

PRESIDENT  
Dr. James L. Discipio

VILLAGE MANAGER  
Julia A. Cedillo

VILLAGE CLERK  
Amanda G. Seidel



TRUSTEES  
Rimas V. Kozica  
Scott F. Mesick  
Patricia B. Rocco  
Marshall Seeder  
Susan M. Storcel  
LaVelle Topps

## VILLAGE BOARD MEETING

Tuesday, JULY 24, 2012 – 7:30 p.m.

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### AGENDA

1. **Call meeting to order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Presentation – Office of Government & Community Affairs Debt Recovery Program (Matthew Ryan, Deputy Director) – materials under Administration**
5. **Public Participation (Agenda Related Items Only)**
6. **Consent Agenda (Roll Call Vote)**
  - A. Approval of Minutes
    - (i) Work Session Meeting – June 12, 2012 (revised)
    - (ii) Executive Session Meeting – June 12, 2012 (revised)
    - (iii) Village Board Meeting – June 26, 2012
    - (iv) Executive Session Meeting – June 26, 2012
    - (v) Work Session Meeting – July 10, 2012
  - B. Action – Motion to Authorize the Village Manager to Approve the Purchase of Ten Mobile Radios, 25 Portable Radios and Necessary Accessories in the amount of \$26,158.00
  - C. Action – Motion to Authorize the Village Manager to Approve the Purchase for Replacement, Servicing and Disposal of 32 Battery Jars for the Chloride UPS from Protech Services of Lake Bluff, IL in the amount of \$5,137.00
  - D. Action – Motion to Authorize the Village Manager to Execute the Project Partnership Agreement (Department of the Army – South LaGrange Road Water Main Replacement Grant)
  - E. Action – Motion to Approve an Open Purchase Order, not to exceed a total amount of \$40,000, with HD Supply Waterworks for the purchase of Fire Hydrant Modification Kits or new Fire Hydrants
  - F. Motion to Authorize the President and Chairperson of the Finance Committee to sign the register for bills, and authorize the Treasurer and Village Clerk to sign checks in payment of operating bills and salaries as itemized in the Check Registers
  - G. Motion to Authorize the Village Treasurer and Village Clerk to sign checks in the payment of payroll and other bills that become due between this date and August 28, 2012 subsequent approval of the Payroll Register and Voucher Register by the Board of Trustees at its regular meeting to be held on August 28, 2012.

**VILLAGE BOARD MEETING**  
**Tuesday, JULY 24 – 7:30 p.m.**

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**AGENDA (continued – Page 2**

7. **Village Manager's Report**
8. **Administration Committee** – Susan Storcel, Chairwomen
  - A. Monthly Report
  - B. Informational Materials for the Local Debt Recovery Program
9. **Building & Zoning Committee** – Rimas Kozica, Chairman
  - A. Monthly Report
10. **Engineering & Capital Projects Committee** – Marshall Seeder, Chairman
  - A. Monthly Report
11. **Public Safety Committee** – LaVelle Topps, Chairman
  - A. Monthly Report– Police Department
  - B. Monthly Report – Fire Department
12. **Public Works Committee** – Scott Mesick, Chairman
  - A. Monthly Report – Public Works Department
  - B. Monthly Report – Water Department
13. **Finance Committee** – Patricia Rocco, Chairwoman
  - A. Monthly Report
14. **Public Works Garage Committee** – Scott Mesick, Chairman
  - A. Discussion & Action – Wholesale Renovation of Public Works Garage
15. **Other Reports**
  - A. Village Clerk
  - B. Village Treasurer
  - C. Village Engineer
  - D. Village Attorney
  - E. Committee and Collectors Report

Action – Motion to Approve Committee and Collectors Report as Presented
16. **Village President**
17. **Public Participation (Non-Agenda Related Items Only)**
18. **New Business**
19. **Executive Session**
20. **Adjourn**

*Village Work Session Meeting: August 14, 2012*  
*Next Village Board Meeting: August 28,, 2012*



## **RULES FOR PUBLIC COMMENT**

### **Village Board Work Session Meetings Village Board Meetings**

1. Please step up to the microphone before speaking, and announce your name and address before beginning your comments.
2. After announcing your name and address for the record, you will be allowed to speak for three (3) minutes.
3. You may not use profane or obscene language and you may not threaten any person with bodily harm, or engage in conduct which amounts to a threat of physical harm.
4. (a) Agenda-related comments: The Village President reserves the right to disallow comments that are repetitive of comments previously made during the meeting, or comments that do not relate to agenda items.  
  
(b) Non-agenda-related comments: The Village President reserves the right to disallow comments that are repetitive of comments previously made during the meeting, or comments that do not relate to Village business, Village services or Village governance.
5. The Village of La Grange Park complies with the Americans with Disabilities Act of 1990. If you require accommodations in order to observe or participate in the meeting, please contact Ms. Andy Bagley at (708) 354-0225 between 9:00 and 5:00 before the meeting so that the Village can make reasonable accommodations for you.

## **Consent Agenda Items**

# Village Board Agenda Memo

**Date:** June 28, 2012

**To:** Village President and Board of Trustees

**From:** Julia Cedillo, Village Manager   
Daniel L. McCollum, Chief of Police   
Philip Kubisztal, Deputy Chief 

**RE:** Purchase of Replacement Mobile & Portable Radios

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## GENERAL BACKGROUND

In 1988, the FCC began what was then called radio spectrum "refarming". It was the desire of the FCC to promote more efficient use of the radio spectrum, by encouraging the use of "narrow-banding" to change radio manufacturing and radio spectrum use from a legacy 25 Khz bandwidth to a 12.5 Khz bandwidth, to make available new public safety radio channels. Since then, the Commission has issued a number of rules and deadline changes for Land/Mobile Radio VHF and UHF licensees. The last Order from the FCC in December of 2004 established a mandatory migration date for all public safety licenses to January 1, 2013. All public safety entities throughout the country, using VHF and UHF radios have to ensure they have radios that comply with the FCC narrow-banding order, and are operating their radio bands within that technical standard by December 31, 2012.

The Police Department conducted an inventory of radios in order to access the ability to meet the narrow-banding requirements. Mostly due to manufacturing dates before the FCC mandate, several of the Department's vehicle mounted mobile radios, and all of the Department's portable "walkie-talkie" radios, were found not be compliant with the new standard and would have to be replaced. Being aware of the impending FCC deadline, the department sought and received a U.S. Department of Justice, C.O.P.S. Technology Grant to fund the replacement of Police Department radios. The Department developed specifications and requested proposals for the replacement of the mobile and portable radios. Only, one Illinois Motorola distributor, Illinois Communications Sales, Inc. of Chicago responded to the request.

## DOCUMENTATION

June 22, 2012, proposal from Joe Polito of Illinois Communications Sales, Inc. in the amount of \$26,158.00 for the replacement of 10 mobile radios, 25 portable radios, and necessary accessories, charging equipment, software and programming cables.

### **MOTION/ACTION REQUESTED**

Because the dollar amount requested exceeds the spending authority of the Village Manager, this request is being placed on the agenda for the July 10, 2012 Village Board Work Session. If there is consensus to approve the purchase, it will be placed on the Consent Agenda for the July 24, 2012 Regular Village Board Meeting.

### **RECOMMENDATION**

Staff recommends approval of the purchase 10 mobile radios, 25 portable radios, and necessary accessories, charging equipment, software and programming cables, from Illinois Communications Sales, Inc. of Chicago, Illinois in the amount of \$26,158.00, with funding for this purchase as provided by the U.S. Department of Justice, C.O.P.S. Technology Grant, award ending date of 12/15/2012.



Proposed For:  
 Deputy Chief Phil Kubisztal  
 LaGrange Park Police Department  
 447 N Catherine  
 LaGrange Park, IL 60526  
[pkubisztal@lagrangepark.org](mailto:pkubisztal@lagrangepark.org)

Proposed By:  
 Joe Polito  
 Illinois Communications  
 300 N Ogden Avenue  
 Chicago, IL 60607  
 June 22, 2012

**Motorola HT1250 Portable**

| <b>QTY</b> | <b>DESCRIPTION</b>  | <b>UNIT COST</b>       | <b>EXTENDED</b>    |
|------------|---|------------------------|--------------------|
| 25         | Motorola HT1250, model AAH25KDF9AA5-N/H951/QA00059, 5 watt 128 channel, VHF portable transceiver complete with 1800mAh nickel metal hydride rechargeable battery, display with limited keypad, flexible antenna, single unit rapid charger, 2.5" spring belt clip, and two year parts and labor warranty. | \$579.00               | \$14,475.00        |
| 25         | Motorola model RMN5076(24") or RMN5036(30") , public safety remote speaker/microphone with coiled cord and clothing clip, and stub antenna.   | \$119.00               | \$2,975.00         |
| 25         | Model HLN9998/AW, swivel mount leather carrying case.   | \$45.00                | \$1,125.00         |
| 6          | Motorola model WPLN4187/NLN7967, six-unit rapid charger with wall mount bracket.  | \$389.00               | \$2,334.00         |
| 1          | Model RKN4075, programming cable for HT series or PR860 radios.   | \$130.00               | \$130.00           |
| 1          | Model H5177, programming software for HT, EX, CDM, & MTX series radios.   | \$299.00               | \$299.00           |
| 10         | Motorola CDM1250, model AAM25KKD9AA2, 45 watt, 64 channel, VHF mobile transceiver, complete with microphone and all hardware necessary for installation.  | \$475.00               | \$4,750.00         |
| 1          | Software - included with H5177 quoted above.  | Included               | Included           |
| 1          | Motorola model AARKN4083, programming cable for CDM1250 radios.   | \$70.00                | \$70.00            |
|            |   | <b>Equipment Total</b> | <b>\$26,158.00</b> |
|            |   | <b>Tax</b>             | <b>Exempt</b>      |
|            |   | <b>Total Cost</b>      | <b>\$26,158.00</b> |

Options:  
 QA00060 Lithium ion 2000mAh rechargeable battery \$35.00 each

# Village Board Agenda Memo

**Date:** June 26, 2012

**To:** Village President and Board of Trustees

**From:** Julia Cedillo, Village Manager *JC*  
Daniel L. McCollum, Chief of Police *DM*  
Philip Kubisztal, Deputy Chief *PK*

**RE:** Purchase of Replacement Batteries for Comm. Center UPS

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## GENERAL BACKGROUND

In 2008 when the Police Department Communications Center was renovated, the Communications Center, Radio Equipment Closet and Telephone Equipment Room were placed under the protection of a Chloride 20 Kva Three-Phase Uninterruptible Power Supply. This industrial UPS provides several benefits in filtering, conditioning and maintaining the electrical power supplied to the dispatch consoles, 9-1-1 equipment and radio systems. The most important function of this device is to provide an uninterruptible supply of line voltage, to prevent the dispatcher's consoles from shutting down and rebooting, during significant events when an electrical power loss to the Municipal Building occurs and there is a momentary gap in power, before the emergency generator starts.

When the UPS device was installed, it was with the understanding that the unit relies upon consumable batteries, which remain in a state of constant charge and seamlessly provide emergency electrical power during the initial loss of Edison power. The life expectancy of these batteries is estimated at 3 to 5 years. These original sets of batteries have now been in service for over 4 years, since the UPS was placed in service in March of 2008. A recent routine preventative maintenance and readiness inspection was performed on the UPS, with the technician reporting that the UPS batteries are starting to show physical signs of distress and are due for complete replacement. PROTECH Services of Lake Bluff, Illinois has performed the routine servicing of our UPS during the last 4 years, as the only Emerson Network Power - Chloride Industrial Systems provider in Northern Illinois, and is a sole source provider.

## DOCUMENTATION

The June 19, 2012 PROTECH Services preventative maintenance field service report and Battery Detail Report recommending complete battery replacement is attached, along with the June 21, 2012 quote from Mr. Russell Tambourine of PROTECH Services in the amount of \$5,137.00 for the replacement of 32 battery jars, model UPS12-100MR.

### **MOTION/ACTION REQUESTED**

Because the dollar amount requested exceeds the spending authority of the Village Manager, this request is being placed on the agenda for the July 10, 2012 Village Board Work Session. If there is consensus to approve this purchase, it will be placed on the Consent Agenda for the July 25, 2012 Regular Village Board Meeting.

### **RECOMMENDATION**

Staff recommends approval of the purchase for replacement, servicing and disposal of 32 battery jars for the Chloride UPS, from PROTECH Services of Lake Bluff, Illinois in the amount of \$5,137.00

# PROTECH SERVICES

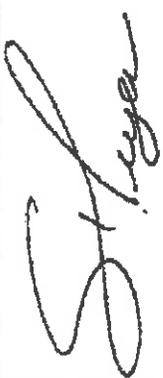
28915 North Herky Drive, Suite 110  
Lake Bluff, Illinois, 60044

## FIELD SERVICE REPORT

TICKET

2767449

For Service Call: 800-728-0392  
FAX: 847-247-4775

|  |   |  |   |
|--|---|--|---|
| SERVICE DATE<br><b>6/19/2012</b>   |   | SITE ID NUMBER<br><b>128881</b>  |   |
| END USER NAME & EQUIPMENT LOCATION<br><b>Village of LaGrange Park</b>  |   | CUSTOMER NAME & ADDRESS OR ALTERNATE CONTACT                                     |   |
| COMPANY: <b>Village of LaGrange Park</b>   |   | COMPANY:   |   |
| ADDRESS: <b>447 N. Catherine Ave</b>   |   | ADDRESS:   |   |
| LOCATION: <b>Mens room closet in basement</b>  |   | LOCATION:  |   |
| CITY: <b>La Grange</b>   |   | CITY:  |   |
| STATE: <b>IL</b>   |   | STATE:   |   |
| CONTACT: <b>Deputy Chief Kubiszt</b>   |   | CONTACT:   |   |
| PHONE: <b>708-352-7711 option 2</b>  |   | PHONE:   |   |
| CELL:  |   | CELL:  |   |
| FAX:   |   | FAX:   |   |
| REASON FOR SITE VISIT<br><b>SOW1 Preventative Maintenance Tag Number 1529997 Chloride CP3020 serial #0817-0206</b> |   | RECOMMENDED / NECESSARY COURSES OF ACTION<br><b>Complete battery replacement</b> |   |
| STATUS (Check all that apply)  |   | SITE INFORMATION   |   |
| ONLINE <input checked="" type="checkbox"/>   | ON BATTERY <input type="checkbox"/>     | MANUFACTURER: <b>chloride</b>  | TYPE: <b>UPS</b>                        |
| MAINTENANCE BYPASS <input type="checkbox"/>  | DEF. BATTERIES <input type="checkbox"/> | MODEL #: <b>C302002AS22NAN (CP3020)</b>  | SIZE: <b>20</b> KVA                     |
| BATTERY STRING VOLTAGE:  | CURRENT:                                | SERIAL #: <b>0817-0206</b>   |   |
| ONLINE <input checked="" type="checkbox"/>   | ON BATTERY <input type="checkbox"/>     | NOMINAL VAC - IN: <b>208</b>   | OUT: <b>208</b>                         |
| MAINTENANCE BYPASS <input type="checkbox"/>  | DEF. BATTERIES <input type="checkbox"/> | BYPASS PANEL MANUFACTURER: <b>Mechanical (UPS bypass)</b>                        |   |
| BATTERY STRING VOLTAGE:  | CURRENT:                                | MODEL #: <b>x</b>  |   |
| SITE / EQUIPMENT CONDITIONS  |   | SERIAL #: <b>x</b>   |   |
| Ventilation alarm  |   | BATTERY TYPE: <b>UPS 12-100MR</b>  |   |
| Filters extremely dirty  |   | CONNECTION: <b>FLAG POST: <input checked="" type="checkbox"/></b>                | RECESSED: <input type="checkbox"/>      |
| Batteries are 4 years old (typical battery life is 3-5 years)  |   | BATTERY QUANTITY: <b>32</b>  | DATE CODE <b>March 2008</b>             |
| Batteries are showing signs of stress and venting around the jar and container                                     |   | BATTERY CABINET: <b>intermittal batteries</b>                                    | CABINET QUANTITY: <b>x</b>              |
|  |   | BATTERY MONITORING SYSTEM: <b>YES: <input checked="" type="checkbox"/></b>       | NO: <input checked="" type="checkbox"/> |
|  |   | ROOM TYPE: <b>Dedicated UPS Room</b>   | ROOM TEMP: <b>75 F</b>                  |
|  |   | REDUNDANCY (PARALLEL OR MODULAR UNITS ONLY): <b>n/a</b>                          |   |
| PERFORMED ACTIONS  |   | EQUIPMENT IDENTIFICATION   |   |
| Recorded all power values  |   | A-B  | B-C                                     |
| Verified all modes of operation: except battery  |   | L1-N   | L2-N                                    |
| Checked all major components for signs of heat/wear  |   | L1-L2  | L1-N                                    |
| Checked all connections of signs of heat/wear/looseness  |   | VAC  | 121                                     |
| Verified all fans - ok   |   | CURRENT  | 6.2                                     |
| Complete visual and mechanical inspection  |   | % LOADED   | 0                                       |
| verified Date and time   |   |  |   |
| reset ventilation alarm for 17808 hrs (2 years)  |   |  |   |
| downloaded logs  |   |  |   |
| Vacuumed out filters   |   |  |   |
| CUSTOMER SIGNATURE   |   | TICKET TYPE  |   |
|                               |   | <b>20</b>  |   |
| FIELD SERVICE ENGINEER   |   | ON-SITE FIELD ENGINEERS  |   |
|  |   | ENGINEER & CELL PHONE NUMBER   |   |
|  |   | TIME IN  |   |
|  |   | TIME OUT   |   |
|  |   | Shawn Pryor 224-279-4062   |   |

**General Comments:**

Manufacturer: C & D  
Model: UPS 12-100MR  
# of Batts: One string of 32  
Date Code: Mar 2008  
Installed: 2008  
Base line: 3685 uOHMS  
Cab Type: internal batteries

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06/19/12 - Cellcorder, IR scan, and complete visual inspection

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VDC ----- 426.8x  
IDC ----- 0.7  
RMS VAC ---- 0.35  
RMS IAC ---- 1.5  
Batt Temp -- 81 F to 84 F

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**RECOMMENDED ACTIONS:**

Complete battery replacement

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# PROTECH SERVICES

Jun 21, 2012

**Deputy Chief Phil Kubisztal**  
VILLAGE OF LAGRANGE PARK  
447 N. CATHERINE AVE.  
LA GRANGE PARK, IL 60526

Phone: 708-352-2151

Quote No. Q01779051

Email: [pkubisztal@lagrangepark.org](mailto:pkubisztal@lagrangepark.org)

We are pleased to submit the following proposal for replacement of your VRLA Battery equipment for your consideration. Please refer to the Scope of Work for specific coverage information. Below is a summary of the service(s) included in this quote.

Site ID: 128881 VILLAGE OF LAGRANGE PARK, 447 N. CATHERINE AVE., LA GRANGE PARK, IL 60526

| Tag #   | Battery Model | Jars | Cabinet Qty |
|---------|---------------|------|-------------|
| 1529998 | UPS12-100MR   | 32   | 1           |

**Select Battery Replacement Option:**

- Total Replacement Price Normal Hours (M-F 8am to 5pm): \$5,137.00
- Total Replacement Price After Hours (M-F 5pm to 8am, and/or all day Saturday): \$5,825.00
- Total Replacement Price Sunday/Holiday: \$6,632.00

(NOT including tax: any tax required must be included in customer purchase order amount)

Payment Terms: Net 30 Days

Signature of this agreement authorizes Protech Services to invoice for services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the customer authorizes and guarantees Protech Services the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Russell Tambourine \_\_\_\_\_ Date

Accepted By:

X Philip Kubisztal \_\_\_\_\_ 03/21/2012  
Customer Signature Required Date

Philip Kubisztal Deputy Chief  
Printed Name Title

**Purchase Order must be assigned to:**

Protech Services  
28915 Herky Rd.  
Unit 110  
Lake Bluff, IL 60044

**Payment remittance address:**

Protech Services  
PO Box 70474  
Chicago, IL 60673

FID# 43-1798453

**PO should be mailed to (or faxed to 847-247-4775):**

Protech Services  
28915 Herky Rd.  
Unit 110  
Lake Bluff, IL 60044

Attn: Russell Tambourine

**Please provide the following information:**

Purchase Order Number: \_\_\_\_\_ \* Phone: 708-352-7711 x210

Billing Contact Person: Deputy Chief Philip Kubisztal Fax #: 708-354-9223

Person Authorizing Payment: Deputy Chief Philip Kubisztal Phone: 708-352-7711 x210

Billing Company Name: Village of LaGrange Park Federal Tax ID # 36-6005954

Billing Address: 447 N. Catherine Avenue

Taxable? Yes  No

Billing City, ST Zip: LaGrange Park, Illinois 60526

If non-taxable, please fax copy of tax exempt certificate

\* If a Purchase Order Number is provided, a hard copy must be included.

**The above-referenced quote for battery replacement includes the following Basic Services:**

**Battery Selection:**

- The battery model listed above or its Liebert approved battery with the same fit, form and function as the battery being replaced.

**Basic Installation Services are limited to:**

- Removal of existing battery string(s)
- Installation of new battery string(s)
- Recycling/Disposal
- Freight: FOB Factory

**Basic Site Requirements for Basic Installation Service:**

- Standard dock delivery that accommodates a standard size semi-truck with an onsite forklift or pallet jack(at least 4,000 lb capacity)
- Inside staging area large enough for the batteries being installed and removed
- Inside, staging area must be within 50' of the dock area
- Battery room/cabinets must be within 200' of the staging area
- Doorways at least 34" in width
- Elevators within easy access and be rated for at least 4,000 lbs

In the event that the customer needs a service or has a site requirement that falls outside of the Battery Selection, Basic Installation Services or Basic Site Requirements listed above, Emerson Network Power, Liebert Services will provide the customer with an additional quote for said Special Installation Services or in response to said Special Site Requirements, and if agreed to by the customer, the customer shall be separately invoiced the additional amounts set forth in the quote. Please notify your salesperson if you require Special Installation Services or have any other Special Site Requirements for which there will be an additional charge.

Special Installation Services and Special Site Requirements for which there will be additional costs and charges include, but are not limited to:

- Inside delivery
- Lift Gate Delivery
- Floor Protection
- Floor Loading Limitations
- Delivery Path Includes Stairways, Ramps or Other Obstructions
- Use of Cranes
- Exclusive labor requirements for deliveries
- Exclusive labor requirements for installations

**\* \* COVERAGE DETAILS \* \***

Parts required to bring equipment back to manufacturers specifications are the responsibility of the customer and billable at the time of the first preventive maintenance visit or service call. All pricing is valid only for service coverage stated and is subject to change if this quote is modified in any way. This quote is valid for 30 days from the date of this quote unless otherwise noted. It is understood that if acceptance of this proposal is acknowledged on the buyer's purchase order, such acceptance will be subject to the terms and conditions of this proposal with the same force and effect as though they were included on the buyer's purchase order.

## SERVICES TERMS AND CONDITIONS

Emerson Network Power Liebert Services, Inc. d/b/a Protech Services is herein referred to as the "Seller" and the customer or person or entity purchasing services ("Services") and parts required for Services ("Parts") from Seller is referred to as the "Buyer." These Services Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope of work, or invoice from Seller relevant to the provision of Services and all documents incorporated by specific reference herein, constitute the complete and exclusive statement of the terms of this agreement ("Agreement") governing the sale of Services and Parts by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of the terms of this Agreement, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Services and Parts will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

**1. PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Services shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Services, whichever occurs first, provided an unconditional authorization from Buyer for the performance of the Services is received and accepted by Seller within such time period. If authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Services. All prices are exclusive of taxes, which are to be borne by Buyer. Unless otherwise specified by Seller, Parts will be furnished at Seller's then prevailing prices.

**2. TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs or Services or costs of production, sale, delivery or shipment of Parts, or which Seller is otherwise required to pay or collect in connection with the provision of Services and Parts, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

**3. TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms of payment are net 30 days from date of Seller's invoice. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this Agreement and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorney's fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future performance of Services or provision of Parts. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue performance of Services and provision of Parts.

**4. SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the performance dates acknowledged or quoted by Seller, all performance dates are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any Parts for which Buyer has not provided shipping instructions and other required information. If the provision of Services or shipment of the Parts is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Unless otherwise specified by Seller, for sales of Parts in which the end destination of the Parts is outside of the United States, risk of loss and legal title to the Parts shall transfer to Buyer immediately after the Parts have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title shall pass from Seller to Buyer upon delivery and receipt of Parts by carrier at Seller's shipping point. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) when delivered by the individual providing the Services, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

**5. LIMITED WARRANTY:** Subject to the limitations of Section 8, Seller warrants that it will perform the Services as described in this Agreement and will exercise all reasonable skill, care and due diligence in the performance of the Services and shall perform the Services in accordance with professional practice. Seller warrants that all Services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of Services. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of Parts. EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTIES SET FORTH IN THIS SECTION 5 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE SERVICES AND PARTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unstable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller that is used in (i) the selection of the Services and/or Parts and (ii) the preparation of Seller's quotation and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Services or Parts, either alone or in combination with other parts.

**6. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, EITHER CORRECT PERFORMANCE FOR THAT PORTION OF THE SERVICES FOUND BY SELLER TO BE DEFECTIVE OR REFUND OF THE PRICE PAID FOR SERVICES.**

**SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC SERVICES OR PARTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**

**BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Parts and/or Services is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

**7. INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: Worker's Compensation in accordance with the statutory requirements of the state in which the work is performed. Employer's Liability with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. Commercial General Liability (CGL) for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage, which is self-insured. Automobile Liability Insurance that covers usage of all owned, non-owned and leased vehicles and which is self-subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability. Seller may self-insure for coverage. Provisions regarding waiver of subrogation, additional insured status, or the primary nature of Seller's insurance shall be limited to the extent of Seller's negligent acts or omissions. Additional information related to the insurance coverage provided by Seller can be found at [www.marsh.com/moi?client=0900](http://www.marsh.com/moi?client=0900).

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

**8. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requisites, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances; acts or omissions of Buyer, including, without limitation, those specified in Section 19; or any events or causes beyond Seller's reasonable control. Performance of Services and delivery of Parts may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Services or Parts or to obtain material used directly or indirectly in the manufacture of the Parts is hindered, limited or made impracticable due

to causes set forth in the preceding paragraph, Seller may delay performance of Services or allocate its available supply of the Parts among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**9. CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred and to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

**10. CHANGES:** Buyer may request changes or additions to the Services. In the event such changes or additions are accepted by Seller, Seller may revise the price and performance dates. Seller reserves the right to change designs and specifications for the Parts without prior notice to Buyer, except with respect to Parts being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Parts manufactured prior to the date of such change.

**11. NUCLEAR/MEDICAL: SERVICES AND PARTS SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS.** Buyer accepts Services and Parts with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

**12. ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment or delegation, without such consent, shall be void.

**13. INSPECTION:** Buyer shall have ten (10) days from the date of completion of each portion of the Services to inspect the Services, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Services are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Services.

**14. BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates for any of the following: a) any Services not specified in Seller's quotation, Seller's order acknowledgment, Seller's scope of work, or other documents referenced herein and therein; b) any Services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller Service personnel will provide supervision only and the cost of such union or contractor labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features); (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner); (iii) failure to operate equipment in accordance with applicable specifications; and (iv) catastrophe, accident, or other cause external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein; or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

**15. DRAWINGS:** Seller's documentation, prints, and drawings ("Documents") (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents in connection with the Services and Parts.

**16. EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States, and the jurisdictions in which the Seller and Buyer are established or from which Services and Parts may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export Parts in violation of such applicable laws, regulations, orders or requirements.

**17. NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Services are being provided to Buyer and for a period of one (1) year after the last provision of Services.

**18. GENERAL PROVISIONS:** These Services Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Services Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Services Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement. Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documents containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth or default of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any prior breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in the county of Franklin, state of Ohio, and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

**19. ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Services are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Services. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform means to shut-off and secure electric power to the equipment as requested by Buyer. Buyer shall provide the obligation to remove or dispose of Parts or equipment specifically agreed upon in Seller's scope of work. Seller is under no obligation to immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous materials or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller performance of Services. Buyer shall appoint a representative familiar with the site and the nature of the Services to be performed by Seller to be accessible at all times or reassigning any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

**20. INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by and to the party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims; or the indemnifying party's obligations herein shall be deemed waived.

# Village Board Agenda Memo

Date: July 5, 2012

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director *BSM*  
Julia Cedillo, Village Manager *JC*

RE: South La Grange Road Water Main Replacement Grant

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**PURPOSE:** To request authorization at the July Village Board Meeting to authorize the Village Manager to execute the Project Partnership Agreement.

**BACKGROUND:** The Fiscal Year 2012/13 Water Fund Budget includes \$890,000 (\$115,000 for engineering and \$775,000 for construction) for the South La Grange Road Water Main. The ACOE has allocated \$600,000 for this project, of which they retain \$100,000 to fund project management.

The project will replace the six inch water main from Brewster to Oak with a ten inch water main. In order to meet federal regulations related to the grant and maximize the dollars available to the Village, it is necessary to break the project into two segments. The first segment will be done through the ACOE's grant. The second segment will be bid and overseen by the Village using the remaining water funds budgeted for this project. The first segment runs from Brewster to Woodlawn. The second segment starts at Woodlawn and ends at Oak. The water main will be under the sidewalk on La Grange Road. Daily lane closures will occur between 9:00 A.M. and 3:00 P.M.

The ACOE is coordinating with Hancock Engineering to finalize the engineering plans and prepare the bid specifications. The Solicitation Notice is scheduled to be issued in Late July with a Pre-Bid Conference to take place on August 14<sup>th</sup>. The bid opening and award of contract would then take place in September. Construction would commence in Spring 2013. Following the ACOE's Bid Award, the Village will issue the bid documents for our segment of the project (Brewster to Woodlawn) and our construction would follow the ACOE's segment.

This project will benefit La Grange Park residents by improving area water flows available for fire protection, replacing aging infrastructure and reducing the risk for water main breaks that can impact La Grange Road traffic.

**WORKSHOP ACTION REQUESTED:** This item is for discussion purposes and is seeking approval to place on the agenda for approval at the July Village Board Meeting an agenda item authorizing the Village Manager to execute the Project Partnership Agreement.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
VILLAGE OF LA GRANGE PARK, COOK COUNTY, ILLINOIS  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE  
FOR THE  
VILLAGE OF LA GRANGE PARK, ILLINOIS  
LAGRANGE ROAD WATER MAIN REPLACEMENT PROJECT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Chicago District and the Village of La Grange Park, Cook County, Illinois (hereinafter the "Non-Federal Sponsor"), represented by the Village Manager.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for designated water-related environmental infrastructure and resource protection and development projects pursuant to Section 219 of the Water Resources Development Act of 1992, Public Law 102-580, as amended (hereinafter the "Section 219 Program");

WHEREAS, the provision of design and construction assistance for the water-related infrastructure and resource protection and development (hereinafter the "Section 219 Assistance Project") at Cook County, Illinois was authorized by Section 219(f)(54) of the Water Resources Development Act of 1992, Public Law 102-580, as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the Village of La Grange Park, LaGrange Road Water Main Replacement Project (an element of the Section 219 Assistance Project and hereinafter the "*Project*", as defined in Article I.A. of this Agreement);

WHEREAS, Section 219 of the Water Resources Development Act of 1992, Public Law 102-580, as amended, specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 219(f)(54) of the Water Resources Development Act of 1992, Public Law 102-580, as amended, provides that \$35,000,000 in Federal funds is authorized for design and construction assistance for the Section 219 Assistance Project;

WHEREAS, the Non-Federal Sponsor intends to provide a design or portion thereof, at no cost to the *Project*, for use by the Government in constructing the *Project* if such design, or portion thereof, is determined by the Government to be acceptable for such purpose;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean replacing approximately 1400 feet of six inch waterline with larger diameter ten inch pipe to improve water flow and pressure within the Village of La Grange Park in Cook County, Illinois as generally described in the Village of La Grange Park Waterline Improvements Project Letter Report, dated June 22, 2012 and approved by U.S. Army Engineer, Chicago District on June 25, 2012.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's design costs not incurred pursuant to any other agreement for the *Project*; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.4. of this Agreement; the Government's costs of review and modifications to the design, or any portion thereof, provided by the Non-Federal Sponsor in accordance with Article II.A.1. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, and *relocations* for which the Government affords credit in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; and the

Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement. The term also shall not include any costs incurred by the Non-Federal Sponsor, its contractors, or others on behalf of the Non-Federal Sponsor for preparing or providing a design, or any portion thereof, for the *Project* in accordance with Article II.A.1. of this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, and the performance of *relocations*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

I. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

J. The term “*Section 219 Project Limit*” shall mean the statutory limitation on the Government’s financial participation in the design and construction of the Section 219 Assistance Project as specified in Section 219(f) of the Water Resources Development Act of 1992, Public Law 102-580, as amended. As of the effective date of this Agreement, such limitation is \$35,000,000.

K. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project* utilizing the portion of the design provided by the Non-Federal Sponsor that the Government determines to be acceptable in accordance with paragraph A.1. of this Article, and applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor expeditiously shall prepare and provide to the Government a design, or the portion thereof that the Non-Federal Sponsor has specified in writing that it intends to provide, for use in constructing the *Project*. The Government shall review such design, or portion thereof, to ensure compliance with applicable Federal laws, regulations, and policies including those related to bidability, constructability, operability and environmental acceptability. The Government, in its sole discretion, may accept, modify, or reject such design, or any portion thereof, for use in constructing the *Project*. Prior to commencement of review by the Government of such design, the Non-Federal Sponsor shall provide a written certification and warranty to the Government that the design provided by the Non-Federal Sponsor is free from any legal encumbrances and use restrictions, including but not limited to, any intellectual property rights and outstanding licensing requirements.

2. If the Non-Federal Sponsor fails to provide a design, or the specified portion thereof, for the *Project*, or the Government determines that the design, or any portion thereof, provided by the Non-Federal Sponsor is inadequate for any reason, the Government, subject to the availability of funds and the *Section 219 Project Limit*, may design the *Project* or complete the design of the *Project*.

3. The Government shall not issue the solicitation for the first contract for design of the *Project*, commence design of the *Project* using the Government’s own forces, or commence review of a design, or any portion thereof, provided by the Non-Federal Sponsor in accordance with paragraph A.1. of this Article, until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

4. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA") (42 U.S.C. 4321–4370e). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

5. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

6. At the time the U.S. Army Engineer, Chicago District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

7. Notwithstanding paragraph A.5. of this Article, if the award of any contract for design or construction of the *Project*, or continuation of design or construction of the *Project* using the Government's own forces, would result in *total project costs* exceeding \$851,000, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for design or construction of the *Project*, and continuation of design or construction of the *Project* using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Project* or the continuation of design or construction of the *Project* using the Government's own forces, but in no event shall the award of contracts or the continuation of design or construction of the *Project* using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design or construction of the *Project* using the

Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with design or construction of the *Project* using the Government's own forces.

B. The Non-Federal Sponsor shall contribute 25 percent of *total project costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 25 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement that do not exceed 25 percent of *total project costs*; and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the *Section 219 Project Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 25 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 25 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement that do not exceed 25 percent of *total project costs*; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

4. The Government shall not include in *total project costs* any costs that were incurred by the Non-Federal Sponsor, its contractors, or others on behalf of the Non-Federal Sponsor for preparing or providing a design, or any portion thereof, to the Government in accordance with paragraph A.1. of this Article and the Non-Federal Sponsor shall not be entitled to any credit, refund, or reimbursement for such costs.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$2,181,000 of Federal funds have been provided by Congress for the Section 219 Assistance Project of which \$638,250 is currently projected to be available for the *Project*. The Government makes

no commitment to request Congress to provide additional Federal funds for the Section 219 Assistance Project or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 219 Assistance Project has reached the *Section 219 Project Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 219 Project Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 219 Project Limit*, the parties shall terminate this Agreement and proceed in accordance with Article XIII.E. of this Agreement.

D. When the District Engineer determines that the entire *Project*, or a portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor,

and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the completed portion thereof as the case may be, in accordance with Article VIII of this Agreement.

F. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way or performance of *relocations* for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for

construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement and for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement. However, no amount shall be included in *total project costs* and no credit shall be afforded for the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs* and no credit shall be afforded for the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law. Finally, no amount shall be included in *total project costs*, no credit shall be afforded pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and include in *total project costs* the amount of such value that does not exceed 25 percent of *total project costs*.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded in accordance with this Article and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective

date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the

Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Illinois would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

4. Any credit afforded under the terms of this Agreement for the value of *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, or performs *relocations*, the value to be included in *total project costs* and the amount of credit to be

afforded in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.H.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

## ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally

oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, and the value included in *total project costs* for lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$851,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$211,750; the *non-Federal proportionate share* is projected to be 24.9 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; the value included in *total project costs* for lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement is projected to be \$1,000; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 1, 2012 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.B.3. of this Agreement; the value included in *total project costs* for lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement; and the Government's total financial obligations for additional work

incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.B.2. and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for: (a) issuance of the solicitation for the first contract for review of the design, or portion thereof, provided by the Non-Federal Sponsor; (b) commencement of review of the design, or portion thereof, provided by the Non-Federal Sponsor using the Government's own forces; (c) issuance of the solicitation for the first contract for design of the *Project*; or (d) commencement of design of the *Project* using the Government's own forces, whichever is scheduled to first occur, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.2. and Article XVII.B.3. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, CHICAGO" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction as financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or

eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, CHICAGO" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 219 Project Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, CHICAGO" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

## ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

## ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books,

records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C.2. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.C. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.2. and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:  
Village Manager  
Village of La Grange Park  
447 N. Catherine Avenue  
La Grange Park, Illinois 60526

If to the Government:  
U.S. Army Engineer, Chicago District  
111 N. Canal St., Ste. 600  
Chicago, IL 60606

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other elements of the Section 219 Assistance Project shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 219 Assistance Project. None of the costs of data recovery activities associated with historic preservation up to such one percent limit shall be included in *total project costs*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for the Section 219 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

C. If, during its performance of *relocations* in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the U.S. Army Engineer, Chicago District.

DEPARTMENT OF THE ARMY

VILLAGE OF LA GRANGE PARK

BY: \_\_\_\_\_  
FREDERIC A. DRUMMOND, JR  
COL, EN  
Commanding

BY: \_\_\_\_\_  
JULIA CEDILLO  
Village Manager  
Village of La Grange Park, Illinois

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the Village of La Grange Park, Cook County, Illinois, that the Village of La Grange Park, Cook County, Illinois is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Village of La Grange Park, Cook County, Illinois in connection with the Village of La Grange Park, LaGrange Road Water Main Replacement Project , and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Village of La Grange Park, Cook County, Illinois have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_  
Julia Cedillo  
Village Manager  
Village of La Grange Park, Illinois

DATE: \_\_\_\_\_

## VILLAGE BOARD AGENDA MEMO

**DATE:** July 5, 2012

**TO:** Village President and Board of Trustees

**FROM:** Rick Radde, Chief Water Operator *RR*  
Brendan McLaughlin, Director of Public Works *BSM*  
Julia Cedillo, Village Manager *JC*

**RE:** New Fire Hydrants/Hydrant Modification Kits – Open Purchase Order

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### GENERAL BACKGROUND

The Public Works Department is seeking approval from the Board to have an open Purchase Order with HD Supply Waterworks, for the purchase of new fire hydrants and/or fire hydrant modification kits. The Purchase Order would have a "not to exceed" total amount of \$40,000.

The Department budgeted \$40,000 (#03-44-5-472, Water Distribution – Supplies, Materials for Water Mains) in the FY2012-2013 Budget for hydrant purchases.

In 2009 the PW Department purchased the necessary tools to allow the rebuilding of current fire hydrants, instead of replacing them with new fire hydrants. By rebuilding the fire hydrants the Village is able to save a substantial amount of money in both hardware and labor for the installation.

Currently the Department is in need of 10 hydrant modification kits, with each kit costing approximately \$2,100 to \$2,365 (depending on the type of hydrant), to upgrade leaking fire hydrants. An open Purchase Order, not to exceed \$40,000, would allow the Department to purchase modification kits throughout the 2012-2013 budget year, instead of storing a large number on-site. This open Purchase Order would also allow the Department to purchase new fire hydrants, should it become necessary (caused by accidents where the hydrant cannot be repaired).

HD Supply Waterworks is the Village's vendor for all water and sewer parts and supplies.

### MOTION / ACTION REQUESTED

Motion approving an Open Purchase Order, not to exceed a total amount of \$40,000.00, with HD Supply Waterworks for the purchase of fire hydrant modification kits or new fire hydrants.

### RECOMMENDATION

Staff recommends the approval from the Board of an Open Purchase Order, not to exceed \$40,000, with HD Supply Waterworks for the purchase of fire hydrant modification kits or new fire hydrants.

# Memorandum

**TO:** Trustee Patricia Rocco, Chairman  
Finance Committee

**FROM:** Julia Cedillo, Village Manager

**DATE:** July 19, 2012

**RE:** *First Half & Second Half of July 2012*

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Payments for operating expenses from the various funds for *first & second half of July 2012* includes:

|                        | <u><i>First Half of July</i></u> | <u><i>Second Half of July</i></u> |
|------------------------|----------------------------------|-----------------------------------|
| General Fund           | \$ 111,334.70                    | \$ 105,638.07                     |
| 2004 Debt Service Fund | - 0 -                            | - 0 -                             |
| Water Fund             | 167,299.60                       | 16,099.55                         |
| Motor Fuel Fund        | - 0 -                            | - 0 -                             |
| Sewer Fund             | 9,703.99                         | 1,274.41                          |
| Emergency Telephone    | 2,374.95                         | 1,205.02                          |
| Trust & Agency Fund    | 3,659.56                         | 6,695.94                          |
| Working Cash Fund      | - 0 -                            | - 0 -                             |
| Capital Projects Fund  | - 0 -                            | 1,433.80                          |
| Total                  | \$ 294,372.80                    | \$ 132,346.79                     |

Payment for salaries, deductions, and employer payroll costs for the *first & second half of July 2012* includes a payroll disbursement from:

|                | <u><i>First Half of July</i></u> | <u><i>Second Half of July</i></u> |
|----------------|----------------------------------|-----------------------------------|
| General Fund   | \$ 166,600.87                    | \$ 143,267.60                     |
| Water Fund     | 10,118.80                        | 11,956.21                         |
| Sewer Fund     | 4,392.91                         | 3,953.96                          |
| Trust & Agency | - 0 -                            | - 0 -                             |
| Total          | \$ 181,112.58                    | \$ 159,177.77                     |

# **Administration Committee**

**Susan Storcel, Chairwoman**

**Rimas Kozica**

**Patricia Rocco**

## **Village Board Agenda Memo**

**Date:** July 18, 2012

**To:** Village President and Board of Trustees

**From:** Julia A. Cedillo, Village Manager   
Daniel L. McCollum, Chief of Police 

**Re:** Local Debt Recovery Program

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### **GENERAL BACKGROUND**

On Friday July 13, 2012, Mr. Matt Ryan of Illinois State Comptroller Judy Baar Topinka's Office gave a presentation in La Grange Park on the Local Debt Recovery Program. This program provides a significant opportunity for units of local government to recover funds they are owed by Illinois residents and have been unable to collect. In the case of La Grange Park, the most difficult debts to collect are unpaid parking fines and ordinance violations.

If La Grange Park joined the program, it would provide a valuable resource in collecting fines/debts owed to the Village going back as long as 7 years. The monies are deducted from state payments owed to individuals in the form of income tax payments and lottery winnings. There is no fee charged to La Grange Park to be a part of these efforts. An intergovernmental agreement must be signed by both parties to take advantage of this opportunity.

Village Attorney Cathy Keating has reviewed the proposed agreement and approved it as to form.

Mr. Matt Ryan of the Illinois Comptroller's Office will make a presentation at the July 24, 2012 Village Board Meeting.

There is a short window of opportunity for La Grange Park to take advantage of the next sign-up period. If the President and Board of Trustees believe that the Village of La Grange Park would benefit from participating in the Local Debt Recovery Program, the intergovernmental agreement would be placed on the August 14, 2012 Work Session as an action item for approval on that date.

### **MOTION/ACTION REQUESTED**

Following Mr. Ryan's presentation and the Board's review of this program, if deemed advisable by the President and Board of Trustees, the intergovernmental agreement and an accompanying resolution would be placed on the August 14, 2012 Village Board Agenda as an action item.

Agenda Memo  
Local Debt Recovery Program  
July 18, 2012  
Page 2

### **DOCUMENTATION**

- Program description
- Intergovernmental Agreement
- Draft resolution for August 14, 2012 Village Work Session Meeting



STATE OF ILLINOIS  
COMPTROLLER  
JUDY BAAR TOPINKA

**A PARTNERSHIP WITH LOCAL GOVERNMENTS**

# LOCAL DEBT RECOVERY PROGRAM

## THE PROGRAM

Under a measure signed into law in December of 2011, the Local Debt Recovery Program will allow the Illinois Office of the Comptroller to enter into an Intergovernmental Agreement (IGA) with counties, municipalities, school districts, community colleges, public universities and other local governments to collect unpaid debt such as parking tickets, fines, fees, and other types of outstanding obligations.

## HOW IT WORKS

- Prior to the Comptroller issuing a state tax refund, commercial payment, lottery winning, retirement or payroll check, the amount owed to the local government plus an administrative fee will be deducted and deposited in the Comptroller's Local Debt Recovery Trust Fund.
- The debtor will be provided with a written notice of the action and has 60 days to protest the deduction with the Illinois Office of the Comptroller.
- If no protest is made at the end of the 60 day period, the amount owed will be transferred to the local unit of government.
- Other payments will be processed as protests are adjudicated.
- Payments to local units of government will be made on a weekly basis and will be consolidated to include all debts owed to the unit of government for that week.
- The same laws governing involuntary withholdings apply to the Local Debt Recovery Program.

Contact the Illinois Office of the Comptroller's Government and Community Affairs Department for more information at (312) 814-2488.

# LOCAL DEBT RECOVERY PROGRAM

## FREQUENTLY ASKED QUESTIONS

**Is there a maximum amount that can be deducted from tax refunds, commercial payments and state payroll checks?**

100% of debt owed can be deducted from tax refunds, lottery winnings and commercial payment checks.

However, if a local debt exists from an individual who receives a state payroll check, no more than 25% of the employee's disposable income (i.e. net income) can be deducted.

Local governments may submit claims for the entire amount owed and the Illinois Office of the Comptroller will compute the amount available for debt recovery.

**Are any types of state checks exempt from the Local Debt Recovery Program?**

Yes, Senior Circuit Breaker, Secretary of State Refund, Illinois Pre-Paid Tuition Trust Fund payments are exempt from the Local Debt Recovery Program as well as any other payments exempt by statute.

**Is there a cost to the local government for participating in the Local Debt Recovery program?**

No. The program is funded by an administrative fee paid by the individual who owes the debt.

The program will involve some of the local government's staff time to submit debtor records to the Office of the Comptroller and maintain debtor records after debt as been recovered.

**Will Local Debt Recovery Program payments be late like other State of Illinois payments?**

No. Once a debt is deducted from a state payment, the amount is transferred into the Local Debt Recovery Trust Fund where it will be held for 60 days during the appeals process. If no appeal is made, the amount will be transferred out of the fund at the end of the 60-day period. Payments will be made on a weekly basis.

If an appeal is made and the debtor's appeal is rejected, the amount owed to the local government will be transferred out of the Local Debt Recovery Trust Fund after the determination on the appeal is made.

# LOCAL DEBT RECOVERY PROGRAM

## FREQUENTLY ASKED QUESTIONS

### **Is there an order of who gets paid first when multiple debts exist?**

If an individual or entity owes multiple units of government, state and federal government debts are paid first. Following that, any debts owed to local governments will be paid on a "first in, first out" manner based on the date that a debt record was placed on the IOC system (through the Maintenance Add process).

### **Can debt collection agencies assist municipalities with managing debt records for the Comptroller's Local Debt Recovery Program?**

While all information (debt records, etc) provided to the Illinois Office of the Comptroller must come from the Local Claiming Entity (LCE); a collection agency can assist the LCE with preparation and maintenance of debt records.

### **Can a municipality provide the collection agency phone number in place of a municipal phone number if debtors have questions about a specific debt?**

No. The phone number can't be a collection agency line. It needs to be a customer service line within the LCE office.

# LOCAL DEBT RECOVERY PROGRAM

## STATUTE: PA 097-0632

**Public Act 097-0632**

**(HB0384 Enrolled)**

**AN ACT concerning State government.**

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The State Comptroller Act is amended by changing Section 10.05 and by adding Section 10.05d as follows:

(15 ILCS 405/10.05) (from Ch. 15, par. 210.05)

Sec. 10.05. Deductions from warrants; statement of reason for deduction. Whenever any person shall be entitled to a warrant or other payment from the treasury or other funds held by the State Treasurer, on any account, against whom there shall be any then due and payable account or claim in favor of the State, or to the United States upon certification by the Secretary of the Treasury of the United States, or his or her delegate, pursuant to a reciprocal offset agreement under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986, or a unit of local government, a school district, or a public institution of higher education, as defined in Section 1 of the Board of Higher Education Act, upon certification by that entity then due and payable, the Comptroller, upon notification thereof, shall ascertain the amount due and payable to the State, or to the United States, the unit of local government, the school district, or the public institution of higher education, as aforesaid, and draw a warrant on the treasury or on other funds held by the State Treasurer, stating the amount for which the party was entitled to a warrant or other payment, the amount deducted therefrom, and on what account, and directing the payment of the balance; which warrant or payment as so drawn shall be entered on the books of the Treasurer, and such balance only shall be paid.

The Comptroller may deduct any one or more of the following:

(i) the entire amount due and payable to the State or may deduct a portion of the amount due and payable to the State in accordance with the request of the notifying agency;

# LOCAL DEBT RECOVERY PROGRAM

## STATUTE: PA 097-0632

(ii) , and may deduct the entire amount due and payable to the United States, or may deduct a portion of the amount due and payable to the United States, in accordance with a reciprocal offset agreement under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986; or

(iii) the entire amount due and payable to the unit of local government, school district, or public institution of higher education or a portion of the amount due and payable to that entity in accordance with an intergovernmental agreement authorized under this Section and Section 10.05d. No request from a notifying agency, or from the Secretary of the Treasury of the United States, a unit of local government, a school district, or a public institution of higher education for an amount to be deducted under this Section from a wage or salary payment, or from a contractual payment to an individual for personal services, shall exceed 25% of the net amount of such payment. "Net amount" means that part of the earnings of an individual remaining after deduction of any amounts required by law to be withheld.

For purposes of this provision, wage, salary or other payments for personal services shall not include final compensation payments for the value of accrued vacation, overtime or sick leave. Whenever the Comptroller draws a warrant or makes a payment involving a deduction ordered under this Section, the Comptroller shall notify the payee and the State agency that submitted the voucher of the reason for the deduction and he or she shall retain a record of such statement in his or her records. As used in this Section, an "account or claim in favor of the State" includes all amounts owing to "State agencies" as defined in Section 7 of this Act.

However, the Comptroller shall not be required to accept accounts or claims owing to funds not held by the State Treasurer, where such accounts or claims do not exceed \$50, nor shall the Comptroller deduct from funds held by the State Treasurer under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act or for payments to institutions from the Illinois Prepaid Tuition Trust Fund (unless the Trust Fund moneys are used for child support). The Comptroller and the Department of Revenue shall enter into an interagency agreement to establish responsibilities responsibility, duties, and procedures relating to deductions from lottery prizes awarded under Section 20.1 of the Illinois Lottery Law.

# LOCAL DEBT RECOVERY PROGRAM

## STATUTE: PA 097-0632

The Comptroller may enter into an intergovernmental agreement with the Department of Revenue and the Secretary of the Treasury of the United States, or his or her delegate, to establish responsibilities, duties, and procedures relating to reciprocal offset of delinquent State and federal obligations pursuant to subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986. The Comptroller may enter into intergovernmental agreements with any unit of local government, school district, or public institution of higher education to establish responsibilities, duties, and procedures to provide for the offset, by the Comptroller, of obligations owed to those entities. (Source: P.A. 97-269, eff. 1-1-12.)

(15 ILCS 405/10.05d new)

Sec. 10.05d. Deductions for delinquent obligations owed to units of local government, school districts, and public institutions of higher education. Pursuant to Section 10.05 and this Section, the Comptroller may enter into intergovernmental agreements with a unit of local government, a school district, or a public institution of higher education in order to provide for (i) the use of the Comptroller's offset system to collect delinquent obligations owed to that entity and (ii) the payment to the Comptroller of a processing charge of up to \$15 per transaction for such offsets. The Comptroller shall deduct, from a warrant or other payment described in Section 10.05, in accordance with the procedures provided therein, its processing charge and the amount certified as necessary to satisfy, in whole or in part, the delinquent obligation owed to the unit of local government, school district, or public institution of higher education, as applicable. The Comptroller shall provide the unit of local government, school district, or public institution of higher education, as applicable, with the address to which the warrant or other payment was to be mailed and any other information pertaining to each person from whom a deduction is made pursuant to this Section. All deductions ordered under this Section and processing charges imposed under this Section shall be deposited into the Comptroller Debt Recovery Trust Fund, a special fund that the Comptroller shall use for the collection of deductions and processing charges, as provided by law, and the payment of deductions and administrative expenses, as provided by law.

# LOCAL DEBT RECOVERY PROGRAM

## STATUTE: PA 097-0632

Upon processing a deduction, the Comptroller shall give written notice to the person subject to the offset. The notice shall inform the person that he or she may make a written protest to the Comptroller within 60 days after the Comptroller has given notice. The protest shall include the reason for contesting the deduction and any other information that will enable the Comptroller to determine the amount due and payable. The intergovernmental agreement entered into under Section 10.05 and this Section shall establish procedures through which the Comptroller shall determine the validity of the protest and shall make a final disposition concerning the deduction. If the person subject to the offset has not made a written protest within 60 days after the Comptroller has given notice or if a final disposition is made concerning the deduction, the Comptroller shall pay the deduction to the unit of local government, school district, or public institution of higher education, as applicable, from the Comptroller Debt Recovery Trust Fund.

Section 10. The Illinois Income Tax Act is amended by changing Section 911.3 as follows:

(35 ILCS 5/911.3)

Sec. 911.3. Refunds withheld; order of honoring requests. The Department shall honor refund withholding requests in the following order:

- (1) a refund withholding request to collect an unpaid State tax;
- (2) a refund withholding request to collect certified past due child support amounts under Section 2505-650 of the Department of Revenue Law of the Civil Administrative Code of Illinois;
- (3) a refund withholding request to collect any debt owed to the State;
- (4) a refund withholding request made by the Secretary of the Treasury of the United States, or his or her delegate, to collect any tax liability arising from Title 26 of the United States Code;
- (4.5) a refund withholding request made by the Secretary of the Treasury of the United States, or his or her delegate, to collect any nontax debt owed to the United States as authorized under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986;

# LOCAL DEBT RECOVERY PROGRAM

## **STATUTE: PA 097-0632**

- (4.6) a refund withholding request to collect any debt owed to a unit of local government, school district, or public institution of higher education collected under an intergovernmental agreement entered into under Sections 10.05 and 10.05d of the State Comptroller Act;
- (5) a refund withholding request pursuant to Section 911.2 of this Act; and (6) a refund withholding request to collect certified past due fees owed to the Clerk of the Circuit Court as authorized under Section 2505-655 of the Department of Revenue Law of the Civil Administrative Code of Illinois. (Source: P.A. 97-269, eff. 1-1-12.)

Section 15. "An Act concerning State government", approved August 8, 2011, Public Act 97-269, is amended by adding Section 99 as follows:

(P.A. 97-269, Sec. 99 new)

Sec. 99. Effective date. This Act (Public Act 97-269) takes effect on the effective date of this amendatory Act of the 97th General Assembly or January 1, 2012, whichever is earlier.

Section 99. Effective date. This Act takes effect upon becoming law.

# LOCAL DEBT RECOVERY PROGRAM

## Local Claiming Entity Application

### INSTRUCTIONS

This form should be completed by the Local Claiming Entity ("LCE"), in cooperation with Office of Government and Community Affairs ("OGCA"). This form must be completed and processed *prior* to acceptance of any files, including test files, for participation in the Local Debt Recovery Program ("LDRP"). All fields above the SYSTEMS ADMINISTRATION USE ONLY fields are required. The LOCAL ENTITY NAME, LOCAL ENTITY DIVISION NAME, and ADDRESS FOR CLAIMING AGENCY PAYMENTS fields will be used for both the consolidated payments to the LCE and the notification letter to the debtor when an offset occurs. Upon completion, send form to OGCA staff. A separate "Local Claiming Entity ShareFile User Access" form is also required.

**IMPORTANT:** You must complete a separate form for each division. There must be separate divisions for debt where the Taxpayer Identification Number ("TIN") is known and debt where the TIN is not known. An LCE can have up to 89 divisions.

LOCAL ENTITY NAME: (30 characters maximum)

LOCAL ENTITY DIVISION NAME: (30 characters maximum)

TIN KNOWN FOR ALL DEBTOR RECORDS

Yes, TIN Known  No, TIN Not Known

ADDRESS FOR CLAIMING AGENCY PAYMENTS:

Street

City

State

ZIP code

TELEPHONE NUMBER ON DEBTOR LETTERS: (no extensions)

TYPE OF PAYMENTS: (IOC will provide direct deposit form if EFT)

Hard-Copy Check  Direct Deposit (EFT)

TESTING CONTACT NAME:

TESTING CONTACT PHONE #:

TESTING CONTACT EMAIL ADDRESS:

TESTING CONTACT BUSINESS ADDRESS:

PRODUCTION CONTACT NAME:

PRODUCTION CONTACT PHONE #:

PRODUCTION CONTACT EMAIL ADDRESS:

PRODUCTION CONTACT BUSINESS ADDRESS:

ADJUDICATION CONTACT NAME:

ADJUDICATION CONTACT PHONE #:

ADJUDICATION CONTACT EMAIL ADDRESS:

Has a review of LCE's protest process been completed?

(Must be completed before LCE's debt can be added to the IOC system.)

Yes  No

### SYSTEMS ADMINISTRATION USE ONLY

LOCAL ENTITY IOC-ASSIGNED NUMBER:

VENDOR NUMBER:

Development | AGC2  ORG2  FGY2  VEN2  CLAT  LRMT   
Production | AGC2  ORG2  FGY2  VEN2  CLAT  LRMT  ShareFile

**Local Entity Division Name Table**  
**Local Debt Recovery**

**Municipalities Division Name's**

Municipal Violations and Fines

Parking and Red Light Fines

Adm. Hearing Judgments

Municipal Fines

Municipal Violations

Police and EMS Billing

Water and Sewer Bills

Business Loan Repayment

Code Enforcement

Police Department

Parking Tickets

**Colleges Division Names**

Tuition and Fees

Tuition and Fees (ns)

Student Balances

Institutional Fees

**Hospital Division Names**

Medical Debt

Medical Debt (ns)

**INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE ILLINOIS OFFICE OF THE COMPTROLLER  
AND  
THE VILLAGE OF LAGRANGE PARK, COOK COUNTY, ILLINOIS  
REGARDING ACCESS TO THE COMPTROLLER'S LOCAL DEBT RECOVERY  
PROGRAM**

This Intergovernmental Agreement (“the Agreement”) is hereby made and entered into as of the date of execution by and between the Illinois Office of the Comptroller (hereinafter “IOC”) and the Village of LaGrange Park, (hereinafter “the local unit”), in order to provide the named local unit access to the Local Debt Recovery Program for purposes of collecting both tax and nontax debts owed to the named local unit. Each of the parties hereto is a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act [5 ILCS 220/2].

**WHEREAS**, both the State of Illinois and the local unit have a responsibility to collect debts owed to its respective public bodies;

**WHEREAS**, IOC operates a system, known as the Comptroller’s Offset System (hereinafter, “the System”), for collection of debt owed the State by persons receiving payments from the State;

**WHEREAS**, the Illinois General Assembly specifically provided for the ability of the local unit to utilize the System when it amended Section 10.05 and added Section 10.05d to the State Comptroller Act [P.A. 97-632; 15 ILCS 405/10.05 and 10.05d];

**WHEREAS**, IOC and the local unit are empowered under the Illinois Constitution [Ill. Const., Art. VII, Sec. 10], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Section 10.05d of the State Comptroller Act (hereinafter, “the Act”) [15 ILCS 405/10.05d] to contract with each other in any manner not prohibited by law;

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**Article I – Purpose**

The purpose of the Agreement between the IOC and the local unit is to establish the terms and conditions for the offset of the State’s tax and nontax payments in order to collect tax and nontax debts owed to the local unit.

**Article II – Authority**

The authority for State payment offset is granted under Section 10.05 of the Act [15 ILCS 405/10.05] and the authority for entering into this Agreement is granted under Section

10.05d of the Act [15 ILCS 405/10.05d], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Article VII of the Illinois Constitution [Ill. Const., Art. VII, Sec. 10].

### **Article III – State Payment Offset Requirements and Operations**

A. Legal Requirements. The offset of State payments shall be conducted pursuant to the authority granted in Section 10.05 and 10.05d of the Act [15 ILCS 405/10.05 and 10.05d] and the requirements set forth in this Agreement.

1. Definition of “Debt”

- (a) For purposes of this Agreement, debt shall mean any monies owed to the local unit which is less than 7 years past the date of final determination, as confirmed by the local unit in Article III(A)(2)(a)(viii) of this Agreement.
- (b) No debt which is more than 7 years past the date of final determination may be placed or may remain on the System.

2. Due Process & Notification

- (a) Before submitting a debt to IOC for State payment offset, the local unit must comply with all of the notification requirements of this Agreement. For purposes of this Agreement, notification of an account or claim eligible to be offset shall occur when the local unit submits to IOC the following information:
  - (i) the name and address and/or another unique identifier of the person against whom the claim exists;
  - (ii) the amount of the claim then due and payable to the local unit;
  - (iii) the reason why there is an amount due to the local unit (i.e., tax liability, overpayment, etc.);
  - (iv) the time period to which the claim is attributable;
  - (v) the local entity to which the debt is owed;
  - (vi) a description of the type of notification has been given to the person against whom the claim exists and the type of opportunity to be heard afforded such person;
  - (vii) a statement as to the outcome of any hearings or other

proceedings held to establish the debt, or a statement that no hearing was requested; and,

(viii) the date of final determination of the debt.

- (b) IOC will not process a claim under the Agreement until notification has been received from the local unit that the debt has been established through notice and opportunity to be heard.
- (c) The local unit is required to provide the debtor with information about a procedure to challenge the existence, amount, and current collectability of the debt prior to the submission of a claim to IOC for entry into the System. The decision resulting from the utilization of this procedure must be reviewable.

3. Certification

- (a) The chief officer of the local unit must, at the time the debt is referred, certify that the debt is past due and legally enforceable in the amount stated, and that there is no legal bar to collection by State payment offset (See Appendix A).
- (b) Only debts finally determined as currently due and payable may be certified to IOC as a claim for offset.
- (c) The chief officer of the local unit may delegate to a responsible person or persons the authority to execute the statement of the claim required by the Agreement.
- (d) This delegation of authority shall be made on forms provided by the Comptroller and shall contain a signature sample of the person(s) to whom the delegation is made.
- (e) For purposes of this Agreement, “chief officer of the local unit” means the Village Manager.

4. Notification of Change in Status

- (a) The chief officer must notify IOC as soon as possible, but in no case later than 30 days, after receiving notice of a change in the status of an offset claim.
- (b) A change in status may include, but is not limited to, payments received other than through a successful offset, the filing of a bankruptcy petition, the death of the debtor, or the expiration of the

ability for the debt to remain on the System, as provided for in Article III(A)(1)(b) of this Agreement.

- B. Operational Requirements. Upon receiving a data file from the chief officer pursuant to the terms of this Agreement, IOC will perform a match with the local unit's debt file using a debtor's social security number, taxpayer identification number, name, address, or other unique identifier. The chief officer will receive a weekly file from IOC indicating the matches, at which time the local unit will update its debtor records. The chief officer will assume the responsibility of providing updates to the debtor records on file with IOC in order to ensure an equitable resolution of the debts owed to the local unit.
1. Technical Requirements. IOC agrees to work with the local unit to facilitate information and data procedures as provided for in this Agreement. The local unit agrees to adhere to the standards and practices of IOC when transmitting and receiving data.
  2. Fee. A fee shall be charged to the debtor in order to recover the cost to IOC for administrating the System. The fee shall be per payment transaction and shall be \$15, unless the payment is for an amount less than \$30, in which case the fee shall be equal to the amount offset. The fee will be deducted from the payment to be offset prior to issuance to the local unit.
  3. Offset Notices. IOC will send offset notices to the debtor upon processing a claim under the Act and this Agreement. The notice will state that a request has been made to make an offset against a payment due to the debtor, identify the local unit as the entity submitting the request, provide the debtor with a phone number made available pursuant to Article III (B)(6) of this Agreement, and inform the debtor that they may formally protest the offset within sixty (60) days of the written notice.
  4. IOC Protest Process. If a protest is received, IOC will determine the amount due and payable to the local unit. This determination will be made by a Hearing Officer and will be made in light of all information relating to the transaction in the possession of IOC and any other information IOC may request and obtain from the local unit and the debtor subject to the offset. If IOC requests information from the local unit relating to the offset, the local unit will respond within sixty (60) days of IOC's request. IOC may grant the local unit an additional sixty (60) day extension for time to respond.
  5. IOC Hearing Officer. The local unit hereby agrees to provide the Hearing Officer with any information requested in an efficient and timely manner in order to facilitate the prompt resolution to protests filed as a result of this Agreement. For purposes of this Agreement, any decision rendered

by the Hearing Officer shall be binding on the local unit and shall be the final determination on the matter. The Hearing Officer may continue the review of a protest at his/her discretion in order to assure an equitable resolution.

6. Local Unit Call Center. The local unit hereby agrees to provide a working phone number which IOC will furnish to persons offset under this Agreement. The local unit shall ensure that the phone number is properly staffed in order to provide information about the debt the local unit is offsetting under this Agreement. The phone number for purposes of this Section and the Agreement is: 708-579-2375.
7. Debt Priorities
  - (a) If a debtor has more than one local unit debt, the debt with the oldest date of delinquency shall be offset first.
  - (b) Any debt that is less than or equal to \$9.99 which is placed or remains on the System will not be offset and will not be paid to the local unit until such time as the balance owed to the local unit by the debtor exceeds \$9.99.
8. Transfer of Payment. Transfer of payment by IOC to the local unit shall be made in the form of electronic funds transfer (EFT). Nothing in this section or this Agreement shall limit the ability of either party to modify this Agreement at a later date in order to provide for an alternative method(s) of payment transfer.
9. IOC Refunds. If IOC determines that a payment is erroneous or otherwise not due to the local unit, IOC will process a refund of the offset, and refund the amount offset to the debtor. In the event the refund results in only a partial refund to the debtor, IOC will retain the fee referenced in Article III, Paragraph B, Section 2 above. The fee will only be refunded to the debtor in the event of a full refund of the offset amount.
10. Local Unit Refunds. The local unit is responsible for refunding monies to the debtor if an offset occurred due to inaccurate debt information or over collection, and the local unit has already received payment from IOC. IOC will only refund monies in the event that a payment has not yet been made to the local unit.

#### **Article IV – Permissible Use of Information**

IOC acknowledges that the local unit is providing sensitive information about local debts for the purpose of conducting offsets under the Agreement. As such, IOC will use the

information solely in connection with the Local Debt Recovery Program. IOC shall safeguard the local information in the same manner as it protects State debt information.

The local unit acknowledges that IOC is providing sensitive information about State payments for the purpose of conducting offsets under the Agreement. As such, the local unit will use the information solely in connection with the Local Debt Recovery Program. The local unit shall safeguard State information in the same manner as it protects local debt information.

The parties may use information in any litigation involving the parties, when such information is relevant to the litigation.

#### **Article V – Term of the Agreement and Modifications**

The Agreement becomes effective as of the Effective Date and shall remain in effect until it is terminated by one of the parties. Either party may terminate this Agreement by giving the other party written notice at least thirty (30) days prior to the effective date of the termination. Any modifications to the Agreement shall be in writing and signed by both parties.

#### **Article VI – No Liability to Other Parties**

Except for the fees described in Article III, paragraph B, Section 2 above, each party shall be responsible for its own costs incurred in connection with the Agreement. Each party shall be responsible for resolving and reconciling its own errors, but shall not be liable to any other parties for damages of any kind as a result of errors. Each party shall be liable for the acts and omissions of its own employees and agents. The Agreement does not confer any rights or benefits on any third party.

#### **Article VII – Issue Resolution**

The parties acknowledge that IOC is ultimately responsible for the development, design and operation of the System. Subject to that understanding, the parties agree to work cooperatively to resolve any matters that arise during the development, design and implementation of the program. If an issue cannot be resolved informally by mutual agreement of staff personnel, then the parties agree to elevate the issue to a senior level manager for resolution of the issue. For purposes of the Agreement, the “senior level managers” are:

1. IOC: Ray Marchiori, Director – Department of Government and Community Affairs
2. Local Unit: Julia A. Cedillo, Village Manager

#### **Article VIII – Contacts**

The points of contacts for this Agreement are:

IOC: Alissa Camp, General Counsel  
Illinois Office of the Comptroller  
325 West Adams  
Springfield, Illinois 62704  
Phone: 217/782-6000  
Fax: 217/782-2112  
E-mail: CampAJ@mail.ioc.state.il.us

Local Unit: Cathleen Keating  
Village Attorney  
Village of LaGrange Park  
Martin, Craig, Chester & Sonnenschein  
2215 York Road #550  
Oak Brook, IL. 60523  
Phone: 630/472-3407  
Fax: 630/472-0048  
E-mail: cmk@mccslaw.com

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#### **Article IX – Acceptance of Terms and Commitment**

The signing of this document by authorized officials forms a binding commitment between IOC and local unit. The parties are obligated to perform in accordance with the terms and conditions of this document, any properly executed modification, addition, or amendment thereto, any attachment, appendix, addendum, or supplemental thereto, and any documents and requirements incorporated by reference.

By their signing, the signatories represent and certify that they possess the authority to bind their respective organizations to the terms of this document, and hereby do so.

[Signature Page Follows]

IN WITNESS WHEREOF, the Illinois Office of the Comptroller and local unit by the following officials sign their names to enter into this agreement.

ILLINOIS OFFICE OF THE COMPTROLLER

By: \_\_\_\_\_

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

Name: Judy Baar Topinka

Title: Comptroller

LOCAL UNIT

By: \_\_\_\_\_

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

Name: Julia A. Cedillo

Title: Village Manager

# Appendix A



STATE OF ILLINOIS  
COMPTROLLER  
JUDY BAAR TOPINKA

## Local Debt Recovery Program

### Involuntary Withholding Tape/File Certification Form

Local Unit Name: \_\_\_\_\_

Tape #/File Type: \_\_\_\_\_

Record Count: \_\_\_\_\_

Dollar Amount: \_\_\_\_\_

Please mark the appropriate box:

Add Tape/File

- The debtor(s) has (have) been sent a notice that a claim has been established against said person thus giving the debtor the opportunity to appeal the determination of the existence and amount of the claim(s).
- No hearing(s) was (were) requested or a hearing(s) was (were) held and the result(s) was (were) that the claim(s) was (were) found to be valid in the amount(s) referenced in the attached record.
- The date(s) of the final determination of the debt(s) for each claim was prior to the date of submittal of the claim to IOC for Local Debt Recovery purposes.

Change Tape/File

- All change transactions contained on the enclosed tape/file meet the criteria for inclusion in the Local Debt Recovery Program.

Delete Tape/File

- All claims contained on the enclosed tape/file no longer meet the criteria for inclusion in the Local Debt Recovery Program, and should be removed from the Program.

I, \_\_\_\_\_, do hereby certify that all of the debts included on the tape/file are in compliance with the requirements of the State Comptroller Act [15 ILCS 405] and the Intergovernmental Agreement entered into between the above named local unit and the Illinois Office of the Comptroller. If I am submitting a facsimile or email signature, I hereby certify by so filing that the original signed document exists in my possession.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Local Unit: \_\_\_\_\_ Phone #: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ILLINOIS STATE COMPTROLLER'S OFFICE AND THE VILLAGE OF LA GRANGE PARK, COOK COUNTY, ILLINOIS REGARDING PARTICIPATION IN THE COMPTROLLER'S LOCAL DEBT RECOVERY PROGRAM**

WHEREAS, the Village of La Grange Park, Cook County, Illinois seeks to participate in the Illinois Office of the Comptroller's Local Debt Recovery Program for purposes of collecting debts owed to the Village of La Grange Park, Illinois; and

WHEREAS, participation in the Comptroller's Local Debt Recovery Program would significantly benefit the La Grange Park in collecting monies lawfully owed to the Village that have previously been uncollectible; and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, Section 3 of the Intergovernmental Cooperation Act (5 ILCS 220/3) and Sections 11-1-2.1 and 1-4-6 of the Illinois Municipal Code (65 ILCS 5/11-1-2.1 and 65 ILCS 5/1-4-6), public agencies are empowered to enter into intergovernmental agreements to support matters of mutual interest as provided by law; and

WHEREAS, the Village of La Grange Park believes it would be in the best interests of the Village to participate in the Local Debt Recovery Program and enter into an intergovernmental agreement with the Illinois State Comptroller's Office.

NOW, THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of La Grange Park, Illinois, as follows:

1. That the Village is authorized to participate in the Local Debt Recovery Program.
2. That the Village Manager is authorized to sign the Intergovernmental Agreement, and the Village Clerk is authorized to attest the agreement.
3. That the Village Manager is authorized and directed to take such further actions as she deems necessary and appropriate to implement, administer and enforce this Resolution and the Intergovernmental Agreement.

ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES of the Village  
of La Grange Park, Cook County, Illinois this \_\_\_\_\_ of \_\_\_\_\_, 2012.

YES:

NOS:

ABSENT:

Approved this \_\_\_\_\_ of \_\_\_\_\_ 2012.

\_\_\_\_\_  
James L. Discipio, Village President

ATTEST:

\_\_\_\_\_  
Amanda G. Seidel  
Village Clerk

(Approved as to form by Village Attorney Cathy Keating on 7/18/12)

# **Public Works Garage Committee**

**Scott Mesick, Chairman**

**LaVelle Topps**

**Susan Storcel**



To: Julia Cedillo, Village Manager  
From: Brendan McLaughlin, Public Works Director *BSM*  
Date: July 18, 2012  
Re: Wholesale Renovation & Modernization of Public Works Garage

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**PURPOSE:** To provide a synopsis of the Public Works Garage Committee Meeting held on July 16<sup>th</sup> and present the committee's recommendation to direct staff to frame a work program for a wholesale renovation to the existing public works garage and prepare a Request for Qualifications/Request for Proposals for a design-build contractor to partner with the village in completing the renovation.

**DISCUSSION:** The Public Works Committee reviewed the attached spreadsheet which updated the current budget based on the findings of additional engineering and environmental reviews. The largest newly identified cost relates to lead and asbestos clean-up which would be required whether demolishing or remodeling. The committee also received an update that village can request the state grants be revised to contemplate a wholesale renovation in lieu of new construction.

Based on the expenses projected exceeding the project budget, the committee concluded that the taxpayers and employees would be better served by extensively renovating the current building so it is equipped to extend its useful life another twenty years or more.

Some of the benefits of renovating over new construction include:

1. The project budget simply does not allow for new construction.
2. Attempting new construction requires more risk than renovating, which can be segmented to match the funds available.
3. New construction would result in a smaller building.
4. Renovating allows Public Works to gain space by reclaiming the former gun range.
5. Renovating eliminates \$125,000 of site improvements related to a new building.
6. The end result will be a virtually new building located on the existing footprint.

**MOTION/ACTION REQUESTED:** In support of the Public Works Garage Committee's recommendation, a motion should be made:

1. to direct staff to frame a work program for a wholesale renovation to the existing public works garage; and
2. to prepare a Request for Qualifications/Request for Proposals for a design-build contractor to partner with the village in completing the renovation.

**SUPPORTING DOCUMENTATION:**

Public Works Garage – Project Estimate Spreadsheet

## **Items of Interest**

**VILLAGE OF LA GRANGE PARK**  
**La Grange Park Village Hall, 447 N. Catherine Ave., La Grange Park, Illinois**

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**2012 MEETINGS REMINDER**

|                    |                       |           |              |
|--------------------|-----------------------|-----------|--------------|
| August 14, 2012    | Work Session Meeting  | 7:30 p.m. | Village Hall |
| August 28, 2012    | Village Board Meeting | 7:30 p.m. | Village Hall |
| September 11, 2012 | Work Session Meeting  | 7:30 p.m. | Village Hall |
| September 25, 2012 | Village Board Meeting | 7:30 p.m. | Village Hall |
| October 9, 2012    | Work Session Meeting  | 7:30 p.m. | Village Hall |
| October 23, 2012   | Village Board Meeting | 7:30 p.m. | Village Hall |
| November 13, 2012  | Work Session Meeting  | 7:30 p.m. | Village Hall |
| November 27, 2012  | Village Board Meeting | 7:30 p.m. | Village Hall |
| December 11, 2012  | Work Session Meeting  | 7:30 p.m. | Village Hall |