

**COMPARED**

Pottawattamie County, IA 2008-014632  
Recorder John Sciortino  
Book-Page: 2008-014632  
File Time: 10/16/2008 @ 08:00:39 AM  
Rec-\$85.00 Aud-\$0.00 RMA-\$1.00 ECM-\$1.00  
Current Transfer Tax Paid: \$0.00



R Fee 85.00

A Fee \_\_\_\_\_

T Tax \_\_\_\_\_

---

**Type of Document:** 2008 Iowa Great Places Grant Agreement

**Return Document to:** Rose E. Brown  
City of Council Bluffs  
Community Development Department  
209 Pearl Street  
Council Bluffs, IA 51503

**Tax Information:** N/A

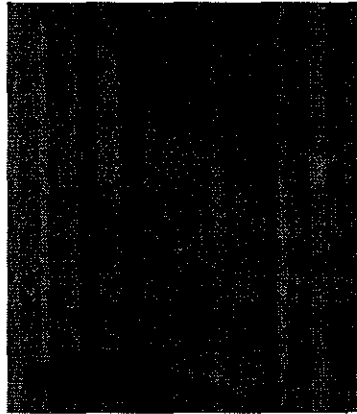
**Grantor:** Iowa Department of Cultural Affairs

**Grantee:** City of Council Bluffs

**Legal Description:** N/A

**COMPARED**

**I O W A**



**GREAT  
PLACES**

## **2008 IOWA GREAT PLACES GRANT AGREEMENT**

### **Mission of Iowa Great Places**

"Great Places brings together the resources of State government to build capacity in communities, regions, neighborhoods, or districts that cultivate the unique and authentic qualities that make places special: engaging experiences; rich, diverse populations and cultures; a vital, creative economy; clean and accessible natural and built environments; well-designed infrastructure; and a shared attitude of optimism that welcomes new ideas, based on a diverse and inclusive cultural mosaic."

## **IOWA GREAT PLACES GRANT AGREEMENT**

---

**RECIPIENT: City of Council Bluffs**  
**PROJECT NAME: River's Edge Riverfront Park Development**  
**PROJECT CODE: GP12-02**  
**EFFECTIVE DATE: July 1, 2008**  
**GRANT AWARD: \$256,000**  
**PROJECT COMPLETION DATE: June 30, 2010**

---

This **IOWA GREAT PLACES GRANT AGREEMENT** is made by and between the **Iowa Department of Cultural Affairs ("DCA")** and the **City of Council Bluffs ("Recipient")**.

WHEREAS, the Iowa Great Places Program ("Program") was established by the Iowa Legislature and the Governor of Iowa for the purposes of combining resources of state government in an effort to showcase the unique and authentic qualities of communities, regions, neighborhoods and districts in Iowa; and

WHEREAS, the Iowa Legislature has appropriated monies to the Iowa Great Places Fund ("Fund") established pursuant to Iowa Code section 303.3D (2005), with the stipulation that such monies be used by DCA to fund capital infrastructure projects for identified Iowa Great Places; and

WHEREAS, Recipient represents a project within an officially designated Iowa Great Place and that Place has entered into a Memorandum of Understanding ("MOU") with the Governor of the State of Iowa regarding the Program; and

WHEREAS, Recipient has submitted a grant application to DCA, which was approved by the grant review panel and the Director of the DCA, requesting monies from the Fund to help finance the Project described in this Agreement; and

WHEREAS, as a condition to receiving Grant Funds, Recipient has secured matching funds for the Project as stipulated in the Great Places Request for Applications #2.0 (2008).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, DCA and Recipient agree to the following terms and conditions:

## **ARTICLE 1**

### **DEFINITIONS**

As used in this Agreement, the following terms shall apply:

1.1 **AGREEMENT** means this document, the Project Plan and Project Budget found in the associated 2008 Great Places grant application. In the event of a conflict between one or more of the foregoing documents, the conflict shall be resolved according to the priority, ranked in descending order, as the documents are listed in the previous sentence. The submitted and approved 2008 Great Places grant application is attached hereto as Exhibit A.

1.2 **GRANT FUNDS** means an award of assistance from the Fund made by DCA to Recipient pursuant to the terms and conditions of this Agreement.

1.3 **PERIOD OF RESTRICTION** means the period of twenty (20) years immediately following the Project Completion Date.

1.4 **PROJECT** means the detailed work, services, and other obligations to be performed or accomplished by the Recipient as described in this Agreement, the Project Plan and Project Budget.

1.5 **PROJECT COMPLETION DATE** means the date stated above, which is the date by which Recipient must complete the Project. For purposes of this Agreement, the Project shall be "completed" when DCA determines that the Project is fully constructed, operational, and open and accessible to the public.

1.6 **PROJECT PROPERTY** means all real property purchased or acquired, and all personal and other property purchased, acquired, created, constructed, developed, modified, improved or enhanced with Grant Funds.

1.7 **PROJECT SITE** means the real property on which the Project Property is located.

1.8 **TERMINATION DATE** means the date this Agreement terminates, which shall occur when this Agreement is terminated by DCA pursuant to Article 10 or at the Project Completion Date.

## **ARTICLE 2**

### **IDENTITY OF THE PARTIES**

2.1 DCA is a public instrumentality of the State of Iowa charged with the administration of the Program.

2.2 Recipient is the City of Council Bluffs.

### **ARTICLE 3**

#### **FUNDING**

3.1 **FUNDING SOURCE** Funds for the Project are limited to those monies appropriated and legally available to DCA in the Fund. The funds of the State of Iowa ("State"), other than those of the Fund, are not obligated or available to meet any obligations of DCA created by this Agreement, and this Agreement shall not constitute an obligation or debt of DCA or the State.

3.2 **RECEIPT OF FUNDS** All disbursements of Grant Funds under this Agreement are subject to possession by DCA of sufficient legally available monies in the Fund. If the Legislature fails to make appropriations to the Fund; or if Grant Funds are de-appropriated, reduced, diverted, delayed, insufficient or unavailable for any other reason, so that, as determined by DCA in its sole discretion, DCA is unable to meet its obligations under this Agreement, then DCA shall have no obligation to fund the Project, in whole or in part.

### **ARTICLE 4**

#### **TERMS OF GRANT**

4.1 **EXECUTION OF PROJECT** Recipient shall execute the Project as described in the Project Plan and in accordance with the Project Budget. Recipient shall allow DCA, its internal or external auditors, 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 to enter upon Recipient's premises and inspect the Project and Project Property at all reasonable times in order to monitor and evaluate performance and compliance with Iowa law and the terms of this Agreement.

4.2 **DISBURSEMENT OF FUNDS** Subject to the terms and conditions of this Agreement, DCA shall disburse Grant Funds to Recipient to reimburse Recipient for approved Project costs and expenses incurred by Recipient consistent with the Project Plan and Project Budget.

4.3 **MAXIMUM PAYMENTS** It is understood and agreed that the Grant Funds disbursed by DCA to reimburse Recipient for Project costs and expenses shall not exceed the Grant Award unless otherwise agreed through a written amendment to this Agreement and that DCA's ultimate financial responsibility under this Grant Agreement will not exceed the Grant Award.

4.4 **RECORD RETENTION AND ACCESS** Recipient shall maintain its books, documents and records that sufficiently and properly document Recipient's receipt and use of Grant Funds under this Agreement for a period of at least five (5) years following the later of the Project Completion Date, Termination Date, or the completion of any required audit. Recipient shall permit the Auditor of the State or any authorized representative of the State, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, or electronic or optically stored and created records or other records of Recipient relating directly or indirectly

to the Project, Project Property or Grant Funds.

4.5 **FINANCIAL STATEMENTS** Recipient shall maintain and furnish, at DCA's request, financial statements (including, without limitation, income, expense and balance sheets relating to the expenditure of Grant Funds). Recipient shall submit to DCA final Project performance and audit reports within sixty (60) days after the Project Completion Date. DCA reserves the right to require such other reports as DCA deems to be necessary, in its sole discretion, to assure that the Project and Project Property are and shall continue to be operated and maintained for the benefit and use of the public and consistent with the public purposes forming the basis of the Grant Award.

4.6 **DOCUMENTATION** Within ten (10) days of its receipt of a written request from DCA, the Recipient shall deliver to DCA: (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) estimated remaining costs and expenses required to complete the Project.

4.7 **PRIOR COSTS** No costs or expenses incurred by Recipient prior to the Effective Date shall be reimbursed by DCA unless DCA specifically agrees, in its sole discretion and in writing, to allow and reimburse such costs and expenses.

4.8 **CONVEYANCE OF PROJECT PROPERTY** During the Period of Restriction, Recipient shall not sell, transfer, convey, assign, encumber or otherwise dispose of all or any portion of the Project Property, whether by agreement, operation of law or otherwise, without the prior written permission of DCA, which permission may be withheld in the sole discretion of DCA.

## **ARTICLE 5** **CONDITIONS TO DISBURSEMENT**

5.1 **CONDITIONS TO DISBURSEMENT** The following conditions shall be met before DCA disburses Grant Funds to Recipient:

(a) **AGREEMENT EXECUTED** This Agreement shall have been properly executed by Recipient and returned to DCA within thirty (30) days of DCA's transmittal thereof to Recipient.

(b) **RECEIPT OF OTHER FUNDING** Recipient shall have received and shall have documented, to the satisfaction of DCA, all matching funds and other funds, beyond the Grant Funds, necessary to complete the Project.

(c) **SUBMISSION OF RECIPIENT DOCUMENTATION** Recipient shall have submitted the following documents to DCA:

i. A resolution of Recipient's governing body authorizing the execution of this Agreement by Recipient and specifying the officer authorized to execute this Agreement.

ii. Project Plan and Project Budget, which is included in the Project's approved 2008 Iowa Great Places grant application.

iii. Completed form "W-9, Request for taxpayer identification number and certification," Which is included in the approved 2008 Iowa Great Places grant application.

iv. If Recipient is a private, non-profit entity, certified copies of the Recipient's Articles of Incorporation and By-Laws; documentation of satisfactory credit history, including, without limitation, no outstanding judgment or unsatisfied liens; documentation confirming Recipient's non-profit status (included in 2008 Iowa Great Places grant application); and a certificate of good standing issued by the Iowa Secretary of State (included in 2008 Iowa Great Places grant application).

v. All documents required pursuant to Article 6.1 hereof.

vi. Certificates of Insurance pursuant to Article 11 hereof.

vii. Documents satisfying conditional approval of grant, if necessary as specified in grant award letter.

viii. Great Places Final Grant Report must be submitted along with final Great Places grant reimbursement request.

ix. Such other documents as DCA may reasonably request.

(d) **RESTRICTIVE COVENANT** This Agreement shall have been recorded as a restrictive covenant for and during the Period of Restriction in the chain of title of the Project Site with the County Recorder of the county in which the Project Property is located.

(e) **ARTICLES OF INCORPORATION** If Recipient is a non-governmental entity, Recipient's covenant contained in Article 8.1 hereof shall have been incorporated into Recipient's Articles of Incorporation, as well as a provision requiring the reversion of Project Property to the State, or, alternatively, the repayment to the State of all Grant Funds received by Recipient for the Project Property, if Recipient (or its successors or assigns) is dissolved during the Period of Restriction, unless the State otherwise agrees in writing to waive one or both of such requirements.

## **ARTICLE 6**

### **DISBURSEMENT OF GRANT FUNDS**

6.1 **REQUIRED DOCUMENTATION** All disbursements of Grant Funds shall be subject to receipt by DCA of a reimbursement request form ("Request for Reimbursement") from Recipient, which shall be submitted with itemized costs and expenses listed and supporting documentation attached. Prior to submission to DCA, Recipient shall review each Request for Reimbursement to verify that claimed expenditures are allowable costs and expenses. DCA shall review the Request for Reimbursement in a timely manner, and if DCA determines that: (i) all itemized costs and expenses are allowable and eligible for reimbursement, and (ii) the supporting documentation is acceptable, it shall promptly process payment to Recipient.

6.2 **SUSPENSION OF DISBURSEMENTS** If Recipient is in breach of this Agreement (as provided in Article 10 hereof), DCA may suspend disbursement of Grant Funds to the Recipient until such time as the breach has been cured to DCA's satisfaction. Notwithstanding anything to the contrary in this Agreement, upon a termination of this Agreement due to a breach by Recipient, DCA's obligation to disburse Grant Funds for the Project shall end as of the Termination Date.

6.3 **DISALLOWED EXPENSES** Any costs and expenses reimbursed by DCA which are subsequently determined to be unallowable through audit procedures shall be returned by Recipient to DCA within thirty (30) days of notice of the disallowance.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

To induce DCA to make the Grant Award, the Recipient represents, covenants, and warrants that:

7.1 **AUTHORITY** Recipient is duly organized and validly existing under the laws of the State of Iowa and is in good standing, and has complied with all applicable laws, regulations and orders. Recipient is duly authorized and empowered to execute and deliver this Agreement. All action on the part of Recipient, such as appropriate resolution of their governing body for the execution and delivery of the Agreement, has been effectively taken.

7.2 **FINANCIAL INFORMATION** All financial statements and related materials concerning the Recipient and the Project provided to DCA are and shall be 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.

7.3 **PROJECT PLAN** The Project Plan is a complete and accurate representation of the Project.



**7.4 CLAIMS AND PROCEEDINGS** There are no actions, lawsuits or proceedings pending or, to the knowledge of the Recipient, threatened against the Recipient affecting in any manner whatsoever the Project Property or the Project Site, Recipient's right to execute this Agreement, or the ability of the Recipient to carry out the transactions or comply with its obligations contained in this Agreement.

**7.5 COMPLIANCE WITH LAWS AND REGULATIONS** Recipient and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement. Recipient represents and warrants 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.

**7.6 ELIGIBILITY OF EXPENSES** Recipient understands and acknowledges that the governmental appropriation of monies for the Fund places limitations on the types of expenditures for which Grant Funds can be used and that Recipient will not be reimbursed for expenses that fall outside such limitations. Recipient represents and warrants that all Project expenses submitted by Recipient for reimbursement hereunder will be eligible expenses under the terms of the appropriations.

**7.7 OWNERSHIP OF PROJECT SITE** Recipient is the sole owner of the Project Site or Recipient has obtained all necessary rights and permissions from the owner(s) of the Project Site in order to implement the Project Plan on the Project Site as contemplated by this Agreement, and therefore, Recipient represents, covenants and warrants that it has all right, title and authority to implement the Project Plan on the Project Site.

**7.8 RENEWAL OF REPRESENTATIONS** The representations and warranties of this Article 7 are made as of the Effective Date of this Agreement and shall be deemed to be renewed and restated by the Recipient at the time of each request for disbursement of funds.

## **ARTICLE 8** **COVENANTS OF RECIPIENT**

Recipient covenants to DCA that:

**8.1 RECIPIENT OWNERSHIP** During the Period of Restriction, Recipient will not change the ownership, structure, or control of the Recipient, the Project Site or the Project Property, including but not limited to, entering into or agreeing to any merger or consolidation with any person, firm or corporation or permitting substantial distribution, transfer, assignment, conveyance, liquidation or other disposition of the Project Site, Project Property or other Recipient assets associated with the Project, whether by agreement, operation of law, or otherwise, without the prior written consent of DCA. If Recipient is a non-governmental entity, Recipient has amended and will maintain its Articles of Incorporation to provide that if Recipient is dissolved during the Period of Restriction, all Project Property shall automatically revert to the State of Iowa unless the State otherwise agrees in writing to waive such requirement.

8.2 **NON-ASSIGNMENT** Recipient will not assign this Agreement or otherwise transfer any of its rights hereunder or delegate any of its obligations hereunder, without the prior written consent of DCA, and any such attempted assignment, transfer or delegation without DCA's prior written consent shall be void.

8.3 **RECIPIENT OPERATION** During the Period of Restriction, Recipient will continuously operate and maintain the Project Property and the Project Site in a manner that preserves and maintains accessibility of the public to the Project Property and the public purpose and use for which the Project was designed and approved. Recipient will not change the scope or use of the Project or the nature of the business and activities conducted, or proposed to be conducted, by Recipient on the Project Site, as contemplated in the Project Plan, without the prior written permission of DCA, which permission may be withheld in the sole discretion of DCA. If Recipient's fails to meet the requirements of this Article 8.3, Recipient shall be required to return all Grant Funds paid by DCA for the Project upon receipt of DCA's demand for repayment.

8.4 **RESTRICTIONS** Recipient will not place, grant or permit any restrictions, liens, encumbrances, security interests, pledges, restrictive covenants or any other limitations on the Project Property or the Project Site during the Period of Restriction without DCA's prior written consent.

8.5 **REMOVAL OF PROJECT PROPERTY** Recipient will not remove from the Project Site all or any part of the Project Property without DCA's prior written consent.

8.6 **NOTICE OF MEETINGS** Recipient will notify DCA at least three (3) business days in advance of all meetings of its governing body at which the subject matter of this Agreement or Project is proposed to be discussed. The Recipient will provide DCA with copies of the agenda and minutes of such meetings and expressly agrees that DCA shall have the right to send a representative to attend any and all such meetings.

8.7 **COMPLIANCE WITH LAWS AND REGULATIONS** In planning, developing, operating and maintaining the Project and the Project Property, Recipient will comply with any and all applicable federal, state, and local laws, rules, ordinances, regulations and orders, including future administrative rules promulgated with respect to the Program.

8.8 **COMPETITIVE BIDDING** Recipient will employ a competitive bidding process (submitted to and approved by DCA in advance) in construction, development and all other Project-related contracts.

## **ARTICLE 9** **INDEMNIFICATION**

9.1 **INDEMNIFICATION BY RECIPIENT** Recipient and its successors and permitted assigns shall defend, protect, indemnify and hold harmless the DCA, the State and

their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement ("Claims"), including, but not limited to, any Claims related to, resulting from, or arising out of:

(a) Any violation or breach of any term or condition of this Agreement by or on behalf of Recipient, including, without limitation, the furnishing or making by Recipient of any statement, representation, warranty or covenant in connection herewith, that is false, deceptive, or materially incorrect or incomplete; or

(b) Any act or omission of Recipient, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Recipient, its agents, officers, officials, directors, employees, board members, subsidiaries, affiliates, contractors or subcontractors; or

(c) Recipient's performance or attempted performance of this Agreement; or

(d) Failure by Recipient or its agents, officers, officials, directors, employees, board members, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations.

9.2 **SURVIVAL** Recipient's duties as set forth in this Article 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential Claim is made or discovered by DCA or any other Indemnatee.

9.3 **DEFENSE OF CLAIM** DCA shall reasonably cooperate with Recipient to facilitate the defense of any Claim against DCA. DCA reserves the right to participate in the defense of any such Claim.

## **ARTICLE 10** **TERMINATION**

10.1 **TERMINATION FOR CAUSE BY DCA** DCA may terminate this Agreement upon written notice for the breach by Recipient of any material term, condition, provision or covenant of this Agreement, if such breach is not cured within the time period specified in DCA's notice of breach or any subsequent notice or correspondence delivered by DCA to Recipient, provided that cure is feasible. In addition, the Department may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

(a) Recipient furnishes any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, misleading or materially incorrect or incomplete;

(b) Recipient or any of Recipient's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

(c) Dissolution of Recipient or any parent or affiliate of Recipient owning a controlling interest in Recipient, or termination or suspension of Recipient's business;

(d) Recipient's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

(e) Recipient has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

(f) DCA determines or believes the Recipient has engaged in conduct that has or may expose the DCA or the State of Iowa to material liability;

(g) Recipient or any corporation, shareholder or entity having or owning a controlling interest in Recipient: (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 the Recipient 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) 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 Recipient and, if instituted against Recipient is consented to, or, if contested by Recipient, is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution;

(h) In DCA's sole determination, Recipient has not made substantial progress toward completion of the Project within one hundred eighty (180) days after the Effective Date of this Agreement, or if Recipient fails to complete the Project by the Project Completion Date;

(i) In DCA's sole determination, the Project is not operated and maintained at a professional level consistent with the highest industry standards, is no longer accessible to the public or is no longer serving and providing a public use or benefit consistent with the public purposes forming the basis for the Grant Award;

(j) If the Recipient expends Grant Funds for purposes other than for payment of approved itemized costs and expenses submitted by Recipient in a Request for Reimbursement; and

(k) Recipient fails to receive the matching funds and other funds, besides the Grant Funds, necessary to complete the Project under the terms of this Agreement.

#### **10.2 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW**

Notwithstanding anything in this Agreement to the contrary, DCA shall have the right to terminate this Agreement immediately, without penalty and without advance notice, as a result of any of the following:

(a) The Legislature or Governor of the State fails to appropriate funds sufficient in the sole opinion of DCA to allow DCA either to meet its obligations under this Agreement or to operate as required to fulfill its obligations under this Agreement.

(b) Program funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DCA to make reimbursements hereunder are insufficient or unavailable for any other reason as determined by DCA in its sole discretion.

(c) If DCA's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified, or if the DCA's duties, programs or responsibilities are modified or materially altered.

(d) If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the DCA's ability to fulfill any of its obligations under this Agreement.

**10.3 MUTUAL TERMINATION FOR CONVENIENCE** This Agreement may be terminated, in whole or in part, upon the mutual agreement of the parties for any reason.

**10.4 TERMINATION OR EXPIRATION OF MOU** Upon the expiration or earlier termination of the MOU, DCA shall have the option to terminate this Agreement.

**10.5 NON-EXCLUSIVE REMEDY** DCA's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to DCA, and DCA shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

#### **10.6 EFFECT OF TERMINATION**

(a) If this Agreement is terminated by DCA pursuant to Article 10.1 hereof, Recipient shall repay all Grant Funds received by Recipient within thirty (30) days of DCA's written request;

(b) If this Agreement is terminated by DCA pursuant to Article 10.2 hereof, by agreement of the parties pursuant to Article 10.3 hereof, or upon the termination or expiration of the MOU pursuant to Article 10.4 hereof, disbursements shall be paid for approved, documented Project costs and expenses incurred by Recipient through the Termination Date within thirty (30) days of receipt by DCA of a Request for Reimbursement for such costs and expenses, subject to legally available Grant Funds. Any costs and expenses reimbursed by DCA which are subsequently determined to be unallowable through audit procedures shall be returned by Recipient to DCA within thirty (30) days of notice of the disallowance.

## **ARTICLE 11** **INSURANCE**

11.1 **INSURANCE REQUIREMENTS** Recipient shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State and acceptable to DCA, insurance covering the Project Property. The insurance shall be of a scope and coverage that is acceptable to DCA; shall name DCA and the State as additional insured or loss payees, as the case may be; and shall not be canceled, reduced or changed without DCA's prior written consent. Recipient shall, at a minimum, provide the coverage set forth below.

11.2 **FIRE AND EXTENDED CASUALTY** Recipient shall provide and continuously maintain, throughout the useful life of the Project Property, fire and extended coverage casualty insurance (including an endorsement for vandalism and mischief) covering the Project Property in an amount equal to the full replacement cost of the Project Property; and

11.3 **BUILDERS RISK INSURANCE** Coverage shall be made effective on the inception date of construction on the Project and will terminate upon the Project Completion Date.

11.4 **CLAIMS PROVISION** The insurance policies required by this Agreement shall provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.5 **CERTIFICATES OF INSURANCE** At the time of execution of this Agreement, Recipient shall deliver to DCA certificates of insurance certifying the types and the amounts of coverage and also certifying that no cancellation or modification of the insurance policies will be made without at least thirty (30) days prior written notice to the DCA. All certificates of insurance shall be subject to approval by DCA.

11.6 **LIABILITY OF RECIPIENT** Acceptance of the insurance certificates by DCA shall not act to relieve Recipient of any obligation under this Agreement. It shall be the responsibility of Recipient to keep the respective insurance policies and coverages current and in force as provided herein. Recipient shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage.

11.7 **WAIVER OF SUBROGATION** Recipient shall obtain a waiver of any subrogation rights that any of its insurance carriers may have against DCA or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to DCA.

## **ARTICLE 12** **GENERAL TERMS AND PROVISIONS**

12.1 **BINDING EFFECT** This Agreement shall be binding upon and shall inure to the benefit of DCA and Recipient and their respective heirs, successors, legal representatives and assigns.

12.2 **TIME IS OF THE ESSENCE** Time is of the essence with respect to Recipient's performance of its obligations under this Agreement.

12.3 **IOWA GREAT PLACES RECOGNITION** The Project shall permanently recognize, in a manner acceptable to DCA, the financial contribution to the Project made by the State through the Program. Iowa Great Places signs are to be displayed on the Project Site; such signs will be provided by Iowa Great Places. In press releases and other publications, Iowa Great Places and the Iowa Department of Cultural Affairs shall be recognized for its financial contribution.

12.4 **SEVERABILITY** 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.

12.5 **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, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to DCA or the State of Iowa.

12.6 **MODIFICATION** Neither this Agreement nor any documents incorporated by reference in connection with this Agreement may be changed, waived, modified, amended or discharged except through a writing executed by both parties. Examples of situations where amendments are required include, without limitation, extensions of the Project Completion Date or material changes to the Project. DCA will consider whether an amendment request is so

substantial as to necessitate re-evaluating DCA's decision to provide a Grant Award for the Project. An amendment will be denied by DCA if it substantially alters the circumstances under which the Project funding was originally approved or if it does not meet requirements set forth in Iowa Code Sections 303.3C or 303.3D.

12.7 **NOTICES** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

(a) Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S.

If to DCA: Iowa Great Places  
Iowa Department of Cultural Affairs  
State Historical Building  
600 E Locust St  
Des Moines, IA 50319

If to Recipient: City of Council Bluffs  
Attn: Community Development Department  
Donald D. Gross  
209 Pearl Street  
Council Bluffs, IA 51503

Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature obtained by the carrier.

(b) From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.8 **WAIVERS** Except as specifically provided for in a waiver signed by duly authorized representatives of DCA and Recipient, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.9 **CUMULATIVE RIGHTS** The various rights, powers, options, elections and remedies of DCA and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed DCA and the State by law, and shall in no way affect or impair the right of the DCA or



the State to pursue any other contractual, equitable or legal remedy to which DCA or the State may be entitled. The election by DCA or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.10 **LIMITATION OF FINANCIAL OBLIGATION** It is agreed by the Recipient that DCA shall not, under any circumstances, be obligated financially under this Agreement except to disburse Grant Funds according to the terms of the Agreement.

12.11 **ENFORCEMENT EXPENSES** The Recipient shall pay upon demand any and all reasonable fees and expenses of DCA, including the fees and expenses of DCA's attorneys (including, without limitation, the reasonable value of time of the Attorney General's Office), experts and agents, in connection with the enforcement of any of the rights of DCA under this Agreement.

12.12 **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.

12.13 **EVENT OF DCA DISSOLUTION** Recipient hereby acknowledges that DCA is a public instrumentality of the State and that in the event that DCA is dissolved for any reason, the State is entitled to enforce any right, title or interest held by DCA hereunder, and all of Recipient's obligations hereunder are owed to the State.

12.14 **SURVIVAL** The parties' rights and obligations under Articles 4.4, 4.5, 4.8, 8.1, 8.2, 8.3, 8.4, 8.5, 9, 10.6, 11 and 12.11 shall survive expiration or termination of this Agreement for any reason.

12.15 **FINAL AUTHORITY** DCA shall have the final authority to assess whether the Recipient has complied with the terms of this Agreement. DCA's decision shall be final and binding on all questions concerning Recipient's compliance with the terms hereof.

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, effective as of the Effective Date.

**DEPARTMENT OF CULTURAL  
AFFAIRS:**

BY: Cyndi Pederson  
Cyndi Pederson, Director

DATE: 9/29/08

**RECIPIENT:**

BY: Thomas Hanafan  
NAME

TITLE: Mayor, City of Council Bluffs

DATE: 9-18-08

Signed before me by Thomas Hanafan, Mayor, City of Council Bluffs, Iowa this 18th day of September, 2008.



Judith H. Ridgeley