

**BUSINESS OF THE CITY COUNCIL  
WINDSOR HEIGHTS, IOWA  
AGENDA STATEMENT**


Item No.   9    
For Meeting of 10/19/09

**ITEM TITLE:** Consideration of Resolution approving grant award agreement for I-JOBS grant.

**CONTACT PERSON:** Marketa George Oliver, City Administrator

**SUMMARY EXPLANATION**

Earlier this year staff applied for and was awarded an I-Jobs grant for funds to help pay for a portion of the new community center at Colby Park. The I-Jobs board scored and ranked each application and the Community Center Project scored high enough to receive funds from the competitive grant process. As part of that grant application, the city has to sign a contract provided by the State of Iowa in order to receive these funds. Attached to this resolution is the contract.

<input checked="" type="checkbox"/> Resolution _____ <input type="checkbox"/> Ordinance _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Other (Specify) _____
Funding Source _____
APPROVED FOR SUBMITTAL  _____ City Administrator

**STAFF RECOMMENDATION:** Approve submittal.

**COUNCIL ACTION:**

**RESOLUTION NO. 09-1019/**

CONSIDERATION OF RESOLUTION APPROVING GRANT AWARD AGREEMENT FOR I-JOBS GRANT.

WHEREAS, the City strives to provide high quality and aesthetically environment and well-built infrastructure and amenities for its residents and visitors; and,

WHEREAS, earlier this year staff applied for and were awards funds from the I-Jobs Board for the new community center; and,

WHEREAS, the City wishes to enter into an agreement with the State of Iowa and the I-Jobs board for the \$641,104 grant; and,

WHEREAS, the State of Iowa and the I-Jobs Board have provided the city with a contract for approval; and

WHEREAS, the City desires to accept the grant and will abide by the processions set forth in the contract;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windsor Heights, Iowa, that the City Council authorizes the Mayor and the City Administrator to execute and deliver this Agreement and such other documents as the Board or the Authority may reasonably require, and specifying the City Administrator and Mayor as authorized to execute the Agreement and such other documents that are necessary to bind the City of Windsor Heights to the terms of this Agreement, with legal counsel review, with the State of Iowa and the I-Jobs Board.

PASSED AND APPROVED THIS 19th DAY OF OCTOBER, 2009.

\_\_\_\_\_  
David J. Sullivan, Mayor

ATTEST:

\_\_\_\_\_  
Marketa George Oliver, City Clerk

**IOWA JOBS PROGRAM  
GRANT AWARD AGREEMENT**

**COMPETITIVE GRANT  
OF**

**\$** 640,104  
**TO** the City of Windsor Heights  
**BY THE IOWA JOBS BOARD**

**TOTAL AMOUNT OF GRANT:** \$ 640,104

**RECIPIENT:** City of Windsor Heights

**AGREEMENT EFFECTIVE DATE:** 10/19/2009

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 City of Windsor Heights (“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 Act provides for both competitive and non-competitive grants.

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

WHEREAS, Iowa Jobs scored the application and made a determination to award it a grant pursuant to the Iowa Jobs Program.

WHEREAS, the Board, on August 31, 2009, voted to award a grant (the “Grant”) of up to \$640,104 dollars (US \$ 640,104 to Grantee, subject to the terms and conditions set forth herein; the Grant equals 24 percent (24 %) 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 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 municipal corporation Its address is 1133 66th Street, Windsor Heights, IA 50324.
- 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 \$640,104 (US \$ 640,104 ) 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) Exhibits A – Application, as submitted to the Board
- 2) Exhibits 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

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 from the Iowa Jobs Fund established pursuant to the Act. The funds of the State of Iowa, other than those held in the Iowa Jobs Restricted Capitals Fund (“Iowa Jobs Fund”), 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 held in the Iowa Jobs Fund that are legally available for such purposes. 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 \$640,104 (US\$ 640,104), 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 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.

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

**7.1.3.1** A resolution of the Grantee's [City Council/Board of Supervisors/Board of Directors] 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.

**7.1.3.2** 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, and (iv) the 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.

**7.1.3.3** 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 ENVIRONMENTAL ASSESSMENT.** Grantee shall cause a phase 1 environmental assessment 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, in the Authority's judgment, the phase 1 assessment so merits, 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 multiplied by the Applicable Percentage; 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. 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 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 builders 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 \$25,000 for damage due to earthquake or flood (provided that flood insurance is available) and shall not exceed \$5,000 for damage due to any other cause.

**9.4.2** 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.

**9.4.3** 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.

**9.4.4** 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.

**9.4.5** The State of Iowa, the Board, and the Authority shall be named as additional insureds or loss payees on the Builders Risk and crime insurance policies for the Project.

**9.4.6** All required insurance purchased from private insurance providers must be issued by companies which have earned at least an "A" 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).

**9.4.7** 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** **DISBURSEMENT OF LESS THAN THE TOTAL AWARD AMOUNT.** If, in the discretion of the Authority, 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.

**9.6** **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.** Any portion of the funds awarded pursuant to this agreement that remains unexpended or unencumbered one year after the date hereof may be reallocated by the Board to another project at the

discretion of the Board. The Grantee shall in any event 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.

**9.7.1.3 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.

**9.7.2 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 2009 Iowa Acts, Senate File 376, Section 1, 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.

**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, if any, 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 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 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/Board of Directors] 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. The Grantee represents and warrants that it holds good, indefeasible and merchantable title to the real property owned by the Grantee or holds valid easement interests 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 determination that no opinion can be rendered or a qualified opinion.

**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 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 Iowa Code Chapter 16, 2009 Iowa Acts, Senate File 376, or 265 Iowa Administrative Code, Chapter 32.

**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: \_\_\_\_\_ Date \_\_\_\_\_  
Jeff Pomeranz, Chairman

**FOR THE IOWA FINANCE AUTHORITY:**

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Bret L. Mills, Executive Director

**FOR THE GRANTEE:**

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Jerry Sullivan, Mayor

**EXHIBIT A**  
Application

[From web tool]



ABOUT I-JOBS

BOARD & MEETING INFO

**APPLICATION, RULES  
& OTHER INFO**

I-JOBS LOCAL  
 INFRASTRUCTURE PROGRAM  
 APPLICATION

MEDIA CENTER

CONTACT

HELPFUL LINKS

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## SUBMITTED I-JOBS LOCAL INFRASTRUCTURE PROGRAM APPS

### Applicant Information

<b>Applicant Type:</b>	City
<b>Applicant:</b>	City of Windsor Heights
<b>Tax ID Number:</b>	42-6004577
<b>Has the applicant received any previous I-JOBS grant awards, competitive or noncompetitive?:</b>	No

### Applicant Contact Information

<b>First Name:</b>	Marketa
<b>Last Name:</b>	Oliver
<b>Title:</b>	City Administrator
<b>Address:</b>	1133 66th Street
<b>City:</b>	Windsor Heights
<b>State:</b>	IA
<b>Zip Code:</b>	50324
<b>Phone:</b>	515-279-3662
<b>Fax:</b>	515-279-3664
<b>E-mail Address:</b>	<a href="mailto:moliver@windsorheights.org">moliver@windsorheights.org</a>

### Project Information

<b>Project Name:</b>	Windsor Heights Community Center
<b>Project City:</b>	Windsor Height
<b>Project County:</b>	Polk
<b>Local Infrastructure Activity Type:</b>	Future flood prevention
<b>Disaster Relation:</b>	Future Flood - Mitigation
<b>Demonstrated Substantial Economic Impact::</b>	Local
<b>Is this project identified in an Iowa Great Places agreement, pursuant to Iowa Code 303.3C?:</b>	No
<b>Total Projected Development Cost:</b>	\$2,624,514.00
<b>Grant Amount Requested:</b>	\$640,104.00

**Provide a brief narrative description summarizing the proposed project, including how the project relates to disaster relief and mitigation and to local infrastructure:**

The City wishes to construct a new Community Center. The shelter house that used to be in the park at this location was originally built in a flood plain and has now been torn down. The building flooded repeatedly. The new Community

Center is being built up nearly 5 feet so that the building will be out of the flood plain and protected from any future flooding. It would be used for regional activities, such as the July 4th festivities which attract approximately 15,000 people annually and include an annual Bill Riley Talent Competition qualifying event. This will be the final phase of the Comprehensive Colby Park Recreational Infrastructure Project and will consist of the construction of a 6,000 square foot community center, which will be home to historical displays and serves as a support structure for events in the park and at the outdoor performance pavilion. The building will also be used for community meetings, private events, recreational classes and concession for the adjacent ball field, outdoor performance pavilion and playground. Further, the structure is located in a park that is a trail hub for trails that come together from 4 jurisdictions and will provide trail hub amenities. This facility can also be used for emergency housing if necessary. This phase of the project will cost nearly \$2,629,959 and is supported by funding from the City, Polk County and other businesses and private citizens. The anticipated start date for this project is July 2009 and ideally the project should be finished prior to July 4th, 2010.

**Explain how the proposed project will have a demonstrated substantial local, regional, or statewide economic impact:**

The immediate short-term impact of the Community Center Project will be the construction jobs created for the twelve to thirteen month duration of the project. A variety of construction contractors will be required to complete the work at average wages ranging from \$15.86 per hour for unskilled labor to \$29.00 per hour for skilled workers. Approximately \$887,166 in construction costs will be used for wages and benefits during the construction period. Another \$1,330,750 in materials and supplies will be purchased for the project. Additional costs are related to design work.

Extra staffing for operation and maintenance of the Community Center Project will also occur. This project creates an additional Parks and Special Events Director position, which currently has an income of \$46,800, plus benefits, including health, dental, life and disability insurances, as well as wellness and retirement benefits. The City also anticipates spending approximately \$5,200 per year to a local business for cleaning the facility. Additionally, the City anticipates spending approximately \$9,600 per year on audio-visual services.

The Community Center Project, itself, will not generate property or corporate income taxes because it is a publicly owned facility. However, it will generate additional rental revenue. In FY 2008, revenue generated from rental of the shelter house was slightly more than \$3,500. Revenue from the new facility is anticipated to be approximately \$46,000. This enables the City to invest in recreational programming. One of the City's primary goals is to create amenities which will attract and retain young families. The Community Center is essential to that goal and will make Windsor Heights more competitive in the quality of life area. Special events have given us an opportunity to draw our citizens to our park facility. Currently the annual Oktoberfest, the 4th of July, and the Easter Egg Hunt are held at Colby Park. With a redeveloped park facility, we could incorporate our Breakfast with Santa/Windsor Wonderland event as well. Not only will drawing citizens to the park through special events help showcase our facility, but also it further cements the park as a community-oriented gathering place.

As mentioned, the project will provide a living wage job, as well as opportunities for short-term construction jobs. It will also provide long-term vending opportunities. One of the elements of the project is a concession area with patio to enable vending. It creates a café-style area where a vendor can sell popcorn, soda, coffee, etc. during summer afternoons, during special events, or baseball games.

It is difficult to measure additional direct economic impact of this project, due to the nature of the project. Events will be an opportunity for local vendors, but it is difficult to determine what that will be. In the past, vendors at the July 4th festivities have each earned from \$3,000 to \$5,000 and approximately \$1,500 to \$1,800 at Oktoberfest. The addition of events and attractions affords them more opportunities to increase revenues.

Additionally, the connection of this particularly park with all of the trails is a tremendous asset. There are a number of studies on the economic benefits of trails and how the location of a trailhead enhances the surrounding businesses. The location of this project is within one mile of a Hy-Vee, a Dairy Queen, two business centers offering a variety of shopping and dining, a Sam's Club, a Walmart, two gas stations and several restaurants. The handbook for Implementing Trail-Based Economic Development Programs produced by the Iowa Department of Transportation recommends locating trailheads within town boundaries to concentrate economic impact. It states, "Situating trailheads within the boundaries of a town not only enables service businesses (gas stations, convenience stores, outfitters) to cluster around them, but it also increases the chances that tired trail users will stay for dinner or even overnight." The handbook also recognizes that linking trails with business districts to channel demands for shopping and restaurants provides a good economic opportunity for the community. This project is the pinnacle of the trailhead, and the trails accessing the Community Center link directly to the City's business areas.

This project provides amenities and venues that are critical to offering quality performing arts opportunities in the metropolitan area. The quality of life will be affected by the ability of all people to use the park and have additional educational, recreational and gathering opportunities. The City of Windsor Heights is the oldest suburb in the metropolitan area. This project will help meet the City's goal of being able to attract and retain families in this area, increasing home ownership and the vitality of the area.

The City anticipates various events and rotating historical displays that will attract people from 50 miles away. The ability to offer a display on the Warren Commission activities and also displays related to Ronald Reagan's years in this area will be highly interesting. Additional displays will include information about the City's coal-mining history and regional Sister City Relationships.

**If your project is rebuilding disaster-damaged property or if it is replacing or rebuilding a local public building, please include an estimate of the additional cost of any expansion or improvement of the infrastructure beyond its size or functionality, etc., that existed prior to the disaster or prior to the replacement or rebuilding of a local public building. If your project does not replace or rebuild disaster-damaged property or a local public building, please put "Not Applicable.":**

The building that is replacing the public building that was at this location is larger than the original building. A detailed budget of construction costs is provided attached to the application.

### Jobs and Economic Impact

**Jobs Chart:** [WHjob\\_creation\\_infoJOBS\\_EC5DC7A49E04C.xlsx](#)

<b>Number of full-time permanent jobs to be created:</b>	1
<b>Number of part-time permanent jobs to be created:</b>	4
<b>Number of full-time temporary jobs to be created:</b>	8
<b>Number of part-time temporary jobs to be created:</b>	142
<b>Total number of jobs to be created:</b>	155

#### Explain the calculation methodology used to estimate the number of jobs to be created:

The City intends to hire a full-time Parks and Special Events Coordinator, as mentioned in the project information. This City is also adding a permanent, part-time parks position to handle mowing, weeding, landscaping, room preparation, etc. The City plans to contract for cleaning services and AV services, accounting for the other three, part-time permanent jobs created.

The construction project supervisor will be one full-time, temporary position. Additionally, there will be approximately seven (possibly 8) full-time equivalent positions working on the project for a total of the 280 work days.

There will be a total of 150 people working on the project (including the eight, full-time equivalent positions) throughout the course of the project. There is a total of approximately 280 workdays on the project.

I spoke with a contractor to determine these numbers.

<b>Number of full-time permanent jobs to be retained:</b>	1
<b>Number of part-time permanent jobs to be retained:</b>	4
<b>Number of full-time temporary jobs to be retained:</b>	0
<b>Number of part-time temporary jobs to be retained:</b>	0
<b>Total number of jobs to be retained:</b>	5

#### Explain the calculation methodology used to estimate the number of jobs to be retained:

The City intends to hire a full-time Parks and Special Events Coordinator, as mentioned in the project information. This City is also adding a permanent, part-time parks position to handle mowing, weeding, landscaping, room preparation, etc. The City plans to contract for cleaning services (\$52,00 annually) and AV services (\$9,984 annually), accounting for the other two, part-time permanent jobs created.

#### Describe the overall expected work conditions and safety for the jobs to be created or retained:

The Construction jobs will have the typical hazards of construction work, but will be required to observe all appropriate OSHA regulations.

The permanent positions will be working with large equipment and some times with mowers. They will be both in and outside. They will observe all OSHA regulations and any applicable State or Federal requirements.

#### Describe the average benefits (including health benefits) provided for all jobs to be created and retained by the project and how those benefits compare to typical comparable jobs in the county in which the project will be located:

This project creates an additional Parks and Special Events Coordinator position, which currently has an income of \$46,800, plus benefits, including health, dental, life and disability insurances, as well as wellness and retirement benefits. The average salary for a parks worker in the area in 2008, based on an Iowa League of Cities salary survey is \$38,841. If you brought those numbers into 2010 by adding a generous 4% per year, the average would be \$42,010.

<b>Total number of jobs to be created or retained:</b>	160
<b>Of that total, number of jobs expected to offer health insurance:</b>	9

**Will the proposed project accrue benefits to areas distressed by high unemployment?:** No

**If yes, briefly describe the anticipated benefits to the area?:**

**Current unemployment rate in the county or counties where the proposed project is located:** 5.8

**Anticipated long-term tax generation of the proposed project:** \$0.00

**Explain how the project will enhance the region's quality of life:**

The Community Center will replace an outdated shelter house that was originally built in a flood plain and flooded repeatedly. This caused problems with the building's use and appeal. The new Community Center is being built up nearly 5 feet so that the building will be out of the flood plain and protected from any future flooding. It would be used for regional activities, such as the July 4th festivities which attract approximately 15,000 people annually and include an annual Bill Riley Talent Competition qualifying event. This will be the final phase of the Comprehensive Colby Park Recreational Infrastructure Project and will consist of the construction of a 6,000 square foot community center, which will be home to historical displays and serves as a support structure for events in the park and at the outdoor performance pavilion. The building will also be used for community meetings, private events, recreational classes and concession for the adjacent ball field, outdoor performance pavilion and playground. Further, the structure is located in a park that is a trail hub for trails that come together from 4 jurisdictions and will provide trail hub amenities and be a wireless hot spot. This project also adds plumbed, outdoor restrooms to the park. It is anticipated that the new amenities will attract additional participation in activities and additional usage of the park, benefitting the sense of community and adding to the outdoor, healthy recreational activities of the entire region.

**Explain how the proposed project will contribute to the community's efforts to retain and attract a skilled workforce:**

Excellent park amenities are consistently identified as something that attracts and retains people to a community. Without providing such amenities, it is impossible to retain and attract a skilled workforce. Also, this project creates a new position that will need to be a skilled worker, as will the permanent, part-time worker. The cleaning service is likely considered an unskilled worker, but the AV technicians would be skilled workers.

#### **Minority Impact Statement**

**The proposed grant projects programs or policies could have a disproportionate or unique positive impact on minority persons:**

Yes

**Describe the positive impact expected from this project:**

The facility is being constructed to be ADA compliant and will have accessible features.

**Indicate which group is impacted:**

Persons with a Disability

**The proposed grant project programs or policies could have a disproportionate or unique negative impact on minority persons:**

No

**Describe the negative impact expected from this project:**

**Present the rationale for the existence of the proposed program or policy:**

**Provide evidence of consultation with representatives of the minority groups impacted:**

**Indicate which group is impacted:**

**The proposed grant project programs or policies are not expected to have a disproportionate or unique impact on minority persons:**

Yes

**Present the rationale for determining no impact:**

The Community Center will be open and accessible to all persons, regardless of race, heritage, creed, color, background, religion or national origin. Also, the City of Windsor Heights is an equal opportunity employer.

#### **Financial Feasibility**

**Describe the operational plan for the proposed project, including detailed information about how the project will be operated and maintained:**

The Community Center will be operated and maintained by City of Windsor Heights staff. The Parks and Special Events Coordinator and Parks Laborer, both of which are new positions, will be responsible for the maintenance of the building and grounds surrounding the building. The City anticipates using a private contractor to handle the janitorial duties in the building. The City also plans to contract for audio-visual services. The City has also invested a substantial

amount of money in plantings around the park and sod. In order to help maintain the new plantings and sod and ball field, the City intends to hire a Parks Laborer summer position as a grounds maintenance specialist. The City anticipates hiring a student with turf management experience and this person will also be responsible for the grounds and plantings around the Community Center. Cost for the parks and grounds maintenance will be included in the Center's operating budget.

**Provide a timeline for implementing the proposed project:**

Ideally, we would like to have the facility constructed by July, 2010, with construction beginning in 2009. The facility would then be open by July 4, 2010. The planning and design for this facility is completed.

**Discuss the availability of other federal, state, local, and private sources of funds for the proposed project and the status of other funding commitments:**

The funding commitments from other sources have been secured, including individual local donors. The City has also secured funding from corporate donors such as Wal-Mart and MidAmerican Energy. Additionally, the City has funding commitments from the Windsor Heights Foundation, Chamber of Commerce, the Lions Club, and Keep Windsor Heights Beautiful. The City also has in-kind and a cash contribution from Polk County.

**I-Jobs Project Budget Form**

**I-Jobs Project Budget Sources:**

Source of Funding	Amount	Are Funds Secured?	If No, Estimated Date to be Secured
I-JOBS Local Infrastructure Competitive Grant Program	\$640,104.00	No	08/31/2009
TIF bonds	\$1,500,000.00	Yes	
City General Fund	\$125,000.00	Yes	
In-Kind contributions from Polk County	\$300,000.00	Yes	
Cash from Polk county	\$5,000.00	Yes	
Wal Mart	\$10,000.00	Yes	
Carol Sorensen Estate	\$20,000.00	Yes	
Mid American Energy	\$500.00	Yes	
WH Lion Club	\$1,000.00	Yes	
Keep Windsor Heights Beautiful	\$1,000.00	Yes	
WH Neighborhood Association	\$300.00	Yes	
WH Chamber of Commerce	\$1,490.00	Yes	
State of Iowa Community Disaster Grant	\$4,129.00	Yes	
Individual Donors	\$14,991.00	Yes	
WH Foundation	\$1,000.00	Yes	
<b>TOTAL SOURCES</b>	<b>\$2,624,514.00</b>		

**I-Jobs Project Budget Uses:**

Use of Funding	Amount
Building Acquisition	\$0.00
Land Acquisition	\$0.00
Demolition	\$16,642.00
On-site Improvements	\$332,735.00
Off-site Improvements	\$0.00
Rehabilitation	\$0.00
New Construction	\$1,640,574.00
Permits	\$0.00
Construction Contingency	\$190,715.00
Soft Cost Contingency	\$82,028.00
Construction Loan Fee	\$0.00
Construction Loan Interest	\$0.00
Real Estate Taxes	\$0.00
Risk/Liability Insurance	\$0.00
Architect	\$211,820.00
Engineer	\$0.00
Attorney	\$0.00
Accounting/Cost Certification	\$0.00
Consultant's Fee	\$0.00
Administration	\$150,000.00
Survey	\$0.00

Archaeological/Environmental	\$0.00
Appraisal	\$0.00
Permanent Loan Fee	\$0.00
Title/Recording	\$0.00
Relocation	\$0.00
Developer Fee	\$0.00
Capitalized Reserves	\$0.00

**TOTAL USES      \$2,624,514.00**

**Federal Funding Verification Document:**

**Alternative Budget 1:**

**Alternative Budget 2:**

**Sustainability**

**Sustainability criteria on which the applicant is electing to be scored:**

General Sustainability  
Criteria

**Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; Conservation of open space and farmland and preservation of critical environmental areas; Promotion of the safety, livability, and revitalization of existing urban and rural communities; Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bike and pedestrian networks, and interconnection with the existing street grid:**

This project is being built on the site where an outdated, inefficient building was previously located. It does not use new ground for the building.

**Provision for a variety of transportation choices, including public transit, pedestrian and bicycle traffic:**

This project is accessible via City street or from the bike trail. Bike racks will also be provided as well as drinking fountains, restrooms and other trail hub amenities.

**Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials:**

This project is being built with an eye to energy efficiency and conservation design. The HVAC design is a closed-loop geothermal system which exceeds the requirements of the 2006 International Energy Code. Refrigerant for the heatpumps is specified as R-410A which is a non CFC/HCFC gas (green house gases). Plumbing fixtures are specified as low flow. The lighting design complies with the 2006 International Energy Conservation Code. Occupancy sensors and time switches are specified to control lighting fixtures so that they automatically turn off when spaces are unoccupied. All non-emergency light fixtures use high efficiency fluorescent or metal halide lamps and have energy efficient electronic ballasts. Exit lights utilize high efficiency LED lamp technology. On the general construction side, large overhangs and window shades assist energy savings. All exterior walls incorporate thermal insulation. It forms a continuous layer over the structural portion of the wall. This is the best insulation location to prevent thermal bridging and therefore increase the wall R-value. All windows are essentially thermally broken (wood) and feature insulated glass units with Low-E coating.

Also, this will be a non-smoking building.

**Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources:**

Permeable pavement is not recommended in this area because of flooding, however, the City has put in a bioswale, to clean the water from the parking lot for this structure before it goes into the creek.

**Extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: Office of Energy Independence's Iowa Energy Independence Plan and the general reduction of greenhouse gas emissions:**

The building is being built with geothermal energy and the City is currently investigating the possibility of a small wind turbine behind the adjacent Public Works building for power.

### Energy Efficiency

**Document:**

[Energy Code Compliance Letter 9D660ECEF2264.pdf](#)

**This section is applicable only to New Construction projects:**

**If the proposed project includes new construction, will the project meet the current state building energy code?:**

Yes

**If no, explain:**

**If the proposed project includes new construction, will the project meet Energy Star® standards?:**

Yes

**If no, explain:**

### Benefits for Disaster Recovery

**Replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses:**

This structure is replacing a structure that was repeatedly damaged by flooding. The replacement structure is being built out of the flood plain to prevent future damage. Also, the City has recently completed a dredging project on Walnut Creek to help prevent flooding in the area.

**Helps achieve the community and/or region's overall post-disaster recovery vision:**

Our post-disaster recovery vision is to be able to mitigate future floods and damage. This project accomplishes that vision.

**Benefits the economic recovery of individuals, businesses, and/or nonprofit organizations:**

There are several benefits to this project. First, it creates and retains jobs. Second, it creates a community gathering place that is not continually plagued by flooding. Prior to being torn down, the old shelter house had a musty smell to it. After flooding so frequently, it simply felt as if it were never dry. It will also assist in enabling our Public Works crews to be focused on other matters during a flooding situation. Previously, when floods were expected or imminent, it would be necessary to go to the Shelter House and elevate all of the appliances. Public Works crews will now be able to use that time to mitigate flood impacts in other areas.

Additionally, this structure provides a much needed community gathering space that will be used public events, meetings and classes. It provides a training space for the City of Windsor Heights' departments that we have not previously had. It also provides a meeting space for the Windsor Heights Chamber of Commerce, as well as other community-oriented, non-profit organizations, such as the Windsor Heights Foundation, the Keep Windsor Heights Beautiful Committee and the Citizens Capital Planning Committee.

### Readiness to Proceed

**Document:**

[Polk Des Moines Assessor 292\\_02124\\_04931FFA1FF69.pdf](#)

**Has preliminary or final engineering and architectural work been completed?:**

Yes, final work complete

**If no, explain:**

**Has all financing for the project (other than funds requested in this application) been committed and is available?:**

Yes, 100% of other funding identified in the Project Budget is committed

**If no, explain:**

**Have all real property interests (including easements and temporary construction easements) necessary for the construction of the project been acquired?:**

Yes, all necessary acquisition is complete

**If no, explain:**

**Have all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.) been obtained?:**

Yes, all necessary governmental approvals have been obtained

**If no, explain:**

**Does the project have a demonstrated reasonable likelihood of incurring costs totaling at least 10% of the project's total projected development cost within three months of execution of the grant award agreement?:**

Yes, the project can incur such costs within three months

**If yes, explain how such expenditure will be accomplished or, if no, explain the anticipated**

**impediments to meeting a 10% expenditure goal:**

Yes. The City has final plans completed and is ready to construct the facility.

**Documents**

**Local Support**

[combined\\_support\\_letters\\_67186C94953E3.pdf](#)

**Cost Estimates**

[costplanning\\_construction\\_equipment\\_C0D286CBB2786.pdf](#)

**Financing Commitments**

[combined\\_funding\\_information\\_BC33B19659389.pdf](#)

**EXHIBIT B**

Grantee Legal Description

[To be provided by Grantee]

E 410F N 276.3F LOT 46 & E 410F W 656.6F LOT K & E 410F LOT 47 WINDSOR PLACE

**EXHIBIT C**  
**Sources of Funds and**  
**Projected Value of Project**

[To be provided by Grantee]

<b>Sources of Funds</b>	
I-JOBS Local Infrastructure Competitive Grant Program	\$ 640,104.00
TIF bonds	\$1,500,000.00
City General Fund	\$ 125,000.00
In-Kind contributions from Polk County	\$ 300,000.00
Cash from Polk County	\$ 5,000.00
Wal Mart	\$ 10,000.00
Carol Sorensen Estate	\$ 20,000.00
Mid American Energy	\$ 500.00
WH Lion Club	\$ 1,000.00
Keep Windsor Heights Beautiful	\$ 1,000.00
WH Neighborhood Association	\$ 300.00
WH Chamber of Commerce	\$ 1,490.00
State of Iowa Community Disaster Grant	\$ 4,129.00
Individual Donors	\$ 14,991.00
WH Foundation	\$ 1,000.00
<b>TOTAL SOURCES</b>	<b>\$2,624,514.00</b>
<b>Projected Value of Project:</b>	
<b>\$1,519,516</b>	

**EXHIBIT D**  
**DISBURSEMENT REQUEST FORM**

PROJECT NO: \_\_\_\_\_

GRANTEE: \_\_\_\_\_

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

Pursuant to, and in accordance with, the provisions of the Iowa Jobs Program Grant Award Agreement, dated \_\_\_\_\_ (the "Agreement"), among the Iowa Jobs Board, the Iowa Finance Authority (the "Authority"), and \_\_\_\_\_ (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 OWNER REPRESENTATIVES**

Date: \_\_\_\_\_  
Name, Title \_\_\_\_\_

Date: \_\_\_\_\_  
Name, Title \_\_\_\_\_

**SCHEDULE 1  
TO  
EXHIBIT D**

**DISBURSEMENT REQUEST FORM**

**ITEMIZATION OF BILLS AND INVOICES  
FOR  
ALLOWABLE EXPENSES**

Vendor	Description of Goods or Services acquired	Amount
	Total:	

(Attach copies of all relevant bills and invoices)

**Exhibit E**



MATTHEW S. BRICK  
ATTORNEY

T: 515-274-1450  
F: 515-274-1488

[Matt.Brick@brickgentrylaw.com](mailto:Matt.Brick@brickgentrylaw.com)

October 16, 2009

I-JOBS Board  
2015 Grand Ave.  
Des Moines, Iowa

**RE: I-JOBS Local Infrastructure Competitive Grant Agreement among the I-JOBS Board, the Iowa Finance Authority, and the City of Windsor Heights, Iowa**

Ladies and Gentlemen:

As legal counsel for the City of Windsor Heights ("City") in connection with the execution and delivery of an I-JOBS Local Infrastructure Competitive Grant Agreement ("Grant Agreement") among the I-JOBS Board, the Iowa Finance Authority, and the City, dated as of October 19, 2009. This opinion is being furnished to you pursuant to Section 7 of the Grant Agreement.

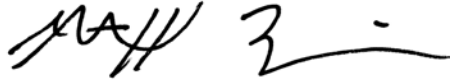
In rendering the opinions expressed herein, I have examined the Grant Agreement and the resolution of the City Council authorizing the same. I also have examined the originals or copies certified or otherwise identified to my satisfaction of such certifications of officers and proceedings of the City 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 City and its officers) the genuineness of all signatures and the authenticity of all documents submitted to me as copies.

I have also examined the relevant land records pertaining to the real property described in Exhibit B to the Grant Agreement, as recorded. 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

4. The 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.

Sincerely,

A handwritten signature in black ink, appearing to read "MATTHEW S. BRICK". The signature is stylized and written in a cursive-like font.

MATTHEW S. BRICK

**SCHEDULE 1  
TO  
EXHIBIT E  
TO  
IOWA JOBS GRANT AGREEMENT**

(Title Exceptions)

**EXHIBIT F**

**Iowa JOBS Electronic Payment Instruction Form**

Grantee: <u>City of Windsor Heights</u>	
I-JOBS Project No.: <u>167</u>	Max. Grant Amount: \$ <u>640,104</u>
Agreement Date: _____	

Please provide the following banking information:  
(type or print clearly)

name of your bank (do not use acronym): _____	Full address and phone number of your bank: _____ _____ _____  Ph: (____) _____
ABA number: ____ - ____ - ____	
Full name of your account (do not use acronym): _____	
Your account number: _____	

Grantee

\_\_\_\_\_

By: \_\_\_\_\_  
[print]

Title: \_\_\_\_\_

**EXHIBIT G**

**IOWA JOBS  
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 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: \_\_\_\_\_