

**IOWA JOBS II PROGRAM
GRANT AWARD AGREEMENT**

**COMPETITIVE GRANT
OF
\$ _____
TO XXXXXXXXXX
BY THE IOWA JOBS BOARD**

TOTAL AMOUNT OF GRANT: \$ 0

RECIPIENT: XXXXXXXXXX

AGREEMENT EFFECTIVE DATE: _____

THIS IOWA JOBS GRANT AWARD AGREEMENT (“Agreement”) is made by and between the **Iowa Jobs Board** (“Board” or “Iowa Jobs”), the **Iowa Finance Authority**, (“Authority”), and XXXXXXXXXX (“Grantee”).

WHEREAS, the Iowa Jobs Program was established by the Iowa Legislature and the Governor of Iowa pursuant to 2009 Iowa Acts Senate File 376 (the “Act”) to assist in recovery from the disasters of 2008 and in economic recovery.

WHEREAS, the Iowa Legislature and the Governor of Iowa pursuant to 2010 Iowa Acts Senate File 2389 (the “2010 Act”) created the Iowa Jobs II program to assist in disaster prevention construction projects.

WHEREAS, the Grantee submitted an application (the “Application”) to the Iowa Jobs board requesting assistance in financing its project (the “Project”).

WHEREAS, the Iowa Jobs Review Committee reviewed the Application and the Iowa Jobs Board made a determination to award Grantee a grant pursuant to the Iowa Jobs II Program.

WHEREAS, the Board, on XXXXXXXXXX (the “Award Date”), voted to award a grant (the “Grant”) of up to XXXXXXXXXX (US \$ 0) to Grantee, subject to the terms and conditions set forth herein; the Grant equals XXXXXXXXXX percent (00.00%) of the projected cost of the Project (the “Applicable Percentage.”)

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Iowa Jobs Board, the Authority, and the Grantee agree to the following terms of this Agreement.

ARTICLE 1
IDENTITY OF THE PARTIES

- 1.1 The Board is a public instrumentality of the State of Iowa that was created by the Act to organize, establish, oversee and approve the administration of the Iowa Jobs II Program. The Board is located for administrative purposes within the Authority. The address for both the Board and the Authority is 2015 Grand Avenue, Des Moines, IA 50319.
- 1.2 The Authority is a public instrumentality and agency of the state of Iowa charged by the Act with, *inter alia*, providing the Board with assistance in implementing administrative functions, negotiating contracts, and providing project follow up.
- 1.3 The Grantee is a XXXXXXXXXXXX. Its address is XXXXXXXXXXXX.
- 1.4 The Project, as approved by the Board, shall consist of the components described in Exhibit A. All Project components described in Exhibit A shall be developed by and under the control of the Grantee.
- 1.5 The Project shall be constructed on the real property legally described in Exhibit B (“Grantee’s Real Property”).

ARTICLE 2
AGREEMENT AMONG THE PARTIES

The Grantee shall be responsible for ensuring that the Project is financed, constructed and maintained in accordance with this Agreement. In consideration of the foregoing, the Board, having reviewed the Application and finding it acceptable, pursuant to the Act awards a grant not to exceed XXXXXXXXXXXX (US \$ 0) to the Grantee, all subject to the terms and conditions of this Agreement.

ARTICLE 3
AGREEMENT DURATION

This Agreement shall be in effect for a period of twenty (20) years from the Agreement effective date.

ARTICLE 4
AGREEMENT ELEMENTS

This Agreement shall include as integral parts hereof:

- 1) Exhibit A – Application, as submitted to the Board
- 2) Exhibit B – Legal Description of Grantee’s Real Property
- 3) Exhibit C – Sources of Funds and projected replacement value of Project upon completion
- 4) Exhibit D – Form of Request for Disbursement

- 5) Exhibit E – Form of Opinion of the Grantee’s Legal Counsel
- 6) Exhibit F – Electronic Payment Instruction Form
- 7) Exhibit G – Certificate Regarding Expenditures
- 8) Exhibit H – Preliminary and Final Title Opinions
- 9) Exhibit I – Survey

In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, such inconsistency or conflict shall be resolved as follows: First by giving preference to the specific provisions of this document; second, by giving preference to the provisions of the exhibits.

ARTICLE 5
FUNDING

The sole funding source for the Grant shall be funds legally available to the Iowa Jobs Board pursuant to the 2010 Act. The funds of the State of Iowa, other than those held in the Revenue Bonds Capitals II Fund (as created by the 2010 Act), shall under no circumstances be obligated or available to meet any obligations of the Board or the Authority under this Agreement. This Agreement shall not constitute an obligation or debt of the Board, the Authority, or the State, except to the extent expressly described herein from monies appropriated for such purposes pursuant to the 2010 Act. Any termination, reduction or delay of funds available to the Board or the Authority due, in whole or in part, to (i) a deappropriation of revenues previously appropriated to the Board by the legislature, or (ii) any other reason beyond the control of the Board or the Authority, may, in the Board’s discretion, result in the termination, reduction or delay of the disbursement of funds to the Grantee.

ARTICLE 6
AWARD OF GRANT

In consideration of the Grantee’s promise that the Project will be financed, constructed, operated, and maintained, the Board, subject to the terms and conditions set forth herein, awards the Grant, not to exceed XXXXXXXXXX (US \$ 0), to the Grantee to assist in the construction of the Project. In the event that additional funding, beyond that identified in Exhibit C, is received by the Grantee for the Project or if the Project’s cost of construction is less than set forth in Exhibit A, the Grant Amount may be adjusted downward at the Board’s discretion. If the cost of construction is greater than set forth in Exhibit A, Grantee shall be responsible for such additional costs.

ARTICLE 7
CONDITIONS TO GRANT AND DISBURSEMENTS

7.1 CONDITIONS. The following conditions must be met prior to any disbursement:

7.1.1 EXECUTION. This Agreement shall have been properly executed and returned to the Authority.

7.1.2 **SALE OF BONDS.** The sale of bonds contemplated by Iowa Code Section 12.87(1)(a)(3), as amended by 2010 Iowa Acts Senate File 2389, Section 78, shall have closed, unless this condition is waived by the authority.

7.1.3 **FINANCIAL COMMITMENTS.** The Grantee shall obtain, to the satisfaction of the Authority, all other legally binding financial commitments necessary to complete the Project, as set forth on Exhibit C.

7.1.4 **GRANTEE DOCUMENTATION.** Prior to the disbursement of any funds to it pursuant hereto, the Grantee shall submit the following documents to the Authority:

7.1.4.1 A resolution of the Grantee's [**City Council/Board of Supervisors**] authorizing the execution and delivery by the Grantee of this Agreement and such other documents as the Board or the Authority may reasonably require, and specifying the officers authorized to execute the Agreement and such other documents that are necessary to bind the Grantee to the terms of this Agreement.

7.1.4.2 A written opinion of the Grantee's legal counsel, in the form attached hereto as Exhibit E, opining that: (i) this Agreement has been duly authorized, executed and delivered by the Grantee and constitutes a valid, legal and binding obligation, enforceable in accordance with its terms, (ii) the Grantee is obligated to perform in accordance with the Agreement, including performance of all future conditions and payments, (iii) the Agreement does not violate any constitutional, statutory, or other limitations placed on the Grantee

7.1.4.3 Current preliminary and final attorney title opinions substantially in the form attached hereto as Exhibit H, addressed to the Iowa Jobs Board and the Iowa Finance Authority, examining abstract(s) prepared in accordance with the 40-year Marketable Title Act and Iowa Code Sections 614.29-.38 (or other search approved at the Authority's discretion) verifying that Grantee has good, indefeasible and merchantable title to and ownership or valid rights under easement or lease of the Grantee's Real Property free and clear of all known liens, claims, security interests, and encumbrances except those of record of which the Authority has been given actual notice in writing and which the Authority has found acceptable.

7.1.4.4 Unless the Authority, in its sole discretion, agrees to waive it, a current survey attached hereto as Exhibit I that meets the Minimum Standard Detail Requirements for Land Title Surveys as adopted by the 2005 American Land Title Association Congress on Surveying and Mapping, dated within six months of this Agreement and naming the Iowa Jobs Board and the Iowa Finance Authority as addressees.

7.1.4.5 A completed and fully executed Certificate Regarding Expenditures, in the form attached hereto as Exhibit G, as such form may be revised by the Authority from time to time.

7.1.4.6 A resolution of the Grantee's [city council / board of supervisors] committing to complete the adoption or amendment, as applicable, of its comprehensive plan utilizing smart planning principles within three years of the date of the award of such grant.

7.1.5 **ENVIRONMENTAL ASSESSMENT.** Grantee shall cause a Phase I Environmental Assessment ("Phase I") that meets or exceeds ASTM E1527-05 standards of the Project site(s) to be performed (unless the Authority agrees in writing that such an assessment is not necessary) and shall provide a copy of such assessment to the Authority. If the Project includes the renovation or rehabilitation of an existing building, Grantee shall cause asbestos and mold surveys to be performed. If, in the Authority's judgment, the Phase I, asbestos, or mold assessments so merit, the Authority may require additional environmental assessments to be performed and satisfactory results reported prior to funds being disbursed.

ARTICLE 8 **DISBURSEMENT OF FUNDS**

8.1 **DISBURSEMENT.**

The Grantee shall request disbursements by submitting the request form set forth as Exhibit D hereto, as the same may be modified from time to time by the Authority, to the Authority itemizing the Grantee's total actual allowable expenses, and attaching supporting invoices. "Allowable expenses" shall mean costs directly incurred by the Grantee for the design, development, or construction of the Project. Expenses shall be documented in a manner acceptable to the Authority. Each Disbursement Request Form shall be signed by two authorized officers or employees of the Grantee.

The Authority will review the request and, if acceptable to the Authority, the Authority shall notify the Treasurer of State that a disbursement should be made to the Grantee. The amount of the disbursement shall equal the amount of the allowable expenses; provided, however that the total amount of all disbursements hereunder, in the aggregate, shall not exceed the amount set forth in Article 2, above.

8.2 **METHOD OF PAYMENT.** Payment will be made by means of electronic funds transfer unless the Authority, in its sole discretion, consents to a different form of payment. Prior to disbursement, the Grantee shall specify the account to receive the funds by means of the Electronic Payment Instruction Form attached hereto as Exhibit F, which Electronic Payment Instruction Form may be revised from time to time by the Authority. Funds granted pursuant to this Agreement shall not be commingled with any other funds.

8.3 SUSPENSION OF DISBURSEMENT. Upon the occurrence of an event of default (as defined in this Agreement) by Grantee, the Authority may suspend payments to Grantee until such time as the default has been cured to the Authority's satisfaction. Notwithstanding anything to the contrary in this Agreement, upon a termination of this Agreement by the Authority on account of an event of default by Grantee, Grantee shall no longer have the right to receive any disbursements after the effective date of default.

ARTICLE 9
TERMS AND CONDITIONS OF GRANT

9.1 USE OF FUNDS. The Grantee hereby agrees, during the term of this Agreement, to cause the Project to be constructed, operated, and maintained in accordance with the representations in this Agreement (including Exhibit A). The funds granted hereunder shall be used for constructing the Project described in Exhibit A and as mandated by the laws and administrative rules governing the Iowa Jobs II program. The Grantee shall allow the Board, its internal or external auditors, the Authority or its designated agents, the Auditor of the State of Iowa, the Treasurer of the State of Iowa, the Attorney General of the State of Iowa and the Iowa Division of Criminal Investigation, or any of them, to inspect the Project at all times in order to audit, monitor and evaluate compliance with federal, state, and local law, as well as the terms of this Agreement.

9.2 ACCOUNTING RECORDS. The Grantee shall maintain all books, records and all other financial documents pertaining to this Agreement in accordance with generally accepted accounting principles. Such records of the Grantee shall be available for inspection and copying by the Board, its internal or external auditors, the Authority or its designated agents, the Auditor of the State of Iowa, the Treasurer of the State of Iowa, the Attorney General of the State of Iowa and the Iowa Division of Criminal Investigation at all times within the term of this Agreement and during the term of any extension thereof, and for five (5) full years from the date of completion the Project.

9.3 DOCUMENTATION. Within thirty (30) days of receipt of a written request from the Authority to the Grantee, the Grantee shall deliver to the Authority: (i) copies of all agreements or documents relating to the Project, (ii) copies of all invoices, receipts, statements or vouchers relating to the Project, (iii) a list of all unpaid bills for labor and materials in connection with the Project, and (iv) budgets and revisions showing estimated costs of the Project and funds required at any given time to complete and pay for the Project.

9.4 INSURANCE.

The Grantee shall maintain and shall require any other parties financing and constructing components of the Project to maintain in effect, with insurance companies of recognized responsibility, at no expense to the Board or the Authority, insurance and bonds covering the Project. The insurance shall be of a scope and coverage that is acceptable to the Authority as set forth below. The Grantee shall submit copies of each insurance agreement or certificates attesting to such insurance coverage and any renewals thereof,

to the Authority. The Project shall, at a minimum, be insured and bonded as set forth below:

- 9.4.1.** The Grantee shall ensure that builder's risk insurance or installation floater is provided for the insurable structures that are part of the Project. The named insureds on the Builders Risk Insurance shall be the Grantee, the State of Iowa, the Board, the Authority, and all general contractors. Coverage for the Project shall be effective on the inception date of construction for the Project and shall terminate when construction of the Project is completed, and shall include a provision to allow permission for the partial occupancy of the Project, where applicable. The Project shall be insured at replacement value, as set forth on Exhibit C. The deductibles for such builders risk insurance or installation floater(s) shall not exceed \$5,000 for damage due to any cause.
- 9.4.2** Flood insurance shall be required during construction for projects containing structures minimally composed of two walls and a roof. The deductible for such policy shall not exceed \$25,000 for damage due to flood. In the event the Project does not feature any structure with at least two walls and a roof, Grantee shall be a participating community in the National Flood Insurance Program prior to disbursement of Iowa Jobs funds, unless Grantee is not eligible to participate, in which case the requirement of obtaining flood insurance or participating in the National Flood Insurance Program shall be waived. The minimum required policy limits for the flood insurance required hereby shall be in the amount of \$500,000 or the total Project cost, whichever is less.
- 9.4.3** Earthquake insurance shall be required during construction for all projects. The minimum required policy limits for the earthquake insurance required hereby shall be in the amount of the total Project cost.
- 9.4.4** The Grantee shall, if necessary to secure coverage, amend its existing blanket property insurance policies to include all permanent structures that are part of the Project upon completion of such structures. The amendments will insure such structures at replacement value. The Grantee shall, if necessary to secure coverage, amend any existing special excess liability insurance policies to include the Project in its entirety.
- 9.4.5** The Grantee shall require each general contractor on the Project, prior to beginning work, to obtain for each component of the Project on which it is acting as general contractor a performance and maintenance bond for the anticipated full value of such component. For purposes of this requirement, the value of the component shall be the anticipated value of the component upon completion, as set forth in Exhibit C. Each performance and maintenance bond shall remain in effect until construction of the component to which it relates is completed and for a period of two-years thereafter. The bonds shall clearly specify the Grantee, the Board, and the Authority as joint obligees.

- 9.4.6** The Grantee shall obtain and maintain in effect a crime insurance policy covering the full amount of any loss or misuse of grant or sub-grant proceeds due to any fraudulent or dishonest act on the part of any of its employees. The crime insurance policy shall remain in effect until December 31, 2012, or later if the Authority, in its sole discretion, deems it necessary. The crime insurance policies shall each clearly specify coverage of losses of the policyholders, the Board, and the Authority.
- 9.4.7** The State of Iowa, the Board, and the Authority shall be named as additional insured's or loss payees on the Builders Risk, Flood, Earthquake and crime insurance policies for the Project.
- 9.4.8** All required insurance purchased from private insurance providers must be issued by companies which have earned at least a "B+" rating by A.M. Best for the most recent three (3) years, are duly licensed, admitted and authorized to do business in the State of Iowa, or coverage may be provided by a recognized risk retention pool with a Demotich rating of AAA. The insurance carrier must also have combined capital and unassigned surplus of at least one hundred million dollars (\$100,000,000).
- 9.4.9** The failure to obtain and maintain or the failure to require to be obtained and maintained any of the bonds or insurance required under this Section 9.4 shall constitute a material breach of this Agreement.

9.5 PROGRESS TOWARDS COMPLETION.

- 9.5.1 180 DAY MILESTONE.** If, in the discretion of the Authority, reasonable progress toward financing and construction of the Project has not been made within one hundred eighty (180) days of the execution of this Agreement, then the Authority shall be under no obligation to make any disbursement hereunder. In such an event, the Grantee shall repay to the Authority an amount equal to all grant proceeds received by it pursuant to this Agreement.
- 9.5.2 ONE YEAR MILESTONE.** If, Grantee has not begun drawing funds within one (1) year of the Award Date, this Grant shall terminate and no funds shall be disbursed unless the Board, in its sole discretion, prior to the first anniversary of the date of the award, grants an extension due to extraordinary circumstances. Any portion of the Grant that remains unexpended or unencumbered one year after the award date may be reallocated by the Board to another project, at the discretion of the Board. For purposes of this section "unencumbered" means that no contract for goods or services payable or reimbursable with Grant proceeds has been entered into by the Grantee.

- 9.6 NOTICE OF PROCEEDINGS.** The Grantee shall promptly notify the Authority of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Grantee that could potentially adversely impact the Project.

9.7 COVENANTS OF GRANTEE.

9.7.1 AFFIRMATIVE COVENANTS. Until the terms of this Agreement are fulfilled, the Grantee covenants that:

9.7.1.1 PROJECT WORK. The Grantee shall fully complete its Project within three (3) years of the effective date of this Agreement. For the purposes of this section “complete” means fully constructed and operational.

9.7.1.2 OPERATION AND MAINTENANCE. For the duration of this Agreement, the Grantee shall cause its Project to be properly operated and maintained.

9.7.1.3 REPORTS. The Grantee shall submit the requests and reports as specified below in the form specified by the Authority.

- 1) The Grantee’s annual audited financial statements, prepared in compliance with section 9.2 hereof. If required by the Authority, the Grantee shall submit more frequent financial statements, such as an income, expense, and retained earnings statement covering the period having elapsed from the date of the last prior submission, and a balance sheet that is not more than thirty (30) days old. The more frequent financial statements need not be audited. Year-end statements must be certified by a Certified Public Accountant (CPA) and must be received by the Authority within two hundred seventy (270) days following the Grantee’s fiscal year end.
- 2) A final accounting for the Project within sixty (60) days after the date on which the Project is completed; and
- 3) The reports required by section 12.14 of this Agreement.

9.7.1.4 INTEREST AND SURPLUS PROCEEDS. The Grantee shall return all unexpended proceeds and interest accrued on grant proceeds to the Authority within thirty (30) days after the first date on which the Grantee’s Project is complete.

9.7.1.5 SMART PLANNING. Grantee shall complete the adoption or amendment, as applicable, of its comprehensive plan utilizing smart planning principles within three years of the date of award of such grant.

9.7.2 NEGATIVE COVENANTS OF GRANTEE. Throughout the term of this Agreement, the Grantee shall not, without prior written disclosure to the

Authority and prior written consent of the Authority (unless such prior approval is expressly waived below), directly or indirectly:

9.7.2.1 Assign, waive or transfer any of Grantee's rights, powers, duties or obligations under this Agreement.

9.7.2.2 Sell, transfer, convey, assign, encumber or otherwise dispose of all or any portion of the Grantee's Real Property, as described in Exhibit B, or any leasehold interest therein except as allowed without consent of the Authority as provided in Article 10.

9.7.2.3 Place or permit any restrictions, covenants or any similar limitations on the real property in the Project other than those that are referenced or acknowledged in this Agreement.

9.7.2.4 Except in the ordinary course of operation or maintenance, remove from the Project site or the State all or any part of the Project.

9.7.2.5 Materially change the scope or use of the Project or the nature of the business and activities being conducted, or proposed to be conducted by Grantee, as described in Exhibit A, unless approved in writing by the Authority and its bond counsel prior to the change.

9.7.2.6 Use or permit the use of any proceeds of Bonds issued by the Treasurer of the State of Iowa pursuant to Iowa Code section 12.87, as amended, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, including without limitation, use, management and disposition of the Project, which would cause the interest on any Bond to be included in gross income for federal income tax purposes; specifically, without limitation of the foregoing, Grantee shall not expend any of the funds disbursed to it under this Agreement for anything other than a capital expenditure.

9.8 [RESERVED.]

9.9 GENERAL INDEMNIFICATION BY GRANTEE.

The Grantee shall, to the extent permitted by the laws and the Constitution of the State of Iowa, indemnify, defend and hold harmless the Board, the Authority, the State of Iowa, its departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following, except where said losses, liabilities, penalties, fines, damages and claims, and related costs and expenses are due solely to the acts or omissions of the Board, the Authority, the State of Iowa, its departments, divisions, agencies, sections, commissions, officers, employees or agents:

- 9.9.1 Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;
- 9.9.2 Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by the Grantee of any representation or warranty made by the Grantee in the Agreement;
- 9.9.3 Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Grantee is required to insure against as provided for in this Agreement; and
- 9.9.4 Any claim, demand, action, citation or legal proceeding which results from an act or omission of the Grantee or any of its agents in its or their capacity as an employer of a person.
- 9.10 **PUBLIC BIDDING REQUIREMENTS.** Grantee shall comply with all applicable public bidding requirements, including, but not limited to, those set forth in Iowa Code chapters 26, 331, 364, 384, and 573.
- 9.11 **TIMELY PERFORMANCE.** The parties agree that the dates and time periods specified in this Agreement are of the essence to the satisfactory performance of this Agreement.
- 9.12 **IOWA JOBS RECOGNITION.**
- 9.12.1 **Construction Phase.** The Project shall recognize during its construction phase the financial contribution made by the State of Iowa through the Iowa Jobs II Program in the form of appropriate signage. The size, format, graphics, and materials of such signs shall be as directed by the Authority, which directions may be posted on the Authority's web site. The Project may deviate from such directions only with the written consent of the Authority.
- 9.12.2 **Post-Construction.** Following construction, the Project shall recognize in a permanent manner reasonably acceptable to the Authority the financial contribution made by the State of Iowa through the Iowa Jobs II Program.
- 9.12.3 **Commemorative Events.** The Grantee shall notify the Authority as soon as possible, and ordinarily not less than ten (10) days prior to any event held by the Grantee to commemorate, celebrate, or mark the groundbreaking, opening, dedication of the Project.
- 9.13 **REPRESENTATIONS & WARRANTIES OF GRANTEE.** To induce the Board to make the Award referred to in this Agreement, the Grantee represents, covenants, and warrants that:

- 9.13.1** **AUTHORITY.** The Grantee is duly organized and validly existing under the laws of the State. The Grantee is duly authorized and empowered to execute and deliver this Agreement. All actions on the part of the Grantee, such as appropriate resolutions of the [City Council/Board of Supervisors] for the execution and delivery of the Agreement, have been effectively taken.
- 9.13.2** **FINANCIAL INFORMATION.** All statements and related materials concerning the Grantee and the Project provided to the Board and the Authority are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.
- 9.13.3** **APPLICATION.** The contents of the Application, including any attachments and exhibits thereto, submitted by the Grantee to the Board for Iowa Jobs funding were an accurate representation of the Project as of the date of submission and there has been no material change in the organization, operation, or key personnel of the Grantee, the Project, or material representations made in the Application since the date the Application was submitted to the Board.
- 9.13.4** **CLAIMS AND PROCEEDINGS.** There are no actions, lawsuits or proceedings pending or, to the knowledge of the Grantee, threatened against the Grantee affecting in any manner whatsoever its right to execute the Agreement, or to otherwise comply with the obligations of the Grantee contained under the Agreement. There are no actions, lawsuits or proceedings at law or in equity, or before any governmental or administrative authority pending or, to the knowledge of the Grantee, threatened against or affecting the Grantee or the Grantee's Real Property.
- 9.13.5** **COMPLIANCE.** The Grantee declares that it has complied or will comply in a timely fashion, with all federal, state and local laws regarding permits, licenses, and clearances that may be required to carry out the Project.
- 9.13.6** **EFFECTIVE DATE.** The covenants, warranties and representations of this Article are made as of the date of this Agreement and shall be deemed to be renewed and restated by the Grantee at the time each request for disbursement of funds is submitted to the Authority.
- 9.13.7** **PROPERTY.** The Project will be built exclusively on real property that is owned by the Grantee, or over which the Grantee has a permanent easement or in which the Grantee holds a valid long-term leasehold interest. The Grantee represents and warrants that it holds good, indefeasible and merchantable title to the real property owned by the Grantee or holds either a valid easement interests or a valid long-term leasehold interest free and clear of all liens, claims, security interests and encumbrances that may adversely impact the Project. In the event a lien, claim, security interest, or encumbrance is filed on any portion of the real

property or easement interests owned by the Grantee which may adversely impact the Project, the Grantee shall promptly take all necessary and possible action to remove such lien, claim, security interest, or encumbrance, including commencement of quiet title proceedings or eminent domain proceedings under Iowa Code Chapter 6B.

ARTICLE 10
CONVEYANCE OF REAL PROPERTY

During the term of this Agreement, the Grantee shall not sell, transfer, convey, assign, encumber or otherwise dispose of all or any portion of the Grantee's Real Property, as described in Exhibit B, without the written permission of the Board, which permission may be withheld or conditioned in the sole discretion of the Board.

ARTICLE 11
DEFAULT AND REMEDIES

- 11.1 NOTICE OF EVENT(S) OF DEFAULT.** The Grantee shall within two (2) business days notify the Authority upon becoming aware of any actual or imminent Event of Default.
- 11.2 EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:
- 11.2.1 MATERIAL MISREPRESENTATION.** If at any time any representation, warranty or statement made or furnished to the Board or to the Authority by, or on behalf of, the Grantee in connection with this Agreement or the Application, is fraudulent, incorrect, false, misleading or erroneous in any material respect when made or furnished or if it becomes untrue due to some occurrence, act, or omission.
 - 11.2.2 NONCOMPLIANCE.** If the Grantee fails to comply in any material respect with any applicable federal, state, or local law, rule, ordinance, regulation or order or if the Grantee fails materially to comply with this Agreement, including, but not limited to, a failure to meet all of the conditions set forth in Article 7 of this Agreement.
 - 11.2.3 FAILURE TO COMPLETE.** If the Project, in the sole judgment of the Authority, is not completed by the date set forth in section 9.7.1.1. For the purposes of this section "completed" means fully constructed and operational.
 - 11.2.4 FAILURE TO OPERATE AND MAINTAIN.** If the Project is not properly operated and maintained for the duration of this Agreement.
 - 11.2.5 MISSPENDING.** If the Grantee expends Grant funds received from Iowa Jobs in contravention of the laws or rules restricting the use of Iowa Jobs funds or if

the Grantee expends Iowa Jobs funds for purposes not described in this Agreement.

- 11.2.6 INSURANCE.** If the Grantee fails to obtain and maintain or the Grantee fails to require other parties financing and constructing components of a Project to obtain and maintain any of the bonds or insurance required by this Agreement or if loss, theft, damage or destruction of any substantial portion of a Project occurs for which there is either no required insurance coverage or for which, in the opinion of the Authority, there is insufficient insurance coverage as required by this Agreement.
- 11.2.7 CONVEYANCE OF RESPONSIBILITIES.** If Grantee assigns, waives or transfers any of its rights, powers, duties or obligations under this Agreement, without written permission of the Authority in violation of Subsection 9.7.2.1.
- 11.2.8 CONVEYANCE OF PROPERTY.** If the Grantee sells, transfers, conveys, assigns, encumbers or otherwise disposes of all or any portion of the Grantee's Real Property, as described in Exhibit B, without written permission of the Board as provided in Article 10.
- 11.2.9 INSOLVENCY OR BANKRUPTCY.** If the Grantee: (i) becomes insolvent or bankrupt; (ii) admits in writing its inability to pay its debts as they mature; (iii) makes an assignment for the benefit of creditors; (iv) applies for or consents to the appointment of a trustee or receiver for it or for the major part of its property; (v) has a trustee or receiver appointed for it or for all or a substantial part of its assets, and the order of such appointment is not discharged, vacated or stayed within sixty (60) days after such appointment; or (vi) if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against it and, if instituted against it, is consented to, or, if contested by it, is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution.
- 11.2.10 UNSATISFACTORY AUDIT.** If an audit of the Grantee results in something other than an unqualified opinion from the auditor, such as but not limited to, a qualified opinion or a determination that no opinion can be rendered.
- 11.3 NOTICE OF DEFAULT.** Prior to exercising any remedy herein for an Event of Default, the Authority shall issue a written notice of default providing therein a thirty (30) day period in which the defaulting shall have an opportunity to cure, provided that cure is possible and feasible.
- 11.4 REMEDIES UPON DEFAULT.** Upon the happening of any Event of Default, the Authority shall have the right to terminate this Agreement and, in the case of an Event of Default occurring during the first ten (10) years of this Agreement, to require immediate repayment of the full amount of funds disbursed to the Grantee under this Agreement

plus interest at the rate of ten percent (10%) per annum (which interest shall begin to accrue from the date of default) without presentment, demand, protest, notice of protest, notice of intention to accelerate or other notice of any kind, all of which are expressly waived by the Grantee. Beginning on the tenth anniversary of the Effective Date of this Agreement, the principal amount to be repaid by the Grantee pursuant to this subsection shall reduce by ten percent (10%) per year (calculated based upon the year in which the Event of Default began).

- 11.5 FUNDING FAILURE.** Any termination, reduction or delay of funds available to the Board due, in whole or in part, to (i) a de-appropriation of revenues previously appropriated to the Board by the legislature, or (ii) any other reason beyond the Board's control, may, in the Board's discretion, result in the termination, reduction or delay of Iowa Jobs funds to the Grantee.
- 11.6 PROCEDURE UPON TERMINATION.** If the Agreement is terminated in whole or in part by agreement of the parties, due to an Event of Default, or pursuant to Article 5 hereof, disbursements may be allowed, in the discretion of the Authority, for costs incurred prior to the date of termination. The Grantee shall return to the Authority all unencumbered Grant proceeds, if any, within one (1) week of receipt of Notice of Termination. Any costs previously paid by the Authority that are subsequently determined to be unallowable through audit procedures shall be returned to the Authority within thirty (30) days of the disallowance.

ARTICLE 12 **GENERAL PROVISIONS**

- 12.1 BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the Board, the Authority, the Grantee, and their respective successors, legal representatives and assigns.
- 12.2 COMPLIANCE WITH LAWS AND REGULATIONS.**
- 12.2.1** The Grantee shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, those applicable to the Iowa Jobs II Program, prevention of discrimination, wages, competitive bidding, environmental protection, occupational safety and health standards, payment of taxes, conflicts of interest, lobbying, and those relating to the use of targeted small businesses as contractors or suppliers.
- 12.2.2** This Agreement is a public record governed by Iowa Code Chapter 22.
- 12.3 SURVIVAL OF AGREEMENT.** Each provision of this Agreement shall be deemed to be severable from all other provisions of the Agreement and, if one or more of the provisions of the Agreement shall be declared invalid, the remaining provisions of the

Agreement shall remain in full force and effect. All indemnification obligations imposed by this Agreement shall survive the termination of this Agreement.

- 12.4 CHOICE OF LAW AND FORUM.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa.

This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Iowa Jobs Board, the Authority, the State of Iowa or their Board members, officers, employees or agents.

- 12.5 MODIFICATION.** Neither this Agreement nor any documents incorporated by reference in connection with this Agreement may be changed, waived, discharged or terminated orally, but only as provided below:

12.5.1 WRITING REQUIRED. The Agreement may only be amended through written prior approval of the Board. Examples of situations where amendments are required include extensions for completion of Project activities, changes to the Project including, but not limited to, alteration of existing approved activities or inclusion of new activities.

12.5.2 BOARD REVIEW. The Board will consider whether an amendment request is so substantial as to necessitate reevaluating the Board's original funding decision on the Project. An amendment will be denied by the Board if it substantially and negatively alters the circumstances under which the Project funding was originally approved or if it does not meet requirements set forth in 2009 Iowa Code Supplement, chapter 16, the Act, the 2010 Act, or 265 Iowa Administrative Code, Chapter 38.

- 12.6 NOTICES.** Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be in writing, enclosed in an envelope, addressed to the party to be notified at the address heretofore stated (or at such other address as may have been designated by written notice), properly stamped, sealed and deposited in the United States Mail. Any such notice given hereunder shall be deemed delivered upon the earlier of actual receipt or three (3) days after posting. The Board and the Authority may rely on the address of the Grantee as set forth heretofore.

- 12.7 WAIVERS.** No waiver by the Board, the Authority, or the Grantee of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the Board, the Authority, or the Grantee in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or

partial exercise of any right or remedy by the Board, the Authority, or the Grantee shall preclude future exercise thereof or the exercise of any other right or remedy.

- 12.8 LIMITATION.** It is agreed by the Grantee that neither the Board nor the Authority shall, under any circumstances, be obligated financially under this Agreement except to disburse funds according to the terms of the Agreement.
- 12.9 ENFORCEMENT EXPENSES.** To the extent permitted by the constitution and laws of the State of Iowa, the Grantee shall pay upon demand any and all reasonable fees and expenses of the Board and the Authority relating to the successful enforcement of this Agreement against it, including the fees and expenses of their attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the Board or the Authority under the Agreement.
- 12.10 HEADINGS.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction and interpretation of this Agreement.
- 12.11 EVENT OF BOARD DISSOLUTION.** The Grantee hereby acknowledges that the Iowa Jobs Board is a public instrumentality of the State of Iowa and that, in the event that the Board or its programs are terminated by statute, the State of Iowa shall be entitled to enforce any right, title or interest held by the Board and all Grantee obligations hereunder shall be owed to the State of Iowa. In the event of such a termination, the approval or consent of the Executive Director of the Iowa Finance Authority (“Executive Director”) shall be deemed sufficient in any instance where the approval or consent of the Board is required or allowed by this Agreement, and the Executive Director shall have standing to enforce the rights of the State hereunder, unless otherwise provided by statute.
- 12.12 INTEGRATION.** This Agreement contains the entire understanding among the Grantee, the Board, and the Authority relating to the Project and any representations that may have been made before or after the signing of this Agreement, which are not contained herein, are non-binding, void and of no effect. None of the Parties have relied on any such prior representation in entering into this Agreement.
- 12.13 COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- 12.14 DOCUMENTATION AND REPORTING OF JOB INFORMATION.** Beginning with the effective date of this Agreement, the Grantee shall report to the Authority on forms or via a web-based tool to be provided by the Authority (which forms or web-based tool may be revised by the Authority from time to time), the number of jobs created as a result of the Project and related information. It is the intention of the parties that the information to be reported shall, at a minimum, include the information required to be reported to the federal government under programs created by the American Recovery and Reinvestment Act of 2009 (“ARRA”). The parties agree that the Authority

may revise its forms or web-based reporting tool to comport with state and federal reporting requirements. The Authority may revise the information to be reported and may terminate the reporting requirement referenced herein at its discretion.

12.15 SET OFF. Should The Board or the Authority obtain a money judgment against Grantee because of a default under this Agreement, Grantee consents to such judgment being set off from any moneys owed to Grantee by the State of Iowa or any other agency of the State of Iowa under any other agreement.

12.16 NO THIRD PARTY BENEFICIARIES. This Agreement has no third party beneficiaries; it benefits only the Grantee, the Board, and the Authority.

12.17 NOT A JOINT VENTURE. Nothing in this Agreement creates the relationship of a partnership, joint venture, or other association of any kind, or agent and principal relationship between or among the parties. Each party is an independent contractor acting for the mutual benefits derived from this Agreement.

12.18 TIME IS OF THE ESSENCE. Time is of the essence with respect to the performance of the terms of this Agreement.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

FOR THE IOWA JOBS BOARD:

BY: _____
Jeffrey A. Pomeranz, Chairman

Date

FOR THE IOWA FINANCE AUTHORITY:

BY: _____
Joseph O'Hern, Executive Director

Date

FOR THE GRANTEE:

BY: _____
Name: _____

Date

Title: _____

DRAFT TEMPLATE

EXHIBIT A
Application

[From web tool]

DRAFT TEMPLATE

EXHIBIT B
Grantee Legal Description

[To be provided by Grantee]

DRAFT TEMPLATE

EXHIBIT C
Sources of Funds and
Projected Value of Project

[To be provided by Grantee]

DRAFT TEMPLATE

EXHIBIT D
DISBURSEMENT REQUEST FORM

PROJECT NO: 0

GRANTEE: XXXXXXXXXXXX

Date: _____

Pursuant to, and in accordance with, the provisions of the Iowa Jobs II Program Grant Award Agreement, dated _____ (the "Agreement"), among the Iowa Jobs Board, the Iowa Finance Authority (the "Authority"), and XXXXXXXXXXXX (the "Grantee"), the Grantee hereby requests that the Authority cause to be disbursed to the Grantee the sum of \$_____.

IT IS HEREBY CERTIFIED THAT:

- 1) Each of the obligations for which disbursement is requested is an Allowable Expense, as such term is defined in the Agreement;
- 2) None of the items for which disbursement is requested has formed the basis for any disbursement heretofore made under the Agreement;
- 3) This disbursement does not include any amount which the Grantee is entitled to retain pursuant to any contract or agreement providing for the retention by the Grantee of a portion of the price paid thereunder;
- 4) No Event of Default is continuing under the Agreement; and
- 5) Grantee hereby renews and restates the covenants, warranties and representations made in the Agreement as of the date of this Disbursement Request
- 6) Attached hereto as Schedule 1 is a true and correct itemization of bills and invoices to be paid in part with the requested disbursement together with copies of all such bills and invoices.

AUTHORIZED GRANTEE REPRESENTATIVES

Date: _____
Name, Title _____

Date: _____
Name, Title _____

Exhibit E

Form of Legal Opinion of Counsel for

[On Letterhead]

, 2010

I-JOBS Board
Iowa Finance Authority
2015 Grand Ave
Des Moines, Iowa

RE: I-JOBS Local Infrastructure Competitive Grant Agreement
among the I-JOBS Board, the Iowa Finance Authority, and

Ladies and Gentlemen:

I have acted as legal counsel for the (the “Grantee”) in connection with the execution and delivery by the Grantee of that certain I-JOBS Local Infrastructure Competitive Grant Agreement (the “Grant Agreement”) among the I-JOBS Board, the Iowa Finance Authority, and the Grantee, executed , 2010. This opinion is being furnished to you pursuant to Section 7 of the Grant Agreement.

In rendering the opinions expressed herein, I have examined the Grant Agreement and the resolution of the Grantee authorizing the same. I also have examined the originals or copies certified or otherwise identified to my satisfaction of such certifications of officers and proceedings of the Grantee and other documents and records as I have deemed relevant and necessary for the basis of such opinions, without undertaking to verify the same by independent investigation. In all such examinations, I have assumed (except in the case of the Grantee and its officers) the genuineness of all signatures and the authenticity of all documents submitted to me as copies.

Based on the foregoing and an investigation of such other considerations of law and fact as I have deemed to be relevant, I am of the opinion that:

1. The Grant Agreement has been duly authorized, executed and delivered by the Grantee and constitutes a valid, legal and binding obligation, enforceable in accordance with its terms;
2. The Grantee is obligated to perform in accordance with the Grant Agreement (including, *inter alia*, performance of all future conditions and payments), except to the extent that the enforceability thereof may be subject to bankruptcy,

insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and to the exercise of judicial discretion in appropriate cases;

3. the Agreement does not violate any constitutional, statutory, or other limitations placed on the Grantee, and

Respectfully submitted,

DRAFT TEMPLATE

EXHIBIT G

**IOWA JOBS II
LOCAL INFRASTRUCTURE COMPETITIVE GRANT PROGRAM
CERTIFICATE REGARDING EXPENDITURES**

I, _____, the _____ of _____ (the "Grantee"), hereby certify with respect to the grant of up to \$ _____ from the Iowa JOBS II Local Infrastructure Competitive Grant Program for _____ [name of project] (the "Project"), that the following information regarding expenditures for the Project and useful life of the components of the Project is true and correct:

The Grant will be used to acquire and/or construct the following, and the following useful lives have been assigned to each category of expenditures (more than one line has been provided for equipment as equipment may be categorized by more than one useful life):

<u>Item</u>	<u>Total Cost</u>	<u>Expected Useful Life (In Years)</u>
Land		0
Land Improvements		
Building		
Equipment		
Equipment		
Equipment		
Total		

[GRANTEE]

Date: _____

Name: _____

Title: _____