NEW BUDGET AMOUNT
1003	PERSONNEL			
1005	FRINGE BENEFITS			
1007	TRAVEL			
1009	EQUIPMENT- NON-CONSTR PROJECTS			
1011	COMMODITIES/PRINTING/POSTAGE			
1013	RENT/UTILITIES			
1015	CONTRACTUAL/CONSULTANT			
1017	AUDIT/ACCOUNTING/LEGAL			
1019	TRAINING/CONFERENCES			
1021	MARKETING/ADVERTISING/WEBSITE			
1023	OTHER			
1201	PLANS & SPECIFICATIONS			
1203	ARCHITECTURAL/ENGINEERING FEES			
1205	PRINTING (CONSTRUCTION DOCS)			
1207	EQUIPMENT (CONSTR PROJECTS)			
1209	LAND PURCHASE			
1211	LABOR			
1213	EXCAVATION			
1215	WIRING/ELECTRICAL			
1217	CONSTR/RENOVATION MATERIALS			

**PART I
BUDGET
Village of Downers Grove
08-203445**

New Construction "Bid as a Whole"	\$35,000
TOTAL:	\$35,000

PART II-A1

**SPECIAL GRANT CONDITIONS
(GOVERNMENTAL ENTITIES)
(Advanced)**

2.1 AUDIT REQUIREMENTS.

_____ The Grantee is required to have an audit conducted as provided in Part V, Section 5.4C, Audit Requirements. The audit must include a Revenue (Receipt) and Expenditure Statement comparing budgeted amounts with actual for this grant. The audit must also include a compliance component which covers, at a minimum, the following items:

- did the Grantee complete the activities described in the Scope of Work (Part III) within the Grant Term
- did the Grantee obtain prior written approvals from the Department for material changes from the performance of the activities described in the Scope of Work (Part III)
- did the Grantee expend grant funds within the grant period specified in the Notice of Grant Award
- did the Grantee adhere to the grant Budget (Part I); if not, variances should be identified
- did the Grantee obtain prior written approvals from the Department for any material variances in its expenditure of grant funds
- did the Grantee adequately account for receipts and expenditures of grant funds
- if applicable, did the Grantee return grant funds to the Department in accordance with the provisions of the Grant Agreement
- are amounts reported in the Grantee's close-out package traceable to its general ledger

X The Grantee is not required to have an audit conducted as a condition of this Grant Agreement; however, if the Grantee receives during the term of this Grant Agreement (or has previously received), additional grants from the State of Illinois for the project described in Part III hereof, the Department may require the Grantee to have an audit conducted as provided in Part V, Section 5.4C(2)(iv) hereof.

2.2 PROJECTS REQUIRING EXTERNAL SIGN-OFFS.

(a) Pursuant to applicable statute(s), this grant requires sign-off by the following State agency(ies). The status of the sign-off is indicated as of the date the grant is sent to the Grantee for execution:

AGENCY	SIGN-OFF RECEIVED	SIGN-OFF OUTSTANDING
<input type="checkbox"/> Illinois Historic Preservation Agency	—	—
<input type="checkbox"/> Illinois Dept. of Agriculture	—	—
<input type="checkbox"/> Illinois Dept. of Natural Resources	—	—
<input checked="" type="checkbox"/> NONE APPLICABLE		

While any external sign-off is outstanding, the provisions of Exhibit 1 apply with respect to the disbursement of funds under this grant.

NOTE: The fact that a sign-off has been received in no way relieves the Grantee of its obligation to comply with any conditions or requirements conveyed by the applicable agency(ies) in conjunction with the issuance of the sign-off for the project funded under this Agreement.

(b) For projects subject to review by the Illinois Environmental Protection Agency, the Grantee must, prior to construction, obtain a construction permit or "authorization to construct" from the IEPA pursuant to the provisions of the Environmental Protection Act, 415 ILCS 5/1 et seq.

2.3 PAYMENT PROVISIONS: PRIOR INCURRED COSTS. The Department shall authorize the State Comptroller's Office to disburse payment of the grant funds as follows:

100 percent (100%) of the grant award will be authorized for disbursement upon the Department's execution of this Agreement. If the amount set forth herein is less than 100% of the grant award, the disbursement schedule for the balance of the grant award is attached hereto as Exhibit 3.

If external sign-offs are indicated in Section 2.2, above, disbursement of grant funds (whether advance or scheduled) are subject to the restrictions set forth in Exhibit 1. Upon receipt of all required sign-offs, the Department's Accounting Division will be notified to disburse grant funds in accordance with the disbursement method indicated herein.

Note: The Department reserves the right to adjust the disbursement schedule set forth above. Reimbursement of costs incurred by the Grantee prior to the Beginning Date specified in the Notice of Grant Award requires the approval of the Department. Such costs must be clearly identified in Part I hereof.

2.4 PROJECT COMPLETION DATE. The Project Completion Date for this Grant is as indicated below:

X Notwithstanding the end date stated in the Notice of Grant Award, the project shall be deemed complete when all activities described in Part III hereof have been fully performed and grant funds have been expended or legally obligated by the Grantee for such activities pursuant to Parts I and III hereof. Grantee shall notify the Department of the Project Completion Date through the submittal of a letter to the Grant manager stating the Project Completion Date.

_____ The Project Completion Date for this Grant is the end date stated in the Notice of Grant Award.

2.5 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) **Status/Expense Reports.** Grantee shall submit status/expense reports as indicated below.

N/A **Quarterly Expense Reports:** The Grantee shall submit Quarterly Expense Reports in the format provided by the Department. Reports shall be submitted quarterly through the Project Completion Date, except where Grantee is directed otherwise in the Close-out Package instructions.

(b) **Close-out Package.** The Close-out Package described in Section 5.4 hereof is due 45 days following the end date stated in the Notice of Grant Award. Grantee shall submit the Close-out Package (consisting of a Final Status Report, a Final Expense Report, and a Close-out Report) in the format provided by the Department. This package shall 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 5.4 shall be considered a material breach of the performance required by this Agreement and may be the basis to initiate proceedings to recover all funds disbursed to the Grantee.

(c) **Additional Information.** Upon request by the Department, the Grantee shall, within 10 business days of its receipt of such a request, 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 reports and documentation required under Section 2.5 should be submitted to the individual identified in Exhibit 2 hereto.

2.6 FUNDING LIMITATIONS/RESTRICTIONS. The Grantee hereby expressly acknowledges and agrees to the following provisions:

(a) The grant awarded pursuant to this Agreement is a one-time award. The State is not obligated to provide funding in subsequent State of Illinois fiscal years for the project funded by this grant.

(b) Funding provided under this Agreement shall not be used to perform or to further the performance of sectarian activities.

(c) Without the express written consent of the Department, no grant funds nor property purchased with grant funds may be disbursed or conveyed respectively, to, on behalf of, or for the benefit of, any registered lobbyist or family member of such lobbyist, as the term is defined in the Lobbyist Registration Act (25 ILCS 170/1 et seq.).

2.7 OPPORTUNITIES FOR MINORITY, FEMALE AND DISABLED PERSONS. Grantee shall use good faith efforts to recruit, develop and extend employment and contracting opportunities to women, minorities, and disabled persons from funds received under this grant. Nothing herein shall be deemed to modify or negate any requirement of the Business Enterprise for Minorities, Females and Persons with Disabilities Act (30 ILCS 575/1) or any other provision of this Grant Agreement.

2.8 MULTIPLE GRANT AWARDS. If the Grantee was previously awarded a grant by the Department to fund the project described in Part III hereof, the Department may, pursuant to Section 5.8(c), unilaterally revise Parts I and III of the previously executed Grant Agreement to accurately reflect all project activities and the multiple funding sources therefor. If the Grantee receives additional grants to fund the project described in Part III hereof subsequent to the execution of this Agreement, Parts I and III for said grant(s) will be developed to reflect all project activities and the multiple funding sources therefor.

2.9 FUNDING ACKNOWLEDGMENT. If requested by the Department, the Grantee shall post signs at the project site or affix signs/decals to equipment purchased with grant funds, which acknowledge the State as providing funds for the project. Signs not provided by the Department must be approved by the Department prior to posting.

2.10 TERMINATION FOR CAUSE. Grantee's failure to comply with any of the terms set forth in this Grant Agreement, shall be a sufficient basis to suspend or terminate this Agreement and seek recovery of all grant funds disbursed to the Grantee. **A failure to comply with the terms of this Grant Agreement shall also be a sufficient basis to suspend or terminate any other grant(s) issued to the Grantee by the Department and to reject future grant requests for the Grantee.**

2.11 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 Grant 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.

2.99 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 III, 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 UNDERSIGNED IS AUTHORIZED ON BEHALF OF GRANTEE TO, AND HEREBY DOES, SPECIFICALLY ACKNOWLEDGE AND AGREE TO COMPLY WITH ALL SPECIAL GRANT CONDITIONS REFERENCED HEREIN.

BY: _____

TITLE: _____

DATE: _____

A handwritten mark, possibly a signature or initials, enclosed within a hand-drawn circle. The mark consists of a central vertical line with two diagonal lines crossing it, forming a star-like or asterisk-like shape.

**PART III
SCOPE OF WORK
Village of Downers Grove
08-203445**

Section 1. Public Benefit

The Grantee is a governmental entity providing essential public services, including water supply, to the residents of Downers Grove in DuPage County.

Grant funds will be used to purchase and install chain link perimeter fencing at each of the Grantee-owned water towers and rate control stations to reduce the risk of vandalism, intruders and malevolent acts. The fencing will be installed at the following locations within Downers Grove: 4318 Downers Drive; 2304 Maple Avenue; 3701 Highland Avenue; 1037 Summit Avenue; 1724 71st Street; 3501 Finley Road; and 6705 Main Street.

Completion of the project will benefit the public by securing the water towers and rate control stations, and reduce the risk to the Grantee's water system including poisoning of the water supply and other act of terrorism.

Section 2. Grant Tasks

2.1 The Grantee agrees to comply with the following:

- (a) The Grantee shall utilize grant funds in accordance with Part I (Budget) to complete the activities/performance described in Section 1, above. The Grantee shall provide any additional funds, or secure commitments therefore, which are necessary to complete the specified activities/performance during the grant term set forth in the Notice of Grant Award.
- (b) The Grantee shall execute all agreements necessary to complete the activities/performance described in Section 1, above, including, but not limited to, purchase/sales contracts for real and/or personal property, leases, easements, loans, financing agreements, grant agreements, operating agreements, etc., during the grant term specified in the Notice of Grant Award.
- (c) The Grantee shall obtain all authorization necessary to complete the activities/performance described in Section 1, above, including, but not limited to, municipal ordinances, permits, variances, other approvals, etc., during the grant term specified in the Notice of Grant Award.
- (d) The Grantee shall notify the Departmental grant manager in writing no later than 10 days after it becomes aware of any events/circumstances that will result in substantial delays or may substantially impair the Grantee's ability to complete the activities/performance described in Section 1, above, during the grant term specified in the Notice of Grant Award.

(e) The Grantee shall provide to the Department additional information relative to its compliance with the provisions set forth in subsections (a) through (d), above, pursuant to Part II, "Additional Information."

(f) In addition to the requirements of Part V, Section 5.4(A), the Grantee shall maintain in its file, and make available to the Department upon request therefore, copies of documentation, correspondence, agreements, etc., evidencing compliance with the requirements of subsections (a) through (d), above.

2.2 Any equipment purchased with Grant funds provided hereunder shall only be used for the purposes set forth above for the term of the grant.

2.3 The Grantee acknowledges and agrees that any funds provided under this Agreement that are allocable personnel costs, fringe benefits, and/or contractual services shall be limited to payment for the provision of services which are directly related to the Scope of Work to be performed under this Agreement.

EXHIBIT 1

The Project described in Part III and funded under this Grant Agreement, is subject to review by the external agency(ies) indicated in Section 2.2 hereof. Grantee must comply with requirements established by said agency(ies) relative to their respective reviews. **Any requirements communicated to the Department shall be incorporated into this Agreement as follows: (i) as an attachment to this Exhibit 1 at the time of grant execution; or (ii) if received from the applicable agency(ies) subsequent to execution, as an addendum to this Agreement.** The Grantee is contractually obligated to comply with such requirements.

Grantee is responsible for coordinating directly with the applicable external agency(ies) relative to said reviews. Except as specifically provided below, the Department's obligation to disburse funds under this Grant Agreement is contingent upon notification by the applicable agency(ies) that all requirements applicable to the Project have been satisfied. Upon receipt of said notification, disbursement of the grant funds shall be authorized in accordance with the provisions of Section 2.3 hereof.

Prior to notification of compliance by the applicable external agency(ies), the Grantee may request disbursement of funds **only** for the following purposes: administrative, contractual, legal, engineering, or architectural costs incurred which are necessary to allow for compliance by the Grantee of requirements established by the external agency(ies). **FUNDS WILL NOT BE DISBURSED FOR LAND ACQUISITION OR ANY TYPE OF CONSTRUCTION OR OTHER ACTIVITY WHICH PHYSICALLY IMPACTS THE PROJECT SITE PRIOR TO RECEIPT BY THE DEPARTMENT OF THE REQUIRED NOTIFICATION FROM ALL APPLICABLE AGENCIES.**

EXHIBIT 2 - REPORT SUBMITTAL

Please submit your documents to:

- Crystal Bigelow
- Duane Brusnighan
- Kirk Kumerow
- JoLaine Miner
- Carla Needham
- David Parr
- Ericka Perkins
- Jim Reed
- Kathy Rudolph
- Kathy Schleyhahn
- Kurt Verduin

At the following address:

Illinois Department of Commerce and Economic Opportunity
620 East Adams Street
Springfield, IL 62701-1615

Retain this page and all reporting forms for submittal for the appropriate reporting period.

PART IV
TERMS AND CONDITIONS GOVERNING GRANT
(Governmental Entities)

4.1 APPLICABLE TIME LIMITATIONS.

(i) **Completion of Performance.** All activities described in Part III hereof, which are chargeable to grant funds provided by this Agreement, must be completed by the grant period end date set forth in the Notice of Grant Award.

(ii) **Expenditure of Grant Funds.** All grant funds provided under this Agreement must be expended or legally obligated by the grant end date set forth in the Notice of Grant Award. Grant funds not expended by the grant end date must be returned to the Department in accordance with directions provided by the Department.

4.2 INTEREST ON GRANT FUNDS. The Grantee may be allowed to retain interest earned on grant funds awarded under this Agreement, provided that:

(i) All interest earned must be accounted for and reported to the Department in the Grantee Close-Out Package described in Section 5.4(B) herein; and

(ii) Interest may only be expended for activities which are identified in Parts I and III hereof.

4.3 REFUNDS TO THE DEPARTMENT. Any refunds (unliquidated grant balance, interest earned on grant funds, or ineligible/improper grant expenditures) due the Department shall be remitted by the Grantee upon demand and pursuant to instructions issued by the Department.

4.4 BUDGET/SCOPE OF WORK MODIFICATIONS.

(i) **Grant Budget (Part I).** The Grantee must obtain prior written approval from the Department for any expenditures which materially vary from the expenditures set forth in Part I hereof. For purposes of this Agreement, "materially vary" means any variance within the line items set forth in Part I which exceeds 10% of the amount established for that line item or any line item added or substituted for a line item in Part I hereof.

(ii) **Scope of Work (Part III).** The Grantee must obtain prior written approval from the Department before changing any of the activities specified in Part III which are chargeable to this grant. Any revision to Part III which results in the performance of activities by the Grantee which are inconsistent with the purpose set forth in the Appropriation authorizing the grant awarded under this Agreement are not permissible.

4.5 FISCAL RECORDING/REPORTING REQUIREMENTS. The Grantee is accountable for all funds disbursed under this grant. The Grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the expenditure of all funds provided under this Agreement. The Grantee shall maintain effective control and accountability over all funds disbursed and equipment, property, or

other assets acquired with grant funds. The Grantee shall keep records sufficient to permit the tracing of funds to a level of expenditure adequate to insure that funds have been expended in accordance with the terms of this Agreement.

4.6 GRANT DELIVERABLES. The Grantee will submit the following Grant deliverables in accordance with the Grant Agreement provisions referenced herein:

- (i) Project Status and Expense Reports, if applicable (Section 2.5)
- (ii) Financial Close-out Package (Section 5.4B); and
- (iii) Audit (if applicable) (Section 2.1 and Section 5.4C).

4.7 PROCUREMENT OF CONSTRUCTION AND PROFESSIONAL SERVICES; ACQUISITION OF EQUIPMENT OR LAND. The Grantee shall procure all construction and professional services, and acquire land, equipment and materials financed in whole or in part with grant funds provided hereunder, through written, contractual agreement(s), which specify the rights and obligations of both parties relevant to the specified transaction.

4.8 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, and the terms and conditions of this Agreement;
- (ii) Grant expenditures should not exceed the amount which would be incurred by a prudent person under the circumstances prevailing at the time the decision is made to incur the costs; and
- (iii) Grant expenditures should be consistent with generally accepted accounting principles.

4.9 GRANT USE/ NON-SECULAR PURPOSE. No portion of the funds may be used to promote or further non-secular purposes. Grant funds may not be used to advance the religious mission of the institution in any way.

**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 the 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 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;

- (9) Grantee's execution of this Agreement shall serve as its attestation that Grantee has read, understands and agrees to all provisions of this Agreement and to be bound thereby. Grantee further acknowledges that the individual executing this agreement is authorized to do so on the Grantee's behalf, 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 an 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 Grant Agreement and suspend or terminate the Grant Agreement pursuant to Section 5.6.

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 III, 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 which 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 which would conflict with the performance of its duties hereunder.

5.2 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 III (Scope of Work) hereof, in accordance with the provisions of Part I (Budget) hereof, and to prepare and submit to the Department the reports and other deliverables described in this Agreement.

5.3 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 5.6A(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: (i) receipts from revenues which provide the funding for this Agreement either fall significantly short of anticipated levels, or significantly decrease, or (ii) 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 5.6A(2) herein.

5.4 RECORDS RETENTION AND ACCESS TO RECORDS; PROJECT CLOSE-OUT; ACCOUNTING; AND AUDIT REQUIREMENTS

A. Records Retention. The Grantee is accountable for all funds received under this Agreement and shall maintain, for a minimum of three (3) years following the later of the expiration or termination of this Agreement, unless the Department notifies the Grantee that a longer period prior to the expiration of three years is required, adequate books, records, and supporting documents, including digital and electronic data, to verify the amount, recipients and uses of all disbursements of 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, or any of their duly authorized representatives, and the Grantee agrees to cooperate fully with any audit conducted 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 Section 5.4 shall establish a presumption in favor of the Department for the recovery of any funds paid by the Department under this Agreement for which adequate books, records and supporting documentation are not available to support their purported disbursement.

If any of the services to be performed under this Agreement are subcontracted and/or if subgrants are issued for the expenditure of 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 three (3) years from the later of the expiration or termination of this Agreement, and any such subcontractor shall be governed by the same requirements to which the Grantee is subject under this Agreement.

B. Grant Close-out

(1) Grant Close-out Report. In addition to any other reporting requirements specified in this Agreement, the Grantee shall complete and submit a

final Grant Close-out Report on forms provided by the Department, within time limits established by the Department, after the expiration or termination of this Agreement. 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 Grant Close-out Report, including such action as the Department, based on its review of the Grant Close-out Report, may direct.

- (2) Grant Refunds. In accordance with the Illinois Grant Funds Recovery Act, 30 ILCS 705/1, et seq., the Grantee must, within 45 days of the earlier of the ending date specified in the Notice of Grant Award or effective date of a termination of this Agreement, refund to the Department, any balance of funds, which is not spent or not obligated as of said date.

C. **Audit Requirements.** If required by Part II of this Grant Agreement, the Grantee shall be required to have an audit conducted in accordance with the following terms:

(1) Federally Funded Grants.

- a. Applicable Federal Requirements. If the Grantee is required to have an audit conducted 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"), then the audit shall be performed in accordance with these provisions.
- b. Grantee Shall Furnish Department with Copy of Audit. When the Grantee has an audit conducted pursuant to the requirements of the Single Audit Act and OMB Circular A-133, and an audit report is produced pursuant to such federal requirements, the Grantee shall provide the Department with a copy of such audit report, except in cases where the Grantee is not required by the Single Audit Act or OMB Circular A-133 to distribute a copy of such audit report to the Department.
- c. Grantee To Send Department Copy of Audit Report or Reporting Package within Specified Time Period. The Grantee shall send a copy of the audit report, the data collection form and the appropriate reporting package, as provided for in the Single Audit Act and OMB Circular A-133, to the Department within 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 Grantee shall send the audit report to the Department at the following address: .

Illinois Department of Commerce and Economic Opportunity
Division of Audits
620 East Adams Street
Springfield, IL 62701

(2) State Funded Grants

a. State Audit Requirements

- (i) The audit shall be conducted by a certified public accountant that is licensed by the State of Illinois to conduct an audit in accordance with Generally Accepted Auditing Standards.
- (ii) Grant funds shall be included in the Grantee's annual audit, unless the Department authorizes the Grantee to have a grant-specific audit conducted.
- (iii) Upon completion of an audit, an audit report shall be issued and the Grantee shall provide the Department with a copy of such audit report.
- (iv) The Grantee shall provide the Department with a copy of an audit report within 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 Grantee shall send the audit report to the Department at the following address:

Illinois Dept. of Commerce & Economic Opportunity
Division of Audits
620 East Adams Street
Springfield, IL 62701

5.5 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 hereafter in effect;

(e) The Grantee permanently ceases the conduct of active trade or business at the location specified in Part III, 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 III, 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 60 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 funds disbursed to it by the Department within 30 days of receipt of the notice of termination.

Grantee shall be responsible for the payment of interest at a rate equal to 12% per annum for any amount of the grant funds which it has not refunded to the Department beginning 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.

5.6 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 5.3B 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 5.4B(2) 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 5.3C 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 5.4B(2) hereof.
- (3) 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.

- (4) 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 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 5.11F 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 III (Scope of Work). Grant refunds shall be submitted in accordance with the provisions of Section 5.4B(2) 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. 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.

5.7 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.

5.8 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.** Budget modifications shall be made in accordance with any applicable provisions as specified elsewhere in this Agreement.
- 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 A and 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 5.8C above does not apply to the unilateral modification authority described in Section 5.8D.

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

- A. Conflict of Interest.** The Grantee shall establish safeguards to prohibit officers, directors, agents, employees and family members from using positions of employment for a purpose that is, or gives the appearance of,

being motivated by a desire for a private gain for themselves or others, particularly those with whom they have family business or other ties. Safeguards, evidenced by rules or bylaws, shall be established to prohibit persons from engaging in actions, which create or which appear to create a conflict of interest as described herein.

B. Interest of Public Officials/Employees.

- (1) **Governmental Entity.** If the Grantee is a governmental entity, the 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, such a financial interest is permissible provided full disclosure of said interest is made to the Department in advance of any decisions relative to the award of a contract giving rise to such interest and further provided that the officer, employee, or member of the governing body so affected shall remove himself or herself from the room during any discussion, deliberation and voting in connection with the awarding of such a contract and provided further that the Department determines, in writing, that the best interest of the State outweighs the conflict of interest issue.

Violations of this Section 5.9 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 and/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 funds derived directly or indirectly through this grant without the written approval of the Department.
- E. 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, and the terms and conditions of this Agreement; (ii) grant expenditures should not exceed the amount which would be incurred by a prudent person under the circumstances prevailing at the time the decision is made to incur the costs; and (iii) grant expenditures should be consistent with generally accepted accounting principles (GAAP).

5.10 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 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 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 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 (P.A. 093-0591).** 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 (P.A. 093-0006).** 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 al).** 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 al).

5.11 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 5.11F 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 Grant 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. Waivers.** A waiver of any condition of this Agreement must be requested in writing. No waiver of any condition of this Agreement may be effective unless in writing from and signed by the Director of the Department.
- H. 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.
- I. 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.

- J. 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.
- K. 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.
- L. 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 impartial and reasonable selection process.
- M. 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 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 Grant 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.