

Committee-of-the-Whole Agenda

6:30 p.m.

Tuesday, June 2, 2015

Questions on the Agenda

Agenda Items

- 1. Revolving Loan Fund Agreement** (Annaka Whiting, Compliance Analyst)
- 2. Annual Financial Report** (Kathy Carr, Finance Director)
- 3. QCIC Agreement** (Lew Steinbrecher, City Administrator)
- 4. Other**
- 5. Public Comment**

Explanation

- 1. A Resolution authorizing the Mayor and City Clerk to execute a \$30,000.00 Revolving Loan Fund Agreement with Functional Integrated Techniques Chiropractic & Massage, LLC d/b/a F.I.T. Chiropractic & Massage and to execute any necessary agreements referenced therein; and authorizing all appropriate City officers and staff to do all things necessary to complete each of the City's responsibilities pursuant to said Agreement. (Annaka Whiting, Compliance Analyst)**

Explanation: The City of Moline wishes to execute a \$30,000.00 Revolving Loan Fund Agreement with Functional Integrated Techniques Chiropractic & Massage, LLC d/b/a F.I.T. Chiropractic & Massage in order to assist with the financing of a new business in the City. The Revolving Loan Fund Committee has reviewed the application and recommends approval. Additional documentation attached.

Staff Recommendation: Approval
Fiscal Impact: \$30,000.00 from Account Number 231-0735-492.11-65
Public Notice/Recording: N/A
Goals Impacted: Financially Strong City; Strong Local Economy; A Great Place to Live

- 2. A Resolution accepting the Comprehensive Annual Financial Report prepared by Baker Tilly Virchow Krause, LLP for the Fiscal Year January 1, 2014 through December 31, 2014 for all municipal funds. (Kathy Carr, Finance Director)**

Explanation: The Comprehensive Annual Financial Report for the City of Moline for the fiscal year ended December 31, 2014 is submitted for City Council acceptance. The primary objectives of a financial audit are: (1) to express an opinion on the fairness of the financial statements in conformity with generally accepted accounting principles; and (2) to determine whether the City has complied with applicable legal requirements in obtaining and expending public funds.

The audit for Fiscal Year 2014 was performed in accordance with generally accepted auditing standards by the accounting firm of Baker Tilly Virchow Krause, LLP. These standards are required to obtain reasonable assurances that the general purpose financial statements are free from material misstatements. The opinion given in the Report on the Independent Auditors states that the general purpose financial statements present fairly, in all material respects, the financial portion of the City of Moline at December 31, 2014, and the results of the City's operations are in accordance with generally accepted accounting principles.

The City of Moline has received the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers' Association for 22 consecutive years and will be submitting the 2014 report for award consideration.

Copies of the CAFR will be made available to the public for reference at the Moline Library, Moline Finance Department, and via the City's web site.

Staff Recommendation: Approval
Fiscal Impact: N/A
Public Notice/Recording: File with various governmental agencies
Goals Impacted: Financially Strong City

- 3. A Resolution authorizing the Mayor and City Clerk to execute an amended QCIC Net Governance Agreement between the following entities for the governance of the Quad Cities Interoperable Communications Network ("QCIC NET"): Rock Island County; Emergency Telephone System Board of Rock Island County; Scott County; the Scott Emergency Communications Center; the Cities of Bettendorf, Davenport, East Moline, Moline, Rock Island and Silvis; and the Village of Milan. (Lew Steinbrecher, City Administrator)**

Explanation: In the summer of 2010, the above-referenced Iowa and Illinois governments and agencies created the Quad Cities Interoperable Communications Network (“QCIC NET”), an emergency telecommunications fiber-optic network. The City of Davenport administered a \$2+ million grant from the U.S. Department of Justice COPS program to build the QCIC NET fiber optic network connecting all the public safety answering points throughout the Quad Cities. Those entities then entered into an agreement for Governance of the QCIC NET to provide for network services, planning, funding, ownership, and operation, to facilitate the management of consistent, cohesive policies and processes. The primary use of the QCIC NET has been to connect public safety answering points in Scott County and Rock Island County and to support the public safety activities of police, fire and other emergency services in Scott County and Rock Island County. Since this fiber optic network has become operational, it has become necessary to revise the governing structure of the QCIC NET Board to more effectively manage the system and expand opportunities to partner with the private sector to utilize some of the unused dark fibers not needed for public safety purposes.

Staff Recommendation:	Approval
Fiscal Impact:	Economic Growth Opportunities for Technology Oriented Moline Businesses.
Public Notice/Recording:	N/A
Goals Impacted:	Financially Strong City; Desirable Place to Live

REVOLVING LOAN FUND AGREEMENT

CITY OF MOLINE

And

FUNCTIONAL INTEGRATED TECHNIQUES CHIROPRACTIC & MASSAGE LLC

Article 1.0 IDENTIFICATION OF PARTIES

This Agreement entered into as of this ____ day of _____, 2015 between the **City of Moline**, an Illinois municipal corporation (hereinafter referred to as the City) and **Functional Integrated Techniques Chiropractic & Massage LLC**, an Illinois limited liability company, (hereinafter referred to as the Business or Borrower).

Article 2.0 STATEMENT OF PURPOSE

WITNESSETH THAT:

WHEREAS, the City promotes the creation and expansion of businesses that create jobs; and

WHEREAS, the Business is interested in participating in the City's Revolving Loan Fund (hereinafter referred to as Program) so as to be able to secure loan financing for the development or expansion of their business enterprise in order to create/retain jobs.

NOW THEREFORE, the City and the Business hereby mutually agree as follows:

Article 3.0 TERMS OF THE LOAN

- 3.1 Maximum Amount of Loan. It is expressly understood and agreed that the maximum amount to be loaned to the Business by the City shall not exceed **Thirty Thousand and 00/100 Dollars (\$30,000.00)**. Such loan will be evidenced by separate Promissory Note executed by the Business, Personal Guarantees executed by Shawn K. Duncan, and a Security Agreement, executed by the City and the Business, Mortgage on real estate, all of even date herewith, which are all hereby made part of this Agreement by reference (collectively referred to hereinafter as "Loan Documents").
- 3.2 Loan Rate. The City and Business agree that all funds loaned to Business shall be at an interest rate of **1.63** percent per annum.
- 3.3 Loan Term. The City and Business agree that the term of the loan shall be **five (5)** years.
- 3.4 Repayment of Loan. The Business will make monthly principal and interest payments for the term of the loan according to the amortization schedule, attached hereto as Exhibit "A" and incorporated in this Agreement by reference. **The first payment shall be due on August 1, 2015 and shall be made to City at the address stated below.** All loan payments are due the first day of each month thereafter.
- 3.5 Prepayment of Loan. The outstanding principal of the loan may be prepaid by the Business at any time without penalty.

Article 4.0 STATEMENT OF WORK AND SERVICES

The Business shall perform in a satisfactory and proper manner, as determined by the City, the work activities and services as written and described in the approved loan application, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

Article 5.0 JOBS PROVIDED

5.1 Jobs Provided. The Business represents that it will take all actions necessary and required to secure the accomplishment of the following benefits to the community:

That the Business will create or retain 3 jobs (full-time equivalent) in the City of Moline, in a twenty-four (24) month period.

5.2 Failure to Create and/or Retain Jobs. Businesses not meeting the minimum jobs created or retained as stated in the loan application should notify the City in writing regarding reasons for not doing so. Action for non-compliance may result in: 1) escalation of the loan interest rate or; 2) extension of timeframe to create/retain jobs. Each loan will be considered on an individual basis.

Article 6.0 REPORTS AND PRODUCTS

6.1 Employment Reports. The Business agrees to keep a written record of all maintained or increased job placements during the course of the contractual agreement with the City. This record shall be available to the City each day of the Agreement during regular business hours. The Business shall submit a record (in a form provided to the Business by the City at the closing of this Agreement) to the City of the maintained or increased job opportunities on a quarterly basis, such record shall be submitted three months from the date of this Agreement and each quarter thereafter. Such record shall state:

- (a) Job title;
- (b) Name of the persons occupying position;

6.2 Accounting Records. The Business shall submit to the City an accounting of any and all purchases of equipment, fixtures, and other improvements made with the proceeds of City funds.

6.3 Failure to Provide. Failure to provide information set forth above shall be cause, at the City's option, for the loan to become payable in full after ten (10) days written notice from the City.

6.4 City Approval of Records. The City shall approve or disapprove the records as stated in this Article 6.0 on a quarterly basis. Continued approval by the City during the term of the loan shall be necessary in order for the Business to participate in the program.

Article 7.0 COMPLIANCE

The owner agrees to comply with all requirements of Title VI and Title VII of the U.S. Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and Executive Order 11063. The owner further agrees not to discriminate in the sale, lease, rental, use or occupancy of the property upon the basis of race, color, sex, age, or national origin.

Article 8.0 COMPLIANCE WITH APPLICABLE LAWS

The Business assumes the responsibility to observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of this Agreement.

Article 9.0 CONSTRUCTION SUPERVISION AND INSPECTION

If this loan is used for construction projects, the Business will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms to the approved plans and specifications; that it will furnish progress reports and other such information as the City may require.

Article 10.0 AUDITING

The Business shall permit the authorized representative of the U.S. Department of Housing and Urban Development to inspect and/or audit the records of the Business relating to its performance under the Agreement.

Article 11.0 TERMINATION

If the Business shall fail to fulfill its obligations under this Agreement, or if the Business shall violate any of the covenants, agreements or stipulations of this Agreement or the Loan Documents, the City shall have the right to terminate this Agreement by giving written notice to the Business of such termination and specifying the effective date thereof. Such notice shall be given at least ten (10) days before the effective date of such termination. Additionally, the City shall demand payment in full of the Promissory Note, and may demand payment in full of any Personal Guaranty incorporated in this Agreement by reference.

Article 12.0 RESTRUCTURING

The purpose of the Revolving Loan Fund Program is to encourage the development or expansion of viable businesses on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project. The City reserves the right to call the loan if these requirements are not met.

It shall be the policy of the City to have the option to call loans if the Business moves from the city or is involved in illegal activities. Following approval to call, the Business shall be informed in writing thirty (30) days prior to recall by the appropriate city staff.

Article 13.0 DEFAULT

In the event the Business defaults under the terms of this Agreement or any other Loan Documents, the City shall have the right to declare the loan to be due and payable immediately to the City. The City shall notify the Business in writing by of any breach in terms of this Agreement. The City may give the Business ten (10) days or such other time as is reasonable in order to correct the default. City may make use of any remedy City has under state or federal law as well as any remedy given to City in any Loan Document. If Lender exercises the option on default to require immediate payment in full, Lender shall give Borrower notice of acceleration as set forth in the Promissory Note.

Unless prohibited by law, the undersigned agrees to pay all costs of collection, including reasonable attorneys' fees incurred by Lender in the event this Note is not duly paid.

By selecting any one or more of these remedies Lender does not give up his right to later use any other remedy. By deciding not to use any remedy should Borrower default, Lender does not waive his right to later consider the event a default if it happens again.

Article 14.0 ASSIGNMENT

The Business shall not assign any interest in this Agreement and shall not transfer any interest by assignment or novation without the prior written consent of the City.

Article 15.0 MODIFICATIONS

There shall be no modifications of this Agreement unless they are in writing, in valid legal form, and are signed by both parties.

Article 16.0 INDEMNIFICATION

The Business agrees to indemnify, keep and save harmless the City, and their agents, officials and employees against all suits, claims, damage, costs and losses, whether caused or contributed to by the negligence of the City, including attorney fees, that may be based on any injury or damage to persons or property that in any way arise out of this Agreement and pertain to the affirmative or negligent acts, errors or omissions of the Business.

Article 17.0 SEVERABILITY

If any section or part of this Agreement shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the agreement as a whole or any section, provisions, or part thereof not adjudged invalid or unconstitutional.

Article 18.0 NOTICE TO PARTIES

Notice to a party hereto shall be addressed to such party at such address set forth below or at such other address it shall from time to time designate by notice in writing:

18.1 **CITY OF MOLINE** referenced in this Agreement as the City:

Economic Development Manager
City of Moline
619 - 16th Street
Moline, Illinois 61265

18.2 **FUNCTIONAL INTEGRATED TECHNIQUES CHIROPRACTIC & MASSAGE LLC**, referenced in this Agreement as the Business or Borrower:

Functional Integrated Techniques Chiropractic & Massage LLC
dba F.I.T. Chiropractic & Massage
1611 5th Ave.
Moline, IL 61265

Article 19.0 TERM OF AGREEMENT

The term of this Agreement shall be effective from the date of signing. The first payment will be due August 1, 2015 and the last payment will be due July 1, 2020 or until all principal and interest has been paid under terms of the Note.

This Agreement shall take effect immediately upon execution by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the _____ day of _____, 2015.

**FUNCTIONAL INTEGRATED TECHNIQUES
CHIROPRACTIC & MASSAGE LLC,
an Illinois limited liability company**

CITY OF MOLINE, ILLINOIS, a municipal corporation

By: _____
Shawn K. Duncan, Member

By: _____
Scott Raes, Mayor

ATTEST:

By: _____
Tracy Koranda, City Clerk

APPROVED AS TO FORM:

Maureen Riggs, City Attorney

Date: _____

PROMISSORY NOTE

Date: _____, 2015

Borrower's Name and Address:

Functional Integrated Techniques Chiropractic & Massage LLC
1611 5th Ave.
Moline, IL 61265

Lender's Name and Address:

City of Moline
619 16 Street
Moline IL 61265

FOR VALUE RECEIVED, the undersigned, Functional Integrated Techniques Chiropractic & Massage LLC, an Illinois limited liability company, (Borrower), promises to pay to the order of the City of Moline, Illinois, an Illinois municipal corporation, (Lender), at Lender's address listed above the **PRINCIPAL** sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)** together with interest thereon at one and sixty-three hundredths percent (1.63%) per annum on the following terms:

SINGLE ADVANCE: Borrower has received all of this principal sum. No additional advances are contemplated under this note.

INTEREST: Borrower agrees to pay interest (calculated on the basis of twelve 30-day months), which shall begin to accrue on the date the Loan Agreement is fully executed by the Borrower and the Lender, on the principal balance owing from time to time as stated below:

FIXED RATE: Borrower agrees to pay interest at the fixed, simple rate of **1.63%** per year, unless and until Borrower defaults hereunder or under any documents securing this Note, in which case the interest charges shall immediately become the post maturity rate, even if prior to the post maturity date.

POST MATURITY/DEFAULT RATE:
Borrower agrees to pay interest on the unpaid balance owing after the maturity date, and until paid in full, at a rate equal to twelve percent (12%) per year.

PAYMENTS: Borrower will make monthly principal and interest payments according to the terms set forth in the Loan Agreement.

BORROWER'S RIGHT TO PREPAY: Borrower has the right to prepay as set forth in the Loan Agreement.

ADDITIONAL CHARGES: In addition to interest, Borrower ____ has paid X agrees to pay the following additional charges: **Filing Fees**

PURPOSE: The purpose of this loan is **to assist a business expansion and to create jobs**

SECURITY: This note is secured in part by:

- **Real estate as listed in the Real Estate Mortgage;**
- **Personal Guaranty of Shawn K. Duncan; and**
- **Security Interest in collateral as listed in the Security Agreement.**

DEFAULT: If any payment hereunder is not paid when due, or if any event of default shall occur under any documents securing this Note, then Lender may, at its option declare this Note to be immediately due and payable and thereupon this Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice or demand.

Upon the occurrence of an event of default, or if Borrower is otherwise in default on this Note, Lender has the following non-exclusive, non-cumulative remedies: (1) Lender may demand immediate payment of all Borrower owes Lender under this Note; (2) Lender may make use of any remedy Lender has under state or federal law; or (3) Lender may make use of any remedy given to Lender in any agreement securing this Note.

By selecting any one or more of these remedies Lender does not give up his right to later use any other remedy. By deciding not to use any remedy should Borrower default, Lender does not waive his right to later consider the event a default if it happens again.

If Lender exercises the option on default to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower must pay all sums secured. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by any Loan Agreement or Personal Guaranty, without further notice or demand on Borrower or Guarantor.

Unless prohibited by law, the undersigned agrees to pay all costs of collection, including reasonable attorneys' fees incurred by Lender in the event this Note is not duly paid.

AMENDMENT: The undersigned agrees that this Note may be amended only by written agreement signed by the party against whom enforcement is sought.

NOTICE: Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to the address shown above or at a different address if Borrower provides the Lender notice of a different address.

WAIVERS: The Borrower, Guarantor, and any other person who has obligations under this Note waive the rights of presentment, notice of presentment, protest, notice of protest, and notice of dishonor.

ASSIGNMENT: This note is assignable in whole or in part by Lender. The Note is not assignable by Borrower.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE. I have received a copy on today's date.

**Functional Integrated Techniques Chiropractic & Massage LLC,
an Illinois limited liability company**

By: _____
Shawn K. Duncan, Member

Date: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Shawn K. Duncan who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the said instrument as his free and voluntary act and as the free and voluntary act of Functional Integrated Techniques Chiropractic & Massage LLC, for the uses and purposes therein set forth, and that he is duly authorized to execute the same for the limited liability company.

Given under my hand and notarial seal this _____ day of _____, A.D., 2015.

NOTARY PUBLIC

PERSONAL GUARANTY

Revolving Loan Fund Program

_____, 2015

**Functional Integrated Techniques
Chiropractic & Massage LLC**

City of Moline, Illinois

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the City of Moline, an Illinois municipal corporation (hereinafter referred to as the "City"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of

**Functional Integrated Techniques Chiropractic & Massage LLC,
an Illinois limited liability company**

(hereinafter referred to as "Borrower") or to engage in any other transactions with Borrower, the undersigned hereby absolutely and unconditionally guarantee(s) to the City the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described and evidenced by a Promissory Note dated the same date as this guaranty, and hereafter referred to as the Indebtedness provided however that this guarantee shall not exceed the sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)** or the outstanding indebtedness whichever is the lesser (hereinafter referred to as "Indebtedness").

The undersigned further acknowledge(s) and agree(s) with City that:

1. No act or thing need occur to establish the liability of the undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked prospectively as to future transactions, by written notice actually received by the City, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the City, or as to any renewals, extensions and refinancings thereof. If there be more than one undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by the City and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth. Parties understand and agree this guarantee shall be a joint and several guarantees and that both and each of the undersigned are fully liable hereunder for the full amount of the guarantee.

3. If the undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) then the City shall have the right to declare immediately due and payable, and the undersigned will forthwith pay to the City, the full amount of all Indebtedness, whether due and payable or unmatured. If the undersigned voluntarily commences or there is commenced involuntarily against the undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the undersigned hereunder shall be for all Indebtedness, without any limitation as to amount, plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the undersigned hereunder. The City may apply any sums received by or available to the City on account of the Indebtedness from Borrower or

any other person (except the undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the undersigned hereunder. If the liability of the undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the City, advising the City that such payment is made under this guaranty for such purpose.

5. The undersigned will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the undersigned against any person liable to payment of the Indebtedness, or as to any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

6. The undersigned will pay or reimburse the City for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the City in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

7. Whether or not any existing relationship between the undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, the City may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the undersigned and without any notice to the undersigned. The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the City is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of settlement with or agreement not to sue Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness;

8. The undersigned waive(s) any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the undersigned will not assert, plead or enforce against the City any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against the City to Borrower or any such other person, whether or not on account of a related transaction. The undersigned expressly agree(s) that the undersigned shall be and remain liable for any deficiency remaining after foreclosure of any mortgage or enforcement of security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

9. The undersigned waive(s) presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The City shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

10. If any payment applied by the City to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or

reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

11. The liability of the undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the undersigned to the City as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

12. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the undersigned. This guaranty shall be effective upon delivery to the City, without further act, condition or acceptance by the City, shall be binding upon the undersigned and the heirs, representatives, successors and assigns of the undersigned and shall inure to the benefit of the City and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. This guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the undersigned and the City. This guaranty shall be governed by the laws of the State of Illinois. The undersigned waive(s) notice of the City's acceptance hereof.

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned the day and year first above written.

By: _____
Shawn K. Duncan, Individually

Date: _____

Return to and Prepared by:
Amy L. Keys
Deputy City Attorney
City of Moline
619 16 Street
Moline IL 61265
(309)524-2010

REAL ESTATE MORTGAGE

MORTGAGOR

Bryanna R. Brodell n/k/a Bryanna R. Duncan
Shawn K. Duncan
707 W. Rusholme St.
Davenport, Iowa 52804

MORTGAGEE/Lender

City of Moline
619 16 Street
Moline, Illinois 61265

REAL ESTATE MORTGAGE: For value received, the undersigned, Bryanna R. Brodell n/k/a Bryanna R. Duncan and Shawn K. Duncan, **wife and husband**, in his/her own right, MORTGAGE and WARRANT to the City of Moline, an Illinois municipal corporation, to secure the payment of the secured debt described below, dated _____, the real estate described below and all rights, easements, appurtenances, rents, leases and existing and future improvements and fixtures (all called the "property").

PROPERTY ADDRESS:

707 W. Rusholme, Davenport, Iowa 52804

LEGAL DESCRIPTION:

Lot 17, Block 9, of Glenarmil Addition to the City of Davenport, Scott County Iowa, a Subdivision of part of the North half of the Southwest Quarter of Section 23, Township 78 North, Range 3 East of the 5th P.M., located in Scott County, Iowa.

TITLE: Mortgagor covenants and warrants title to the property, except for encumbrances of record, municipal and zoning ordinances, current taxes and assessments not yet due.

SECURED DEBT: This mortgage secures repayment of the secured debt to Functional Integrated Techniques Chiropractic & Massage LLC, an Illinois limited liability company, (hereinafter referred to as "F.I.T.") and the performance of the covenants and agreements contained in this mortgage, the Revolving Loan Fund, and in any other document incorporated herein. Secured debt, as used in this mortgage, includes any amounts F.I.T. owes Lender under this mortgage or under any instrument secured by this mortgage.

FUTURE ADVANCES: All amounts owed under the above agreement are secured even though not all amounts may yet be advanced, and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

The total unpaid balance secured by this mortgage at any one time shall not exceed a maximum principal amount of **Thirty Thousand and 00/100 Dollars (\$30,000.00)**, plus any disbursements made for the payment of taxes, special assessments, or insurance on the property, with interest on such disbursements.

TERMS AND COVENANTS: Mortgagor agrees to all the terms and covenants contained in this mortgage (specifically incorporating by this reference those on pages 3 and 4) and in any riders described below and signed by Mortgagor.

SIGNATURE(S):

By: _____
Bryanna R. Brodell n/k/a Bryanna R. Duncan

By: _____
Shawn K. Duncan

Date: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Bryanna R. Brodell n/k/a Bryanna R. Duncan and Shawn K. Duncan, wife and husband who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such, appeared before me this day in person and severally acknowledged that both signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, A.D., 2015.

NOTARY PUBLIC

COVENANTS

1. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens and encumbrances on the property when due and will defend title to the property against any claims which would impair the lien of this mortgage. Lender may require Mortgagor to assign any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the property.
2. **INSURANCE.** Mortgagor will keep the property insured under terms acceptable to Lender at Mortgagor's expense and for Lender's benefit. Lender will be named as loss payee or as the insured on any such insurance policy. Any insurance proceeds may be applied, within Lender's discretion, to either the restoration or repair of the damaged property or to the secured debt.
3. **PROPERTY.** Mortgagor will keep the property in good condition and make all repairs reasonably necessary.
4. **EXPENSES.** Mortgagor agrees to pay all Lender's expenses, including reasonable attorneys' fees if Mortgagor breaks any covenants in this mortgage or in any obligation secured by this mortgage. Attorneys' fees include those awarded by an appellate court. Mortgagor will pay these amounts to Lender as provided in Covenants of this mortgage.
5. **DEFAULT AND ACCELERATION.** If Mortgagor sells the property or breaks any covenants under this mortgage, any prior mortgage or any obligation secured by this mortgage, Lender may accelerate the maturity of the secured debt and demand immediate payment and exercise any other remedy available to Lender. Lender may foreclose this mortgage in the manner provided by law.
6. **WAIVER OF HOMESTEAD.** Mortgagor hereby waives all right of homestead exemption in the property.
7. **AUTHORITY OF MORTGAGEE TO PERFORM FOR MORTGAGOR.** If Mortgagor fails to perform any of his duties under this mortgage, Lender may perform the duties or cause them to be performed. Lender may sign Mortgagor's name or pay any amount if necessary for performance. If any construction on the property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect his security interest in the property. This may include completing the construction. Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this mortgage.
8. **INSPECTION.** Lender may enter the property to inspect if Lender gives Mortgagor notice beforehand. The notice must state the reasonable cause for Lender's inspection.
9. **CONDEMNATION.** Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the property. Such proceeds will be applied as provided in Covenant 1. This assignment is subject to the terms of any prior security agreement.
10. **WAIVER.** By exercising any remedy available to Lender, Lender does not give up Lender's rights to later use any other remedy. By not exercising any remedy, if Mortgagor defaults, Lender does not waive his right to later consider the event a default if it happens again.
11. **JOINT AND SEVERAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this mortgage are joint and several. If Mortgagor co-signs this mortgage but does not co-sign the underlying debt Mortgagor does so only to mortgage his interest in the property under the terms of this mortgage. Mortgagor also agrees that Lender and any party to this mortgage may extend, modify or make any other changes in the terms of this mortgage or the secured debt without my consent. Such a change will not release Mortgagor from the terms of this mortgage.

The duties and benefits of this mortgage shall bind and benefit the successors and assigns of either party or both parties.
12. **NOTICE.** Unless otherwise required by law, any notice to Mortgagor shall be given by delivering it or by mailing it by certified mail addressed to Mortgagor at the Property Address or any other address that Mortgagor has provided to Lender. Mortgagor will give any notice to Lender by certified mail to Lender's address on the front side of this mortgage, or to any other address which Lender has designated.

Any notice shall be deemed to have been given to either party when given in the manner stated above.

13. **TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN THE MORTGAGOR.** If all or any part of the property or any interest in it is sold or transferred without Lender's prior written consent, Lender may demand immediate payment of the secured debt. Lender may also demand immediate payment if the mortgagor is not a natural person and a beneficial interest in the mortgagor is sold or transferred. However, Lender may not demand payment in the above situations if it is prohibited by federal law as of the date of this mortgage.
14. **RELEASE.** After 5 years from the date of execution, if the loan has been paid, the release of the Mortgage will be prepared and forwarded to the Mortgagor to be recorded at Mortgagor's expense.
15. **AMENDMENT.** This Agreement shall not be altered or amended except in a writing signed by the parties hereto.
16. **PARTIAL INVALIDITY.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
17. **GENDER.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.
18. **CAPTIONS.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of the Agreement.

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of this ___ day of _____ 2015 (Security Agreement), is made by **Functional Integrated Techniques Chiropractic & Massage LLC**, an Illinois limited liability company (Borrower), in favor of the **City of Moline**, an Illinois municipal corporation (City).

RECITALS

WHEREAS, pursuant to a Loan Agreement dated as of _____, by and between the City and the Borrower (Loan Agreement), and approved by City as Council Bill _____, the City has agreed to loan Borrower Thirty Thousand and No/100ths Dollars (\$30,000.00); and

WHEREAS, it is a condition precedent to the loan of the City that this Security Agreement be executed.

NOW THEREFORE, in order to induce the City to loan funds under the Loan Agreement and for other good and valuable consideration, the parties hereby agree as follows:

1. DEFINED TERMS. Unless otherwise defined herein, the terms defined in the Loan Agreement (whether or not such Loan Agreement remains in effect) are hereby incorporated by reference into this Security Agreement and shall have the meanings given to them in the Loan Agreement.

1.1. "Collateral." The Collateral shall consist of the personal property of the Borrower wherever located, and now owned or hereafter acquired, including but not limited to, deposit accounts, accounts receivable, and personal property set forth on Exhibit "A" attached hereto and incorporated herein by reference, including:

- (a) Additions, accessions, and substitutions and rights ancillary to, or arising in any way in connection with, any of the foregoing, including security agreements securing any of the foregoing, guaranties guaranteeing any of the foregoing, documents, notes, and drafts representing any of the foregoing, the right to returned goods, and warranty claims with respect to any of the foregoing;
- (b) Books and records pertaining to the foregoing and the equipment containing the books and records or on which the books and records are stored;
- (c) Money, deposit accounts, insurance proceeds, and other tangible and intangible property received upon the sale or disposition of any of the foregoing; and
- (d) To the extent not listed above as original collateral, proceeds and products of the foregoing.

1.2. "Obligations." This Security Agreement secures the following, which is collectively referred to as "Obligations" throughout this agreement:

- (a) The Borrower's obligations under the Loan Agreement, referenced more specifically above, and a Promissory Note, executed by Borrower dated _____, to secure an indebtedness of Thirty Thousand and No/100ths Dollars (\$30,000.00), and this Security Agreement; together with all other obligations of Debtor to Secured Party now existing.

(b) The repayment of (1) any amounts that the City may advance or spend for the maintenance or preservation of the Collateral, and (2) any other expenditures that the City may make under the provisions of this Security Agreement or for the benefit of the Borrower, including attorneys' fees;

(c) All amounts owed under any modifications, renewals, or extensions of any of the foregoing obligations; and

(d) All other amounts now or in the future owed by the Borrower to the City.

1.3. "UCC." Any term used herein but not defined in this Security Agreement has the meaning given to such term in the Uniform Commercial Code (UCC) as enacted in the State of Illinois.

1.4. "Borrower's Location." The Borrower's state of its incorporation is Illinois.

2. GRANT OF SECURITY INTEREST. The Borrower hereby grants a security interest in the Collateral to the City to secure the prompt payment and performance of the Obligations.

3. PERFECTION OF SECURITY INTERESTS

3.1. Filing of Financing Statement (Financing Statement). The Borrower authorizes the City to file a Financing Statement describing Collateral. IF FOR FIXTURES, TIMBER OR MINERALS, SUCH A FILING SHALL BE FILED FOR RECORDING IN THE REAL ESTATE RECORDS.

3.2. Possession.

(a) The Borrower shall have possession of the Collateral, except where expressly otherwise provided in this Security Agreement or where the City chooses to perfect its security interest by possession in addition to the filing of a financing statement; and

(b) Where Collateral is in the possession of a third party, the Borrower will join the City in notifying the third party of the City's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the City.

3.3. Control. The Borrower will cooperate with the City, when and if the City seeks to obtain control with respect to any Collateral.

3.4. Documents and Instruments. If requested by the City, the Borrower shall immediately deliver any and all documents and instruments to the City.

4. BORROWER'S REPRESENTATIONS AND WARRANTIES. The Borrower warrants and represents the following:

4.1. Organization. The Borrower (a) is an organization duly organized, validly existing, and in good standing under the laws of the State of Illinois; (b) has all requisite power and authority to own its properties and assets and to carry on its business as now conducted and as proposed to be conducted; (c) is qualified to do business in every jurisdiction where such qualification is required, except where the failure to so qualify is not likely to have a material adverse effect on its business, operations, or finances; and (d) has the corporate power and authority to execute, deliver, and perform its obligations hereunder and under the Loan Agreement.

4.2. Due Authorization. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate acts and do not violate the Borrower's articles of incorporation or bylaws or any law or regulation applicable to Borrower or its business, and this Agreement constitutes a duly valid and binding agreement of Borrower enforceable against it, according to its terms, except as such terms may be limited by applicable bankruptcy or insolvency laws.

4.3. Predecessors. There are no predecessors to Borrower in existence during the past five (5) years.

4.4. Names. For the past five (5) years, Borrower has not used any other name, including trade names.

4.5. Title, Other Liens. Except for the security interest granted pursuant to this Agreement, and a security interest granted to Northwest Bank & Trust Company (Northwest Bank), Borrower owns each item of Collateral free and clear of any and all liens, security interests, encumbrances, or claims of any kind. No financing statements or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the City or Northwest Bank .

4.6. Location of Collateral. All of the Borrower's fixtures, equipment, and inventory are now located or will be located at 1611 5th Avenue, Moline, Illinois.

5. POST-CLOSING COVENANTS AND RIGHTS CONCERNING THE COLLATERAL

5.1. Maintenance of Security Interest.

(a) The Borrower shall maintain the security interest herein as a priority security interest and shall defend such security interest against the claims and demands of all persons or entities.

(b) At any time, upon written request of the City, the Borrower will promptly execute and deliver such further instruments and documents and take such further actions as the City may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (1) the filing of any financing or continuation statements under the UCC in effect in any jurisdiction; and (2) in the case of Collateral as set forth in Section 3.3 hereof, take any action necessary to enable the City to obtain "control" within the meaning of the UCC.

(c) The Borrower shall keep current on all of its obligations to its landlord.

5.2. Changes in Name or Organization. The Borrower will not (unless in each case it shall have given the City at least 90 days' prior written notice thereof of such change):

(a) Change its jurisdiction of organization from that specified in Section 4.1 hereof; or

(b) Change its name, identity, or corporate structure to such an extent that any financing statement previously filed in favor of the City hereunder would become seriously misleading or otherwise become ineffective to maintain perfection of the Collateral.

5.3. Inspection. The City may inspect any Collateral in the Borrower's possession at any time upon reasonable notice.

5.4. Maintenance. The Borrower shall maintain the Collateral in good working condition and repair.

5.5. Insurance. The Borrower shall insure at its expense, and keep insured by solvent insurers, all Collateral in such amounts as similar goods are usually insured by companies similarly situated, against loss or damage of the kinds usually insured against by companies similarly situated, and upon the City request, the policies evidencing such insurance shall be duly endorsed in the City's favor, and certificates evidencing such insurance shall be provided to the City. If the Borrower defaults in this regard, the City shall have the right, but not the obligation, to insure and charge the cost to the Borrower. The City assumes no risk or responsibility in connection with the payment or nonpayment of losses, the only responsibility of the City being to credit the Borrower with any insurance payments received on account of losses.

5.6. No Disposition of Collateral. Except for sales, leases, or other dispositions made in the ordinary course of business, the Borrower shall not, without the authorization of the City:

- (a) Make any sales or leases of any of the Collateral;
- (b) License any of the Collateral; or
- (c) Grant any other security interest in any of the Collateral, except to Northwest Bank.

6. BORROWER'S COVENANTS. Until the Obligations are paid in full, the Borrower agrees to the following:

6.1. Compliance with Environmental Laws. The Borrower shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations, including, but not limited to, all environmental laws, ordinances, rules, and regulations, and shall keep the Collateral free and clear of any liens imposed pursuant to such laws, ordinances, rules, and regulations.

6.2. Compliance with Employment Laws. The Borrower shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations concerning minimum wages, overtime laws, and payment of withholding taxes, and deliver to the City such reports and information in form satisfactory to the City as the City may request from time to time to establish compliance with such laws.

7. EVENTS OF DEFAULT. The occurrence of any of the following shall be, at the option of the City (except for Section 7.5, which shall be automatic), an Event of Default:

7.1. Any default in payment or performance by the Borrower under the Loan Agreement, any notes, or any of the other Obligations;

7.2. The Borrower's failure to comply with any of the provisions of, or the incorrectness of any representation or warranty contained in, this Security Agreement, any note, or any of the other Obligations;

7.3. Transfer or disposition of any of the Collateral, except as expressly permitted by this Security Agreement;

7.4. Attachment, execution, or levy on any of the Collateral;

7.5. The Borrower's voluntarily or involuntarily becoming subject to any proceeding under (a) the Bankruptcy Code, or (b) any similar remedy under state statutory or common law; or

7.6. The Borrower's failure to comply with, or the Borrower's becoming subject to, any administrative or judicial proceeding under any federal, state, or local (a) hazardous waste or environmental law; (b) asset forfeiture or similar law that can result in the forfeiture of property; or (c) other law, where noncompliance may have any significant effect on the Collateral.

8. REMEDIES UPON DEFAULT

8.1. General. Upon any Event of Default, the City may pursue any remedy available at law (including those available under the provisions of the UCC) or in equity to collect, enforce, or satisfy any Obligations then owing, whether by acceleration or otherwise.

8.2. Cumulative Remedies. Upon any Event of Default, the City shall have the right to pursue any of its remedies separately, successively, or simultaneously, including, without limitation, the following:

(a) File suit and obtain judgment, and, in conjunction with any action, the City may seek any ancillary remedies provided by law, including levy of attachment and garnishment.

(b) Take possession of any Collateral if not already in its possession with demand and without legal process. Upon the City's demand, the Borrower will assemble and make the Collateral available to the City as it directs. The Borrower grants to the City the right, for this purpose, to enter into or on any premises where Collateral may be located.

(c) Without taking possession, sell, lease, or otherwise dispose of the Collateral at public or private sale in accordance with the UCC.

8.3. Recovery of Expenses. Should an Event of Default occur, the Borrower shall pay to the City all costs and expenses incurred by the City for the purpose of enforcing its rights hereunder, including:

(a) Costs of foreclosure;

(b) Costs of obtaining an award of money damages; and

(c) Reasonable fees for the services of attorneys and other professionals employed by the City for any purpose related to this Security Agreement or the Obligations, including consultation, drafting documents, preparation of reports, instituting, prosecuting, or defending litigation or arbitration.

9. FORECLOSURE PROCEDURES

9.1. No Waiver. No delay or omission by the City to exercise any right or remedy accruing upon any Event of Default shall (a) impair any right or remedy; (b) waive any default or operate as an acquiescence to the Event of Default; or (c) affect any subsequent default of the same or of a different nature.

9.2. Notices. The City shall give the Borrower such notice of any private or public sale as may be required by the UCC. Notification of disposition will be sent after default at least ten (10) days before the date of disposition.

9.3. Condition of Collateral. The City has no obligation to clean up or otherwise prepare the Collateral for sale.

9.4. No Obligation To Pursue Others. The City has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them, and the City may release, modify, or waive any collateral provided by any other person to secure any of the Obligations, all without affecting the City's rights against the Borrower. The Borrower waives any right it may have to require the City to pursue any third person for any of the Obligations.

9.5. Compliance with Other Laws. The City will use its best efforts to comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

9.6. Warranties. The City may sell the Collateral without giving any warranties as to the Collateral. The City may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

9.7. Purchases by City. In the event the City purchases any of the Collateral being sold, the City may pay for the Collateral by crediting some or all of the Obligations of the Borrower.

9.8. No Marshaling. The City has no obligation to marshal any assets in favor of the Borrower, or against or in payment of any note, any of the other Obligations, or any other obligation owed to the City or any other person.

10. ILLINOIS INSURANCE NOTICE

Unless the Borrower provides the City with evidence of the insurance coverage required by this agreement, the City may, but is not required to, purchase insurance at the Borrower's expense to protect the City's interests in the collateral. This insurance may, but need not, protect the Borrower's interests. The coverage that the City purchases may not pay any claim that the Borrower makes or any claim that is made against the Borrower in connection with the collateral. The Borrower may later cancel any insurance purchased by the City, but only after providing the City with evidence that the Borrower has obtained insurance as required by their agreement. If the City purchases insurance for the collateral, the Borrower will be responsible for the costs of that insurance, including interest and any other charges the City may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance the Borrower may be able to obtain on the Borrower's own.

11. MISCELLANEOUS

11.1. Assignment.

(a) Binds Assignees. This Security Agreement shall bind and shall inure to the benefit of the successors and assigns of the City and shall bind all persons who become bound as a borrower to this Security Agreement.

(b) No Assignments by Borrower. The City does not consent to any assignment by the Borrower except as expressly provided in this Security Agreement.

11.2. Counterpart. This Security Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

11.3. Further Assurances. The Borrower agrees to execute any further documents, and to take any further actions, reasonably required by the City to evidence or perfect the security interest granted herein, to maintain the first priority of the security interests, or to effect the rights granted to the City herein.

11.4. Governing Law. This Security Agreement is being executed and delivered and is intended to be performed in the State of Illinois and shall be construed and enforced in accordance with the laws of the State of Illinois, except to the extent that the UCC provides for the application of other law.

11.5. Headings. Section headings used in this Security Agreement are for convenience only. They are not a part of this Security Agreement and shall not be used in construing it.

11.6. Modifications. Any modification to this Security Agreement must be made in writing and signed by the party adversely affected.

11.7. Rules of Construction.

- (a) No reference to “proceeds” in this Security Agreement authorizes any sale, transfer, or other disposition of the Collateral by the Borrower;
- (b) “Includes” and “including” are not limiting;
- (c) “Or” is not exclusive; and
- (d) “All” includes “any,” and “any” includes “all.”

11.8. Severability. Should any provisions of this Security Agreement be found to be void, invalid, or unenforceable by a court or panel of arbitrators of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid, or unenforceable and shall not affect the remaining provisions of this Security Agreement.

11.9. Notices. Any notices required by this Security Agreement shall be deemed to be delivered when a record has been (a) deposited in any United States postal box if postage is prepaid and the notice properly addressed to the recipient at the address set forth below; (b) received by telecopy; (c) received through the Internet; or (d) when personally delivered to a party.

The parties have signed this Security Agreement as of the day and year first written at Moline, Illinois.

**FUNCTIONAL INTEGRATED TECHNIQUES
CHIROPRACTIC & MASSAGE LLC, an Illinois
limited liability company**

CITY OF MOLINE, ILLINOIS

By: _____
Shawn K. Duncan, Member

By: _____
Scott Raes, Mayor

ATTEST:

By: _____
Tracy Koranda, City Clerk

APPROVED AS TO FORM:

Maureen Riggs, City Attorney

QCIC NET GOVERNANCE AGREEMENT

This Agreement, is entered into by the Emergency Telephone System Board of Rock Island County; the Scott Emergency Communications Center; the Governments of Bettendorf, Davenport and Scott County, Iowa; East Moline, Milan, Moline, Rock Island, Silvis, and Rock Island County, Illinois for the Governance of the Quad Cities Interoperable Communications Network (“QCIC NET”).

WHEREAS, Chapter 28E, Code of Iowa and the Illinois Intergovernmental Cooperation Act, 5ILCS 220/1 ET. seq., provides that powers, privileges or authority exercised by a public agency of the state may be exercised jointly with any other public agency of the state having such powers, privileges and authority; and

WHEREAS, these Illinois and Iowa governments and agencies in the Quad Cities Metropolitan Area have worked together to create and operate the Quad Cities Interoperable Communications Network (“QCIC NET”), an emergency telecommunications fiber-optic network; and

WHEREAS, the parties entered into an agreement in August of 2010 for Governance of the QCIC NET to provide for network services, planning, funding, ownership, and operation for the benefit of the signatories, such that it results in the development, implementation and management of consistent, cohesive policies, processes; and

WHEREAS, the primary use of the QCIC NET is to connect public safety answering points in Scott and Rock Island Counties and support the public safety activities of police, fire and other emergency services in Scott County, Iowa and Rock Island County, Illinois and the partners used United States Department of Justice (DOJ) – Community Oriented Policing Services (COPS) grant program to help fund the QCIC NET; and

WHEREAS, in accordance with provisions in the QCIC NET GOVERNANCE AGREEMENT the parties herby desire to amend the previous Agreement by mutual consent of the participants of the Agreement and upon meeting obligations within the Agreement to accommodate other provisions:

- Ensuring and reinforcing the QCIC NET Public Safety Mission and Purpose is known, clear and attainable by all Stakeholders,
- Leveraging the QCIC NET through expanded use by the parties themselves and through Public Private Partnerships for complimentary applications aligned with the best interests of the parties and the constituents they represent and serve,
- Establishing a method and structure to address Public Private Partnership proposals and subsequent arrangements within regulatory allowances agreeable to all parties,
- Contracting for network management assistance and technical advisory services to be funded equally when necessary by the Emergency Telephone System Board of Rock Island County and Scott Emergency Communications Center of Scott County.

THEREFORE, THE PARTIES HERETO agree to the following terms and conditions which restate those previously agreed terms and conditions not being amended, as well as amended and new terms and conditions:

A. Network Definition. The QCIC NET is defined as the built or otherwise contributed fiber-optic cable, conduit, routers, switches and other equipment identified in the QCIC NET construction plans as contracted by the City of Davenport under bid numbers 09-50 and 10-43 for use in connecting the Scott and Rock Island County Public Safety Answering Points (PSAPS).

B. Board Structure and Operation. Six (6) Board Members or appointees of the Scott Emergency Communications Center (SECC) Board will serve as the Iowa members of the QCIC NET Governing Board; six (6) members or appointees of the Emergency Telephone System Board of Rock Island (RICO ESTB) will serve as the Illinois members of QCIC NET Governing Board. Only a majority of Iowa signatories have authority to rescind such authorization over the SECC and only a majority of the Illinois signatories have authority to rescind such authorization over the RICO ETSB.

1. The QCIC NET Governing Board shall meet at least quarterly to decide matters relative to the QCIC NET. To be considered adopted, motions of the QCIC NET Governing Board must be approved in accordance with the provisions outlined in the QCIC NET By-laws.

2. The QCIC NET Governing Board shall have authority over usage, access, policy and changes to the QCIC NET. Such authority may include, but is not limited to, the following:

- Establishing By-laws.
- Establishing Advisory Committees.
- Adopting network operation standards and procedures.
- Establishing a QCIC NET strategic plan.
- Adopting a disaster recovery plan.
- Adopting an operating manual.
- Setting connection and disconnect policies and procedures.
- Contracting for services that benefit the network.
- Tracking equipment and spare parts inventory.
- Tracking ongoing vendor support, warranties and specification sheets.
- Making fiber assignment among the users.
- Maintaining network maps.
- Reviewing and adjust the governance system.
- Seeking funds and procuring network services such as Service Level Agreements (SLAs), operations, maintenance, upgrade, line location and line repair.
- Developing processes to purchase network equipment collectively to ensure compatibility and favorable pricing.
- Setting transport fees.
- Setting maintenance fees.

C. Governance Practices. It is acknowledged that the DOJ-COPS Grant funded construction of a 72 strand single mode fiber optic network, but because it was interconnected with city and state contributed existing 12 fiber optic strands at several locations, as well as an additional 72 fiber optic strands paid for and owned by the City of Davenport at some locations, hybrid Governance Practices needs to be implemented and followed by all parties. In order to mitigate concerns over non-ownership control of the portions of the network and yet maintain strict control over the QCIC NET strands to avoid interruption of 911 applications, the following Governance Practice Policies are hereby agreed to and will be followed by the signatory parties.

1. Donated Municipal Fiber. Where existing 12 fiber optic strands were contributed by cities, these 12 strands will now be available completely and indefinitely for use by the QCIC as the Governing Board sees fit. Execution by the individual city participants of this QCIC Net Governance Agreement shall serve as an Indefeasible Right of Use (IRU) for as long as the city is

a participating party of the QCIC NET. If a city elects to no longer be a participating party of the QCIC NET, then such city and the QCIC NET Governing Board agree to negotiate in good faith continued use of the 12 fiber optic strands for the QCIC NET in exchange for the city continuing to use a comparable value of the QCIC NET fiber they may be using or need at such time, or such other reasonable and agreed upon compensation. Because these 12 strands were donated and become an integral part of the day-to-day operations of the QCIC NET, while the city may negotiate with the QCIC for continued use, the contributing cities agree that at no time will the city eliminate use by the QCIC NET unless the city replaces these strands at the city's expense and donates the replacement infrastructure to the QCIC NET. Since these strands are part of a cable consisting of other city used strands, maintenance of the 12 strands will be handled the same as the other QCIC fiber.

2. *Negotiated Fiber.* Where the existing state-owned 12 fiber optic strands were negotiated for use by the QCIC NET, as well as where the QCIC NET strands were negotiated for use by the states' Iowa Department of Transportation and Illinois Department of Transportation, the executed Indefeasible Right of Use (IRU) Agreement shall govern use, maintenance and all other provisions involved with the fiber.

3. *Grant Constructed Fiber.* Where the 72 strand fiber optic cabling and/or conduit was constructed and paid for by the DOJ-COPS Grant, the following fiber allocation and policies will govern and be followed:

a. The QCIC NET Governing Board will create, set and enforce policy of the 72 strand fiber optic cabling, beyond those policies contained in this Agreement which were a prerequisite to the formation of the QCIC NET Governing Board.

b. The management of the fiber may be contracted out to a third party consultant to become the Network Manager and carry out the policies and orders created and set by the QCIC NET Board. **The responsibility for managing and carrying out the policies and orders does not apply to city use fiber that is not in any way associated with the QCIC NET, and where part of the QCIC NET management and carrying out of policies and orders only applies to those specifically created and set by the QCIC NET Governing Board and assigned to the managing entity. The cities will still have management and control over the city use fiber with the exception of those specific and limited responsibilities assigned herein and as modified in the future to the Network management Consultant and/or Network Manager.**

c. Regardless of what entity is using the fiber for whatever purpose, all signatory parties agree that when such use is proposed, reported, maintained, replaced, repaired, altered, or in any manner touched or utilized, the entity using the fiber must notify the Network Manager and if that position is vacant both the SECC and/or ETSB (depending whether the fiber is physically located in Iowa or Illinois or across a bridge or river crossing where either the SECC or ETSB have entered into agreements with other parties assuming responsibility) so that complete and accurate fiber strand mapping can be maintained.

d. Recognizing that The QCIC NET is operational because municipalities and the states (Iowa and Illinois Department of Transportation) have contributed for use strands of fiber, as well as the fact that the DOJ-COPS Grant initiated interconnecting only the PSAPs, but not every emergency response facility, eighteen (18) strands

contained in the slate and white tubes (specifically strands numbers 55-72 unless modified or reassigned by the Network Manager or the Board) may be used for whatever government related application the signatory cities deem appropriate without the approval of the QCIC NET Governing Board for this cabling physically located within the particular city using the fiber, contingent upon the following provisions:

- i. Such use will not in any way interfere, degrade, or in any way be problematic to the other strands of fiber being used for the QCIC NET or by other parties.
 - ii. Such use will always be for a government or quasi government application(s) or resulting government/constituents' benefit(s) and not solely a for-profit application without any positive advantage or value to the city. Government applications may include local, county, state or federal government and examples of resulting benefit(s) may include maintenance of the network by a third party, expansion of the network, revenues to offset operating and maintenance costs, etc. No IRU agreement or other contractual arrangement may be entered into with another party by the city utilizing any portion of the QCIC fiber without the QCIC NET Governing Board approval.
 - iii. The city using these strands will comply with the reporting requirements of item C.3.c above, as well as all other provisions contained in this Agreement.
 - iv. If there is a question of whether any city application is in any way interfering or in violation of this Agreement, as amended, then by a majority vote of the Governing Board, the city may be denied use or continued use at which time control of the fiber reverts back to the QCIC NET Governing Board within that particular city until rectified or such time deemed appropriate by the Governing Board.
- e. All strands of fiber contained in the Blue Tube (Fiber Strands 1-12), Orange Tube (Fiber Strands 13-24), Green Tube (Fiber Strands 25-36), Brown Tube (37-48) and first 6 strands in the Slate Tube (Fiber number 49-54) unless reassigned will be used only after obtaining approval of the QCIC NET Governing Board. Those fibers within these tubes that have been identified as "DEAD" shall remain unusable unless future network construction or use reconfiguration changes under the Governing Board's authority. Those fibers within these tubes that have been identified as "SPARE" may be used by a participating city (most likely for some type of point-to-point application) upon getting approval from the QCIC NET Governing Board under whatever conditions and provisions determined by the Governing Board.
- f. There is one segment of the network where the DOJ-COPS Grant paid for an additional 72 fiber optic strands (between the 911 Moline Center located at 1200 River Drive, Moline heading east in the Railroad Right-of-Way up to Hand Hole H.H. MOL-11 at the intersection of 4th Avenue and 16th Street in Moline of which all 144 strands of fiber will be governed and controlled by the QCIC NET Governing Board. If there is a proposed use of some of this fiber by a city, it shall be treated as "SPARE" which may be used by a participating city upon getting approval from the QCIC NET Governing Board under whatever conditions and provisions determined by the Governing Board.

4. *City of Davenport Purchased Fiber.* Where the City of Davenport has paid for an additional 72 fiber optic strands located in general between the SECC coming through Scott County Court House through the Davenport Police Station into City Hall and continuing along E. River Drive into Bettendorf City Hall, Davenport will own and have full use and discretion of this additional 72 fiber optic strands, but because it is all part of the same cabling as the other 72 strands of the QCIC NET and as a condition of being placed/located within portions of the conduit owned by the QCIC NET, Davenport agrees to the following:

- a. Such use will not in any way interfere, degrade, or in any way be problematic to the other strands of fiber being used for the QCIC NET or by other parties.
- b. Davenport will comply with the reporting requirements of item C.3.c above, as well as all other provisions contained in this Agreement when working on the 72 fiber optic strands that were part of the QCIC NET construction project. This reporting requirement does not apply when Davenport is working on Davenport owned fiber or conduit having no impact at all to the QCIC NET fiber.
- c. If there is a question of whether the Davenport application is in any way interfering or in violation of this Agreement, as amended, then by a majority vote of of the Governing Board Davenport may be denied use or continued use until rectified or such time deemed appropriate by the Governing Board.

5. *ETSB Purchased Fiber.* Fiber strands paid for by the ETSB in an arrangement with Rock Island Arsenal (RIA) located generally between the 911 Moline Center at 1200 River Drive across the Moline bridge onto RIA, across RIA and crossing the 24th Street bridge in the City of Rock Island, and continuing into the City Hall of Rock Island ETSB will own and have full use and discretion of this additional 72 fiber optic strands, but because it is all part of and an integral component of the QCIC NET and as a condition of being placed/located within portions of the conduit owned by the QCIC NET, the ETSB agrees to the following:

- a. All strands of fiber contained in the Blue Tube (Fiber Strands 1-12), Orange Tube (Fiber Strands 13-24), Green Tube (Fiber Strands 25-36), Brown Tube (37-48) and first 6 strands in the Slate Tube (Fiber number 49-54), unless reassigned, will be used only after obtaining approval of the QCIC NET Governing Board. Those fibers within these tubes that have been identified as “DEAD” shall remain unusable unless future network construction or use reconfiguration changes under the Governing Board’s authority. Those fibers within these tubes that have been identified as “SPARE” may be used by a participating Illinois city (most likely for some type of point-to-point application) upon getting approval from the QCIC NET Governing Board under whatever conditions and provisions determined by the Governing Board.
- b. ETSB will comply with the reporting requirements of item C.3.c above, as well as all other provisions contained in this Agreement when working on the 72 fiber optic strands that were part of the QCIC NET construction project. This reporting requirement does not apply when ETSB is working on ETSB owned fiber or conduit having no impact at all to the QCIC NET fiber.
- b. Such use will not in any way interfere, degrade, or in any way be problematic to the other strands of fiber being used for the QCIC NET or by other parties.

c. ETSB will comply with the reporting requirements of item C.3.c above, as well as all other provisions contained in this Agreement.

d. If there is a question of whether the ETSB application is in any way interfering or in violation of this Agreement, as amended, then by a majority vote of the Governing Board ETSB may be denied use or continued use until rectified or such time deemed appropriate by the Governing Board.

6. *Fiber Splicing* In addition to the notification requirements of item C.3.c above, when any party or representative of the signatory parties intend to maintain, replace, repair, alter, or in any manner touch any of the fiber addressed in this Agreement, the parties agree to follow the fiber splicing and handling procedures.

7. *Security of Network Facilities* Because the QCIC NET fiber terminates/originates, continues through or is connected to numerous patch panels and equipment in multiple locations in the parties facilities, all signatory parties agree to take whatever steps necessary to secure the QCIC NET infrastructure, equipment and ancillary components of the network such as appropriate fire suppression arrangements, controlled environmental conditions (air conditioning, heating, ventilating, humidity control, etc.), and proper signage that no unauthorized person touches the QCIC NET fiber, equipment and ancillary components.

8. *Precedence* It is agreed upon that the only method of eliminating or in any way modifying these prerequisite Governing Policies (not subsequent policies set by the QCIC NET Governing Board) is by majority vote of the signatory parties.

D. Ownership. The signatory parties shall own the new and donated portions of the QCIC NET infrastructure located within their corporate boundaries or other area of jurisdiction, and shall not otherwise sell, dispose of, or otherwise use and handle this infrastructure in noncompliance of this Agreement unless authorized by the QCIC NET Governing Board or other applicable duly authorized entity. The ETSB is considered the owner of the QCIC NET infrastructure located generally between the 911 Moline Center at 1200 River Drive across the Moline bridge onto RIA, across RIA and crossing the 24th Street bridge in the City of Rock Island, and continuing into the City Hall of Rock Island. Should the QCIC NET Governing Board cease to exist and no other entity authorized to assume its function, the governmental signatory parties herein would own and control the portions of QCIC NET equipment and infrastructure under their jurisdiction.

E. Maintenance. Until otherwise approved by the QCIC NET Governing Board, each signatory having jurisdiction over the land or building where portions of the QCIC NET are located shall be fully responsible for maintaining the QCIC NET fiber, conduit and other equipment and ancillary components in a working fashion equal to the network's original construction and operation. The ETSB shall be responsible for these duties for QCIC NET infrastructure located generally between the 911 Moline Center at 1200 River Drive across the Moline bridge onto RIA, across RIA and crossing the 24th Street bridge in the City of Rock Island, and continuing into the City Hall of Rock Island, until otherwise approved by the QCIC NET Governing Board. Additionally, each signatory party is responsible for locating and marking the network resources prior to any approved construction project.

F. Network Management. A structure may be established to address public Private Partnership Proposals and provide a mechanism for the QCIC NET Governing Board and the signatory parties to retain and have available network management assistance and technical advisory services. Such services may include but are not limited to:

- Coordinating maintenance among all participating agencies.
- Reviewing and recommending goals and objectives to the QCIC NET Governing Board.
- Reviewing and recommending long-range plans to the QCIC NET Governing Board.
- Recommending adoption/modification of operating policies/procedures to the QCIC NET Governing Board, including setting connection and disconnect policies and procedures; tracking equipment and spare parts inventory; tracking ongoing vendor support, warranties, and specification sheets; making fiber assignment among the users; and maintaining network maps.
- Reviewing and discussing performance of any network service providers and making performance reports to the QCIC NET Governing Board.
- Developing processes to purchase network equipment collectively to ensure compatibility and favorable pricing.
- Assisting the Board with procurement of funds and network services such as Service Level Agreements, operations, etc.
Evaluation with recommendations of Public Private Partnerships or single entity proposals.

Network Services to Continue to be handled by participating jurisdictions includes:

- Line Locating
- Preventive System Maintenance
- Network Electronics
- Stock and Inventory of Spare Parts
- NOC/POP Operations
- Emergency Maintenance and Repair
- End-User Hook-up/Disconnect
- Dark Fiber and Other Type Billing

G. Manner of Financing. When QCIC NET requires funding for management of the network or for other uses to guarantee the networks Public Safety mission, the costs will be divided between SECC for the Iowa side and ETSB for the Illinois side. When practical all services will be equally divided as to costs and the associated contracts will reflect the services for the network in each state. SECC and ETSB will have separate contracts and when practicable the contracts will be multi year. The QCIC NET Board will vote to recommend the funding requests.

H. Fiscal Agent. Since it is intended to have a network management contract with both the SECC on the Iowa side, and ETSB on the Illinois side of the river, the portion of fees allocated to the Iowa use of the QCIC NET and facilities will go the SECC to deposit into a SECC bank account for disbursement and other appropriate government accounting and approved use practices, and the portion of fees allocated to the Illinois use of the QCIC NET and facilities will go to the ETSB to deposit into an ETSB bank account for disbursement and other appropriate government accounting and approved use practices. The SECC and ETSB are hereby authorized to act as fiscal agents for monies associated and specific to the QCIC NET fiber for the signatory parties to this Agreement. Approved use, practices, protocols, method and calculation of fee allocation and distribution are to be developed through the creation of Standard Operating Procedures (SOPs) of monies due to the individual cities, counties and other parties owning portions of the QCIC NET and the SECC and ETSB will disburse such entitled payments when required. If fees are entitled to go to one of the cities, county or other entity, then the SECC and/or ETSB will issue payment upon having acceptable documentation, approval and compliance with the SOPs.

- I. Saving Clause.** If any section, provision, or part of this Agreement shall be found to be invalid or unconstitutional, such judgment shall not affect the validity of the Agreement as a whole or any section, provision, or part thereof not found to be invalid or unconstitutional.
- J. Term.** This agreement shall become effective upon the date of the last signature hereon, and continue in full force and effect through June 30 of every year, unless sooner terminated as provided herein. This agreement shall automatically be renewed each year unless terminated as provided herein.
- K. Amendment/Termination.** This Agreement may be amended or terminated by mutual written consent of the participants to this Agreement and upon meeting obligations outlined within the Agreement. In the event of termination of the agreement, the distribution of the fiber shall be in accordance with the ownership section.

The undersigned agree with the terms of the agreement as written above.

To be signed by chief elected officials and/or chairs of:

Scott County, Iowa

Scott Emergency Communications Center

City of Davenport, Iowa

City of Bettendorf, Iowa

Rock Island County, Illinois

Emergency Telephone System Board of Rock Island County

City of Rock Island, Illinois

City of Moline, Illinois

City of East Moline, Illinois

City of Silvis, Illinois

Village of Milan, Illinois