

DOCUMENT VET SHEET

for

**Karen McConnaughay
Chairman, Kane County Board**

Name of Document: IGA's (originals) - Wasco Sanitary District,
Village of Burlington, Village of Elburn, Maple
Park, Village of Gilberts, City of Batavia,
Submitted by: Compton Township, Virgil Drainage District #3
Phone Number: Jodie Wollnik EXT 23499
Date Submitted: 2-3-11

Examined by: KC SHARP
(Print name)
[Signature]
(Signature)
2-7-11
(Date)

Comments: Originals - all need signature
of chairman
All previously reviewed & approved

Chairman signed: Yes No 2-8-11
(Date)

Document returned to: Jodie Wollnik

**Agreement Between
The County of Kane and the City of Batavia For Allocation and Loan of Bond Proceeds
Pursuant to the
American Recovery and Reinvestment Tax Act of 2009**

This Agreement (“**Agreement**”) is made and entered, by and between the County of Kane, a unit of local government of the State of Illinois hereinafter referred to as the “**County**”, and the City of Batavia, a unit of local government within the boundaries of the Counties of Kane and DuPage, hereinafter referred to as the “**Agency**.” The County and Agency also may be referred to in this agreement as the “**Party**” or “**Parties**”.

WHEREAS, Section 10 of Article VII of the 1970 Constitution of the State of Illinois (the “**Illinois Constitution**”) provides, *inter alia*, that “Units of local government and school districts may contract or otherwise associate among themselves . . . to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance,” and further provides that “Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance”; and

WHEREAS, Section 1 of Article VII of the 1970 Illinois Constitution provides that:

“Municipalities” means cities, villages and incorporated towns.
“Units of local government” means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts;

and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, (the “**Intergovernmental Cooperation Act**”) provides that “any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State...except where specifically and expressly prohibited by law”; 5 ILCS 220/3; and

WHEREAS, Section 2 of the Intergovernmental Cooperation Act defines the term “public agency” as:

Any unit of local government as defined in the Illinois Constitution of 1970, any school district, any public community college district, and public building commission, the State of Illinois, any agency of the state government or of the United States, or of any other state, any political subdivision of another state, and any combination of the above pursuant to an intergovernmental agreement which

includes provisions for a governing body of the agency created by the agreement;

and

WHEREAS, The County of Kane, Illinois (the “**County**”), is a duly organized and existing county created under the provisions of the laws of the State of Illinois and operating under the provisions of the Counties Code, as amended, 55 ILCS 5/1-1001 et seq. (the “**Counties Code**”), and is a “unit of local government” as defined in Section 1 of Article VII of the 1970 Illinois Constitution and a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act; and

WHEREAS, the City of Batavia is a duly organized and existing municipality created under the provisions of the laws of the State of Illinois and operating under the provisions of the Illinois Municipal Code, 60 ILCS 5/1-1, et seq., and is a “unit of local government” as defined in Section 1 of Article VII of the 1970 Illinois Constitution and a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act; and

WHEREAS, Section 1400U-2 of the Internal Revenue Code of 1986, as amended, enacted as part of the American Recovery and Reinvestment Act of 2009 (the “**Act**”), authorizes state and local governments to issue bonds that qualify as “recovery zone economic development bonds” as defined in that Section (“**Recovery Zone Economic Development Bonds**”); and

WHEREAS, Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes,” as such term is defined in Section 1400U-2; and

WHEREAS, pursuant to prior action by the County Board of the County (the “**County Board**”), the County has been designated as a “recovery zone” for purposes of Section 1400U-2; and

WHEREAS, the County has been allocated a volume cap of \$16,800,000 for Recovery Zone Economic Development Bonds to be issued for projects constituting qualified economic development purposes within the County during calendar years 2009 and 2010, and may use such volume cap for eligible costs or may allocate such volume cap in any reasonable manner as the County shall determine in good faith at its discretion for use by other units of local government such as the Agency to finance eligible costs for qualified economic development purposes within the County; and

WHEREAS, on _____, 2010, the County Board adopted Ordinance No. ____, authorizing the issuance of Recovery Zone Economic Development Alternate Bonds (Riverboat Revenue Alternate Revenue Source) of the County, in an aggregate principal amount not to exceed \$16,800,000 (the “**Bonds**”) for the purpose of paying all or a portion of 1) the costs of

acquiring, constructing, improving and equipping various water and/or sewer public works projects to be undertaken jointly by the County and other units of local governments located within the County pursuant to intergovernmental agreements between the County and such units, and 2) the costs of certain other capital projects of the County; and incidental to these project costs, to pay bond discount, interest, bond reserve requirements, and legal, other financing and related administrative fees and costs (collectively, the “Recovery Zone Economic Development Project”); and

WHEREAS, the County intends to adopt an ordinance (the “Bond Ordinance”) for the purpose of issuing not to exceed \$16,800,000 Recovery Zone Economic Development Alternate Bonds (Riverboat Revenue Alternate Revenue Source) (the “Bonds”); and

WHEREAS, the County intends to deposit a portion of the proceeds of the sale of the Bonds (the “Bond Proceeds”) with a depository (the “Depository”) pursuant to a depository agreement (the “Depository Agreement”) among the County, the Agency, and the Depository; and

WHEREAS, the Bond Ordinance will authorize the [Chairman of the Board][and/or] [Chief Financial Officer] of the County, (the “Authorized Officer[s]”), among other things, to execute an agreement or agreements to allocate a portion of the proceeds of the Bonds to public agencies within Kane County; and

WHEREAS, the Agency has applied to the County for a loan of Bond Proceeds in the aggregate principal amount of \$920,000.00 for the purpose of paying [all or a portion of] the costs of the Carriage Crest Lift Station Rehabilitation Project, (the “Agency Project”); and

WHEREAS the Agency Project is described more fully in Exhibit A hereto; and

WHEREAS the Agency Project shall be located on the real property described in Exhibit A hereto (the “Property”); and

WHEREAS, the County hereby finds that the financing of the Agency Project is consistent with the purposes set forth in Ordinance No. ____; and

WHEREAS, the County wishes to loan to the Agency, pursuant to the terms of this Agreement, a portion of the Bond Proceeds in the aggregate principal amount of \$920,000.00 for the purpose of paying for all or a portion of the costs of the Agency Project; and

WHEREAS, in accordance with Section 1400U-2 of the Act the costs of the Agency Project are and shall be such of the Agency’s capital costs necessarily incurred or to be incurred in furtherance of qualified economic development purposes, and, pursuant to the Bond Ordinance, the County has found and hereby finds that such costs consist of the cost of the Agency’s capital improvements for the Agency Project; and

WHEREAS the County and the Agency now desire to enter into this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I: INCORPORATION OF RECITALS

The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE II: THE LOAN; GENERAL TERMS

1. The County will loan Bond Proceeds to the Agency in the aggregate principal amount of \$920,000.00 for the purpose of financing the Agency Project as described herein. in accordance with the terms and conditions of this Agreement.

2. The County shall authorize all actions and execute all documents necessary or desirable to loan the \$920,000.00 to the Agency for the Project. In so doing the County shall comply with the laws of the State of Illinois, including the terms and conditions contained within this Agreement.

3. The Agency shall authorize all actions and execute all documents necessary or desirable to accept the loans and to authorize repayment of the loans under the terms and conditions stated herein. In so doing, the Agency shall comply with the laws of the State of Illinois, and the terms and conditions contained within this Agreement. The Agency shall be responsible for its expenses incurred in the performance of this Agreement and of its activities contemplated herein. The costs of issuance of the Bonds, including but not limited to the fees and expenses of the financial consultant and bond counsel, shall be paid from the proceeds of the Bonds.

4. The County shall loan the Bond Proceeds to the Agency in accordance with the schedule and pursuant to the provisions set forth in Articles III and IV of this Agreement. Interest on the Bond Proceeds loaned to the Agency shall begin to accrue on the date of issuance of the Bonds. The loan shall bear interest at the rate or rates which are equal to 64% of the interest due on the Bonds on each interest payment date for the Bonds. The loan shall be amortized on the same schedule as the portion of the Bonds applicable to the loan, except that each payment on the loan will be due 10 business days prior to each interest payment date on the Bonds. The maximum yield on the Bonds shall not exceed 4.0% for an amortization period of approximately 10 years.

5. In consideration of the mutual promises and the terms and conditions set forth herein, the County agrees to loan the amounts stated herein in exchange for the Agency's obligation to repay those amounts with interest at the above stated rate and in accordance with

the above stated schedule. In consideration of the mutual promises and the terms and conditions set forth herein, the Agency agrees to repay the loaned amounts with interest at the above stated rates and in accordance with the above stated schedule in exchange for the County's loan of the amounts stated herein.

ARTICLE III: THE AGENCY PROJECT

1. The plans and specifications for the Agency Project shall: (a) meet the general requirements for the Project set forth in the applicable portions of Exhibit A hereof, and (b) be provided to the County by the Agency. The Agency shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to or affecting the Agency Project or the Agency as related thereto, including but not limited to those summarized on Exhibit B attached hereto and incorporated herein. The Agency shall include a certification of such compliance with each request for Bond Proceeds hereunder and at the time the Agency Project is completed. The County shall be entitled to rely on this certification without further inquiry. Upon the County's request, the Agency shall provide evidence satisfactory to the County of such compliance.

2. In all contracts relating to the Agency Project, the Agency agrees to require the contractor to name the County as an additional insured on insurance coverages and to require the contractor to indemnify the County from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Agency Project by the contractor or the contractor's suppliers, employees, or agents.

3. The Agency covenants to the County that it shall complete the Agency Project; provided, however, the Agency shall not be considered in breach of or in default of its obligation to complete the Agency Project in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the Agency which in fact interferes with the ability of the Agency to discharge its obligation to complete the Agency Project. With respect to any such delay the Agency shall, upon the occurrence of the event causing such delay, immediately give written notice to the County. The Agency may rely on this section only to the extent of the actual number of days of delay affected by any such events described above.

4. On or before December 10, 2010, the Agency shall furnish the County with a drawdown schedule evidencing the Agency's reasonable expectation that the Agency Project will be acquired and constructed with due diligence and that 85% of the Agency Project will be completed within 3 years from the date of issuance of the Bonds.

5. On or before December 10, 2010, the Agency will furnish evidence satisfactory to the County establishing its reasonable expectation that the Agency has either satisfactory title to the Property (which may be evidenced by an acceptable pro forma title insurance policy), subject only to those title exceptions acceptable to the Authorized Officer in his or her reasonable judgment, or an adequate easement or leasehold interest for the construction and continued operation of the Agency Project.

ARTICLE IV: FUNDING

1. (a) With respect to the Agency Project, on a monthly basis (or at such other intervals as the County may agree to), the Agency shall provide the Depository and the County's Department of Finance (the "Department") with a Requisition Form, in substantially the form attached hereto as Exhibit C, along with: (i) a cost itemization of the Agency Project budget in substantially the form attached hereto as Exhibit D Project Budget"; (ii) evidence of the expenditures upon project improvements which the Agency has paid or will pay; and (iii) all other documentation described in Exhibit C. Pursuant to the Depository Agreement, the Depository will make the applicable requested disbursement of Bond Proceeds to the Agency (or to such other party as the Agency may request in writing). The availability of Bond Proceeds is subject to the County's compliance with all applicable requirements regarding the use of such proceeds and the timing of such use.

(b) Prior to the disbursements of any of the Bond Proceeds to the Agency for costs incurred or to be incurred relative to the Agency Project, the Agency shall satisfy the County, to the reasonable satisfaction of the Authorized Officer, that the Agency has either satisfactory title to the Property (which may be evidenced by an acceptable pro forma title insurance policy), subject only to those title exceptions acceptable to the Authorized Officer in his or her reasonable judgment, or an adequate easement or leasehold interest for the construction and continued operation of the Agency Project.

(c) Delivery by the Agency of a Requisition Form hereunder shall, in addition to the items therein expressly set forth, constitute a certification, representation and warranty to the Depository and the County, as of the date of such Requisition Form, that:

(i) the total amount of the Bond Proceeds requested represents the actual amount paid or to be paid to the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Agency Project, and/or their payees;

(ii) all amounts shown as previous payments on the Requisition Form (if any) have been paid to the parties entitled to such payment;

(iii) the Agency has approved all work and materials for the Requisition Form, and such work and materials conform to the plans and specifications for the Agency Project; and

(iv) the Agency is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to or affecting the Agency Project or the Agency as related thereto, including but not limited to those summarized on Exhibit B of this Agreement.

The County shall have the right, in its discretion, to require the Agency to submit further documentation as the County may require in order to verify that the matters certified to above are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the County or the Depository from relying on such certifications by the Agency.

(d) If, at any time, with the approval of the County, the Depository disburses Bond Proceeds in advance and in anticipation of the incurrence of costs by the Agency then, upon disbursement by the Depository, such Bond Proceeds shall be held in a segregated account for the Agency Project, and the Agency shall provide the County with the statements for such segregated Project account as part of the quarterly report for such Project required pursuant to Article IV, Section 5 below.

(e) Payment of Bond Proceeds will be made subject to all applicable restrictions on and obligations of the County contained in: (i) the Depository Agreement [and the Insurance Policy], and (ii) all County ordinances relating to the Bonds, including but not limited to the Bond Ordinance, and all agreements and other documents entered into by the County pursuant thereto.

2. The estimate of the cost of the Agency Project is set forth on the applicable portion of Exhibit A hereto. The Agency has delivered to the Authorized Officer a detailed preliminary budget, attached hereto and incorporated herein as Exhibit D. The Agency shall deliver to the County an amended budget (if necessary) in connection with each Requisition Form and a final budget (upon Agency Project completion) for the Agency Project, and when approved by the County in writing such amended (if any) and final budgets shall also be attached hereto and incorporated herein as Exhibit D. The budget shall identify the sources of and uses for all funds for the Agency Project. The Agency certifies that it has identified sources of funds (including the Bond Proceeds) sufficient to complete the Agency Project. The Agency agrees that the County will only contribute the Bond Proceeds to the Agency Project and that all costs of completing the Agency Project over the Bond Proceeds (if any) shall be the sole responsibility of the Agency. If the Agency at any time does not have sufficient funds to complete the Agency Project, the Agency shall so notify the County in writing, and the Agency may reduce the scope

of the Agency Project as agreed with the County in order to complete the Agency Project with the available funds.

3. “Agency Project Improvements” shall mean the capital improvements; land assembly costs; relocation costs; rehabilitation, remodeling, renovation and reconstruction costs; financing costs and other costs, if any, recognized and approved in writing by the County as being eligible costs for qualified economic development purposes under Section 1400U-2 of the Act with respect to the Agency Project, to be paid for out of Bond Proceeds. Attached as Exhibit E and incorporated herein is a preliminary list of Agency Project Improvements. The Agency shall deliver to the County an amended list of Agency Project Improvements (upon Agency Project Completion), and when approved by the County in writing such amended (if any) and final lists of Agency Project Improvements shall also be attached hereto and incorporated herein as Exhibit E. During the course of a Project, the Authorized Officer, based upon the detailed Project Budget attached as Exhibit D and any necessary modifications thereto, shall make or approve such modifications to Exhibit E as he or she wishes in his or her discretion to account for all of the Bond Proceeds to be expended under this Agreement; provided, however, that all Agency Project Improvements shall (i) be for qualified economic purposes under the Act, and (ii) be improvements or costs that the Authorized Officer has agreed to pay for out of Bond Proceeds, subject to the terms of this Agreement.

4. If the aggregate cost of the Agency Project is less than the amount of the Bond Proceeds contemplated by this Agreement, the Agency shall have no claim to the difference between the amount of the Bond Proceeds contemplated by this Agreement and the amount of the Bond Proceeds actually paid by the County to the Agency and expended by the Agency on the Project (the “Excess Bond Proceeds”); provided, however, that the foregoing shall not be construed to preclude the Agency from requesting all or some of the Excess Bond Proceeds from the County to finance other costs incurred by the Agency for the purposes allowed by Section 1400U-2 of the Act and provided for in the Bond Ordinance, subject to the County’s approval (in the County’s sole discretion). The County may also request that the Agency return Excess Bond Proceeds to the County, in which case the County shall use such Excess Bond Proceeds to reduce the loan obligation of the Agency.

5. The Agency shall provide to the County quarterly reports on the progress and status of the Agency Project and reasonable access to its books and records relating to the Project.

6. During the Term hereof, the Agency shall not sell, transfer, convey, lease or otherwise dispose (or cause or permit the sale, transfer, conveyance, lease or other disposal) of all or any portion of (a) the Property or any interest therein, or (b) any Agency Project Improvement or any interest therein (each a “Transfer”), or otherwise effect or consent to a Transfer, without the prior written consent of the County. The County’s consent to any Transfer may, in the County’s sole discretion, be conditioned upon (among other things) whether such a Transfer would conflict with the statutory basis for the loan of the Bond Proceeds hereunder pursuant to

the Act. Subject to applicable law, the Agency shall pay any proceeds of any Transfer to the County.

ARTICLE V: TERM

The Term of the Agreement shall commence as of the Agreement Date and shall expire upon repayment of the loan.

ARTICLE VI: INDEMNITY; DEFAULT

1. The Agency agrees to indemnify, defend and hold the County, its officers, officials, members, employees and agents harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the County arising from or in connection with (i) the Agency's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) the Agency's or any contractor's, subcontractors or materialmen in connection with the Project. In no event shall the Agency's obligation to indemnify the County exceed the County's actual damages that are attributable to the actions of the Agency as they relate solely to this Agreement.

2. The failure of the Agency to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Agency with respect to an Agency Project under this Agreement or any related agreement (including the Depository Agreement) shall constitute an "Event of Default" by the Agency hereunder. Upon the occurrence of an Event of Default, the County may terminate this Agreement with respect to the Agency Project and all related agreements, and may, pursuant to the Depository Agreement, give the Depository written notice to suspend disbursement of the Bond Proceeds (or, in the alternative to disburse the Bond Proceeds only upon the written request of the County) with respect to the Agency Project until such time as the County give the Depository written notice to resume regular disbursement of the Bond Proceeds as contemplated hereunder. The County may by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. Any such legal proceeding shall be brought in the Sixteenth Judicial Circuit, Kane County, Illinois.

In the event the Agency shall fail to perform a covenant which the Agency is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an event of default shall not be deemed to have occurred unless the Agency has failed to cure such default within thirty (30) days after its receipt of a written notice from the City not capable of being cured within such thirty (30) days period, the Agency shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

3. The failure of the County to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the County with respect to an Agency Project under this Agreement or any related agreement (including the Depository Agreement) shall constitute an "Event of Default" by the County hereunder. Upon the occurrence of an Event of Default, the Agency may terminate this Agreement with respect to the Agency Project and any other agreement directly related to this Agreement. The Agency may by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. Any such legal proceeding shall be brought in the Sixteenth Judicial Circuit, Kane County, Illinois.

In the event the County shall fail to perform a covenant which the County is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an event of default shall not be deemed to have occurred unless the County has failed to cure such default within thirty (30) days after its receipt of a written notice from the Agency. If an event of default is not capable of being cured within such thirty (30) days period, the County shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

ARTICLE VII: CONSENT

Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

ARTICLE VIII: NOTICE

Notice to Agency shall be addressed to:

Bill McGrath
City Administrator
100 N. Island Avenue
Batavia IL 60510
Phone: (630) 454-2000
Facsimile: (630) 454-2001
Electronic: bmcgrath@cityofbatavia.net

and

Gary Holm
Director of Public Works
200 N. Raddant Rd.
Batavia IL 60510
Phone: (630) 454-2309

Facsimile: (630) 454-2351
Electronic: gholm@cityofbatavia.net

Notice to the County shall be addressed to:

Chief Financial Officer
Kane County Government Center
719 South Batavia Avenue
Geneva, Illinois
FAX: (630) 208-5110

with a copy to:

Kane County State's Attorney
100 S. Third Street
4th Floor
Geneva, IL 60134
Attention: Chief Civil Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electric communications, whether by telex, telegram, telecopy or facsimile (FAX) machine; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

ARTICLE IX: ASSIGNMENT; BINDING EFFECT

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the County, the Agency and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

ARTICLE X: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument signed by all of the parties hereto.

ARTICLE XI: COMPLIANCE WITH LAWS

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE XII: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE XIII: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original.

ARTICLE XIV: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties.

ARTICLE XV: AUTHORITY

Execution of this Agreement by the County is authorized by the Bond Ordinance. Execution of this Agreement by the Agency is authorized by Resolution 10-77-R adopted by the Agency on November 1, 2010. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE XVI: HEADINGS

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

ARTICLE XVII: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement, nor any act of the County or the Agency shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the County and the Agency.

ARTICLE XVIII: CONSTRUCTION OF WORDS

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE XIX: NO PERSONAL LIABILITY

No officer, member, official, employee or agent of the County or the Agency shall be individually or personally liable in connection with this Agreement.

ARTICLE XX: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the Agency:

Bill McGrath
City Administrator
100 N. Island Avenue
Batavia IL 60510
Phone: (630) 454-2000
Facsimile: (630) 454-2001
Electronic: bmcgrath@cityofbatavia.net

and

Gary Holm
Director of Public Works
200 N. Raddant Rd.
Batavia IL 60510
Phone: (630) 454-2309
Facsimile: (630) 454-2351
Electronic: gholm@cityofbatavia.net

For the County:

Chief Financial Officer
Kane County Government Center
719 South Batavia Avenue
Geneva, Illinois
FAX:

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

ARTICLE XXI: TAX MATTERS

The Agency shall not act or fail to act in such a way as to prevent the County from complying with the terms and conditions of that certain Tax Compliance Certificate entered into by the County in connection with the Bonds, a copy of which has been provided to the Agency.

IN WITNESS WHEREOF, the County of Kane, by a Resolution duly adopted by the County Board of Kane County, causes this Agreement to be signed by its Chairman and attested by its Clerk and _____, by order of its _____, has caused this Agreement to be executed by the _____, and attested to by its Clerk, all on the day and year hereinafter written.

Dated _____ day of _____, 2010.

COUNTY OF KANE

By:


Karen McConaughay

PLE

Chairman, County Board
Kane County

Attest: _____
John A. Cunningham
Clerk, County Board
Kane County, Illinois

Dated _____ day of _____, 2010.

Agency

Attest: Janette Armlust
Dep. City Clerk

By: Jeffery D. Scholte
Mayor

EXHIBIT A

THE AGENCY PROJECT

Bond Issuance Date	
Bonds	
Depository	
Depository Agreement Date	
Insurer	
Property Location (attach legal description)	
Category of Project (Acquiring, Constructing, Improving, Equipping [water and/or sewer] Public Works Project)	
Description of Agency Project Improvement	
Bond Proceeds	\$
Project Budget	\$

EXHIBIT B

**RULES, AND REGULATIONS APPLICABLE TO THE AGENCY/
AGENCY POLICIES, PROGRAMS AND PROCEDURES**

(see attached)

EXHIBIT C

AGENCY PROJECT

REQUISITION FORM # _____

State of Illinois)
) SS
County of Kane)

The affiant, _____, _____ a unit of local government and public agency of the State of Illinois (the “Agency”), hereby certifies to _____ (the “Depository”) and the County of Kane (the “County”) that with respect to that certain Intergovernmental Agreement between the Agency and the County dated _____, 2010 (the “Agreement”):

A. The following is a true and complete statement of all costs incurred for the Project by the Agency:

TOTAL: \$ _____

B. This paragraph B sets forth and is a true and complete statement of all costs of Agency Project Improvements for the Agency Project paid for by the County to date (if any) through its loan of Bond Proceeds (as defined in the Agreement) to the Agency:

\$ _____

C. The Agency requests disbursement for the following cost of Agency Project Improvements:

\$ _____

D. None of the costs referenced in paragraph C above has been previously loaned to the Agency by the County.

E. The Agency hereby certifies to the County that, as of the date hereof,

1. The representations and warranties contained in the Agreement are true and correct and the Agency is in compliance with all applicable covenants contained therein.

2. No Event of Default (as defined in the Agreement) or condition or event that, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

3. The Agency is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to

or affecting the Project or the Agency as related thereto, including but not limited to those summarized in Exhibit B of the Agreement.

F. Attached hereto are: (1) a cost itemization of the applicable portions of the budget attached as Exhibit D to the Agreement; and (2) evidence of the expenditures upon Agency Project Improvements for which the Agency hereby seeks disbursement.

H. The Agency hereby requests that the Depository direct disbursement to:

All capitalized terms that are not defined herein have the meanings given such terms in the Agreement.

	_____, a unit of local government and public agency of the State of Illinois By: _____ Name: _____ Title: _____
--	---

Subscribed and sworn before me this ___ day of _____, ____.

My commission expires: _____

Exhibit D
[Preliminary] [Amended] [Final] Agency Project Budget

<u>Uses of Funds</u>	<u>Source (County or Agency)</u>	<u>Cost</u>
Legal Fees		
Land Acquisition		\$
Fees and Reimbursable Costs		\$
<i>Subtotal for Legal Fees</i>		\$
Abatement, Demolition, Site Preparation & Remediation		\$
Design and Management		\$
Pre-Purchased Materials		\$
Furniture, Fixtures and Equipment		\$
Construction Expenditures		
Fees and Services		\$
General Construction		\$
Construction Contingency (5%)		\$
PBC Administration (3%)		\$
Project Management Office Costs		\$
Project Total		\$

Exhibit E
[Preliminary] [Amended] [Final] Agency Project Improvements

<u>Uses of Funds</u>		<u>Cost</u>
Legal Fees		
	Land Acquisition	\$
	Relocation	\$
	Fees and Reimbursable Costs	\$
	<i>Subtotal for Legal Fees</i>	\$
		\$
Abatement, Demolition, Site Preparation & Remediation		\$
Design and Management		\$
Pre-Purchased Materials		\$
Furniture, Fixtures and Equipment		
Construction Expenditures		
	Fees and Services	\$
	General Construction	\$
	Construction Contingency (5%)	\$
	PBC Administration (3%)	\$
Project Management Office Costs		\$
Project Total		\$